



## Brief: Pretrial Incarceration

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### Key Points:

- 1. About 43,000 Texas prisoners (63%) are incarcerated prior to trial.**
- 2. This detention breaks ties between prisoners & their family or employer.**
- 3. Bail practices should protect our communities but not oppress the poor.**

**A Catholic perspective:** According to Catholic teaching, civil law's response to crime should be to uphold justice with the goals of defending the common good, deterring offenses, reestablishing public order, and achieving restitution.<sup>[1]</sup> To help the state achieve these goals, we support bail reforms so individuals accused of crimes are not imprisoned because they lack the money to pay bail.

In November 2018, 42,772 people were imprisoned in Texas prior to their trial, amounting to 63 percent of the total Texas jail population.<sup>[2]</sup> While governments may morally use pretrial detention to protect the common good and deter future offenses, it should target individuals who are dangerous or a flight risk.

We support bail reforms to help defendants who are poor and who remain in prison prior to trial solely for that reason. The foundation for our position is found in Scripture, in which God shows a special care for the poor.<sup>[3]</sup> Christ himself was born into poverty and exhorted his followers to care for the poor, declaring that our salvation depends upon such care through the Parable of Lazarus and the Rich Man, the Sermon on the Mount, and his discourse on the final judgment.<sup>[4]</sup> Moreover, in the tradition of the Catholic Church, we find that:

*Those who are oppressed by poverty are the object of a preferential love on the*

*part of the Church which, since her origin and in spite of the failings of many of her members, has not ceased to work for their relief, defense, and liberation through numerous works of charity which remain indispensable always and everywhere.<sup>[5]</sup>*

Care for the poor today requires us to be aware of their situation and consider how to correct an injustice under which they suffer.

**Texas law and policy:** The Texas Constitution guarantees prisoners the right to bail, and each county defines its procedures for who is detained prior to trial and who is released on bond.<sup>[6]</sup> Release on bond can be achieved in two ways: through *financial* or *personal* bond.

Under financial bond, the accused may obtain his release by paying a sum of money defined by the court. While each local court determines this amount, principles are defined in state law to ensure bail is not oppressive.<sup>[7]</sup> Moreover, the full amount of bond is returned if the accused meets all of the court's conditions, such as attendance at trial.<sup>[8]</sup> In practice, financial bond takes the form of *cash* and *surety* bonds: in cash bond, the accused pays the bond out-of-pocket; in surety bonds, the accused pays a third party—a surety—10 percent of the total bond. The surety then guarantees the full required amount to the court and ensures the accused complies with the court's requirements.

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Under personal bond, the accused may be released by the court without any financial requirements being placed upon them.<sup>[9]</sup> Courts have the discretion to use personal bond; certain Texas communities use it to release individuals after determining they will not endanger the community nor are a flight risk.<sup>[10]</sup>

Research indicates that frequent use of financial bond—compared to frequent use of personal bond—results in twice as many people being imprisoned (15 versus 6 percent) on a bail of \$2,000 or less. Such an amount requires an accused person to pay only \$200 to a surety to obtain their release. Moreover, three times as many people (3 versus 1 percent) are imprisoned on a bail of \$500 or less, which would require payment of up to \$50.<sup>[11]</sup>

As a result of pretrial incarceration, the conviction rate for accused individuals unable to pay financial bond rises by 30 percent, largely because the accused person pleads guilty.<sup>[12]</sup> Moreover, low-risk pretrial detainees are more likely to be sentenced to prison and incarcerated for longer periods of time.<sup>[13]</sup> In contrast, a risk-informed personal bond system removes the pressure to plead guilty, provides more access to pretrial diversion programs, and increases communication with attorneys to help defendants plan a meaningful defense.

A risk-informed personal bond system upholds justice and preserves the common good.

**Key bill summaries: HB 1323 / SB 628** reforms the bail system to ensure that the amount of bail depends on whether an arrested person is dangerous to the community or a flight risk. We support this bill to correct an injustice under which the poor suffer.

**HB 601** increases the accuracy of information collected about mentally ill defendants and helps courts make informed decisions about release on personal bond and recommended services provided to the person after such release. We support this bill to improve Texas' bail system and care for persons with disabilities.

**Call to action:** To support this proposal in the Texas legislature, please visit [txcatholic.org/justice](http://txcatholic.org/justice) to find and contact your lawmaker. Please also pray for Texas and for our legislators, that they may maintain just laws which uphold justice by consoling the suffering and rehabilitating offenders.

*The TCCB is a federation of all Roman Catholic dioceses and ordinariates in Texas. There are 8 million Catholics living in our state. To contact us, call our office at 512-339-9882 or find TXCatholic on [Facebook](#) and [Twitter](#).*

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## Endnotes

1. Catechism [#2265-2266](#).
2. Texas Commission on Jail Standards, [Abbreviated Population Report for 11/01/2018](#).
3. Ex. 22:21-22; Lv. 19:9-10, 14:21-22, 5:7-11, 12:8, 25:8-13; Prov. 31:8-9; Sir. 4:1-10; Is. 58:2-7.
4. During the presentation of Jesus in the Temple, Mary and Joseph offered up a pair of doves, following the Mosaic law for families who could not afford larger sacrifices. See: Lk. 2:24, 16:19-31; Mt. 5:3; Mt. 25: 31-46.
5. Catechism of the Catholic Church #2448.
6. Constitution of the State of Texas, [Article I, Sec. 11](#).
7. Texas Code of Criminal Procedure, [§ 17.15](#).
8. Texas Code of Criminal Procedure, [§ 17.02](#).
9. Texas Code of Criminal Procedure, [§ 17.03](#).
10. Texas A&M and Texas Indigent Defense Commission, [Liberty and Justice: Pretrial Practices in Texas](#). (March 2017) 7-13.
11. Id. 33.
12. Megan Stevenson, [Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes](#). (Nov. 8, 2016)
13. Lowenkamp, Christopher, et al., [Investigating the Impact of Pretrial Detention on Sentencing Outcomes](#). (2013).