

# PROJECT ORANGE JUMPSUIT: The Felony Report #1

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

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Co-Directors

Gerald R. Wheeler Ph.D.

Gerald Fry Attorney at Law

Senior Analyst

Rodney Hissong Ph.D.

Associate Professor, Public Policy

University of Texas - Arlington

## 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 Hypothesis**: 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 commercial 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 1% of arrested felony defendants are released on personal bond year after year (See Harris County Pretrial Services Annual Reports 1990-2014); in 2014, 96% of all felony bonds are surety, compared to 1% cash, and 2.5% PTR. The purpose of this study is to analyze what happens to 3,206 scientifically randomly selected defendants charged with felony 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 case outcome? 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?

## FELONY FLOW CHART SUMMARY

Universe Database 11,860  
Source: Harris County District Attorney Office

Random sample Database **3,206**  
(Tracked 36-40 months)

**Disposed Cases**  
**3,189**

**Open Cases**  
**17:**

5 fugitive: 3-surety, 2-non-arrest

Booked HCJ      Not Booked

**2,945**

**244:**

9-detained, 3 surety bond

92% of charged

30 non-arrest no bond processed

214 bond: 1-cash, 212-surety, 1-ptr

**Detained** at disposition  
**2,047**

Booked hcj-- on **Bond** at disposition-898; not  
booked **bond** defendants at disposition-214 = **1,112** total  
Bond type: 6-cash, 42-ptr, 840-surety, 224-surety/ptrc

Of total 1,112 Felony **Bond** defendants at disposition, plus 30 non-arrest, plus 6 “open” surety bond cases: 3 fugitives, 3 pending outcome, plus 2 open non-arrest fugitives, a total 1,150 defendants were at risk of flight. Of these, **only 5 (.4%)** fell in (**fugitive** category: 3-surety; 2-non-arrest) at end of 36-40 month study period. *Note: pretrial status at disposition “bond” or “detained” does necessarily reflect original pretrial release status. For example, defendant “detained” on date of disposition may have made bond that was later revoked. And a defendant on “bond” may have been previously revoked, detained than and made a new bond. OF 3,189 DISPOSED DEFENDANTS ONLY 45 (1.4%) ARE RELEASED ON PERSONAL BOND (PTR).*

## HYPOTHESES

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

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

Count of MADE Y / N Column Labels							
Row Labels	> 20000	10001-20000	2000 or less	2001-5000	5001-10000	NO BOND	Grand Total
<b>BLACK</b>	<b>266</b>	<b>433</b>	<b>160</b>	<b>216</b>	<b>208</b>	<b>255</b>	<b>1538</b>
DETAINED	164	347	72	119	112	255	1069
ON BOND	102	86	88	97	96		469
<b>HISPANIC</b>	<b>214</b>	<b>124</b>	<b>113</b>	<b>107</b>	<b>100</b>	<b>97</b>	<b>755</b>
DETAINED	159	88	44	43	44	97	475
ON BOND	55	36	69	64	56		280
<b>OTHER</b>	<b>9</b>	<b>4</b>	<b>10</b>	<b>7</b>	<b>3</b>	<b>6</b>	<b>39</b>
DETAINED	4	2	2		1	6	15
ON BOND	5	2	8	7	2		24
<b>WHITE</b>	<b>154</b>	<b>169</b>	<b>139</b>	<b>136</b>	<b>132</b>	<b>97</b>	<b>827</b>
DETAINED	88	119	46	65	73	97	488
ON BOND	66	50	93	71	59		339
<b>Grand Total</b>	<b>643</b>	<b>730</b>	<b>422</b>	<b>466</b>	<b>443</b>	<b>455</b>	<b>3159</b>

**TABLE 1-A (Percent Distribution)**

Count of MADE Y / N Column Labels							
Row Labels	> 20000	10001-20000	2000 or less	2001-5000	5001-10000	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	61.65%	80.14%	45.00%	55.09%	53.85%	100.00%	69.51%
ON BOND	38.35%	19.86%	55.00%	44.91%	46.15%	0.00%	30.49%
<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>
DETAINED	74.30%	70.97%	38.94%	40.19%	44.00%	100.00%	62.91%
ON BOND	25.70%	29.03%	61.06%	59.81%	56.00%	0.00%	37.09%
<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	44.44%	50.00%	20.00%	0.00%	33.33%	100.00%	38.46%
ON BOND	55.56%	50.00%	80.00%	100.00%	66.67%	0.00%	61.54%
<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>
DETAINED	57.14%	70.41%	33.09%	47.79%	55.30%	100.00%	59.01%
ON BOND	42.86%	29.59%	66.91%	52.21%	44.70%	0.00%	40.99%
<b>Grand Total</b>							

The Tables 1 and 1-A above reveal that Black and Hispanic felony defendants have highest detention rate on date of case disposition compared to Whites in four of five bond categories. For example, in \$2000 or less bond category, 45% of Blacks are

**detained compared to 33% detention rate for Whites. The highest detention rate (80.14%) was found among Blacks in \$10001-20000 bond category.**

**FH-II Hypothesis: Type of bond is not associated with pretrial misconduct defined at bond forfeiture and bond revocation**

**TABLE-2 FELONY PRETRIAL MISCONDUCT DISPOSED CASES**

Original Bail Status	Total cases	Bond Forfeiture		Bond Revoked	
		N	%	N	%
PTR	45	1	2.2	2	4.4
CASH	6	0	0	0	0
SURETY	1,226	96	7.8	122	10.0
Total	1,277	97	7.6	124	9.7

Bond Forfeiture: Only 1 (2.2%) of 45 PTR defendant forfeited bond, compared to 96/1,226 (7.8%) of SURETY bond defendants. The same pattern was found for revocation outcome between PTR (4.4%) versus (9.9%) nearly 10% for SURETY defendants. These differences are statistically significant and somewhat unexpected because the low number of PTR (N=45) compared to SURETY (N=1,226) would impact the rate of misconduct more for PTR/PTRc than the latter. At the same time analysis of charge and conviction history reveal judges overwhelmingly selected PTR/PTRc defendants with no prior felony conviction history, and bonds set at \$5000 or less. Thus higher bond forfeiture and revocation rates of SURETY or SURETY/PTRc hybrid defendants may be attributable to “higher” risk defendants--with prior criminal history and or charged on drug crimes reflected in higher set bonds and supervised by Harris County Community Supervision & Corrections Department as “courtesy” supervision cases; defendants that failed drug tests or other special conditions. However, many PTR/PTRc defendants were also supervised by H.C.C.S.C.D. Further analysis of relationship of set bond to misconduct is forthcoming.

However, given the extremely low fugitive rates (PTR 0/45=0%) and surety 3/1,232=0.2%, and misconduct findings favoring PTR/PTRc, undermines the for-profit bondsmen argument that county supervised pretrial release via personal bond felony defendants are greater risk to public safety than for-profit financial bail.

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

The Tables 3-A & 3-B illustrate the disparity in days of pretrial incarceration of disposed Bond vs. Detained felony defendants in comparable set bond categories.

TABLES 3-A, 3-B DISPOSED **FELONY** DEFENDANTS *Mean & Median* Days Detained by SET BOND CATEGORY AND PRRETRIAL RELEASE STATUS (DETAINED VS. BOND) AT DATE OF CASE DISPOSITION

TABLE 3-A- Pretrial Release Status at Disposition-DETAINED (N=2045)  
\$Bond Category *Mean* Std. *Median* N\* missing data N=2

\$Bond Category	<i>Mean</i>	Std.	<i>Median</i>	N* missing data N=2
No Bond	136.37	8.02	78	455
< 2000	16.51	2.37	4	164
2001-5K	38.82	3.62	16	227
5001-10K	70.15	6.33	47	230
10000-20K	49.75	3.08	25	555
>20K	159.95	8.42	104	414

TABLE 3-B- Pretrial Release Status at Disposition-**BOND** (N=1112)

\$Bond Category	<i>Mean</i>	Std.	<i>Median</i>	N
<2000	2.73	0.66	2	258
2001-5K	6.05	1.74	2	239
5001-10K	9.61	1.71	3	213
10001-20K	16.13	2.47	4	174
>20K	26.82	3.92	5	228

The above tables unequivocally illustrate a two-tier justice system in regards to pretrial incarceration days of comparable set bond groups and its effects on case outcome. In Harris County the set bond amount reflects the nature of charge and prior conviction history. For example, the lowest subcategory (<\$2000) defendants “**detained**” at disposition averaged over two weeks (16.51 days) of pretrial incarceration versus less than 3 days (2.73 days) of those released on “**bond.**” This pattern was found in all set bond categories for *mean* days and median days detained at date of disposition. Noting that 10% (N=164) of total (N=1590) Disposed “Detained” population in lowest bond category (<\$2000) lacked the resources to pay standard 10% bondsman’s fee (\$200) and were denied PTR. Taking together with those detained on \$5000 or less (N=227+164= 391), 25% of total detained group were held on bond set at \$5000 or less. Given average detention days (16.5 & 38.8), annual pretrial incarceration cost calculates into \$ millions in jail cost. Given, nearly over 90% of all felony bond defendants comply with conditions of bail and less than 1% abscond, the evidence support expanding non-financial pretrial release of defendants classified low risk of flight and to public safety, particularly those charged on non-violent crimes.

The next section of analysis reveals the impact of “detained” vs “bond” on outcome of statistically comparable cases. The Tables below show a clear pattern of more favorable outcome of “Bond” versus “Detained” defendants controlling for set bond categories. For

example, in \$2000 or less category subgroup, the non-conviction rate of “Bond” group was 29.8% compared to 14.6% for “Detained”(see TABLES 4-A,4-B below). In regards to \$2000 or less set bail subgroup, only 2.3% and 0.8% of “Bond” group were sentenced to State Jail and TDC respectively, compared to 15.2% and 0.5% of “Detained.”

TABLES 4-A DISPOSED FELONLY CASE OUTCOME BY PRETRIAL RELEASE STATUS-“DETAINED”- ON DATE OF CASE DISPOSITION (Percent Distribution) BY SET BOND CATEGORY

FELONY								
DETAINED								
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	PROBATION	HCJ	STJ	TDC	
2000 or less	164	24	79	0	35	25		1
2001-5000	227	32	63	4	57	53		18
5001-10000	230	30	61	8	16	48		67
10001-20000	556	55	29	5	85	285		97
> 20000	415	54	52	7	65	46		191
NO BOND	455	60	43	1	33	53		265
<b>TOTAL</b>	<b>2047</b>	<b>255</b>	<b>327</b>	<b>25</b>	<b>291</b>	<b>510</b>		<b>639</b>

FELONY								
DETAINED								
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	PROBATION	HCJ	STJ	TDC	
2000 or less	100.0%	14.6%	48.2%	0.0%	21.3%	15.2%		0.6%
2001-5000	100.0%	14.1%	27.8%	1.8%	25.1%	23.3%		7.9%
5001-10000	100.0%	13.0%	26.5%	3.5%	7.0%	20.9%		29.1%
10001-20000	100.0%	9.9%	5.2%	0.9%	15.3%	51.3%		17.4%
> 20000	100.0%	13.0%	12.5%	1.7%	15.7%	11.1%		46.0%
NO BOND	100.0%	13.2%	9.5%	0.2%	7.3%	11.6%		58.2%
<b>TOTAL</b>	<b>100.0%</b>	<b>12.5%</b>	<b>16.0%</b>	<b>1.2%</b>	<b>14.2%</b>	<b>24.9%</b>		<b>31.2%</b>

TABLES 4-B DISPOSED FELONLY CASE OUTCOME BY PRETRIAL RELEASE STATUS-“BOND”- ON DATE OF CASE DISPOSITION (Percent Distribution) BY SET BOND CATEGORY

FELONY								
ON BOND								
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	FINE	PROBATION	HCJ	STJ	TDC
2000 or less	258	77	148	2	3	20	6	2
2001-5000	239	85	87	0	14	33	14	6
5001-10000	213	55	74	0	36	21	5	22
10001-20000	174	41	44	0	7	26	21	35
> 20000	228	82	60	0	6	8	8	64
NO BOND	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>1112</b>	<b>340</b>	<b>413</b>	<b>2</b>	<b>66</b>	<b>108</b>	<b>54</b>	<b>129</b>

FELONY								
ON BOND								
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	FINE	PROBATION	HCJ	STJ	TDC
2000 or less	100.0%	29.8%	57.4%	0.8%	1.2%	7.8%	2.3%	0.8%
2001-5000	100.0%	35.6%	36.4%	0.0%	5.9%	13.8%	5.9%	2.5%
5001-10000	100.0%	25.8%	34.7%	0.0%	16.9%	9.9%	2.3%	10.3%
10001-20000	100.0%	23.6%	25.3%	0.0%	4.0%	14.9%	12.1%	20.1%
> 20000	100.0%	36.0%	26.3%	0.0%	2.6%	3.5%	3.5%	28.1%
NO BOND	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>TOTAL</b>	<b>100.0%</b>	<b>30.6%</b>	<b>37.1%</b>	<b>0.2%</b>	<b>5.9%</b>	<b>9.7%</b>	<b>4.9%</b>	<b>11.6%</b>

TABLE 4-C DISPOSED FELONY NON-ARREST (no bond processed) OUTCOME BY SET BOND CATEGORY

FELONY							
NON-ARREST							
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	PROBATION	HCJ	STJ	TDC
2000 or less	7	5	2				
2001-5000	4	3	1				
5001-10000	3	2	1				
10001-20000	2	1	1				
> 20000	8	7	1				
NO BOND	6	5	1				
<b>TOTAL</b>	<b>30</b>	<b>23</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

  

FELONY							
NON-ARREST							
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	PROBATION	HCJ	STJ	TDC
2000 or less	23.3%	3.0%	1.2%	0.0%	0.0%	0.0%	0.0%
2001-5000	13.3%	1.3%	0.4%	0.0%	0.0%	0.0%	0.0%
5001-10000	10.0%	0.9%	0.4%	0.0%	0.0%	0.0%	0.0%
10001-20000	6.7%	0.2%	0.2%	0.0%	0.0%	0.0%	0.0%
> 20000	26.7%	1.7%	0.2%	0.0%	0.0%	0.0%	0.0%
NO BOND	20.0%	1.1%	0.2%	0.0%	0.0%	0.0%	0.0%
<b>TOTAL</b>	<b>100.0%</b>	<b>76.7%</b>	<b>23.3%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>

Given these findings, it is difficult not to conclude fundamental bail reform and adequate legal representation for indigent defendants at the magistrate hearing<sup>3</sup> and trial courts constitute a moral imperative in reforming criminal proceedings in Harris County.