

## Public Safety and Cost Control Solutions for Texas County Jails

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### Key Points

- If Texas counties build the 2,000 jail beds that are planned or under construction, the construction costs alone could be as high as \$160 million.
- Of the nearly 65,000 Texas county jail inmates, 58 percent are pretrial detainees.
- Legislation enacted in 2007 allowing law enforcement to issue citations and notices to appear for minor offenses has not been widely implemented.
- Many county jails release inmates without any form of photo identification, which compromises both public safety and the ability of these reentering individuals to obtain employment and housing.

### Introduction

County jails in Texas are a popular destination, with Texans making more than one million visits to them every year.<sup>1\*</sup> Given that there are more than 1,700 offenses in Texas state law, along with countless city criminal ordinances, perhaps this is not surprising. As of December 1, 2011, there were 64,984 inmates in Texas county jails.<sup>2</sup> Approximately 2,000 Texas jail beds are under construction or being planned, which at an average cost of \$60,000 to \$80,000 per bed, will cost between \$120 to \$160 million to build.<sup>3†</sup>

On any given day, roughly 58 percent of these inmates in Texas jails are classified as “pretrial,” with the remaining inmates being those sentenced to a term of incarceration for a misdemeanor, felons sentenced to prison waiting to be picked up by the Texas Department of Criminal Justice, and alleged parole violators waiting for the Board of Pardons and Paroles to determine whether they will be revoked to prison. Individuals may remain in pretrial detention for many reasons, including because they are: 1) unable to post a financial bond (either by paying in full, by cash, or more commonly through paying a bondsman a non-refundable 10 percent of the total), 2) are denied financial bond, or 3) are not deemed eligible or suitable for personal bond (a nominal amount such as \$25) coupled with pretrial supervision. In Texas, 11 counties have pretrial supervision divisions while some other counties utilize the local probation department to provide pretrial supervision for some pretrial defendants.

Given that county jails play a vital role in protecting public safety, facilitating the process of meting out justice to victims and offenders, while also constituting one of the largest items in most county budgets, it is critical to develop and implement policies to ensure that these facilities are used in the most efficient manner.

### Policy Options

#### *Analyze Jail Population Data*

The most important preliminary step available to counties seeking to reduce unnecessary pretrial incarceration is to review their jail population data to determine the number of defendants who are locked up solely because they could not afford a commercial bond. Of course, there are some pretrial defendants who were either denied bond or for whom bond was set at a very high amount because of the severity of their offense or on account of previous instances of fleeing. However, most arrests are for much less serious offenses than murder and rape, which often appropriately result in high bonds or denial of bond. An analysis that identifies how many indigent, low-risk defendants are still in jail after 48 or 72 hours is likely to hone in on those who could not afford to post bond.

Through such an analysis, counties can also determine how many pretrial defendants are on hand due to being revoked to county jail prior to trial. Defendants, as noted above, may be revoked regardless of whether they are supervised by a bondsman or pretrial services if, for example, they test positive for marijuana on a drug test required as a condition of release. A pretrial services official in one major Texas county said judges are notorious for a quick trigger. This official noted a case in which a defendant on pretrial services cycled tens of miles from the periphery of the city only to arrive late at a pretrial hearing and was revoked to jail. The pretrial services director said judges and prosecutors often use revocation to strong-arm a plea deal to satisfy the prosecutor’s desire for a harsher sentence and the judge’s desire to move the docket, even if the result amounts to little more than assembly-line justice.

Many possible solutions may emerge from such an analysis, which should be part of an ongoing dynamic monitoring of the jail population. For

\* This figure is a total of all entries, not the number of unique visitors.

† Some of these beds will replace existing beds while others are new capacity.

example, reviewing these data points would quantify the cost currently incurred by keeping low-risk inmates in jail simply because they cannot afford a bond. Once this expense is known, a less costly menu of tailored solutions can be developed.

### *Reexamine Bond Schedules*

Counties can reexamine their bond schedules to determine whether to lower guidelines for bond amounts for certain nonviolent offenses. This was among the recommendations of a Justice Management Institute report commissioned by Harris County in June of 2009 to assist them with improving their criminal justice system and relieving jail overcrowding.<sup>4</sup>

A key flaw in these schedules is that they do not deal with risk, but just with the severity of the offense. However, offense level and risk level as assessed by a quantitative, validated instrument are often not synonymous. Even if the guideline amounts should not be lowered for all defendants charged with a certain crime, a second, lower dollar amount could be created for certain offenses when the defendant has been determined to be low-risk. Dr. Ed Latessa and his fellow criminologists at the University of Cincinnati have developed the Ohio Risk Assessment System (ORAS), a public domain assessment instrument that includes a tool specifically designed for the pretrial stage that focuses on those factors most correlated with flight and re-arrest risk, such as adherence to conditions while previously under any form of supervision, employment status, substance abuse, and residential stability.<sup>5</sup>

Similarly, many Texas counties use guidelines that preclude pretrial release—whether by commercial bond or pretrial services—for defendants jailed on a probation violation. This policy should be revised to take into account: 1) the severity of the original offense and previous record, if any, 2) whether the violation was a new offense or a rules violation, such as a missing an appointment with a probation officer, and 3) the defendant's risk level.

### *Ensure the Judiciary Has All Relevant Information When Setting Bond Amounts*

A procedural issue may limit the amount of information judges have when setting bail. Defense lawyers, if one has been hired or appointed for an indigent defendant, are often not present at the probable cause hearing.

At the probable cause hearing, shortly after an arrest, the magistrate often considers whether to set bond if there is no schedule, or more typically in larger jurisdictions, modify the bond amount automatically applied to the case through the county's schedule. At such hearings, a prosecutor often persuades the judge to increase the bond amount. Frequently no one is on hand to present facts favorable to the defendant that would support a lower amount. This is problematic in a system that relies on adversarial justice for ensuring accurate fact-finding and basic fairness.

While a 2008 United States Supreme Court case gave defendants the right to request an attorney at this first hearing, it does not require an automatic appointment at the hearing in the absence of an express request, and a defendant is not entitled to an attorney prior to the hearing who would actually be prepared to argue the bond amount at the hearing.<sup>6</sup> Defendants should be explicitly advised of their right to have an attorney present at the hearing where their bond is set. However, a failure to advise the defendant of such should not prejudice the underlying case from moving forward.

### *Increase Court Efficiency*

If courts processed cases more quickly, pretrial services could supervise more defendants on the same budget. Bondsmen might also be willing to take on more defendants, as the longer the period of time in which they are on the hook, the more risk there is in taking on a defendant.

Major counties should use their existing resources and personnel to monitor the efficiency and practices of each judge, tracking key indicators such as the size and age of a judge's average caseload backlog, the number of pretrial defendants in jail awaiting a hearing in that court, the number of pretrial defendants the judge has revoked for rules violations, and other key efficiency and utilization indicators. While the independent decision-making authority of judges should not be compromised, their work should be transparent and subject to the examination of county officials and taxpayers, who fund court and jail systems. Moreover, this data can help determine whether cases could be more efficiently allocated among existing courts. It does not make sense to propose building a jail if remedying the backlog in the criminal courts would result in more rapid hearings, more expedited justice for victims, and do more for each dollar spent to relieve jail overcrowding.

Given that new courts cost a few hundred thousand dollars to create, it is wise to look at expanding approaches like alternative dispute resolution in both civil cases and low-level property offenses (through victim-offender mediation)<sup>7</sup> that reduce court utilization. If fewer courts are needed for civil cases but the criminal docket is backlogged, those courts could be converted to dual or criminal courts.

### *Inform Jail Inmates of All Release Options*

Another sensible solution is simply ensuring that all jail inmates receive and fully understand information concerning their options for pretrial release. This seemingly mundane matter can actually be substantial, as indicated by the controversy surrounding whether bail bondsmen and pretrial services could share their information in the Tarrant County Jail.<sup>8</sup> In particular, the list of bail bondsmen could contain information about the policies of each bondsman, such as whether they accept payment plans, as many do. Such payment plans can be critical for defendants who cannot come up with the 10 percent fee immediately, but some may be unaware of this option. Another logistical issue is that jail detainees must typically

surrender their cell phones when they enter jail. In many cases, they are not permitted to access these phones for the sole purpose of looking up the numbers of family members and friends who might be able to help them post bond. These are matters of local policy and practice that should be addressed at the county level.

### *Strengthen Jail Reentry Practices*

Counties should also examine the percentage of their jail populations that consist of “frequent fliers.” Most counties lack a reentry strategy. Yet research has demonstrated that those who obtain basics such as housing and employment after leaving a lockup are far less likely to recidivate.<sup>9</sup> Despite this research, there are barriers in state and local policies and practices, such as litigation against employers on the basis that they hired an ex-offender, restrictions on where offenders can live, and a lack of information sharing among correctional, social service, and mental health agencies.

One basic shortcoming that merits urgent attention is the failure of most counties to ensure that those discharged from county jails have photo identification. One Austin church that operates a food bank fills a small part of this gap by regularly driving those released from jail who lack transportation to the bureau where they can obtain a driver’s license or other form of photo identification. A 2008 report issued by the Bureau of Justice Statistics and National Association of Counties entitled “Effective County Practices in Jail to Community Transition Planning for Offenders with Mental Health and Substance Abuse Disorders” highlights best practices in reentry for offenders leaving county jail with co-occurring disorders.<sup>10</sup>

### *Consider Utilizing Improved Electronic Monitoring Technologies*

Another possible solution is greater use of electronic monitoring, particularly taking advantage of recent technological developments that have increased the capabilities and lowered the cost of monitoring devices. For example, some GPS devices and services offer crime scene correlation, whereby police and probation departments can determine whether a monitored defendant or probationer was at a crime scene at a certain time.

A landmark 2006 study of 75,661 Florida offenders placed on radio frequency and GPS monitoring concluded:

“In relation to public safety effectiveness, electronic monitoring was found effective in reducing the likelihood of reoffending and absconding while on home confinement. Both radio frequency and GPS significantly reduced the likelihood of revocation for a new offense and absconding from supervision, even when controlling for sociodemographic characteristics of the offender, current offense, prior record, and term of supervision factors and conditions.”<sup>11</sup>

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This study found GPS has a “prohibitive” effect on absconding. In all, offenders were 89 to 95 percent less likely to be revoked for a new offense if they were on electronic monitoring. The study concluded that electronic monitoring did not have a net widening effect because it more often served as an alternative to incarceration than as an addition to existing supervision practices that would have succeeded in keeping the offender out of prison even without the monitoring. These results parallel a 2003 study by the Florida Department of Corrections of probationers on GPS, which concluded that probationers “supervised with electronic monitoring had fewer revocations than community control offenders who were not.”<sup>12</sup> Similarly, a New Jersey study of 225 sex offenders on community supervision found only one committed a new sex offense, and only 19 committed another offense or a technical violation over a period of more than two years.<sup>13</sup>

Most pretrial services departments in Texas use GPS sparingly if at all due to cost constraints. One approach is to use it as a sanction for defendants under pretrial supervision in lieu of jail revocation for missing appointments and other rules violations. This could more than pay for the cost of the monitoring. A judge can make a defendant pay for electronic monitoring, though many simply do not have the funds. A bondsman cannot be ordered to pay for it.

### *Implement the Cite and Release Option in Appropriate Cases*

Another option for counties to control jail costs associated with pretrial defendants is to implement HB 2391, enacted in 2007. This legislation, which was signed into law with the support of the state’s leading law enforcement associations, gave police the option to issue a citation instead of making an arrest for seven misdemeanors, including common property offenses involving less than \$500 and possession of four ounces or less of marijuana.<sup>14</sup>

Prior to this legislation, an arrest was required for all Class B misdemeanors or higher. The bill has been fully implemented in Travis County, with 90 percent of cited offenders showing up for trial.<sup>15</sup> It has also been implemented for offenses other than marijuana in Dallas County. However, most other jurisdictions, such as Harris, Bexar, and Tarrant counties, are not taking advantage of this op-

portunity to better utilize law enforcement resources and control county jail populations. The reason for a lack of implementation appears to be that many prosecutors are advising law enforcement authorities against it.

While the legislation appropriately vests officers with full authority on whether to make an arrest given the situation, in practice officers need procedures for submitting evidence for prosecution and citations pre-filled with a court appearance date. For this, cooperation of the county or district attorney is essential. State lawmakers should clarify the wording of HB 2391 to require prosecutors to handle citation cases in the same way they would as if the person was brought to jail.

The Legislature should also consider expanding the number of offenses covered by HB 2391, perhaps by reworking it to apply to all misdemeanors but those excluded, which might include the handful of misdemeanors that typically involve an immediate danger to public safety such as endangering a child. In actuality, most of the misdemeanors in state law are not in the Penal Code and involve ordinary business activities, such as not posting a required sign, that may be honest mistakes and pose no danger to the public. Law enforcement and jail resources can be saved by simply issuing citations either requiring a court appearance or offering payment by mail or online.

## *Use Graduated Responses to Reduce Pretrial Revocations*

Counties like Harris County, with significant numbers of revoked pretrial defendants occupying jail cells, should also explore the use of a graduated sanctions and incentives program for violators who miss an appointment or fail a drug test, but are not alleged to have committed a new offense. Responses to each violation that are sure, swift, and proportionate have been proven to promote compliance. They can include mandatory treatment, increased reporting, fines, electronic monitoring, and other measures. For example, a graduated sanctions grid in Ohio has been demonstrated to increase compliance while reducing incarceration costs.<sup>16</sup> If judges depart from the grid, they could be required to make written findings as to why they did so.

## **Conclusion**

The operation of county jails involves many complex issues that implicate public safety, justice for victims and offenders, and cost-effectiveness for taxpayers. Many Texas counties are adopting innovative strategies to promote the more efficient utilization of these lockups and the replication of best practices that have proven effective in one county in other jurisdictions should be a high priority. After all, there is not one single solution for county jails, but a range of policy options that must be customized to each locality based on what may be the unique drivers its jail population and the priorities of key stakeholders such as the judiciary. ★

<sup>1</sup> Presentation by Dee Wilson, Director of the Texas Department of Criminal Justice Rehabilitation and Reentry Division, Texas Department of Criminal Justice Community Justice Assistance Division 2009 Sentencing Conference: Evidence-Based Discretionary Sentences in a Court Environment (Nov. 2009).

<sup>2</sup> Texas Commission on Jail Standards, County Population Report (1 Dec. 2011).

<sup>3</sup> "Planning and Construction Report," Texas Jail Standards Commission (Sept. 2011).

<sup>4</sup> "Harris County Criminal Justice System Improvement Project Preliminary Report," Justice Management Institute (17 June 2009).

<sup>5</sup> "Creation and Validation of the Ohio Risk Assessment," University of Cincinnati Center for Criminal Justice Research, Final Report (July 2009).

<sup>6</sup> *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008).

<sup>7</sup> "Publications on Victim Offender Mediation," Texas Public Policy Foundation.

<sup>8</sup> Dan McGraw, "Jailhouse Blues," *Fort Worth Weekly* (7 Dec. 2005).

<sup>9</sup> "Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism," CRS Report for Congress, Blas Nunez-Neto (July 2008).

<sup>10</sup> "Effective County Practices in Jail to Community Transition Planning for Offenders with Mental Health and Substance Abuse Disorders," National Association of Counties (Sept. 2008).

<sup>11</sup> Bales, William D., et. al., "Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring," *Criminology and Public Policy* 5.1 (2006) 61-69.

<sup>12</sup> "Electronic Monitoring Should Be Better Targeted to the Most Dangerous Offenders," Office of Program Policy Analysis and Government Accountability, State of Florida (Apr. 2005).

<sup>13</sup> Report on New Jersey's GPS Monitoring of Sex Offenders, New Jersey State Parole Board (Dec. 2007).

<sup>14</sup> House Research Organization, House Bill 2391 Summary (Apr. 2007).

<sup>15</sup> Travis County Sheriff Greg Hamilton, House Bill 2391 Background and Procedures.

<sup>16</sup> Brian Martin, "Examining the Impact of Ohio's Progressive Sanction Grid, Final Report" (Oct. 2008).

