

# Project ORANGE JUMPSUIT:

## Effects of Pretrial Status and Days Detained on Case Outcome of Harris County Felony & Misdemeanor A/B Defendants

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### *PREFACE*

*The concept of similar defendants being treated comparatively in their criminal proceedings is referred to as “evenhandedness.”<sup>1</sup> One illegitimate factor cited by legal scholars was pretrial custody. In August, 2014, **The Sentencing Project** reported, “inequality ...reverberates within the justice system, with dire consequences for poor people. Far too often, the quality of justice one receives is not based on the rights enshrined in our constitution, but rather how much justice one can afford i.e., the ability to pay bail to secure pretrial release ..”<sup>2</sup> The degree pretrial justice process violates “evenhandedness” is reflected in case outcome studies of statistically comparable “bond” versus “detained” defendants. The preponderance of evidence-based research demonstrates significant racial and ethnic disparities in arrest, in charging, in bail and sentencing.<sup>3</sup> In this instance, Harris County, Texas’s largest criminal court jurisdiction, provides an 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 defendant’s fate more than any other legal or extralegal attribute. Harris County is ideal setting because the courthouse culture is dominated by the politically powerful commercial bond industry, assembly-line prosecution, judges and county commissioners opposed to bail reform, namely-release on personal recognizance, as well as adversarial indigent legal defense system.*

### **HOUSTON: TINDERBOX WAITING FOR A SPARK**

The common denominator in deadly urban riots in the 60’s and recent civil protests is police misconduct. Watts: a cop arrested an “intoxicated” motorist; Detroit: police raid an unlicensed bar; Newark: cab driver arrested and assaulted for tail-gating; Los Angeles: after a jury acquitted cops that severely injured Rodney King; Ferguson MO: white cop shoots unarmed black youth. Is Houston immune from violent protest? Is there any vulnerable area in the nation’s fourth largest metropolitan area? In September, 2014, *Houston Chronicle* reported

between 2008 and 2012, “grand juries refused to indict officers in every one” of 121 officer civilian shootings.”<sup>4</sup> Perhaps a spark will ignite in the county’s largest jail. A jail ranked 3<sup>rd</sup> in inmate to inmate sexual violence by U.S. Depart of Justice in national survey of 350 jails.<sup>5</sup> It may happen by citizens awakening to the economic and social costs of massive incarceration of the poor, especially people of color, by the county’s two tier justice system. A system best described as a tinderbox legally fashioned and fueled by passive community leaders, self-serving elected rulers and allied profiteers embodied in the Harris County Bail Bond Board. In September, 2013, *Houston Chronicle* Sunday Editorial, citing **Project Orange Jumpsuit’s(POJ)**<sup>6</sup> called Harris County justice, “**JAIL HELL-Poor defendants who can’t make bail pay the price. The system’s culture needs to change.**”<sup>7</sup> Sadly, as evidenced in Harris County’s for-profit bail’s deep roots, and **POJ’s** updated findings reported below, the courthouse culture relentlessly tilts the scales of justice against the most vulnerable people. Notwithstanding Houston’s falling crime, the prevailing surety bond monopoly and its discriminatory effects have never been stronger.

### PATH TO DETENTION IN HARRIS COUNTY

**Commercial Bail Cartel.** On December 16, 1975, Federal Judge Carl Bue Jr. issued a ninety (90) page Court Memorandum and Opinion (*Alberti v. Sheriff*, 406 F. Supp.646 (H.D. Tex. 1975)<sup>8</sup> directed at remedying the overcrowding condition of the (Harris) county jail, and upgrading the County’s struggling Pretrial release Agency, a program seen by the Federal Court as an integral mechanism to help reduce the jail population. The role of the bondmen in undermining the agency was also described in detail.

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

According to American Surety Company, “*Texas is the only state in the country requiring the use of a county Bail Bond Board system to issue licenses for the purpose of writing bail*”<sup>9</sup> (*italics added*). Bail Bond laws fall under TX Article 2372; and Sec 1704.152(b)(1)-(2). There are two types of bondsman: “independent” and “corporation.” Independent licensed bondsman fall under TX Statutes OC/10/1704.203 (e), He or she must deposit a minimum \$50,000 cash, CD, or property as collateral with the County treasury and 10% of face of total posted bonds beyond the minimum. For example, \$50,000 security deposit allows independent bondsman to post \$500,000 in surety bonds, \$100,000 deposit \$1 million in bonds. Bondsmen affiliated with national insurance corporations have the advantage of insurance company employed lobbyists promoting favorable surety bond legislation. Thousands of defendants lack the financial resources to post full cash bail or pay 10% fees to bondsmen. According to **Harris County Bail Bond Board’s** (HCBBB) March 21, 2014 website it oversees 94 licensees,<sup>10</sup> 68% affiliated with national insurance corporations. The board regulates a highly profitable business monopoly that annually collects \$35 million in estimated fees from overwhelmingly “captive” clients that

are arrested, prosecuted and detained then monitored by the county’s computerized management information system utilized by bondsmen all at public expense(see Table 1).

**TABLE 1-YEAR 2012 HARRIS COUNTY BAIL BOND DISTRIBUTION\* BY TYPE, SET SUM VALUE**

OFFENSE	BOND TYPE				BOND SET AMOUNT	
	N				\$	
	CASH	SURETY	PTR **	TOTAL	CASH	SURETY
FELONY	195	16,826	661	17,682	\$1,854,500.00	\$239,815,466.00
MISDEMEANOR	2997	36,986	4,608	44,591	\$2,664,366.00	\$94,929,979.00
<b>TOTAL</b>	<b>3,192</b>	<b>53,812</b>	<b>5,269</b>	<b>62,273</b>	<b>\$4,518,866.00</b>	<b>\$334,745,445.00</b>

\*Figures reflect bonds, not defendants; Harris County District Clerk; \*\*Harris County Pretrial Services

No public records document the fees charged to defendants and collected by bondsmen. If we apply rumored (10%) standard fee to official total sum value of posted surety bonds reported by Harris County District Clerk’s office (\$334.7 million) shown in TABE 1, an estimated \$34.4 total million fees was collected for 53,812 surety bonds processed in YR 2012. However, in view of the fact that the standard fee reported for \$500 bond is \$125, and 7,489 surety bonds fell in this category in 2012, estimated annual bondsmen fees approach \$35million.

**Profit & Loss: Ultimate Business Model.** Theoretically, a bondsman’s financial liability is equal to the face value of posted bond of defendant/client that forfeits bail by failing to appear at scheduled court setting or absconding. “Cash” bond held by county will be forfeited for failure to appear or escaping prosecution. Personal bonds (PTR) forfeitures are rarely collected from defendants. Bondsmen strongly argue this point, contending that personal bond defendants are greater risk of flight and threat to public safety than their clients because PTR defendants have “no skin in the game” and are poorly supervised by public servants.

**Pretrial Misconduct Differences.** National research findings including **POJ’s** misconduct analysis go against bondsmen’s argument. **POJ** felony PTR cases had lower forfeiture (2%) and revocation (5%) rates than Surety (7%) and (9%). Among disposed misdemeanor bond cases, PTR had higher revocation rate (10%) than Surety (6%) but the converse is true in bond forfeiture rates, i.e. Surety=10%; PTR=4%. However, in view PTR cases only represented 8% of total bond cases, no significant comparative statistical differences can be concluded. *It must be noted that at this juncture, only 7(0.5%): PTR=1; Cash=1; Surety=5, of 1258 felony bond defendants are classified as “fugitive”* (see Appendix Tables 3, 3a, 4, 4a). Among misdemeanors bond defendants, 24(1.2%) are fugitives (PTR=3; Cash=5; Surety=16). Pretrial Release programs that use validated risk assessment instruments as criteria for bail and supervision level versus solely financial status of accused, does not inherently discriminate against the poor and is consistent with our democratic values of fair and equal justice and constitutional right to bail.

In terms of profit versus loss, District Clerk’s office reported surety bondsmen paid (loss) only \$2.2 million (7%) of estimated total collected fees (profit) in liability judgments for 3,263 forfeiture cases that represent only 6% of total (53,812) posted surety bonds in 2012 (see TABLE 2). Unexplained, is the disparity Harris County Assistant District Attorney Kathleen Braddock’s reported between combined figure (5,787) in felony and misdemeanor A/B bond forfeiture cases her office filed in the same period and the number (3,263) of paid judgments reported by the District Clerk’s office.<sup>11</sup> Although the District Attorney’s office has a representative on the Harris County Bail Bond Board (HCBBB), its Bond Forfeiture Division cannot provide a record of the number of bond forfeiture cases filed by type of bond. Braddock’s figure (5,787) includes “cash,” “surety” and “PTR” cases; 5,787 of 62,273 total posted bonds translates into 9% bond forfeiture rate. According to the District Attorney Bond Forfeiture Operations Manual, “in order to provide the bondsmen with an opportunity to recapture the defendant and place the defendant in custody in Harris County our office will offer a grace period” of ten (10) months after the date of forfeiture for a felony case and four (4) months for a misdemeanor case “prior to seeking a final judgment.”<sup>12</sup> In terms of financial risk of captive clientele, Harris County is a Bondsmen’s paradise.

**TABLE 2-FELONY & MISDEMEANOR SURETY BOND FOREITURE FEE JUDGEMENT COLLECTED YR 2012\***

SURETY BONDS			
OFFENSE	COUNT	PAID	AVG
FELONY	802	1,086,559.38	1,355
MISDEMEANOR	2461	1,117,511.38	454
<b>TOTAL</b>	<b>3263</b>	<b>\$ 2,204,070.76</b>	<b>\$ 675.47</b>

\*Figures reflect bonds, not defendants; Harris County District Clerk

The degree of hostility toward bail reform and HCBBB’s bias against indigent citizen’s right to bail and presumption of innocence until proven guilty is illustrated in the recent adjourning statement of its chairman Honorable Michael Fields, an elected County Criminal Court-at- Law misdemeanor judge following the authors’ presentation of **POJ’s** salient findings. **“...the folks who work in the bail bond industry ...are doing a valuable service for the citizens of Harris county. Their show-up rate is higher than pretrial release bonds. There is one sure fire-way to stay out of jail and that is not commit a crime. If you do then you’re going to have to post a bond.”**<sup>13</sup>

**Initial Bail Hearing.** The HCBBB and its judicial allies formulate bail policies and procedures that generate and maintain an optimal pool of “captive” clients to extract millions of dollars in bondsmen fees. Some of these fees are contributed to elected officials that support the bond industry. Defendants held in custody downtown or substation will be reviewed by a magistrate within 24-48 hours via monitor or physical court appearance. Magistrates are given their bail guidelines by trial judges opposed to personal bond release. **POJ’s** analysis of felony and misdemeanors dispose cases found that 7.5% and 19.3 % respectively were not booked in the

county jail. Most of these defendants were arrested and made bond before court review. A few (non-arrest) were charged but never taken into custody. HCBBB's influence reached down to indigent legal defense. Off the record, court-appointed attorneys who dare advocate PTR (ROR) for a detained defendant are threatened with being taken out of rotation. Court-appointed attorneys and public defenders are not present at the initial magistrate court hearing. Pretrial Services staff complete risk assessment interview reports 24/7 on 90% of detainees. Inexplicably, this report is classified by judges and only accessible to attorney of record that rarely retrieves it because of judges' well established bias against granting PTR bond.

**Indigent Legal Defense.** The county allocated \$40 million in 2012-13 for indigent legal defense, of which \$5-6 million supports The Public Defender Program (PD). Most detained indigent defendants are represented by court-appointed attorneys at initial review at trial court. Statistically, PD's are relegated to detained misdemeanor mental health and complex detained felony cases. Neither type of indigent legal defense representation impact pretrial release. According to 2012 Harris County Pretrial Services Annual Report,<sup>14</sup> of 32,645 Felony arrests, 21,473 (66%) were detained. Bail defendants (11,172; 34%) fell in three categories: Surety: 10,690 (96 %), Cash: (1%), PTR: 356 (3%). Among 57,523 Misdemeanor A/B arrests, 25,699 (45%) were detained. Bail defendants (31,824; 55%) include Surety: 25,179 (79%); Cash: 2,498 (8%) and PTR: 4,157 (13%). The PD Director offers no valid explanation to these investigators why a PD is not assigned to magistrate hearings. The PD Director is a member of the county's monthly Jail Coordinating Council chaired by long standing Precinct 1 County Commissioner El Franco Lee. The council is charged of reviewing jail population trends and exploring outsourcing cell options to stem jail overcrowding. The topic of bail reform is taboo.

**Intractable Pretrial Detention Population.** Regardless of fall in Harris County daily average total jail population from August, 2009 (11,296) to July 2014 (8,698) the number of detainees remained relatively stable 6,151 to 6,056.<sup>15</sup> The detainee population rate jumped from 55% in August, 2009, to 70% in July 2014. Notwithstanding calls for reform and expanding pretrial release via personal bonds (PTR), and the county starting a Public Defender Pilot Program in 2011, PTR release declined to an historic low since Pretrial Services program was mandated by Federal Court Order in 1976.<sup>16</sup> According to Harris County Pretrial Services 2013 Annual report, among felony arrests, only 0.7% (234/32,642) were granted PTR compared to 1% in 2012.<sup>17</sup> Misdemeanors fell from 7% to 6.6% (3,677/55,324). How do we explain the intractability in detention population and its direct relationship to massive incarceration? Indeed, the HCBBB Chairman, and other elected members that support the multimillion dollar commercial bond industry know that the Commissioners Court will appropriate \$millions of taxpayers' funds to outsource cells to another county or state for **sentenced** county inmates should a spike in jail population exceed the 9,406 housing capacity. In previous years 2010-2011 the county fathers allocated \$31 million for outsourcing cells to manage overflow that raised the eyebrows of the U.S. Department of justice and Texas Commission on Jail Standards.<sup>18</sup>

## HIGH ECONOMIC AND SOCIAL COST OF MASSIVE INCARCERATION

**\$845 Orange Jumpsuit.** According to Harris County Sheriff department's spokesman Alan Bernstein, the county's jails annual operating budget is \$180 million plus \$47 million for medical

services. Asked cost per inmate book-in, he reported: “healthy/day costs- \$45 plus one time booking and release of about \$800.”<sup>19</sup> Applied to 109,395 YR 2012 total book-ins, one time 1-day book-in and release formula translates into \$93million tax dollars. One can appreciate the importance of evaluating gatekeeping (admission) factors that drive first-time/recycle book-ins, affect pretrial detention duration, and post adjudication cell utilization of sentenced county offenders, pending TDC transfers, probation revocations and parole violators etc.

Analysis of monthly “average daily jail population reports,” reveal the majority of county inmates consistently fall in the pretrial detainee category. Pretrial population rates range between low-6,151 (55%) of 11,295 total population - August-2009, to high-6,056 (70%) of 8,698-July -2014.<sup>20</sup> The July 2014 monthly report shows misdemeanor detainees (473) represent only 8% of total pretrial detainees (6,056) and 5.4% of total population (8,698) in Harris County Sheriff’s custody. These data may give the false impression that misdemeanor detainees account for a fraction of total jail operations cost. Ironically, analysis of YR 2012 misdemeanor book-ins (84,763) suggest otherwise. Also, far more individuals are arrested on misdemeanor (57,524) than felony charges (32,645).<sup>21</sup>

**Race/Ethnicity Disparity in Pretrial Detention.** POJ’s preliminary findings of study sample demonstrate pretrial and post adjudication incarceration cost are driven by Harris County’s policy of processing nearly all arrestees into jail, coupled with detaining nearly all indigent population routinely denied PTR. Taking into account gravity of charge, bail category or conviction history, **POJ** found people of color were disproportionately detained, compared to their white counterparts. For example, in the lowest felony bond group (\$2000 or less) 45% of Blacks and 39 % of Hispanics were detained at date of disposition compared to 34% of whites. This pattern was observed in four of five bond categories. Among misdemeanors population, whites had the lowest detention rate of 17% in the lowest bond (\$500) subpopulation compared to 26% and 27% for Blacks and Hispanics. Among highest (>\$10,000) subgroup Hispanics fared worst- 71% detained at disposition, in contrast to 67% for Blacks and 54% for whites.

**Fastest Justice in the West.** Most judges are obsessed with managing their court dockets. Harris County’s streamline filing system, facilitated by preset bail schedule and restrictive bail of indigent defendants is a godsend to “efficient” court management. Set bail values guidelines reflect gravity of crime and prior offense conviction. For example, the lowest misdemeanor bond for first Possession of Marijuana and DWI offense is \$500. The lowest felony first offense POSS CS PG 1 <1G bond is \$2000. The “direct filing system,” allows prosecutor to review the charge, interpret and set bail according to guidelines established by judiciary within hours defendant is taken into custody. At this juncture, pretrial release entails paying bondman a nonrefundable fee based on ten percent of the face value of the bond. Bondsmen accept Visa, mobile bank transfer, installment payment and property as collateral. The second option of defendant in custody is to have a friend or significant other deposit a “cash” bond with the county for the full face of the set bond. This fee is refundable at completion of case unless conditions of bail are violated. An alternative for-profit cash bond model is available in three Texas counties (Franklin, Calhoun and Brazos) and 40 other states, subject to agreement

executed by the County Judge (see [www.govpaynet.com](http://www.govpaynet.com)). It processes cash bail, fines & court costs for a lower client fee via credit/debit and mobile fund transfers by third parties. This model circumvents jail book-in and expedites release from detention.

### BOND VS. DETAINED: TWO WORLDS

**“Duration” of detention days.** This variable is defined as average days held in pretrial custody from date charged to date disposed taking into account “in” and “out” of jail (recycle) if bond was revoked and remade. For example, a defendant may be initially detained, make bond for several days, then rearrested and revoked but no new bond; this case’s pretrial status category at disposition is “detained.” As hypothesized, **POJ** found **misdemeanor** disposed population had significantly shorter average days detained awaiting trial regardless of pretrial release status (M “bond”=1.8 days; “detained”=13 days), than **felony** : “bond”=11 days; “detained” 82 days (see Tables 3,3a,4,4a).

**Case Processing Time.** **POJ’s** analysis of “case age” and outcome of disposed “bond” vs. “detained” cases illustrate two worlds. *Median* processing days of **felony** “bond” vs. “detained” cases was 149 days and 56 days respectively. “Bond” cases *averaged* 180 days compared to 100 for “detained.” *Median Misdemeanor* disparity was more pronounced. Fifty percent of “bond” cases were processed within 115 days or less, compared to 5 days or less for “detained” defendants. “Bond” cases *averaged* 161 days compared to 13 *average* days for “detained” group.

**TABLE 3 – FELONY DISPOSED “DETAINED” POJ POP.: DAYS DETAINED & COST BY BOND CATEGORY**

FELONY				
DETAINED				
BOND CATEGORY	TOT POP	SUM OF DAYS	AVERAGE DAYS	EST. COST OF DETENTION
2000 or less	164	2,709	16.5	148,995
2001-5000	227	8,814	38.8	484,770
5001-10000	227	14,727	64.9	809,985
10001-20000	552	26,602	48.2	1,463,110
> 20000	397	58,690	147.8	3,227,950
NO BOND	444	53,971	121.6	2,968,405
<b>TOTAL</b>	<b>2011</b>	<b>165,513</b>	<b>82.3</b>	<b>\$9,103,215.00</b>

**TABLE 3a –FELONY DISPOSED “BOND” POJ POP.: DAYS DETAINED & COST BY BOND CATEGORY**

FELONY				
ON BOND				
BOND CATEGORY	TOT POP	SUM OF DAYS	AVERAGE DAYS	EST. COST OF DETENTION
2000 or less	254	696	2.7	38,280
2001-5000	236	1,050	4.4	57,750
5001-10000	212	2,041	9.6	112,255
10001-20000	172	2,601	15.1	143,055
> 20000	219	5,683	25.9	312,565
<b>TOTAL</b>	<b>1093</b>	<b>12,071</b>	<b>11.0</b>	<b>\$663,905.00</b>

**TABLE 4 – MISD. DISPOSED “DETAINED” POJ POP.: DAYS DETAINED & COST BY BOND CATEGORY**

MISDEMEANOR				
DETAINED				
BOND CATEGORY	TOT POP	SUM OF DAYS	AVERAGE DAYS	EST. COST OF DETENTION
<= 500	179	1,591	8.9	87,505
501 - 1999	259	2,295	8.9	126,225
2000	92	844	9.2	46,420
2001 - 4999	250	1,868	7.5	102,740
5000 - 9999	631	10,412	16.5	572,660
>= 10,000	106	3,122	29.5	171,710
NO BOND	2	4	2.0	220
<b>TOTAL</b>	<b>1,519</b>	<b>20,136</b>	<b>13.3</b>	<b>\$1,107,480.00</b>

**TABLE 4a – MISD. DISPOSED “BOND” STUDY POP.: DAYS DETAINED & COST BY BOND CATEGORY**

MISDEMEANOR				
ON BOND				
BOND CATEGORY	TOT POP	SUM OF DAYS	AVERAGE DAYS	EST. COST OF DETENTION
<= 500	639	696	1.1	38,280
501 - 1999	461	653	1.4	35,915
2000	99	179	1.8	9,845
2001 - 4999	192	401	2.1	22,055
5000 - 9999	257	817	3.2	44,935
>= 10,000	59	373	6.3	20,515
NO BOND	-	-	-	-
<b>TOTAL</b>	<b>1,707</b>	<b>3,119</b>	<b>1.8</b>	<b>\$171,545.00</b>

**Impact of Bail vs. Detain in Post Adjudication incarceration.** Because “defendant” is the unit of analysis, POJ used accumulative set bond value and most serious charge where applicable. POJ’s tracking analysis of all study cases found nearly all (93%) felony and 81% of misdemeanor arrests were book-in Harris County jails regardless of risk of flight, or danger to public safety. Analysis of study cases (see Appendix Tables 3,3a, 4, 4a) found that majority of booked misdemeanor defendants made bond within 1 to 2 days. The average days detained of disposed \$500 bond misdemeanor “bond” defendants was 1 day; \$2000 bond misdemeanor “bond” cases averaged 2 detained days. Felony \$2000 bond category “bond” study subpopulation averaged 3 days detained at date of disposition. Emphasizing that bond category is a function of gravity of crime and conviction history, felony defendants with \$2000 set bond should have similar level of charge and case outcomes. For example, in the lowest felony bond category \$2000, jail sentence of “bond” cases was 11%, in contrast to 37% for “detained” counterparts (see Appendix Tables 5a & 6a, 7). A detailed analysis of case outcome of five bond categories encompassing 98% total study population, found a consistent pattern of disparity in case outcome whereby statistically equivalent “detained” cases had significant higher conviction and jail sentence rates than their “bond” equivalents.



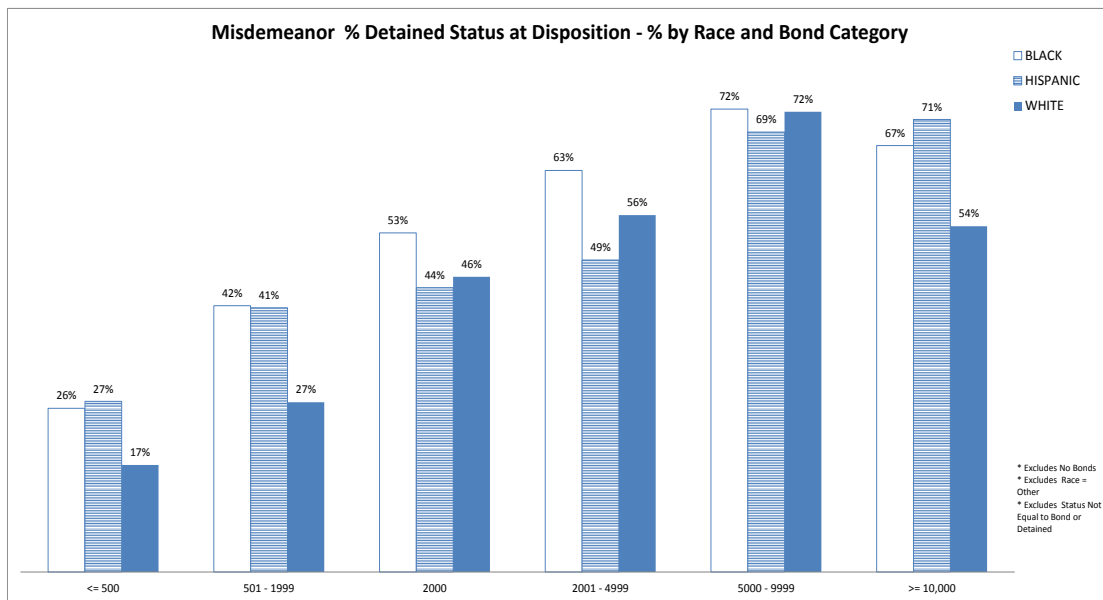
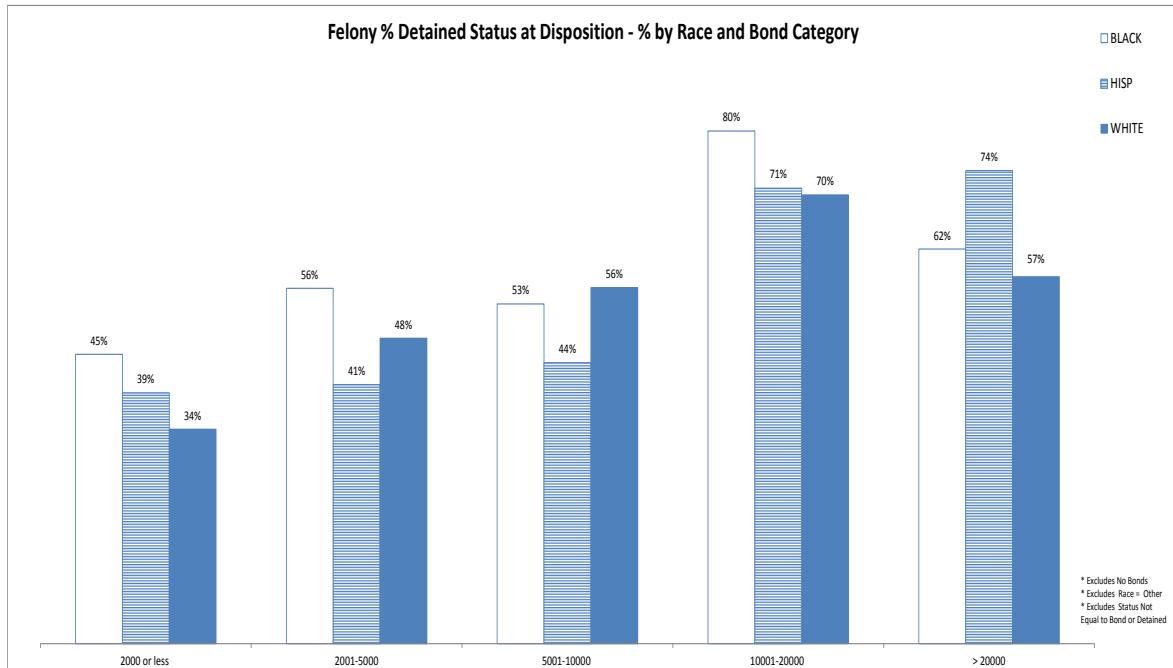
## APPENDIX

### STUDY SAMPLE & RESEARCH METHODOLOGY

The following report is an update of nonprofit corporation **THEMIS RESEARCH** 's **Project Orange Jumpsuit's (POJ)** five-year longitudinal study of 6,526 scientifically selected Harris County felony and misdemeanor A/B defendants charged in first four months of 2012. The study population, tracked from January 1, 2012 to mid-February, 2014 by, is representative of over ninety-thousand (90,169) arrestees processed by Harris County in 2012. The study sample consists of 3,207 (27%) scientifically randomly selected felony defendants from total felony (11,860) database and 3,319 (14 %) of total misdemeanor A/B database (23,309) provided by Harris County District Attorney. The total database (35,169) contains two Excel spreadsheets listing felony and misdemeanor A/B defendants charged with an offense in order of date filed beginning January 1, 2012 through April 30, 2012 and processed in 22 Harris County District Courts trying criminal cases and 15 County Criminal Courts at Law. Random selection of respective study populations was completed by Dr. Rodney Hissong, Associate Professor, University of Texas – Arlington, Department of Urban Affairs, using IBM/SPSS software. The preliminary report is based on 98% of completed study cases.

Longitudinal Research Design: Study sample subjects will be tracked from date of charge for five years by accessing Harris County District Clerk's online justice information system. Variables include: defendants' county assigned identification SPN and case Number, assigned court, name, Race/Ethnicity, age, sex, charge, type of legal representation, charge, conviction history, bail set, type of bond, pretrial release status, pretrial jail days, bond forfeiture & penalties, bond revocation, fugitive status, case processing time, disposition and recidivism.

Pretrial Release Race/Ethnicity Disparity. The preliminary findings of the representative sample



**Pretrial Misconduct: Personal Bond vs. Surety Bond.** The commercial bond industry argues that defendants released on personal bond and 10% refundable court administered pretrial release programs applicable to federal courts and some other state jurisdictions, and supervised by public servants, pose a higher risk to public safety measured in pretrial misconduct than those released on surety bond monitored by for-profit bondsmen. This hypothesis is rarely tested empirically because cohort studies comparing effects of pretrial defendants’ legal and socio-economic attributes on misconduct and case outcome are rare.

Ideal controlled studies employing random assignment of statistically comparable subjects to “interventions” i.e., PTR, government 10% deposit, in the criminal justice field is politically impossible. In jurisdictions dominated by financial bail like Harris County, a “creaming effect” arises in bail selection itself. Defendants with financial resources are better able to pay bondsmen or post cash bond. This group is more likely employed, have completed high school or have attended college. In contrast, the only bail option for the poor is release on non-financial bail such as personal recognizance or personal bond (PTR).

In jurisdiction where the judges are philosophically opposed to alternative bail, the poor generally remain in jail until they plead guilty. Objective factors such as the accused’s community ties, nature of offense charge and criminal history are ignored in the personal bond decision making process. The objective risk scale program and supervision have been available in Harris County since 1977 when imposed by Federal Court Order. However the program has been relentlessly attacked by the surety bond industry threatened by competition.

While acknowledging there are pretrial release programs that are not funded to adequately monitor PTR released defendants, Harris County is not in this category. Ironically, many judges order surety bond defendants to be simultaneously supervised by pretrial services and probation staff. This is called “courtesy supervision” and is funded by taxpayer.

Unfortunately, misconduct comparison among types of bond is limited by the cohort’s sample size of PTR felony defendants. Only 43 (3.4 %) of 1244 combined disposed bond felony defendants were released on PTR compared to 1196 (96%) surety. Notwithstanding sample size differences, PTR felony defendants had lower forfeiture and revocation rates (See TABLES 3 & 3a). We also note that many surety bond defendants were also monitored by the probation department as courtesy supervision cases. Among 73 defendants pending case outcome, 13 are fugitives: of these fugitives, six (6) were never arrested or made bond; one (1), was on PTR, 1 cash and 5 released on surety type bond of which 3 were courtesy.

Bondsmen’s greatest fear is employing a risk assessment instrument to evaluate pretrial release based on objective factors like community ties, charge and criminal history as opposed to exclusively defendants’ financial resources. Bondsmen are equally opposed to defendants using their own credit or debit card or a business model like GOVPAYNET that employs no bondsmen and charges clients a smaller fee and circumvents the book-in process.

**TABLE 3- FELONY DISPOSE STUDY POPULATION - PRETRIAL MISCONDUCT BY TYPE OF BOND**

FELONY - DISPOSED					
BOND TYPE	COUNT	MISCONDUCT			
		Forfeitures		Revoked	
		N	%	N	%
CASH	5	0	0%	0	0%
PTR	43	1	2%	2	5%
SURETY *	1196	87	7%	112	9%
DETAINED	1860	1	0%	4	0%
NON-ARREST	30	0	0%	0	0%
<b>TOTAL</b>	<b>3134</b>	<b>89</b>	<b>3%</b>	<b>118</b>	<b>4%</b>

\* Includes PTR courtesy supervision cases

**TABLE 3a- FELONY OPEN STUDY POPULATION - PRETRIAL MISCONDUCT BY TYPE OF BOND**

FELONY - STILL OPEN							
BOND TYPE	COUNT	MISCONDUCT					
		Forfeitures		Revoked		Fugitive	
		N	%	N	%	N	%
CASH	1	1	100%	0	0%	1	100%
PTR	4	1	25%	2	50%	1	25%
SURETY *	36	12	33%	10	28%	5	14%
DETAINED	26	0	0%	0	0%	0	0%
NON-ARREST	6	0	0%	0	0%	6	100%
<b>TOTAL</b>	<b>73</b>	<b>14</b>	<b>19%</b>	<b>12</b>	<b>16%</b>	<b>13</b>	<b>18%</b>

\* Includes PTR courtesy supervision cases

**Misdemeanor Pretrial Misconduct.** TABLES 4 & 4a show surety bond disposed defendants had over twice (10%) forfeiture rate than PTR (4%). The converse is true with respect to revocations (6% vs, 10%). Revocation may follow re-arrest, positive drug test or violation of special condition of bail. Among 82 misdemeanor defendants with open case, 41 (50%) are non-arrest fugitives that never made bond. Of the total 1597 combined disposed and open misdemeanor surety bond defendants, only 17 or 1% fell in the fugitive category. This compares to 3 (1.2%) of 231 PTR study population. Of the total 110 cash bond subpopulation, 5(4.5%) defendants fell in fugitive category. Given the above findings; one is hard pressed to conclude significant differences in misconduct between surety and personal bond defendants in Harris County and the notion that non-financial bond defendants constitute a greater risk of flight than money based bail.

**TABLE 4- MISDEMEANOR DISPOSED STUDY POPULATION PRETRIAL MISCONDUCT BY TYPE OF BOND**

MISDEMEANOR - DISPOSED					
BOND TYPE	COUNT	MISCONDUCT			
		Forfeitures		Revoked	
		N	%	N	%
CASH	104	4	4%	4	4%
PTR	227	10	4%	22	10%
SURETY *	1567	162	10%	87	6%
DETAINED	1328	0	0%	0	0%
NON-ARREST	11	0	0%	0	0%
<b>TOTAL</b>	<b>3237</b>	<b>176</b>	<b>5%</b>	<b>113</b>	<b>3%</b>

\* Includes PTR courtesy supervision cases

**TABLE 4a- MISDEMEANOR OPEN STUDY POPULATION PRETRIAL MISCONDUCT BY TYPE OF BOND**

MISDEMEANOR - STILL OPEN							
BOND TYPE	COUNT	MISCONDUCT					
		Forfeitures		Revoked		Fugitive	
		N	%	N	%	N	%
CASH	6	6	100%	0	0%	5	83%
PTR	5	2	40%	2	40%	3	60%
SURETY *	30	17	57%	3	10%	16	53%
NON-ARREST	41	0	0%	0	0%	41	100%
<b>TOTAL</b>	<b>82</b>	<b>25</b>	<b>30%</b>	<b>5</b>	<b>6%</b>	<b>65</b>	<b>79%</b>

**TABLE 5- CASE OUTCOME OF FELONY "DETAINED" DEFENDANTS AT DISPOSITION**

FELONY							
DETAINED							
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	PROBATION	HCI	STJ	TDC
2000 or less	164	24	79	0	35	25	1
2001-5000	227	32	63	4	57	53	18
5001-10000	227	30	61	8	16	48	64
10001-20000	552	55	29	5	85	283	95
> 20000	397	52	52	6	65	46	176
NO BOND	444	60	43	1	33	53	254
<b>TOTAL</b>	<b>2011</b>	<b>253</b>	<b>327</b>	<b>24</b>	<b>291</b>	<b>508</b>	<b>608</b>

**TABLE 5a-CASE OUTCOME BY PERCENT FELONY "DETAINED" DEFENDANTS AT DISPSTION**

FELONY							
DETAINED							
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	PROBATION	HCI	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%	13.2%	26.9%	3.5%	7.0%	21.1%	28.2%
10001-20000	100.0%	10.0%	5.3%	0.9%	15.4%	51.3%	17.2%
> 20000	100.0%	13.1%	13.1%	1.5%	16.4%	11.6%	44.3%
NO BOND	100.0%	13.5%	9.7%	0.2%	7.4%	11.9%	57.2%
<b>TOTAL</b>	<b>100.0%</b>	<b>12.6%</b>	<b>16.3%</b>	<b>1.2%</b>	<b>14.5%</b>	<b>25.3%</b>	<b>30.2%</b>

**TABLE 6- CASE OUTCOME OF FELONY “BOND” DEFENDANTS AT DISPOSITION**

FELONY									
ON BOND									
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	FINE	PROBATION	HCJ	STJ	TDC	
2000 or less	254	76	146	2	3	20	6	1	
2001-5000	236	85	85	0	13	33	14	6	
5001-10000	212	55	74	0	36	20	5	22	
10001-20000	172	40	43	0	7	26	21	35	
> 20000	219	81	57	0	5	8	8	60	
NO BOND	-	-	0	0	0	0	0	0	
<b>TOTAL</b>	<b>1093</b>	<b>337</b>	<b>405</b>	<b>2</b>	<b>64</b>	<b>107</b>	<b>54</b>	<b>124</b>	

According to research recently reported by the Public Policy Research Institute Texas A&M University, “the benefits of pre-trial release are apparent.”<sup>9</sup> Statistically identical defendants who make bond experience:

- 86% fewer pretrial jail days
- 333% better chance of getting deferred adjudication
- 30% better chance of having all charges dismissed
- 24% less chance of being found guilty, and
- 54% fewer jail days sentence

**TABLE 6a-CASE OUTCOME BY PERCENT FELONY “BOND” DEFENDANTS AT DISPOSTION**

FELONY									
ON BOND									
BOND CATEGORY	COUNT	NON CONVICTION	DEFERRED	FINE	PROBATION	HCJ	STJ	TDC	
2000 or less	100.0%	29.9%	57.5%	0.8%	1.2%	7.9%	2.4%	0.4%	
2001-5000	100.0%	36.0%	36.0%	0.0%	5.5%	14.0%	5.9%	2.5%	
5001-10000	100.0%	25.9%	34.9%	0.0%	17.0%	9.4%	2.4%	10.4%	
10001-20000	100.0%	23.3%	25.0%	0.0%	4.1%	15.1%	12.2%	20.3%	
> 20000	100.0%	37.0%	26.0%	0.0%	2.3%	3.7%	3.7%	27.4%	
NO BOND	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
<b>TOTAL</b>	<b>100.0%</b>	<b>30.8%</b>	<b>37.1%</b>	<b>0.2%</b>	<b>5.9%</b>	<b>9.8%</b>	<b>4.9%</b>	<b>11.3%</b>	

**TABLE 7 MISDEMEANOR OUTCOME BY BOND CATEGORY ON BOND**

BOND CAT	COUNT	NON-CONV	DEFERRED	PROB	FINE	HCJ	STJ	TDC
<= 500	639	283	133	59	1	163	0	0
501 - 1999	461	161	90	52	1	157	0	0
2000	99	25	18	7	0	49	0	0
2001 - 4999	192	38	19	32	0	103	0	0
5000 - 9999	257	59	24	19	0	154	1	0
>= 10,000	59	13	10	2	0	34	0	0
NO BOND	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>1707</b>	<b>579</b>	<b>294</b>	<b>171</b>	<b>2</b>	<b>660</b>	<b>1</b>	<b>0</b>

**TABLE 7a MISDEMEANOR OUTCOME BY PERCENT ON BOND**

BOND CAT	COUNT	NON-CONV	DEFERRED	PROB	FINE	HCJ	STJ	TDC
<= 500	100.0%	44.3%	20.8%	9.2%	0.2%	25.5%	0.0%	0.0%
501 - 1999	100.0%	34.9%	19.5%	11.3%	0.2%	34.1%	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%	19.8%	9.9%	16.7%	0.0%	53.6%	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%	22.0%	16.9%	3.4%	0.0%	57.6%	0.0%	0.0%
NO BOND	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	<b>100.0%</b>	<b>33.9%</b>	<b>17.2%</b>	<b>10.0%</b>	<b>0.1%</b>	<b>38.7%</b>	<b>0.1%</b>	<b>0.0%</b>

**TABLE 8 MISDEMEANOR**

**DETAINED**

BOND CAT	COUNT	NON-CONV	DEFERRED	PROB	FINE	HCJ		
<= 500	179	18	14	3		144	0	0
501 - 1999	259	22	22	1		214	0	0
2000	92	5	2	2	0	83	0	0
2001 - 4999	250	17	4	3	0	226	0	0
5000 - 9999	631	39	14	2	1	568	4	
>= 10,000	106	8	1	2	0	95	0	0
NO BOND	2	1	0	0	0	1	0	0
	<b>1519</b>	<b>110</b>	<b>57</b>	<b>13</b>	<b>1</b>	<b>1331</b>	<b>4</b>	<b>3</b>

**Misdemeanor sample:** TABLES 8 through 10a illustrate the disparities in detention and disposition for comparable misdemeanor defendants. For example, the pretrial detention rate for \$500 bond category was 22%. The average pretrial jail days at disposition of “detained” subpopulation was 8.9 days, representing \$488 per detainee jail cost. Excluding deferred adjudication for both “detained” and “bond” defendants, the “non-conviction” rate of “detained” was 10.1% vs. 44.3 % for “bond” group. In addition, 80.4% of “detained” were sentence to jail compared to 25.5% “bond” defendants in the \$500 bond set category.

TABLE 9 DETAINED DISPOSED MISDEMEANOR DETAINED								
BOND CAT	COUNT	NO-CONV	DEFER	PROB	FINE	HCJ	STJ	TDC
<= 500	179	18	14	3	0	144	0	0
501 - 1999	259	22	22	1	0	214	0	0
2000	92	5	2	2	0	83	0	0
2001 - 4999	250	17	4	3	0	226	0	0
5000 - 9999	631	39	14	2	1	568	4	3
>= 10,000	106	8	1	2	0	95	0	0
NO BOND	2	1	0	0	0	1	0	0
	<b>1519</b>	<b>110</b>	<b>57</b>	<b>13</b>	<b>1</b>	<b>1331</b>	<b>4</b>	<b>3</b>

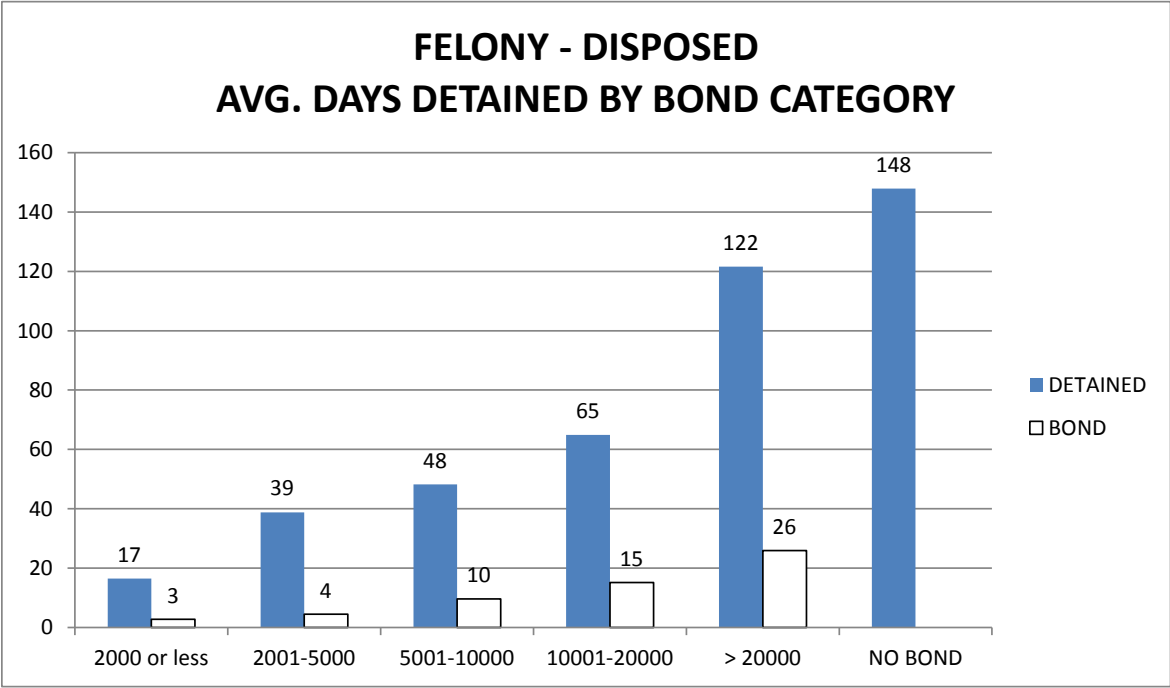
TABLE 9a DETAINED DISPOSED MISDEMEANOR DETAINED								
BOND CAT	COUNT	NO-CONV	DEFER	PROB	FINE	HCJ	STJ	TDC
<= 500	100.0%	10.1%	7.8%	1.7%	0.0%	80.4%	0.0%	0.0%
501 - 1999	100.0%	8.5%	8.5%	0.4%	0.0%	82.6%	0.0%	0.0%
2000	100.0%	5.4%	2.2%	2.2%	0.0%	90.2%	0.0%	0.0%
2001 - 4999	100.0%	6.8%	1.6%	1.2%	0.0%	90.4%	0.0%	0.0%
5000 - 9999	100.0%	6.2%	2.2%	0.3%	0.2%	90.0%	0.6%	0.5%
>= 10,000	100.0%	7.5%	0.9%	1.9%	0.0%	89.6%	0.0%	0.0%
NO BOND	100.0%	50.0%	0.0%	0.0%	0.0%	50.0%	0.0%	0.0%
	<b>100.0%</b>	<b>7.2%</b>	<b>3.8%</b>	<b>0.9%</b>	<b>0.1%</b>	<b>87.6%</b>	<b>0.3%</b>	<b>0.2%</b>

TABLE 10-MISDEMEANOR ON BOND						
BOND CATEGORY	COUNT	NON-CONVICTION	DEFERRED	PROBATION	FINE ONLY	HCJ
<= 500	639	283	133	59	1	163
501 - 1999	461	161	90	52	1	157
2000	99	25	18	7	0	49
2001 - 4999	192	38	19	32	0	103
5000 - 9999	257	59	24	19	0	154
>= 10,000	59	13	10	2	0	34
NO BOND	0	0		0	0	0
	<b>1707</b>	<b>579</b>	<b>294</b>	<b>171</b>	<b>2</b>	<b>660</b>

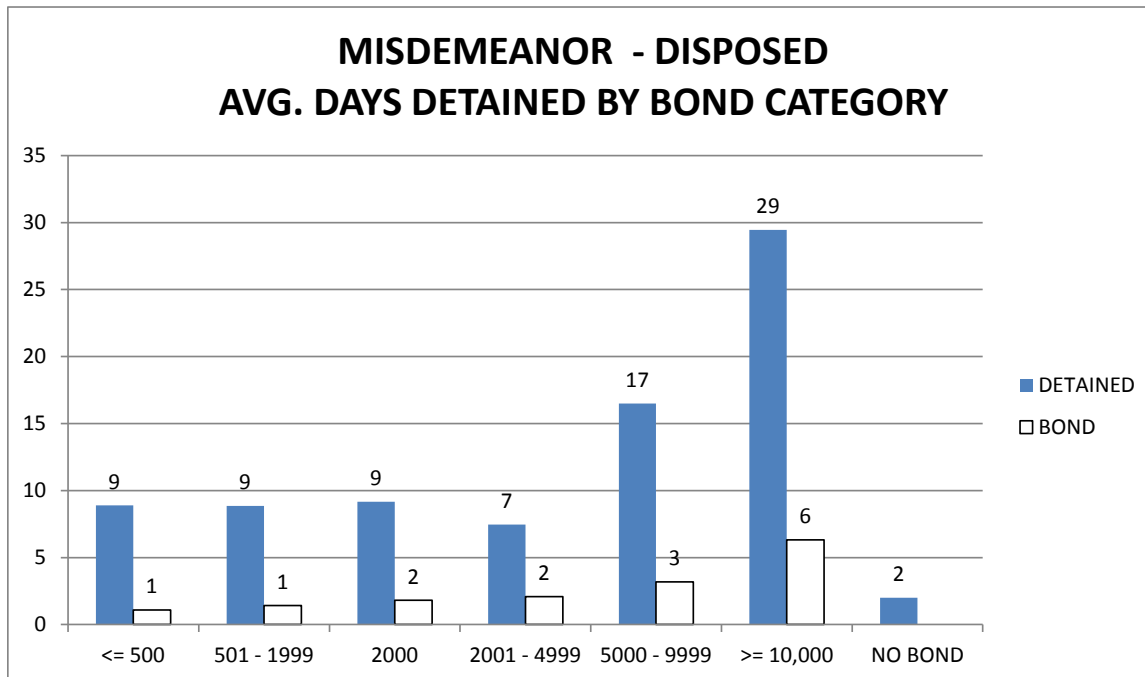


TABLE 10a MISDEMEANOR ON BOND						
BOND CATEGORY	COUNT	NON-CONVICTION	DEFERRED	PROBATION	FINE ONLY	
<= 500	100.0%	44.3%	20.8%	9.2%	0.2%	25.5%
501 - 1999	100.0%	34.9%	19.5%	11.3%	0.2%	34.1%
2000	100.0%	25.3%	18.2%	7.1%	0.0%	49.5%
2001 - 4999	100.0%	19.8%	9.9%	16.7%	0.0%	53.6%
5000 - 9999	100.0%	23.0%	9.3%	7.4%	0.0%	59.9%
>= 10,000	100.0%	22.0%	16.9%	3.4%	0.0%	57.6%
NO BOND	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	<b>100.0%</b>	<b>33.9%</b>	<b>17.2%</b>	<b>10.0%</b>	<b>0.1%</b>	<b>38.7%</b>

GRAPH 1- AVERAGE DAYS DETAINED BY BOND CATEGORY FELONY DISPOSED DEFENDANTS



**GRAPH 2- AVERAGE DAYS DETAINED BY BOND CATEGORY MISDEMEANOR DISPOSED DEFENDANTS**



**NOTES**

1. Gerald R. Wheeler Ph.D. & Carol L. Wheeler Ph.D. "Bail Reform in the 1980s: A Response to the Critics", *CRIMINAL LAW BULLETIN* May-June 1982; Stephen Demuth;
2. The Sentencing Project, August 28, 2014.
3. Darrell Steffensmeier (2004) National Science Foundation; Cassia Spohn U.S. Dept. of Justice (2000); *The Sentencing Project, (2002-2008)* Washington D.C .;Traci Schlesinger *Racial & Ethnic Disparity in Pretrial Processing*; Besiki Kutateladze & Nancy R. Andiloro, *Prosecution and Racial Justice in New York County* 2014 U.S. Dept. of Justice; See *Pretrial Justice Institute News*; Laura and John Arnold Foundation (LIAF) *PRETRIAL CRIMINAL JUSTICE RESEARCH PROJECT NOV 2013*, [WWW.ARNOLOFOUNDATION.ORG](http://WWW.ARNOLOFOUNDATION.ORG); *Wichita County Public Defender Office An Evaluation of Case Processing, Client Outcomes, and Costs (October 2012)* [WWW.TXCOURTS.GOV/TIDC](http://WWW.TXCOURTS.GOV/TIDC) or <http://ppri.tamu.edu>
4. *Houston Chronicle*, September 5, 2014
5. Dan Solomon, "Harris County Jail Has One of the Worst Sexual Assault Rates in the Country," *Texas Monthly*, January 13, 2014
6. Gerald R. Wheeler Ph.D. & Gerald Fry *Project Orange Jumpsuit* Report #1 September 25, 2013

7. See Lisa Olsen's Article *Houston Chronicle*, September 5, 2014 17, 2013 "Study: Inmates who can't afford bond face tougher sentences'" *Houston Chronicle*, September 22,2013
8. On December 16, 1975, Federal Judge Carl Bue Jr. issued a ninety (90) page Court Memorandum and Opinion (*Alberti v. Sheriff*, 406 F. Supp.646 (H.D. Tex. 1975))
9. See American Surety Bonds Texas Harris County Jail Population July 2014 Report;
10. Harris County Bail bond website March 21,2014
11. Attorney Kathleen Braddock's June, 2014 Telephone Interview
12. Harris County District Attorney Bond Forfeiture Operations Manual.
13. Transcribed Minutes Harris County Bail Bond Board Meeting May 13, 2014
14. Harris County Pretrial Services 2012 Annual Report
15. (*Alberti v. Sheriff*)
16. Harris County Pretrial Services 2013 Annual Report
17. See Texas Commission on Jail Standards
18. Interview Alan Bernstein Harris County Sheriff's Department, August 2014
19. *Ibid* Harris County Assistant District
20. Harris County Jail Population July 2014 Report
21. Harris County Pretrial Services 2012 Annual Report