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## **PROJECT ORANGE JUMPSUIT: The Misdemeanor Report #1**

Three-Year Cohort Pretrial Justice & Case Outcome Study of Harris County  
Misdemeanor A/B Defendants Charged January 1, 2012 through April 30, 2012

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### Introduction

The concept of similar defendants being treated comparatively in their criminal proceeding is referred to as “evenhandedness.” One illegitimate factor cited by legal scholars was pretrial custody (Stephen Demuth; Darrell Steffensmeier *Impact of Gender and Race-Ethnicity in the Pretrial Release Process* American Statistical Assoc, 2004 National Science Foundation Arlington, VA, 22230. The preponderance of evidence-based pretrial release research demonstrates significant racial and ethnic disparities in arrest, in charging, in bail and sentencing (The Sentencing Project, August, 2014). If the accused is unable to afford financial bail, he or she will quickly learn, ***in Harris County, the punishment is days or weeks of pretrial incarceration with the strong likelihood of pleading guilty for more time behind bars than their bond counterparts.*** In this instance, Harris County, Texas’s largest criminal court jurisdiction, provides the ideal setting to test the **Orange Jumpsuit Hypotheses**: the color of standard uniform of “detained” inmate as opposed to street clothes of accused free on bail, dictates defendants fate more than any other legal or extralegal attributes. This is particularly true in a courthouse culture dominated by the nation’s most powerful bail bond industry that monopolizes access to bail, a law and order judiciary and local elected and appointed officials that govern the Harris County Bail Bond Board. Only 8% of arrested misdemeanors are released on personal bond year after year (See Harris County Pretrial Services Annual Reports 1990-2014); and 77% and 8% of all misdemeanor A/B bonds are surety and cash respectively. The purpose of this study is to analyze what happens to 3,317 scientifically randomly selected defendants charged with misdemeanor A/B offense, tracked for three years.

*The project addresses six major issues: first (1) to what degree does socio-economic status affect pretrial release status at disposition (“detained” versus “bond”) at date of case disposition; Second (2) to what degree does pretrial release status “bond” vs. “detained” at date of case disposition and respective days detained, impact conviction and severity of sentence of statistically equivalent defendants? (Note, heretofore no three-year cohort study has correlated days detained between charge and disposition date (case age or completion), conviction outcome and severity of sentence; Third (3) to what degree does type of bail affect pretrial misconduct? Four (4) to what degree does type of legal representation affect pretrial release status, days of pretrial incarceration from charge to disposition dates, conviction outcome and severity of sentence? Five (5) Employing multivariate analysis, what defendant legal and extralegal attribute(s) drive case outcome of statistically equivalent cases? Six (6) what is the social and taxpayer cost of for-profit bail system on indigent defendants charged with crime and unable to pay for bail in Harris County?*

**MISDEMEANOR FLOW CHART**

Universe Database 23,309 defendants  
 Source: Harris County District Attorney Office

Random Sample Database **3,317** defendants  
 (Tracked 1/1/12—4/30/15)

**Disposed Cases**  
**3,263**

**Open Cases**  
**54:**  
 3-open surety  
 51 fugitive: 28-non-arrest,15-surety,6-cash, 2-ptr

Booked HCJ **2,628\*** Not Booked **635**:622 bond: 45-cash, 549-surety, 28-ptr,  
 13 non/arrest

\*81% of disposed cases

Pretrial Release Status at Disposition Date

<u>Detained</u>	<u>Bond</u>	
<b>1,528</b>	<b>1,722</b>	1,100 booked hcj-made; 622 not booked-made bond
		Bond type:100-cash, 206-ptr, 1,416-surety,

Who Makes Bond? Does type of bail affect pretrial misconduct? Does pretrial release status (bond vs. detained) at date of disposition affect outcome? Is there correlation between days detained from date charged to disposition date to conviction and severity of sentence?

Project Orange Jumpsuit found that 2,628 (81%) of 3,263 disposed misdemeanor

defendants were booked in Harris County Jail (HCJ) as detainees during the study period. In regards to pretrial release status at disposition date the analysis showed that 1,528 (47%) of the study population were detained, compared to 1,722 (53%) on bond (cash n=100; ptr n=206; surety n=1,416). Including 13 disposed non-arrest cases, only 635 (20%) of 3,263 total disposed misdemeanor defendants were *never* booked in HCJ by case completion. 622 of these made bail: (ptr n=28; cash n=45; surety n= 549).

In a jurisdiction notoriously dominated by a powerful surety bond industry and judges biased against personal bond release, pretrial detention is driven by defendants’ financial status. **Of 3,263 misdemeanor disposed defendants, only 228 (7%) were released on personal bond.** In this instance, indigent defendants-predominantly people of color- rarely are granted ptr by magistrates or trial judges (see TABLE 1 below). For example, 22% (180/826) of \$500 set bond defendants are detained at disposition. That increases to 29% detained rate for defendants held on <\$500-\$1999 set bond categories, and 31% of defendants with <\$500- \$2000 or less set bond. The disparities in bail access in race/ethnicity are demonstrated in the following hypothesis.

### HYPOTHESES

***MH-I Hypothesis: Controlling on Set Bail Category, Black and Hispanic Defendants Are More Likely Detained at Disposition of Case than their White Bail Counterparts.***

The Tables 1 below reveal that Black and Hispanic defendants have highest detention rate in all six bond categories. For example in <\$500 bond category, Whites have lowest detention rate (16.5%) compared to Blacks (25.6%) and Hispanics (26.5%).

**TABLE 1 Disposed Misdemeanor Pretrial Status Distribution “Bail” vs. “Detained” at Case Disposition by Race/Ethnicity and Set Bail Category**

Count of SPN	Column Labels								
Row Labels	<= 500	501 - 1999	2000	2001 - 4999	5000 - 9999	>= 10,000	NO BOND	Grand Total	
<b>BLACK</b>	<b>261</b>	<b>248</b>	<b>83</b>	<b>182</b>	<b>429</b>	<b>84</b>		<b>1287</b>	
DETAINED	67	103	44	114	311	56		695	
ON BOND	194	145	39	68	118	28		592	
<b>OTHER</b>	<b>27</b>	<b>14</b>	<b>2</b>	<b>5</b>	<b>16</b>	<b>3</b>		<b>67</b>	
DETAINED	3	5		2	9	1		20	
ON BOND	24	9	2	3	7	2		47	
<b>WHITE</b>	<b>327</b>	<b>263</b>	<b>52</b>	<b>139</b>	<b>221</b>	<b>39</b>	<b>1</b>	<b>1042</b>	
DETAINED	54	70	24	77	159	21	1	406	
ON BOND	273	193	28	62	62	18		636	
<b>HISPANIC</b>	<b>211</b>	<b>202</b>	<b>55</b>	<b>120</b>	<b>224</b>	<b>41</b>	<b>1</b>	<b>854</b>	
DETAINED	56	84	25	58	154	29	1	407	
ON BOND	155	118	30	62	70	12		447	
<b>Grand Total</b>	<b>826</b>	<b>727</b>	<b>192</b>	<b>446</b>	<b>890</b>	<b>167</b>	<b>2</b>	<b>3250</b>	

Count of SPN	Column Labels							
Row Labels	<= 500	501 - 1999	2000	2001 - 4999	5000 - 9999	>= 10,000	NO BOND	Grand Total
<b>BLACK</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>		<b>100.00%</b>
DETAINED	25.67%	41.53%	53.01%	62.64%	72.49%	66.67%		54.00%
ON BOND	74.33%	58.47%	46.99%	37.36%	27.51%	33.33%		46.00%
<b>OTHER</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>		<b>100.00%</b>
DETAINED	11.11%	35.71%	0.00%	40.00%	56.25%	33.33%		29.85%
ON BOND	88.89%	64.29%	100.00%	60.00%	43.75%	66.67%		70.15%
<b>WHITE</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>
DETAINED	16.51%	26.62%	46.15%	55.40%	71.95%	53.85%	100.00%	38.96%
ON BOND	83.49%	73.38%	53.85%	44.60%	28.05%	46.15%	0.00%	61.04%
<b>HISPANIC</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>
DETAINED	26.54%	41.58%	45.45%	48.33%	68.75%	70.73%	100.00%	47.66%
ON BOND	73.46%	58.42%	54.55%	51.67%	31.25%	29.27%	0.00%	52.34%

***MH-II Hypothesis: Type of Bond or pretrial release is not associated with Pretrial Misconduct defined as Bond Forfeiture, Bond Revocation or Fugitive status.***

Any valid comparison of pretrial misconduct by types of pretrial release groups must include “disposed” and “open” conventional bond cases and “non-arrest” (N/A) cases in which no bond is made and defendant is not detained. In this N/A/subcategory, 13 cases were disposed and 28 open at the end of study period (see TABLE 2 below). In regards to total PTR bonds (n=230) all but 2 cases were disposed; in total cash bond subcategory (n=110), only 6 cases are open; of the total surety (n=1,602), open cases are 18. Thus, the sum total disposed cases “at risk” (n=1,929) plus “open” (n=54) cases represent the total at risk cases (n=1,983).

It is also important to understand that *pretrial status at disposition “bond” or “detained” does not necessarily reflect original pretrial release status. For example, a defendant “detained” on date of disposition may have made bond that was later revoked. And a defendant on “bond” when case completed may have been revoked, detained then made another bond.*

The most serious measure of pretrial misconduct is flight from prosecution. For the purpose of this study, flight is defined as fugitive status at the end of the three-year study period. TABLE 2 below illustrates the misconduct rates. Of total misdemeanor original “Bond” defendants (n=1,942) plus non-arrest cases-(n=41), **51 (2.6%) of total (n=1,983) defendants at risk** fell in **fugitive** category at end of 36-40 month study period. Note that 28 (55%) of the fugitive cases were “non-arrest” defendants that did not post bond.

Comparing type of conventional bail, the highest bond forfeiture rate was associated with SURETY bond defendants (11%). This compares to 4.4% and 3.6% forfeiture rate for PTR and CASH bond categories respectively. In regards to bond revocation, PTR was highest (9.1%), followed by 7.1% and 3.6% rates for SURETY and CASH bonds respectively.

**TABLE 2 Pretrial Misconduct of Misdemeanor Defendants At Risk N= 1983**

Original Type	Bond/release			Bond Forfeit		Revoke	Fugitive
	N	Disposed	Open	N		N	N
PTR	230	N= 228	N= 2	N=10 (4.4%)		N=21*(9.1%	N=2 (.9%)
CASH	110	N=104	N=6	N=4 (3.6%)		N=4 (3.6%)	N=6 (5.5%)
SURETY	1,602	N=1,584	N=18	N=177(11%)		N=113 (7.1%)	N=15 (.9%)
NON-AR	41	N=13	N=28	N=0 (0%)		N=0	N=28 (68.3%)
Total	1983	1,929	54	191 (9.6%)		138 (7.0%)	51 (2.6%)

\*5 cases No evidence of law violation or FTA

At best these findings are mixed and support the hypotheses that there is no superior mode of pretrial release. Cash bonds may have had the lowest forfeiture and revocation rates, but this category has the highest fugitive rate. What explains these mixed results? One could speculate that there is financial incentive by District Attorney Office’s Bond Forfeiture Division and Harris County to collect the penalty associated with a forfeited surety bond stemming from bondsman’s financial liability related to his client’s failure to appear in court. However, according to District Clerk reports (see TABLE 5). actual bond forfeiture rate for 107,588 misdemeanor bonds processed for yrs 2012, 2013, 2014 was (7.7%); the set valued of these bonds was \$284.6 million; a figure that translates into estimated \$28.4 million total bondsmen fees. Of the \$28.4 million fees, bondsmen paid \$4.1 million (14%) in bond forfeiture penalties; a profit margin facilitated by D.A.’s grace period policy governing forfeited misdemeanor surety bonds. Whereas, a PTR defendant perceived by prosecutors and trial judges released on a “free bond,” that fails to appear in court, in their eyes, may justify revocation of bail. There is also some question on verifying “failure to appear.” One may conclude that failure to appear triggers an official bond forfeiture. But release of data gathered and maintained by Pretrial Services on personal bond defendants including failure to appear or bond revocation information are not accessible to the public or these researchers because these data are conveniently exempt from public disclosure by the board of Harris County criminal court judges (see Sec.17.42, Rule 12.5 (a), (f) and (k)). However, we documented all new charges or law violations and violations special conditions of bail defendants in the study population. But failure to appear documentation itself is elusive. A Surety bond defendant that forfeits bond for failure to appear or violates conditions of bail such as failing a drug test, is more likely to remake a bond (usually doubled); an option **not** often available to their indigent counterpart who fails to appear or violates condition of bail. Note, only a fraction  $2/230= 0.9 \%$  of both misdemeanor PTR and SURETY defendants  $15/1599=0.9\%$  absconded or fell in the fugitive category and end of 3 year plus study period. An unanticipated finding was the highest absconding rate ( $6/110 = 5.5\%$ ) was found among cash bail defendants. **In light of the fact only a fraction of ptr and surety bond defendants escaped prosecution in Harris County**, is difficult to financially justify the substantial tax payer incarceration cost of detaining indigent

defendants, given the vast majority of misdemeanor defendants are not classified a risk to public safety by the County’s Pretrial Services risk- assessment system.

**MH-III Hypothesis: Taking into Account of Set Bail Category, Defendants on “Bond” at Disposition Will have significant lower days detained and More Favorable Case Outcome than their “Detained” Counterparts.**

Evidence-based research demonstrates the scales of justice are weighted heavily against the “detained” compared to statistically equivalent “bond defendants.” First, there is the personal cost of double punishment of pretrial incarceration and its impact on case outcome manifested in massive incarceration of indigent defendants sentenced to jail and thereafter stigmatized by criminal record.

The tables below show *mean* and *median* days of pretrial incarceration of “Detained” vs. “Bond” defendants at date of disposition taking into account the set bond category. In Harris County, the Bond category reflects Harris County Criminal Courts at Law bond Schedule based on nature of charge and prior conviction history. For example, a typical bond is \$500 for defendant charged with possession of marijuana without prior conviction. The standard bondsman’s non-refundable fee is \$125; a full \$500 cash bond deposited in the county treasury is refundable.

Table A below shows that both *average* and *median* days detained of \$500 “Bond” defendant on “bond” at date of disposition is 1 day. Over 50% of this subgroup spent 1 day or less detained between date charged and case disposition date. Table B shows that “Detained” \$500 bond subgroup’s *average* and *median* pretrial incarceration days was nearly 9 and 3 days respectively. Over 50% of “Detained” cases at disposition date were detained 3 days or more. Note, the incarceration cost of 3 days is nearly \$1000 (\$850 booking process and medical screening plus \$50 or higher per day if medical treatment is required).

**TABLE 3-Comparison of Average & Median Days Detained: “Bond” (N=1,722) vs “Detained”(N=1,526) Misdemeanor Defendants at Date of Disposition by Bail Category**

**Table 3-A: Bond Defendants on Date of Disposition (N=1,722)**

<b>\$ Bond Category</b>	<b>Mean</b>	<b>Std.</b>	<b>Median</b>	<b>N</b>
<b>&lt;500</b>	<b>1.08</b>	<b>.051</b>	<b>1</b>	<b>646</b>
<b>501-1999</b>	<b>1.41</b>	<b>.077</b>	<b>2</b>	<b>465</b>
<b>2000</b>	<b>1.80</b>	<b>.212</b>	<b>2</b>	<b>99</b>
<b>2001</b>	<b>2.10</b>	<b>.206</b>	<b>2</b>	<b>195</b>
<b>5000-999</b>	<b>3.17</b>	<b>.419</b>	<b>2</b>	<b>257</b>

>10,000                      6.21      1.43      3              60

**Table 3- B: Detained Defendants on Date of Disposition (N=1,526)**

\$ Bond Category	Mean	Std.	Median	N
<500	8.84	1.303	3	180
501-1999	9.57	1.331	3	262
2000	9.23	1.616	3	93
2001-4999	7.45	.950	3	251
5000-999	17.37	1.92	4	633
>10,000	29.43	5.07	10	107

The Tables Below Support the Central Hypotheses: ***Taking Into Account Set Bail Category, Misdemeanor defendants Released on “Bond” at date of disposition will have more favorable disposition outcome than their “Detained” Counterparts.*** For example, the overall non-conviction rates of total “Bond” disposed population is 34.1% vs. 7.2% for “Detained”; see Table 4 below). Moreover, over 87.5% of “Detained” subgroup are sentenced to Harris County Jail, compared to 38.5 of “Bond” subgroup. This pattern is consistent in all set bond categories.

Table 4-Misdemeanor Disposed Outcome by Pretrial Status (“Bond” N=1722 vs. “Detained” N=1522) at Case Disposition Date by Set Bond Category; Total N=3250\*

MISDEMEANOR								
ON BOND								
BOND CATEGORY	COUNT	NON-CONVICTION	DEFERRED	PROBATION	FINE ONLY	HCI	STJ	TDC
<= 500	646	288	134	59	1	164	0	0
501 - 1999	465	163	91	52	1	158	0	0
2000	99	25	18	7	0	49	0	0
2001 - 4999	195	39	19	32	0	105	0	0
5000 - 9999	257	59	24	19	0	154	1	0
>= 10,000	60	14	10	2	0	34	0	0
NO BOND	0	0	0	0	0	0	0	0
	1722	588	296	171	2	664	1	0

MISDEMEANOR								
ON BOND %								
BOND CATEGORY	COUNT	NON-CONVICTION	DEFERRED	PROBATION	FINE ONLY	HCI	STJ	TDC
<= 500	100.0%	44.6%	20.7%	9.1%	0.2%	25.4%	0.0%	0.0%
501 - 1999	100.0%	35.1%	19.6%	11.2%	0.2%	34.0%	0.0%	0.0%
2000	100.0%	25.3%	18.2%	7.1%	0.0%	49.5%	0.0%	0.0%
2001 - 4999	100.0%	20.0%	9.7%	16.4%	0.0%	53.8%	0.0%	0.0%
5000 - 9999	100.0%	23.0%	9.3%	7.4%	0.0%	59.9%	0.4%	0.0%
>= 10,000	100.0%	23.3%	16.7%	3.3%	0.0%	56.7%	0.0%	0.0%
NO BOND	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	100.0%	34.1%	17.2%	9.9%	0.1%	38.6%	0.1%	0.0%

MISDEMEANOR								
DETAINED								
BOND CATEGORY	COUNT	NON-CONVICTION	DEFERRED	PROBATION	FINE ONLY	HCI	STJ	TDC
<= 500	180	18	14	3	0	145	0	0
501 - 1999	262	22	23	1	0	216	0	0
2000	93	5	2	2	0	84	0	0
2001 - 4999	251	17	4	3	0	227	0	0
5000 - 9999	633	39	14	2	1	569	4	4
>= 10,000	107	9	1	2	0	95	0	0
NO BOND	2	1	0	0	0	1	0	0
	1528	111	58	13	1	1337	4	4

MISDEMEANOR								
DETAINED								
BOND CATEGORY	COUNT	NON-CONVICTION	DEFERRED	PROBATION	FINE ONLY	HCI	STJ	TDC
<= 500	27.9%	10.0%	7.8%	1.7%	0.0%	80.6%	0.0%	0.0%
501 - 1999	56.3%	8.4%	8.8%	0.4%	0.0%	82.4%	0.0%	0.0%
2000	93.9%	5.4%	2.2%	2.2%	0.0%	90.3%	0.0%	0.0%
2001 - 4999	128.7%	6.8%	1.6%	1.2%	0.0%	90.4%	0.0%	0.0%
5000 - 9999	246.3%	6.2%	2.2%	0.3%	0.2%	89.9%	0.6%	0.6%
>= 10,000	178.3%	8.4%	0.9%	1.9%	0.0%	88.8%	0.0%	0.0%
NO BOND	100.0%	50.0%	0.0%	0.0%	0.0%	50.0%	0.0%	0.0%
	88.7%	7.3%	3.8%	0.9%	0.1%	87.5%	0.3%	0.3%

\*includes 4 misdemeanor defendants also charged on felony: Misd case dismissed.

### Impediments to Harris County Bail Reform: A footnote

*Roots of Bail Reform.* Lest we forget, Harris County Pretrial Services was mandated in Federal Court Order issued by Federal Judge Carl Bue Jr. in late 1975 to remedy inhuman conditions stemming from overcrowded jail and salvage a mostly small volunteer alternative (PTR) non-financial bail program politically under siege by surety bondsmen.

***By far the most significant single factor influencing the agency's lack of success was the organized effort of commercial bail bondsmen to sabotage the agency...the bondsmen pressed their attack on County officials to take steps to weaken the agency.***



(Alberti v. Sheriff, 406 F. Supp. 646 H.D. Tex. 1975)

After the a new jail was complete in late 1980s, and again became overcrowded stemming from thousands of indigent defendants unable to pay bondsmen fees, County Officials opted to outsource county inmates serving sentences to Louisiana and elsewhere. Meanwhile the majority of county inmates are economically disadvantaged pretrial detainees. The statutorily created **Harris County Bail Bond Board** composed of elected officials included judges and for-profit bondsmen relentlessly denounce PTR and bail reform. "FOLLOW THE MONEY" Millions in fees keeping coming.

**TABLE 5-SURETY BOND  
SUMMARY  
COUNT \$ VALUE & PENALTY  
YRS 2012-2014**

offense	year	surety bond count	dollar value	bond forfeit	paid penalty
felony	2012	16876	\$240,614,466	802	\$1,086,559
	2013	17455	\$264,343,500	849	\$925,076
	2014	17823	\$275,967,142	1126	\$928,606
	total	52157	\$780,925,108	2777	\$2,940,241
misdA/B	2012	37048	\$95,017,779	2461	\$1,117,511
	2013	36211	\$95,137,451	2691	\$1,431,538
	2014	34329	\$94,444,940	3129	\$1,568,164
	total	107588	\$284,600,170	8281	\$4,117,213
<b>Grd total</b>		<b>159745</b>	<b>\$1,065,525,178</b>	<b>11058</b>	<b>\$7,057,454</b>
fel BF %		5.30%			
misd BF%		7.70%			
		3 yrs total est (10%)bond fees	\$106.5 million		
		percent BF penalties	6.60%		

**SOURCE: HARRIS COUNTY  
DISTRICT CLERK**

\*\* More analysis  
findings pending

