

Understanding How Bail Works **Frequently Asked Questions**

How does the pretrial release process work?

When someone is arrested, they are typically booked into a county jail, and a bond amount is set by either a bail schedule (a predetermined list of bail amount by crime category) or an officer of the court (judge, magistrate, etc.). Once a bond has been set, the defendant basically has two options.

Their first choice is that they can choose to sit in jail and await their trial. Their second choice is that they can post a bond and be released on the promise that they will show up for all of their court appearances. If the defendant appears at all court proceedings until the case has been fully adjudicated, the bond is then exonerated, and the defendant is no longer financially responsible for the bond amount.



What are the different types of pretrial release mechanisms available to the defendant?

While pretrial processes differ slightly from county to county, there are generally 5 main types of pretrial release.

Own Recognizance Release (OR) - if a defendant is not deemed a risk to the community or a flight risk, a judge may release that person on their own recognizance. This type of release typically occurs with low level non-violent, first time offenders. It means that they do not have to put up any money, but instead simply must promise to appear for court.

Pretrial Services Release - if a defendant is not deemed a risk to the community or a flight risk, but they might have special needs or circumstances (substance abuse, mental health, etc.), a judge may release that person to a pretrial services agency. This taxpayer-funded agency is then responsible for ensuring that the defendant shows up for all court appearances. Additionally, these agencies may also be responsible for ensuring that the defendant attend substance abuse classes or seek mental health assistance, etc.

Full Cash Release - if a defendant is not deemed a risk to the community or a flight risk, and a bond has been set by a schedule or a judge/magistrate, the defendant can secure his release by paying the full amount of the bond to the court. This payment is a deposit to the court and will be refunded (less court costs and fees imposed by the judge) if the defendant appears for all court proceedings until final adjudication of the case and once the bond has been exonerated by the court.

Bail Bond Release - if a defendant is not deemed a risk to the community or a flight risk, and a bond has been set by a schedule or a judge/magistrate, the defendant can secure his release by paying the full amount of the bond to the court. If the defendant does not have the full amount of the bond, they can use a third-party entity, in this case a bail bondsman, to post the bond for them. This is typically done for a small fee, usually 10% or less of the bond amount (i.e., \$1,000 bond would cost a defendant \$100).

The fee paid to the bail bond agent is much like a premium fee paid on any insurance policy. It is not refundable and fully earned upon the posting of the bond. The bondsman, for the fee paid, plays an essential role in ensuring that the defendant shows up for court. If they fail to appear for court, the bail agent is responsible for either retrieving the defendant and bringing them back to court or paying the full amount of the bond to the court.



What happens when the defendant fails to appear for court?

If a defendant fails to appear for court, the bond goes into forfeiture and the clock starts ticking. Texas utilizes different time frames, but typically, the defendant has a certain amount of time to get back to court (i.e. 180/270 days).

Based on the type of release mechanism the defendant is on, the results vary. If a defendant is on a OR release or Pretrial Services release, then typically a warrant will be issued. In these cases, a warrant is issued and delivered to the Warrant Division of the County Sheriff's office where it waits to be served along with they other thousands of other warrant. In many instances, the defendant will only be returned to court when they are arrested for committing another crime.

If a defendant is on a full cash bond and fails to appear, the process is very similar, except that the money that they put on deposit is now forfeited and paid to the county. A warrant is issued, and the defendant typically is not apprehended until they are caught committing another crime.

If a defendant is released on a financially secured bail bond and fails to appear, the process is much different. Because a bail bond agent is involved and accountable for the full amount of the bond, there will be a substantial effort put forth by the bail bond agent to find and retrieve the defendant. If the defendant is returned to custody within the allocated time period, the bail bond agent can be released off the bond, but must still pay court costs and any other rearrest fees. If the defendant is not returned to court within the allocated time period, the bail agent pays the full amount to the county.

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Which method of pretrial release is the most effective?

There have been several studies looking to answer this question, but the most comprehensive has been conducted by the Department of Justice, Bureau of Justice Statistics between 1990-2004. The study, "Pretrial Release of Felony Defendants in State Courts," examined the pretrial practices of the 75 largest counties across the country and assessed which method of release was the most effective at ensuring defendants appear for court.

The surprising thing about this study is that each of the 15 years the study was conducted the results were the same. The most effective form of release in terms of ensuring appearance at court were releases on a financially secured bail bond with an 18% Failure to Appear (FTA) rate.

The two least effective forms of release were OR releases with a 26% FTA rate and unsecured release through a pretrial services agency with a 30% FTA rate. Additionally, the release through a financially secured bail bond surpassed all other forms of release in the area of fugitive rates. After one year, only 3% of people released on a bail bond were still at large compared to 8% for OR bonds and 10% for those released through a pretrial program.

These statistics have been used by several other researchers in conducting additional studies on the topic of pretrial release. One of the most widely known of these studies, was conducted by Eric Helland and Alex Tabarrok. Their study, "The Fugitive: Evidence On Public Versus Private Law Enforcement From Bail Jumping" was published in the University of Chicago Journal of Law and Economics. It found that, "defendants released on a bail bond were 28 percent less likely to fail to appear than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time."

