

# Pretrial Fundamentals in Texas



Presented by Aaron Johnson, Director  
Galveston County Personal Bond, Magistrate Court and Collections  
Texas Association of Pretrial Services Agencies (TAPS) Vice-President  
National Association of Pretrial Services (NAPSA) Education Committee Chair

# Synopsis

- All across American, people who are arrested and face arbitrary bond amounts, often staying incarcerated in jail pending disposition of their cases
- Instead of functioning as a fair process for release (bail), arbitrary monetary conditions (bond) often functions as a preventive detention tool
- This population typically are financially disadvantaged, suffering from mental health concerns or diagnosis, and increase the racial disparities within the state of Texas and across the nation
- Utilizing legal and evidenced based practices are showing better results than our current system

# Main Points

- Understand the History of Bail in America
- Case Law, Litigation, and Reform Efforts
- Texas Senate Bill 6 (87th Leg)
- Texas 16.22 and 17.032 Process

# History of Bail in America

## Fundamentals of Bail



A Resource Guide for Pretrial Practitioners and  
a Framework for American Pretrial Reform

 **NIC**  
National Institute of Corrections

By Timothy  
Schnacke



# What is “Bail”?

- What is your definition of Bail?
- Historically – Bail is a process of release, not a condition (financial or not) or preventive detention
- Many jurisdictions define bail = \$ or an amount associated with a charge on a bail schedule

# Bail

- Purpose
  - Maximize pretrial release
- Purpose of Conditions
  - Reasonable assurance of victim & public safety
  - Reasonable assurance of returning to court
  - Least restrictive necessary

# Bond

- An obligation or promise; not a guarantee
- Bail Bond: Obligation by the defendant and/or surety to the court
- Can be financial (secured or unsecured) or non-financial

# Bail in Kansas

## Kansas Bill of Rights

(9) – All persons shall be bailable (*releasable*) by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, no excessive fines imposed, nor cruel or unusual punishment inflicted.

## Kansas State Statute (Chapter 22; Article 2801 – 2818)

### Chapter 22; Article 2801:

The purpose of this article is to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges or to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.



# Bail in California

## California State Constitution

### Article 1; Section 12

A person shall be released on bail by sufficient sureties, except for (capital crimes, violent person or sexual assault felony offenses, or substantial likelihood of violent threat being carried out). Excessive bail may not be required. Consider seriousness of charge, previous criminal history, and probability of appearing for court. Can be released on Own Recognizance at the court's discretion.

## California State Statute (PC 1268-1276.5)

### PC 1275

In setting, reducing, or denying bail (*release*) the judge/magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and probability of his/her appearing at trial or hearing of the case. The public safety shall be the primary consideration.

# Bail in Texas

## Texas State Constitution

### Article 1; Section 11

BAIL. All prisoners shall be bailable (*releasable*) by sufficient sureties, unless for capital offences†, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

### Article 1; Section 13

EXCESSIVE BAIL OR FINES; CRUEL OR UNUSUAL PUNISHMENT; OPEN COURTS; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

# Excessive Bail

- Where does this term come from?
  - English Bill of Rights 1689
  - “*excessive bail* ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”
- Eighth Amendment
- But what does it mean?

# “Money as a Criminal Justice Stakeholder” by Tim Schnacke

Effects of secured financial conditions have on the bail (*release*) decision process:

- Skew Judges understanding of risk
- Delay/prohibit release ofailable (*releasable*) clients
- Increase of racial and ethnic disparities for those remaining in custody



# *Stack v. Boyle* (1951)

- Supreme Court found bail could not be set higher than what was “reasonably likely to ensure” their return to court.
- Set at \$50k => \$500K today!
- Needed to be Individualized
  - Lack of evidence they would flee
  - Limited financial Resources

# Previous Bail Reform Efforts

## Manhattan Bail Project (1961)

- Demonstrated those released with strong community ties in lieu of financial conditions continued to show up for court
- Founding of the Vera Institute of Justice



# Bail and Criminal Justice Conference (1964)

- National Conference on Bail and Criminal Justice
  - Co-Sponsored by DOJ and Vera Foundation
- Comments by AG Robert Kennedy
  - “to focus serious shortcomings of our present bail system and promising alternatives”
- Comments by Chief Justice Earl Warren
  - “emphasis upon the financial aspect of bail is common to both federal and state systems and is a weakness of both”



# Bail Reform Act (1966)

- Non-capital cases a statutory right to be released pending trial
- Subject to Judicial review
  - Consider family ties, employment and prior court appearance (like the MBP prior)
  - *Public Safety* was not a factor at this time outside of capital cases



# VISTA Bail Program (1968)

- Volunteers in Service to America in Baltimore
- Working to eliminate the double standard
  - Defendants affording bail could go home and support families, those who could not waited in jail
- Baltimore Program showed 97% of defendants released on Own Recognizance returned to court



# Bail Reform Act (1984)

- Introduced preventive detention based upon public safety
- Subject to criteria: violent crime (with/without weapons), specific felony charges, possible life sentence, repeat felony offender

# Carefully Limited Exception

- *United States v. Salerno* (1988)
  - Supreme Court upheld preventive detention
  - When no release conditions will reasonably assure the safety of the victim or community

Judge Rehnquist

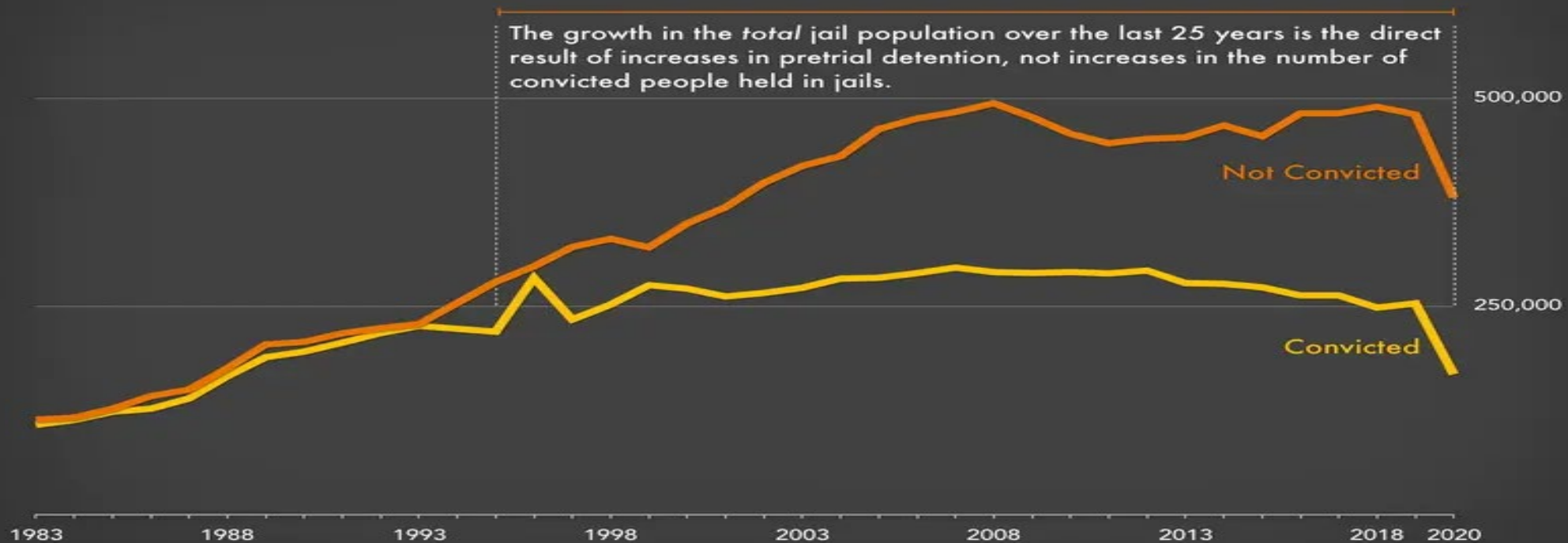
*“in our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception”*



# Shift in Jail Usage

## Pretrial policies drive jail growth

Number of people in local jails on a given day, by conviction status



**PRISON**  
POLICY INITIATIVE

Compiled from the Bureau of Justice Statistics series *Prison and Jail Inmates at Midyear, Correctional Populations in the United States*, and *Jail Inmates*. Missing data for 1994 interpolated from 1993 and 1995 values.



# The Impacts of Pretrial Detention

- Research has shown defendants held pretrial have less favorable outcomes:
  - More likely to plead guilty or overall convicted
  - Defendants detained for the entire pretrial period are more likely to be sentenced to jail or prison
  - Convictions happened 3 to 4 times more often than someone who was able to secure release prior to sentencing
  - Sentences were also 2 to 3 times longer
  - Loss of Job, Home, Family and Community Stability



# Money Bail ≠ Public Safety

- Justin Michael Love (2020)
  - Posted total \$565,000 in bonds
  - Accused in 2015 murder, bond revoked due to continued harassment charges 2021
- Corey Hodge (2021)
  - Posted total \$370,000 in bond October 2020
  - April 2021 and July 2021 accused of killing two more individuals
- Devon Jordan (2021)
  - Posted \$1 mil bond March 2022
  - Already charged and on bond for 2 Capital Murder Charges

# No Right to Cash/Surety Bond

- Holland v Rosen (2018)
  - No federal constitutional right to money/surety bond
  - Bail does not equal monetary conditions
    - *“reliance on monetary bail resulted in the release of defendants who had the means to pay regardless of their flight risk or danger, and the pretrial detention of poorer defendants even if they were accused of less serious crimes and posed little risk”*
  - Recognized when constitution was drafted, bail was based on a personal surety system



# National Standards (2020)

- Created by National Association of Pretrial Service Agencies (NAPSA) and American Bar Association (ABA)
- Many different components of an effective, legal, and evidence-based bail system.
- Considers the best practices for fair and reasonable bail (release) decision making.





# Reform Efforts in Practice

- National Institute of Corrections (2017)
- Released “*A Framework for Pretrial Justice*”
  - Collaborative effort with NIC, NAPSA and the Pretrial Executive Network
- Outlines legal and evidence based practices to maximize pretrial release, court appearance and public safety



# Measuring What Matters (NIC)

- Measure Pretrial Success
  - Data Points needed
- Maximize Pretrial Release
  - Total Eligible vs. Total Released
- Ensure Court Appearance
  - Total Courts vs. Total Appearance
- Maintain Public Safety
  - Total Clients vs. Rearrest Rate



# National Reform

- Rep. Ted Leiu (D-CA) introduced the *No Money Bail Act* (2016 and 2017)
- Kamala Harris (D-CA) and Rand Paul (R-KY) introduced *Pretrial Integrity and Safety Act* (2017)
- Bernie Sanders (I-VT) introduced *No Money Bail Act* (2018)
- Nationally recognized as an issue, but has not been passed

# State Reforms

- Kentucky (1976), Illinois (1963), Oregon (1970) and Wisconsin (1979) outlawed commercial bail
- New Mexico changed their state constitution in 2016
- New Jersey changed their constitution and practices in 2017
- Illinois Pretrial Fairness Act (HB3653) goes into effect January 1, 2023

# Texas Litigation

- O'Donnell vs. Harris County (2016)
  - Challenged bail practices for misdemeanor arrestees
- Daves vs. Dallas County (2018)
  - Challenged bail practices for Felony arrestees
- Booth vs. Galveston County (2018)
  - Challenged bail setting practices without an ability to pay determination
  - Provide attorney at bail hearings



# SENATE BILL 6

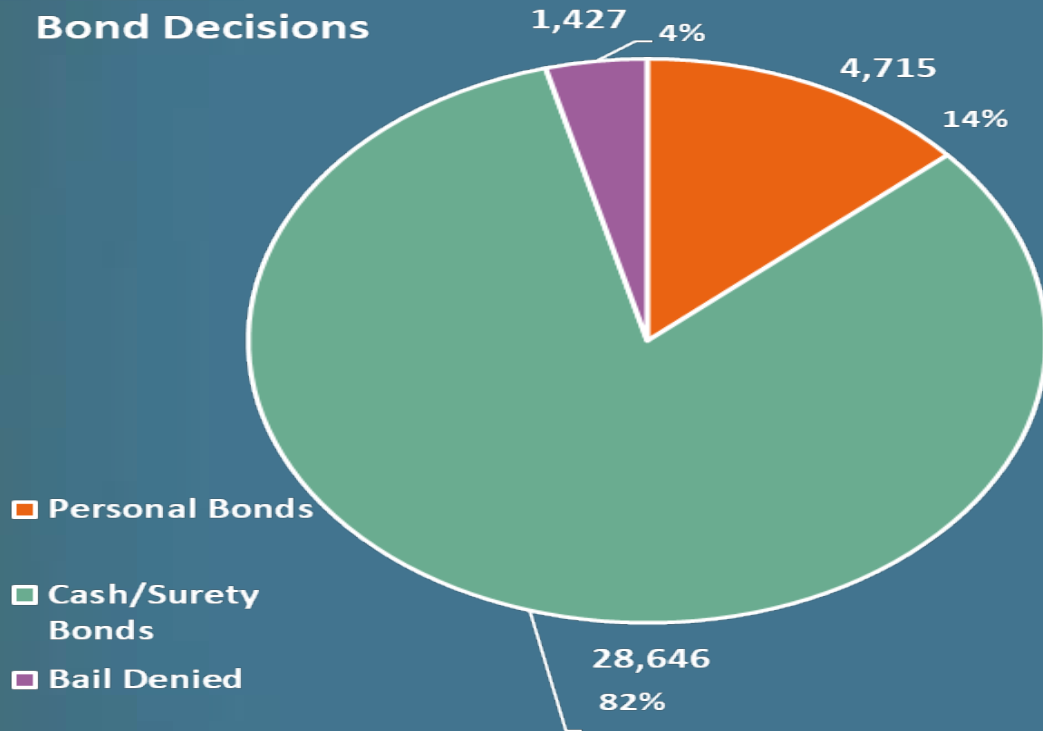
- Special Session of the 87<sup>th</sup> Legislature (2021)
- Related to procedures for:
  - Setting the amount of bail
  - Release of certain defendants on a monetary or personal bond
  - Duties of certain officers taking bail bonds
  - Duties of magistrates in criminal cases
  - Reporting information pertaining to bail bonds
  - Training and re-certification requirements for Magistrates from approved providers

# SENATE BILL 6

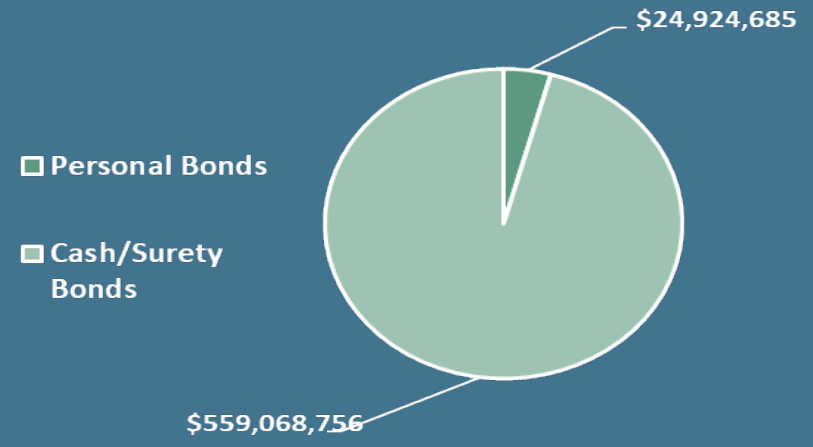
- Required:
  - The implementation of a standardized public safety report system (PSRS) for statewide use
    - PSRS went live on April 1<sup>st</sup>, 2022
    - Produce a public safety report (PSR)
    - Create the Bail Form
  - Magistrates shall consider the PSRS for defendants charged with a Class B misdemeanor or higher offense

# BOND STATISTICS

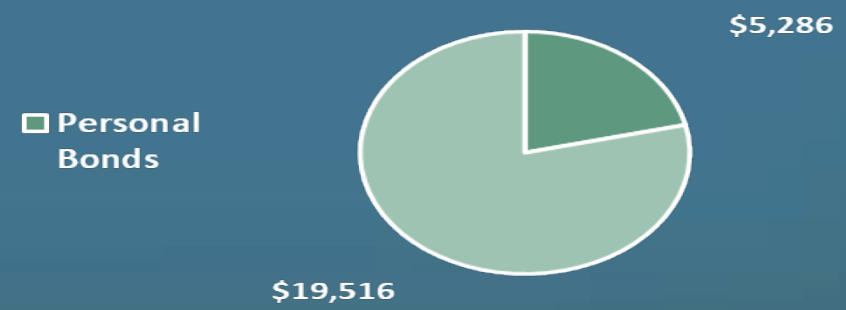
## Bond Decisions



## Total Amount of Bonds Set by Type



## Average Amount of Bond by Type





# OFFENSE STATISTICS

## Offense Categories



## Most Common Charges in April



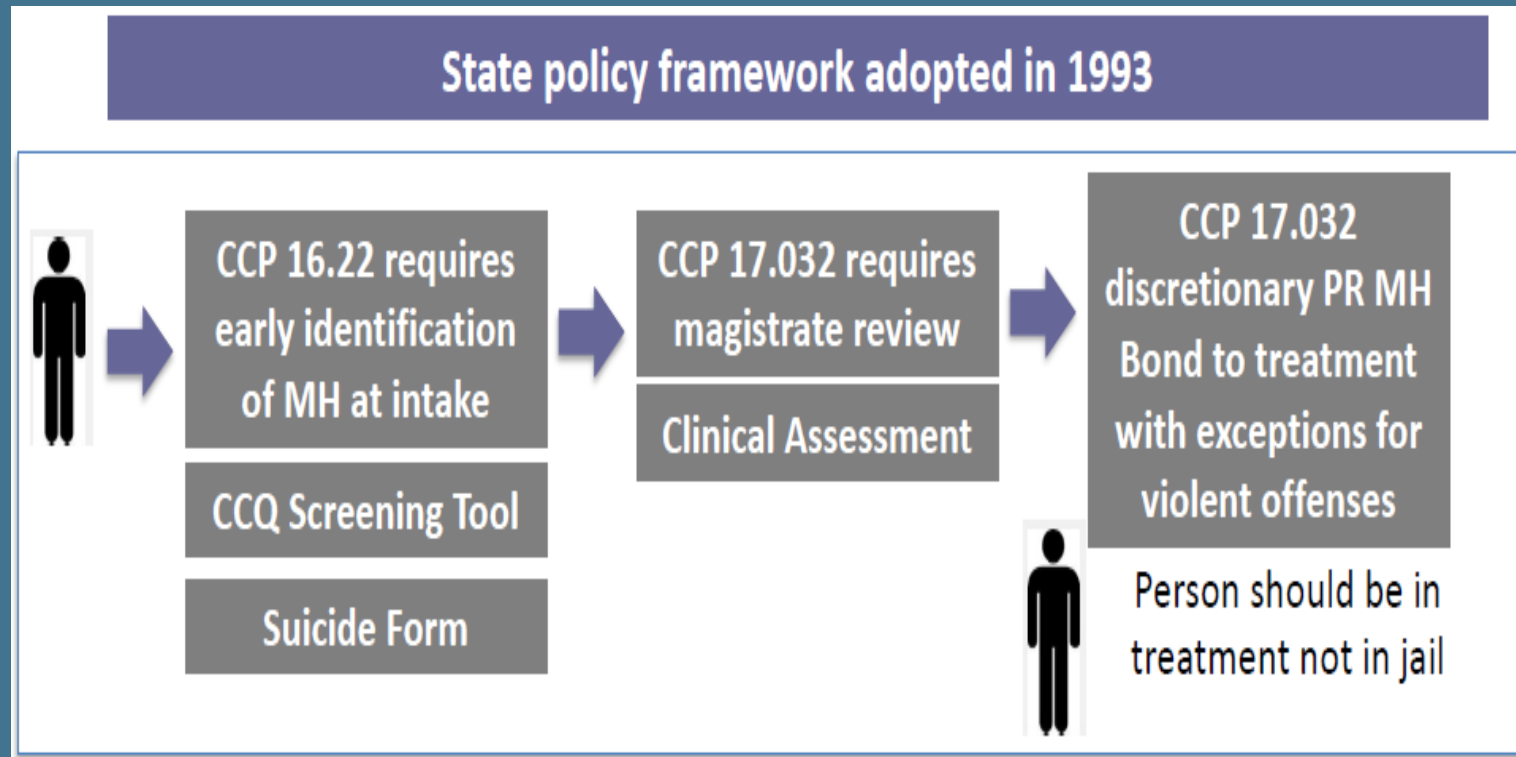
# RESEARCH: SURETY V. ASSESSMENT

## 2022 Comparative Study Findings

- Utilizing Money to release defendants (bail bonds) does not appear to be related to whether people miss court or experience rearrest during the pretrial period.
- Pretrial risk assessment scores, however, are associated with missing court and experiencing rearrest.
- These results do not support the use of monetary release conditions (bail bonds) and instead suggest that using pretrial risk assessment instruments to inform release decisions may result in more accurate and appropriate decision-making.



# Texas CCP 16.22 and CCP 17.032

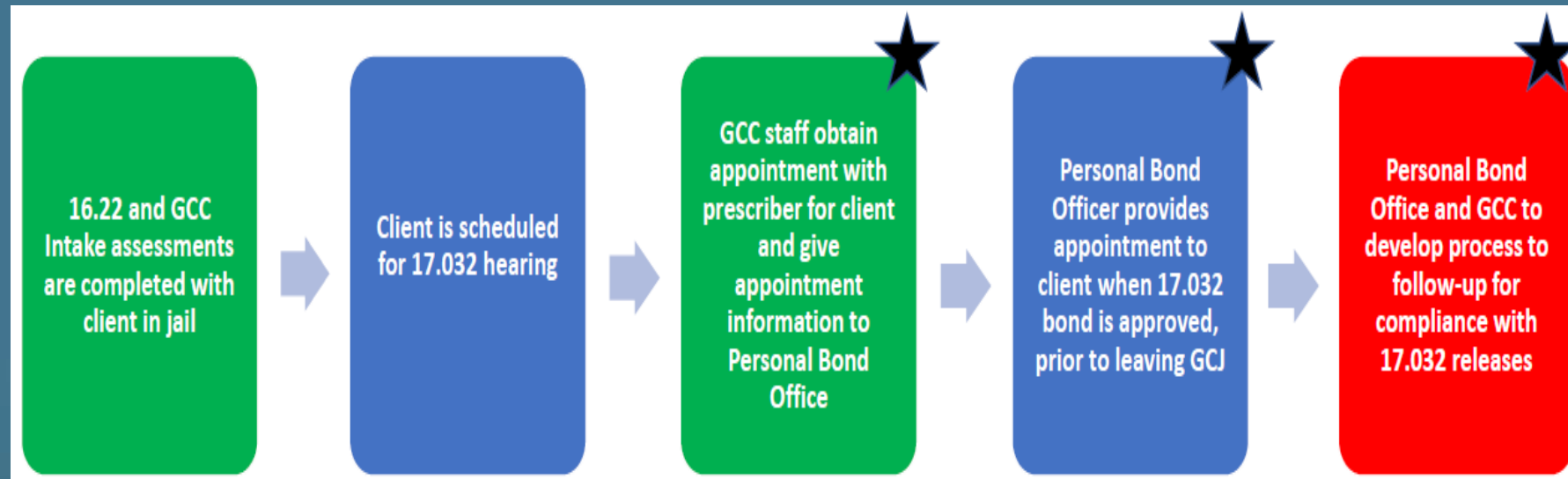


SB 6 is currently impeding this process and must be fixed during the next legislative session.

# Pretrial practice and reform in Galveston County

## Coordinated Responses:

- Remove money as a focus or barrier to release
- Identify evaluation and treatment options identified and available locally
- Provide follow-up to help prevent missed court appearance and new law violations



\*Galveston County has implemented a Mental Health Court as of October 2021 which now services all identified cases



Sandra  
Bland



Donald  
Neely



Jason  
Roque

# Thanks for your attention!

## Contact Information

### TAPS Email

[texaspretrial@gmail.com](mailto:texaspretrial@gmail.com)

### NAPSA Email

[member@napsa.org](mailto:member@napsa.org)

Aaron Johnson

409-770-5437

[aaron.johnson@galvestoncountytexas.gov](mailto:aaron.johnson@galvestoncountytexas.gov)