

2019-20

LEGISLATOR'S GUIDE to the Issues



Pretrial Justice and Indigent Defense

The Issue

There are some one million annual bookings into Texas jails. Texas counties face significant expenses associated with pretrial detainees, who account for 60% of county jail inmates. Additionally, for any offense that carries the potential of jail time, such as possession of the smallest amounts of marijuana, counties are constitutionally required to bear the cost of providing counsel for the indigent.

Several programs that aim to reduce the jail population while protecting—or enhancing—public safety have been implemented in Texas.

A pilot program proposed by the Texas Public Policy Foundation in 2009 and subsequently funded by the Texas Indigent Defense Commission allows indigent defendants in Comal County to choose their attorney among a list of qualified counsel maintained by the county. This consumer choice model provides greater fidelity in the attorney-client relationship rather than having the judge, who works for the government, appoint the counsel. An independent published evaluation found that this program has improved client satisfaction.

Diversion program models such as the Law Enforcement Assisted Diversion (LEAD) program in Seattle, the 24-hour crisis center for the mentally ill in San Antonio, and the First Chance Intervention Program in Houston have proven that empowering police to divert appropriate individuals without bringing them to jail can not only save taxpayers millions of dollars on jail costs, but also lead to greater public safety. Research has found that, as each 24 hours goes by in jail, a person is more likely to lose their job, family, and home, and in the case of mentally ill individuals, to decompensate.

Finally, counties across the state are inconsistent when it comes to promptly assessing pretrial defendants' risk level and mental health status as well as expeditiously providing counsel. These steps are vital to ensuring that costly jail space is prioritized. Prompt administration of an actuarial risk assessment is the equivalent of a prompt diagnosis by a doctor and is essential to making an informed decision about whether someone should be released prior to trial, and if so what, if any, conditions are necessary. Similarly, representation is essential, as pretrial detainees are ill-equipped to challenge the amount at which bail has been set,

which may not take into account factors, such as strong community ties indicating they pose a low risk of flight.

The Facts

- As of March 2018, there were 66,108 individuals in county jails, of which 35,375 were pretrial defendants. Jails are among the largest items in county budgets—Harris County spends more than \$170 million each year on its jail while Dallas County spends in excess of \$110 million.
- Approximately 30% of Texas county jail inmates are receiving mental health services.
- On an annual basis, attorneys are provided in about 460,000 cases to indigent defendants at a cost of \$238 million.

Recommendations

- Expand voucher pilot program for indigent representation.
- Enhance use of police diversion. Police diversion efforts can be strengthened by enhancing Texas' cite and summons law. Passed in 2007, it ensures prosecutors treat these cases similarly to those in which a custodial arrest is made and creates a presumption that the authority should be exercised unless the officer determines the person is a danger to public safety or a flight risk.
- Ensure rapid assessment and provision of counsel for pretrial defendants and create presumption of release for defendants for whom an assessment does not indicate a high risk to public safety. The Legislature should ensure that pretrial defendants are promptly assessed and that those who do not pose a significant danger to public safety do not remain in jail at taxpayer expense simply because of excessive bail amounts.

Resources

[*Improving Indigent Defense in Texas*](#) by Vikrant Reddy, Texas Public Policy Foundation (July 2012).

[*Bringing Balance to Pretrial Proceedings: Solutions for Early Representation of Indigent Defendants*](#) by Marc Levin, Texas Public Policy Foundation (April 2015).

[*Public Safety and Cost Control Solutions for Texas County Jails*](#) by Marc Levin, Texas Public Policy Foundation (March 2012).

[*Open Roads and Overflowing Jails: Addressing High Rates of Rural Pretrial Incarceration*](#) by Marc Levin and Michael Haugen, Texas Public Policy Foundation (May 2018).