



Free Bail Bond Programs Funded by Texas Taxpayers

The Need for Accountability

Should taxpayer funded “free” bail
bond agencies be accountable for
their performance?

You decide.

TEXAS TAXPAYER FUNDED “FREE” BAIL BOND PROGRAMS

This data sheet is designed to present critical questions and honest answers about Texas’ numerous County Pretrial Release Agencies (the agencies) which arrange for free bail bonds for defendants accused of crimes. They are released on the condition that the agencies will make sure these defendants come back to court. All too often they fail in this. These “failure to appear” defendants thus become fugitives from justice and present a genuine public safety danger. When the defendants fail to appear, no one goes after them and no one collects their forfeited bail. Millions of dollars are lost annually. Yet, the agencies function very much “behind the curtain,” stridently avoiding the light of scrutiny. In other words: they are largely unaccountable. This operates as a disadvantage to the judges who rely upon the agencies’ representations that they will get their defendants to court for disposition of the defendants’ case(s). The questions and answers presented here will hopefully bring about the transparency to which local taxpayers, judges, county political leaders and law enforcement personnel are entitled.

What are the agencies and what role do they play in the release of defendants pending trial?

They are county offices whose staff has access to the county’s jails and courts.

How do they function?

When a defendant is arrested and jailed upon suspicion of having committed a crime, the court sets an amount of bail which must be posted in order for the defendant to be released pending their trial. An agency staff member will “interview” the defendant and then recommend to the court that the defendant is not a flight risk and if released with no security, the agency will monitor the defendant and get him to court.

Why would a judge do that?

Because the judge believes that the agency will get the defendants to court.

Are agency releases common?

Yes. Thousands of times each year.

Do the agencies get their defendants back to court?

No. Where statistics have been obtained, they show poor performance in this regard. Highly credible national studies* have demonstrated similar results in agencies across the country. The agencies do a poor job of getting defendants to court.

Can a defendant be released some other way?

Yes. They can have their appearance in court financially secured by a third party (surety) qualified to post financial security in the amount of bail set by the court.

Do these sureties do a better job at getting their defendants to court?

Yes. A recent study in Texas* showed that defendants that are out on a surety bond were twice as likely to return to court when compared to those whose releases were unsecured.

Are the judges aware of this?

No, and this is one of the primary needs for regular and accurate reporting, thus assuring accountability.

If the agencies are doing a poor job of getting defendants to court, would the judge want to know that?

Absolutely. Every Texas judge setting conditions for a defendant's release before trial is duty bound under the law to release defendants in such a way as to ensure their reappearance. The Texas Constitution at Sec. 11 requires them to do so. These judges would never knowingly release a defendant on inadequate security. But if the agencies do not accurately reveal their poor performance in getting their defendants to court, the judges will continue to rely on the agencies and thereby unknowingly make bad release decisions.

Are the agencies programs in Texas costly?

Yes. In some counties the cost is well in excess of one million dollars annually and, in at least one instance, it is in the multi-million dollar range.

What happens when a taxpayer funded agency fails to get it's defendant to court?

Nothing. When an agency defendant skips out, no one goes after him and no one pays. When a surety bonded defendant skips out on court, the third party surety pursues the fugitive and returns him to custody. If that surety fails to do so, the surety pays the county the bail amount.

Do these agency fugitives simply remain at large indefinitely?

Yes, until they are re-arrested on the commission of a new crime. Studies* show these fugitives to be highly recidivistic.

So these fugitives at large create a real public safety danger?

Yes.

Are any of the agencies' defendants serious offenders?

Yes. In one county, defendants who were already out on a pending charge were then released through the agency on new charges, such as: possession of narcotics, bail jumping, evidence tampering, burglary of a habitation and sexual assault, and the list goes on...

All of these people who were already out on bail were re-arrested on new cases and then released again on "free bonds" to be monitored for re-appearance by the county agency?

Yes.

Who promises to pay the amount of the bail when a defendant is released through one of the agencies?

The defendant himself. When a defendant is released upon the agency's recommendation, that defendant signs a bail bond making two promises: (1) he will come to court as directed, AND (2) if he does not, he will pay the full amount of the bail to the court. This money, however, is never paid. Millions of dollars are thereby routinely lost to the counties.

With so much money and public safety interest at risk, would not the failure to appear and the re-arrest rates of an agency's defendants be important information?

Yes. Taxpayers who fund the agency should know if their money is being effectively spent. Judges should know if justice and citizens safety interests are being thwarted. Local government leaders would want to know these things as well.

Is there no requirement that the agencies correctly report their reappearance, re-arrest rates and their expenditures?

Yes, there is such a requirement. Texas Code of Criminal Procedure Article 17.42* was passed years ago precisely for that purpose.

So why does that not handle the matter?

It would, if it were followed.

Then why is it not being followed?

Because there are no consequences for not reporting or for inaccurately reporting. Art. 17.42 has no “teeth” in it. When an agency inadequately reports, nothing happens.

Are agencies not forthcoming regarding their performance?

Not routinely. Recently in one county, the information called for by Art. 17.42 was requested*. The request was denied. A formal Freedom of Information Act request was made. Denied again. Only upon threat of a Petition For Mandamus to have the court order the release of the information was the data then provided. The records reflected such performance that the lack of transparency was understandable.

Then what needs to be done?

Art. 17.42 should be amended to provide that every one of the agencies is henceforth under the Act’s reporting requirement and that penalties will apply upon non-compliance.

Is this data sheet an attempt to do away with the agencies?

No, it is not. It is purely an attempt to correct the failure of the agencies to openly account for their performance, or lack thereof, as it relates to the court appearance and re-arrest rates of defendants released through the agencies.

Was this data sheet prepared by someone, or some organization, involved in the release of defendants pending trial?

Yes. It was prepared by Jerry W. Watson, a Texas Attorney who, for 43 years, has specialized in the representation of insurance companies who underwrite surety bonds, including bail bonds. He currently serves, among other capacities, as Chief Legal Officer to AIA Holdings, Inc., whose family of companies comprises Texas and the nation’s oldest and largest underwriter of criminal court appearance bonds.

Texas Constitution, SEC. 11: Prisoners shall beailable by *sufficient sureties*.

*For original source data, please visit www.aiasurety.com/accountability.

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