



Dear Governor Abbott, Lieutenant Governor Dan Patrick, and Members of the Texas Legislature:

“Bail reform” is now a ubiquitous term, but it means something different to everyone, with a particular meaning for those directly impacted by the current Texas bail system. During the upcoming special session, you will be asked to define what bail reform will mean for Texas. We support bail reform that: (1) reduces the jail population, (2) ends jailing for poverty, (3) invests in community-based services and supports, and (4) avoids expanding government surveillance systems like pretrial services and GPS monitoring. To date, the Texas legislature has not taken up meaningful bail reform legislation as described. We hope you will join us in pushing for bail reform that meets these criteria and opposing any reforms that increase the jail population or perpetuate race- and wealth-based disparities in pretrial detention and conditions.

The problems with the cash bail system are well-known and pervasive. Using cash to determine whether a person is freed or remains jailed means poor people stay caged, while those with resources are freed. This is not only unfair, but also ineffective: cash is a poor proxy to realize the purported purposes of bail, to ensure appearance in court and community safety. People who can purchase their freedom are no more likely to show up in court, and those who cannot afford to pay bail are no more dangerous than people who can pay bail. In short, cash bail discriminates against poor people simply because they are poor without any benefit in court appearance or safety.

The effects of this economic discrimination are devastating. Only a few days in jail increases the likelihood that a person will plead guilty—even if they did not commit a crime. People who are incarcerated pretrial are also at significant risk of losing their jobs, homes, and even custody of their children. Because of these devastating consequences, pretrial incarceration has a perverse *criminogenic effect*, meaning it increases the likelihood a person will commit a crime. Further, COVID-19 has ravaged



jails and prisons, creating a significant health risk for incarcerated Texans, with future variants posing a similar risk.

A regime in which a person who cannot pay remains in jail while a similarly-situated person who can pay is free is also unconstitutional. The Fifth Circuit made as much clear in *O'Donnell v. Harris Cty.*, 892 F.3d 147, 163 (5th Cir. 2018):

[T]ake two misdemeanor arrestees who are identical in every way—same charge, same criminal backgrounds, same circumstances, etc.—except that one is wealthy and one is indigent. Applying the County's current custom and practice, with their lack of individualized assessment and mechanical application of the secured bail schedule, both arrestees would almost certainly receive identical secured bail amounts. One arrestee is able to post bond, and the other is not. As a result, the wealthy arrestee is less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration. The poor arrestee, by contrast, must bear the brunt of all of these, simply because he has less money than his wealthy counterpart. The district court held that *this state of affairs violates the equal protection clause, and we agree.* (emphasis added.)

We laud and commend the Texas legislature for taking on the task of reforming our broken bail system. Yet, we are wary that the legislature will choose to define “bail reform” in a way that codifies the worst aspects of the current system, introduces novel, insidious aspects (like the bail bills introduced during the regular legislative session did), and then claim a victory. Those of us fighting for liberatory bail reforms won’t be fooled.



The wrong bail policies have spurred significant litigation in Texas, and the wrong legislation will spur additional litigation, at significant cost to the state and counties. Thus, we call on you to reject any measure that:

- Expands preventive detention, which would chip away at the presumption of innocence.
- Limits the use of personal bonds, which would codify a regime that discriminates against poor people.
- Requires or incentivizes the use of risk assessment tools, which would perpetuate existing race and income disparities.
- Requires or incentivizes the use of bail schedules.
- Restricts the operation of charitable bail funds serving low-income Texans at no cost to them or the state.

We call on you to support bail legislation that:

- Expands use of personal bonds so that people without access to money can still access freedom pretrial.
- Provides robust procedural safeguards when bail is assessed, such as representation at magistration and bail hearings.
- Treats inability to pay bail as a preventive detention order, and requires an on-the-record adversarial hearing on the necessity of detention with the burden on the government to demonstrate the need.
- Prohibits pretrial detention or the use of unaffordable money bail unless a judge has made a finding that pretrial detention is necessary.
- Supports the operation of charitable bail funds.



TEXAS CIVIL RIGHTS PROJECT

TFDP Texas Fair Defense Project

ROBERT F. KENNEDY HUMAN RIGHTS

TOP Texas Organizing Project

ACLU Texas

THE BAIL PROJECT

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TEXAS JAIL PROJECT

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grassroots leadership helping people gain power

MANO AMIGA SMTX



Texas Appleseed



The Power of Faithful People

We stand ready to work with you on legislation that will make Texas a leader in the bail reform movement.

Signed,

Organizations

- Texas Civil Rights Project
- Texas Organizing Project
- Texas Fair Defense Project
- Texas Jail Project
- Texas Appleseed
- Texas Criminal Justice Coalition
- Texas Freedom Network
- Texas Homeless Network
- Texas Inmate Families Association
- Faith in Texas
- RAICES
- Civil Rights Corps
- ACLU of Texas
- Grassroots Leadership
- Just Liberty
- Alliance For A New Justice System
- Restoring Justice
- The Bail Project
- Robert F. Kennedy Human Rights
- National Council of Jewish Women Greater Dallas
- Faith Commons



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Local Progress Texas

United Fort Worth

Next Generation Action Network

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All of Us or None Texas-A Project of Legal Services for Prisoners with Children

Our Revolution Texas

Compass Rose Public Schools

F.I.R.E. Fight for Im/migrants & Refugees Everywhere

Workers Defense Action Fund

Dallas Community Police Oversight Coalition

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Faith Leaders

Rabbi Nancy Kasten, Faith Commons

Reverend Preston W. Weaver, St. Paul United Methodist Church

Reverend Collin Packer

Reverend Dr. George A. Mason

Reverend Laurie Anderson, Midway Hills Christian Church

Reverend Karen Fry, Co-Spiritual Director of Center for Spiritual Living Dallas

Reverend Reginald Lillie

KayLynn Lyon, Texas Impact, Wilshire Baptist Church

Chris Slaughter, Faith Forward Dallas at Thanks-Giving Square

Reverend Holly Bandel, First United Methodist Church Dallas, Executive Assoc. Minister

Reverend Amy W. Moore

Rabbi Kimberly Herzog Cohen, Temple Emanuel-El

Reverend Marv Knox, Fellowship Southwest