

Surety in the System?



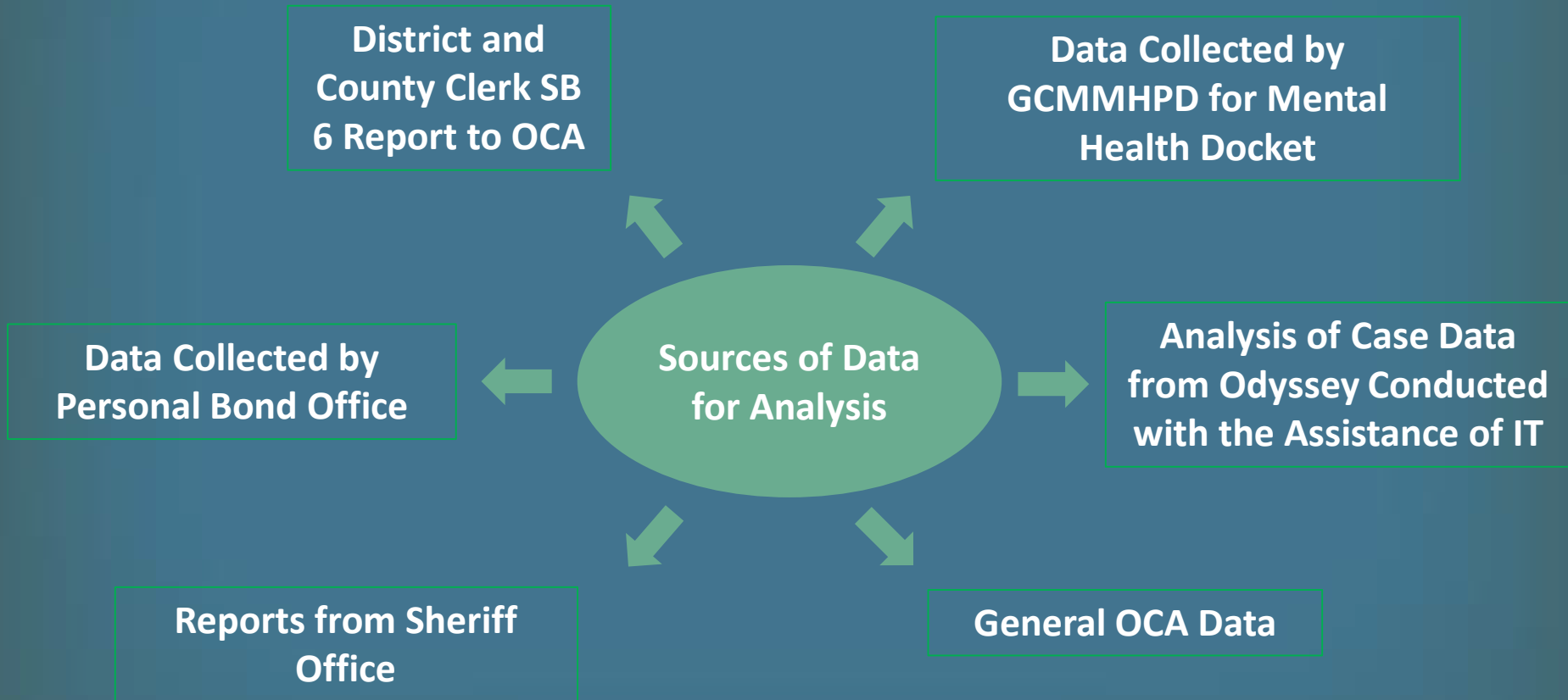
Galveston County Research 2023

Context: Types of Bonds in Texas

1. Cash bond - A person places a certain amount of cash with the court to guarantee they will appear at the next court setting. If a person does not appear at the next setting after posting a cash bond, the bond *may be* forfeited. If a person is found not guilty or has their case(s) dismissed then the bond money may be refunded.
2. Surety bond – A person contacts a bonding company who, for a fee of at least 10% which is nonrefundable regardless of outcome, puts up a bond which is insurance of the person appearing at the next court date. The premise is the Surety will be out the total amount if the person fails to appear.
3. Personal bond – Under statutorily defined conditions, a person could be eligible to be released on a Personal Bond. Factors that are considered by the judge are: the type of charge, the defendant's ties to the community, and whether or not the arrest resulted from warrants for failure to appear in court. The bond amount can be waived as court costs or assigned to post and is set at 3% of the bond amount.

Study Period and Sources of Data

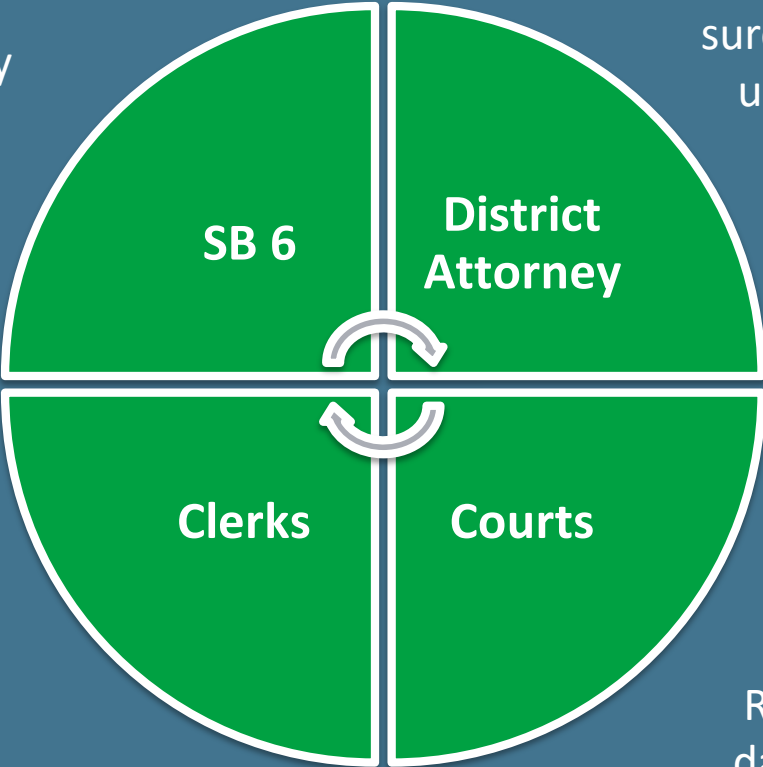
**SB 6 OCA FTA Report First Reporting Period
April 2022 to March 2023**



Complex Layers to Figure Out FTAs in Relation to Bond Forfeitures

Newer reports provide new data on total bond amounts, FTAs and liability available but lack contextual meaning

Law makes it hard to forfeit a surety bond. Data analysis to understand the scope has never been done

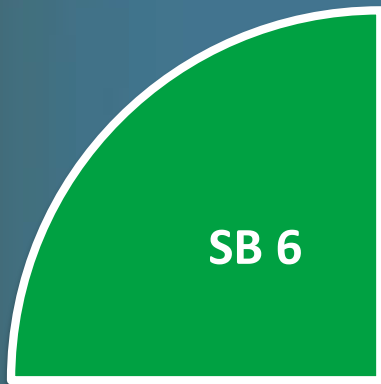


Reports are available but analytical triangulation across agencies is required

Records are available but data is hard to extract and analyze cohesively

Context: SB 6 Requires More Than The Old Bond Schedule

During the Second Special Session in the 2021 Legislative Session, the Texas Legislature passed Senate Bill 6 (*The Damon Allen Act*), which was then signed into law by Gov. Abbott on September 13, 2021.



This bill significantly changed the process for setting bail by requiring magistrates to consider information about a defendant, including their criminal history and any required bond conditions through the PSRS, prohibiting release of a defendant on a personal bond in certain situations, and increasing educational requirements for magistrates.

Context: County and District Clerk Reports

The County and District Courts are required to file an FTA Report to OCA

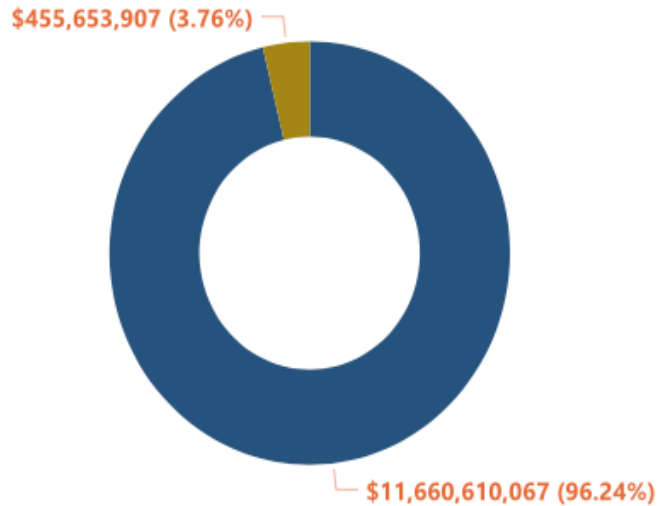


They also are the initiator of an FTA event – depending on jurisdiction and coding.

There are many different codes to enter and all have a significant impact on the reporting types and numbers

Context: SB 6 Report on Bail Setting by Type and Amounts in Texas

Bail Amounts by Type



Average Bail Amount



Market Valuation of Texas Companies in 2023 *

American Airlines	\$10.9 Billion
Global Life	\$10.7 Billion
KBR Software	\$8.4 Billion
Phillips 66 Oil	\$9.3 Billion
National Instrument Corporation	\$7.8 Billion
Cullen/Frost Bankers	\$6.8 Billion
Academy Sports and Outdoors	\$4.4 Billion



Courts

Context: Texas Law Makes it Hard to Get a Surety Bond Forfeiture

Bond Forfeiture is a “civil” matter and runs through the District Attorney’s office.

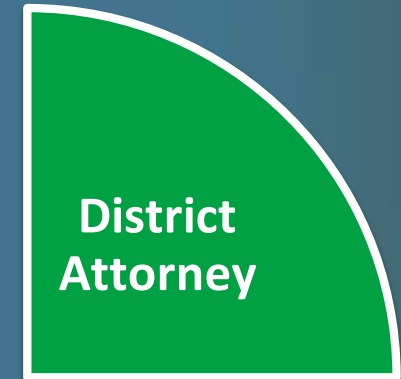
Starts at the Failure to Appear, but can take 2 years for final judgement

Courts enter *Judgement Nisi* (unless) in favor of the State, but is temporary as the client/surety can respond.

Court enters a *capias*, sets new bond, and the forfeiture is set to a separate docket. All parties are served with the citation.

This is just the start to a longer process which essentially resolves the outstanding bond amount for a FRACTION of what was set originally.

Essentially the resolution becomes a court cost fee.



Context: Surety Industry Transparent About Not Losing Money

BONDS VS. INSURANCE

AT A GLANCE

BONDS

INSURANCE



3 Parties: Principal, Obligee and Surety

A bond is a three-party agreement whereby the surety guarantees the faithful performance of the principal to the obligee.



2 Parties: Insured and Insurance Company

Insurance is a two-party agreement. The insurance company pays the insured directly for losses incurred.



Losses Are Not Expected

The surety takes only risks that are qualified and safe risks.



Losses Are Expected

Insurance losses are expected; therefore, the rates are adjusted to cover the losses and expenses.



Losses Are Recoverable

The surety is lending its name, which it wants returned untarnished after the obligation is performed. In case of a claim, the surety expects to be repaid or indemnified by the principal.



Losses Are Not Recoverable

An insurance company doesn't expect to be repaid by the insured.



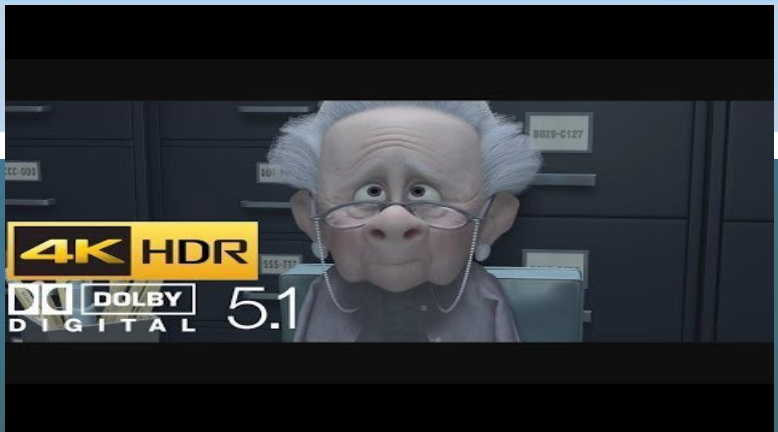
Sureties - Selective Risk Takers

Must be selective in the risks they write.



Insurance - Writes Most Risks

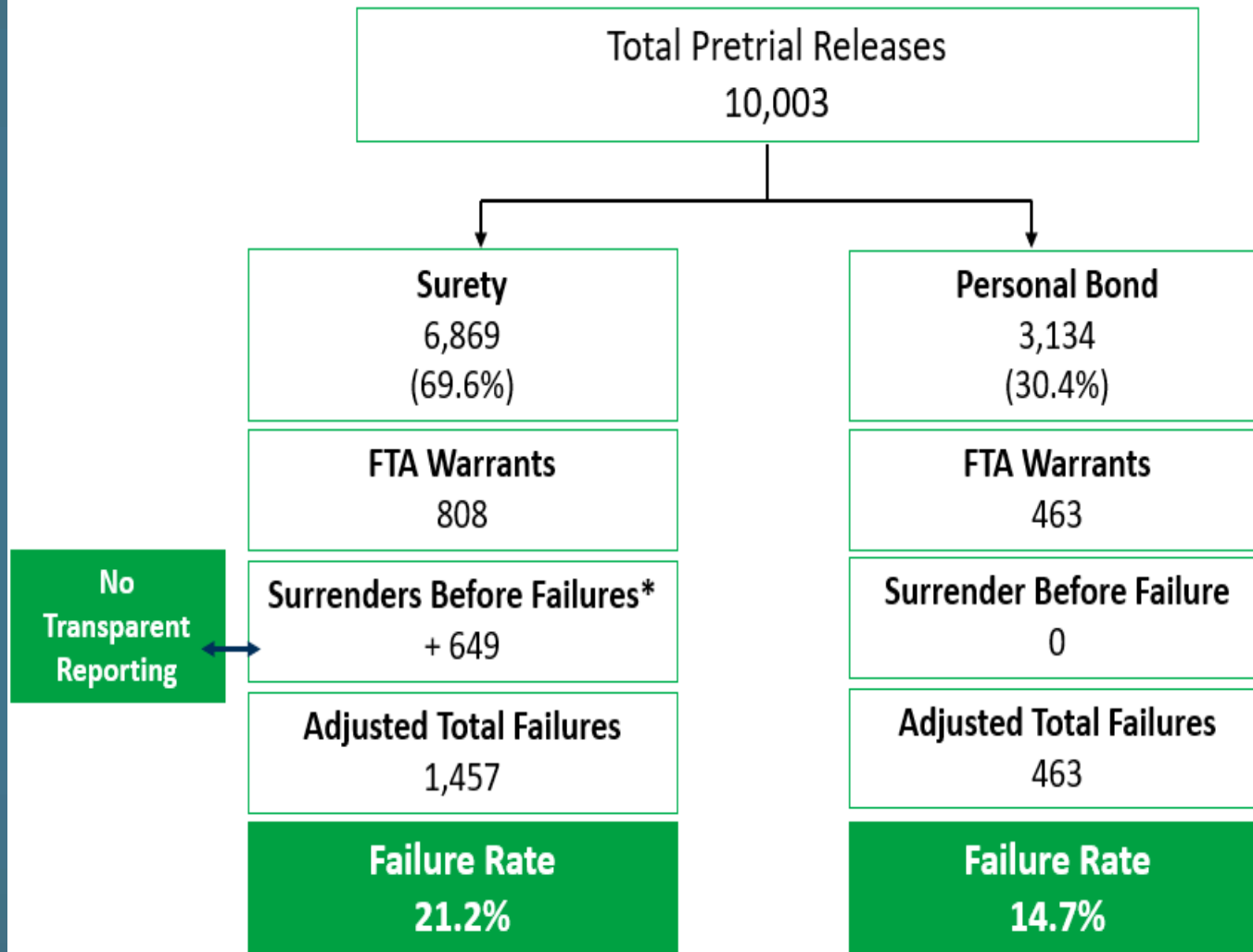
Insurer tries to write most everything, thus letting the volume cover the risk.



Analysis of Period April 2022 – March 2023

1. There were 1457 Surety Bond FTA's identified during this period by the County and District Clerks, which was an FTA rate of 21.2% for the period.
2. By comparison, there were 463 Personal Bond FTA's which was FTA rate of 14.7% for the period.
3. For the original data set of those Surety Bond FTA's:
 - 17% of the capias warrants were recalled
 - 36% of the capias warrants had their case dismissed
4. For the remaining 64% of the capias warrants:
 - 94% of those cases ended in some type of agreement
5. Total collection rate vs. actual bond amount – 4%

SB 6 Study Period -April 2022 to March 2023



SB 6 District and County Clerk FTA Reports Bond Collection Liability from April 2022 to March 2023 and Bond Collections Reported by County and District Clerk for Period

**April 2022 to May 2023
Twelve Month Total**

Total FTA Cases
1,347



Bond Forfeiture Liability
\$14,319,830

**Bond Collections in Galveston County
Related to Bond Forfeiture Litigation***

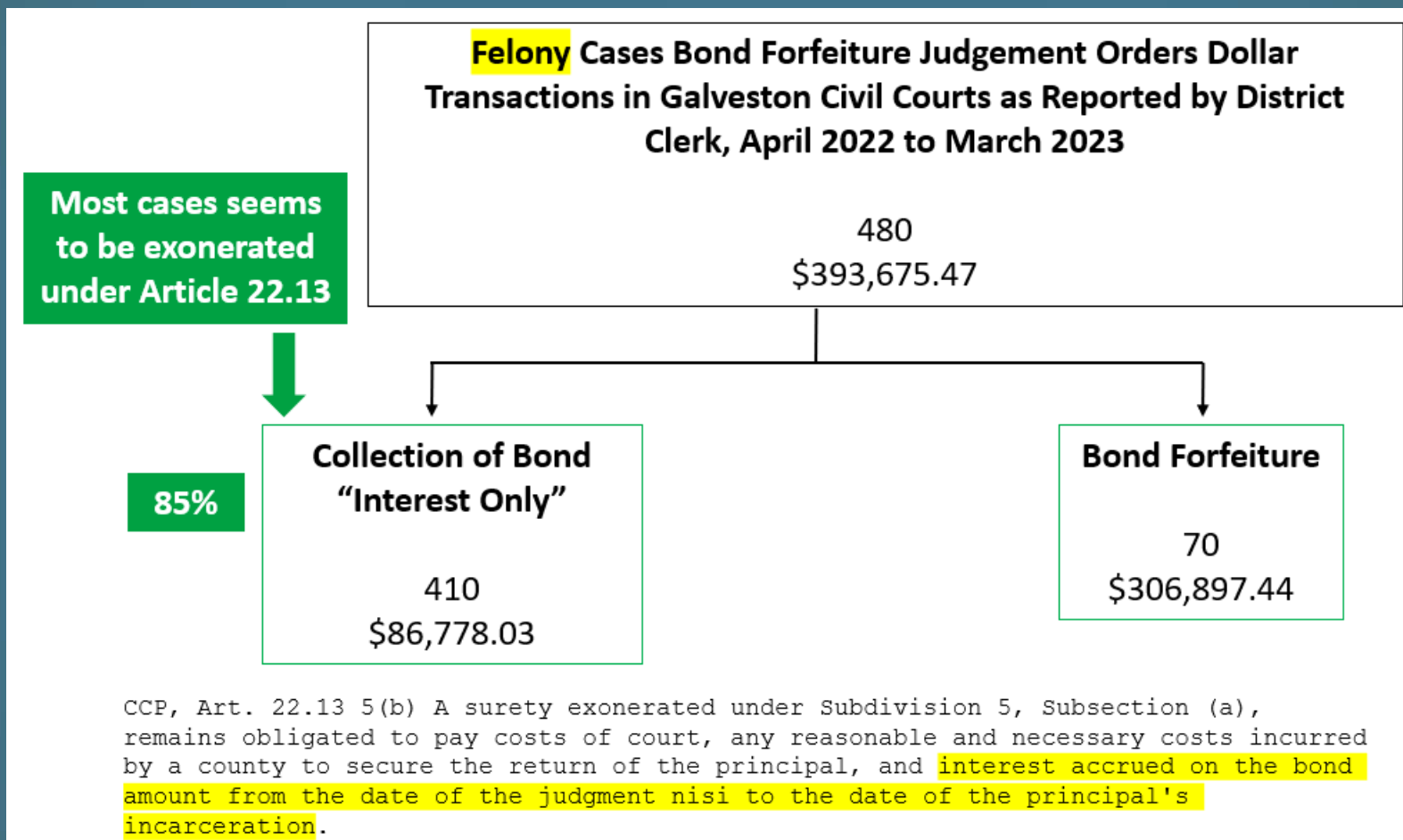
County Clerk Reported
\$246,651.83

District Clerk Reported
\$393,675.47

**Total
\$640,327.30**

**Percent of Total Liability Collected
4%**

Most of the Forfeiture Cases Seems to Have Bond Exonerated



Full Bond Amount Forfeiture is the Exception

1. The criminal cause number is [REDACTED]
2. Following the Defendant-Principal's failure to appear in court on 6/11/2021 for the above-referenced criminal case, the Court entered a Judgment Nisi Declaring Bond Forfeiture herein on 6/11/2021.
3. No sufficient cause is shown for the Defendant-Principal's failure to appear on 6/11/2021, to answer the charge against him/her and that the Judgment Nisi heretofore rendered against the Defendant-Principal and Defendant-Surety should be made final.

IT IS THEREFORE ORDERED that the State is hereby awarded and shall have and recover from the Defendant-Principal and Defendant-Surety only the following: 1) \$40,000.00; 2) any and all applicable court costs, as provided by Art. 22.13(b) of the Texas Code of Criminal Procedure.

Bond Liability = \$40,000
Bond Forfeiture = \$40,000

Overview of Process Case Study - Surety Bond Release

Trial Court: _____
Name: _____
Booking No. _____

Case No: _____
SPN: _____
Language: English

THE STATE OF TEXAS
COUNTY OF GALVESTON

Date/Time of Arrest: 6/21/2022

MAGISTRATE WARNING, FINDINGS, AND ORDER

Before me, the undersigned, magistrate of the State of Texas on this day personally appeared _____ who was given the following warning:

- You are charged with the following:

Offense(s)

Offense	Warrant	County	Probable Cause	Affidavit Attached	Bail/Fine	Arrest Date
- POSS MAN DISTR INSTR TO COMMIT RETAIL THEFT - M	No		Yes	Yes	\$2,500.00	6/21/2022 5:08 PM
- THEFT PROP <\$2,500 2/MORE PREV CONV - F	No		Yes	Yes	\$30,000.00	6/21/2022 5:08 PM

Surety Bond Form

CHARGE THEFT PROP < \$2,500 2/ MORE PREV CONV ✓
 THE STATE OF TEXAS
 COUNTY OF GALVESTON

CAUSE NO. [REDACTED]
 COURT [REDACTED]

That we [REDACTED] Known All Men By These Presents: [REDACTED] as principal, and the undersigned [REDACTED] BAIL BONDING, as sureties, are held and firmly bound unto the STATE OF TEXAS, in the penal sum of THIRTY THOUSAND (\$ 30,000) are bound for the payment of all fees and expenses that may be incurred by any peace officer in the event any of the hereinafter stated conditions of this bond are violated for the payment truly to be made, we do bind ourselves, and each of us, our heirs, executors and administrators, jointly and severally.

THE CONDITION OF THIS BOND IS THAT THE DEFENDANT HAS BEEN CHARGED WITH A FELONY

.. "we are bound for the payment of all fees and expenses that may be incurred by any peace officer in re-arresting the said principal in the event any of the hereinafter stated conditions of this bond are violated for the payment of which sum or sums well and truly to be made, we do bind ourselves, and each of us, our heirs, executors and administrators, jointly and severally."

this obligation shall become void, otherwise to remain in full force and effect.

Signed and dated this 22 day of JUNE, 20 22

Average 5% to 10% Bond fee = \$1,500 to \$3,000

June 22, 2022



Notice to Appear

County of Galveston
600 59th Street - Suite 1500
Galveston, Texas 77551
409-766-2400
NOTICE TO APPEAR

1 of 5

[Redacted]

[Redacted]

All attorneys, both State and Defense, and said defendant(s) are ordered to be present in the court at this time.

[Redacted]

122ND DISTRICT COURT
600 – 59th Street
Galveston, Texas 77551

Even if you have negotiated a plea in your case, **YOU ARE STILL REQUIRED TO APPEAR ON THIS DATE.**

Be familiar with your case and the time elements involved as there will be no general continuances granted.

FAILURE TO APPEAR IN PERSON OR THRU YOUR ATTORNEY COULD RESULT IN BOND FORFEITURE.

Your attire and your actions should reflect respect for the Court and for the Judge.

No shorts of any length. No hats. No sunglasses. No muscle T-shirts.
Your underwear should not be visible. Wear a belt if necessary.
No chewing gum. No food or drinks. No reading the newspaper. Use of electronic devices in the courtroom is prohibited.
Turn your cell phone OFF.

Please make every attempt to find suitable arrangements for someone to care for your child while you are in court.
The courtroom, during criminal proceedings, is not a suitable environment for any young child.
Restless or crying babies/children must be taken out of the courtroom.

Beginning of FTA Bond Forfeiture Process

Defendant fails to appear on 01/04/2023, his 5th court setting.

DA Files for Bond Forfeiture (NISI)

CAUSE NO. § CIVIL CASE NO. *Copy*

THE STATE OF TEXAS § FILED

VS. § GALVESTON COUNTY, TEXAS

§ 2023 JAN 4 PM 2:35

§ 56th JUDICIAL DISTRICT

Don D. Kenedy
DISTRICT CLERK
GALVESTON COUNTY, TEXAS

JUDGMENT NISI DECLARING FORFEITURE

On the 4 day of JANUARY, 2023 came the State of Texas by her Criminal District Attorney, and the name of defendant herein, who stands charged with a felony, being duly and distinctly called at the door of the Courthouse to come into court to answer the State of Texas on the charge of a felony according to the tenor and effect of his/her bail bond on file in the Court, but after a reasonable time after such call was made in which to appear, the defendant came not, but wholly made default.

And if appearing to the court that the above named Defendant, as Principal, together with _____ BONDING as Surety(ies), did enter into said bail bond payable to the State of Texas, in the sum of \$30,000, as approved on JUNE 22, 22.

“but after a reasonable time after such call was made in which to appear, the defendant came not, but wholly made default”

Citation Issued by Clerk

January 5, 2023



CITATION - JUDGMENT NISI TRC 99 & CCP 22.05
THE STATE OF TEXAS

JOHN D. KINARD
CLERK DISTRICT COURT
FILED
11:30AM
JAN 17 2023

TO:

Attached is a copy of the Judgment of Forfeiture (Judgment Nisi) a copy of the forfeited bond, and a copy of the power of attorney if any was provided filed in the 56th District Court of Galveston County, Texas located at 600 59th Street, Suite 4001, Galveston, Texas 77551-2388, on the 01/04/2023 describing the claim against you. You are hereby notified to appear and show cause why the Judgment of Forfeiture (Judgment Nisi) should not be made final the parties in this case are: Plaintiff, The State of Texas vs. John Wilson, et al, Defendants. Defendant(s), **YOU HAVE BEEN SUED.** You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and Judgment of Forfeiture (Judgment Nisi) a default judgment may be taken against you. The District Clerk who issued this citation is located at the Justice Center, 600 59th Street, Suite 4001, Galveston, Texas 77551-2388

Issued and given under my hand and the seal of said court at Galveston, Texas, on this the 5th day of January, 2023.

Issued at the request of:
Galveston County District Attorney
600 59th Street, Room 1001
Galveston, Texas 77551-2388



John D. Kinard, District Clerk
Galveston County, Texas

By: *Rolande Kain*
Rolande Kain, Deputy Clerk

SEE ATTACHED FORM - NOTE: Status Conference set on 04/06/2023

CERTIFICATE OF DELIVERY BY CERTIFIED MAIL

Came to hand on the 01/05/2023 at 3:00 o'clock P.M. and executed on the _____ day of *Seegreencard* 20____ by mailing the same to the above named defendant by registered, certified, and restricted delivery to addressee only, return receipt requested, a true copy of this citation with a copy of the Petition attached thereto.

JOHN D. KINARD, District Clerk Galveston County, Texas
Authorized Person

BY: *Elissa Alvarado*, Deputy Clerk

Service Fee:	\$75.00
Certified Tracking Mail No. 9314 7699 0430 0102 9420 52	Place sticker here Certified Address Number SENDER'S RECORD
Date Signed for: <i>Seegreencard</i>	Signed By:

23 - CV - 0014
DISCLAIMER
Citation by Certified Mail and Return
2012482

Twenty days to answer if not "a default judgement may be taken against you"

Bond Company Defense Lawyer Answers

January 9, 2023

DATE: January 9, 2023

THE STATE OF TEXAS

IN THE 56th DISTRICT COURT

VS.

GALVESTON COUNTY, TEXAS

1. DEFENDANT SURETY'S ORIGINAL ANSWER

Comes now, the above referenced Defendant-Surety and files this original Answer and would respectfully show unto the Court as follows:

Defendant denies each and every, all and singular, the allegations contained in the Plaintiff's Original petition and demands strict proof thereof by a preponderance of the evidence pursuant to Tex. R. Civ. Pro. 92.

Defendant-Surety affirmatively pleads equitable remittitur as set forth in Tex. R. Civ. Pro. 315; Art. 17, 19, Chapter 22, Texas Code of Criminal Procedure, and Tex. Civ. Atty., All., Art 2372 p-3.

Wherefore, premises considered, Defendant-Surety requests the Court to enter judgment that Plaintiff shall take nothing by this suit; that Defendant recover all costs together with such other and further relief to which Defendant may be justly entitled; and that Defendant receive general relief at law and/or in equity that Defendant is entitled to receive.

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Tex:

*“Defendant denies each and every, all and singular, the allegations contained in the Plaintiff’s Original petition and demands strict proof thereof by a **preponderance of the evidence** pursuant to Tex. R. Civ. Pro. 92.”*

“Wherefore, premises considered, Defendant-Surety requests the Court to enter judgment that Plaintiff shall take nothing by this suit.....”

Agreed Final Judgement of Bond Forfeiture

CAUSE NO. 23-CV-0014

THE STATE OF TEXAS

[REDACTED]

Defendant-Surety

IN THE DISTRICT COURT OF GALVESTON COUNTY
56TH JUDICIAL DISTRICT
DISTRICT CLERK
GALVESTON COUNTY, TEXAS

FILED
23 FEB 15 AM 12:01

**AGREED FINAL JUDGMENT OF BOND FORFEITURE
(COSTS AND INTEREST ONLY)**

This is a bond forfeiture case. The criminal case cause number [REDACTED]. Court finds it has jurisdiction of the subject matter and the parties. The Court makes the additional findings and orders listed below.

February 15, 2023

1. A Judgment Nisi Declaring Bond Forfeiture was entered in this case on 1/4/2023.
2. The Defendant-Principal and Defendant-Surety are, exonerated from liability upon the forfeiture taken as described above for the following reason:

The Defendant-Principal was rearrested on 12/5/2022, within 270 days subsequent to the date of his or her failure to appear in court for the above-referenced criminal case.

and appeal.

THIS JUDGMENT DISPOSES OF ALL CLAIMS AND PARTIES AND IS FINAL.

Signed on this the 15 day of February, 2023.

Louisa G.
PRESIDING JUDGE

APPROVED AS TO SUBSTANCE AND FORM:
Megan S Jones
MEGAN JONES
ASST. CRIMINAL DISTRICT ATTORNEY

Agreed Judgment - Final - OCA
2529857

[REDACTED]

Exoneration Reason

Bill From District Clerk

JOHN D. KINARD
GALVESTON COUNTY DISTRICT CLERK

FILED
2023 FEB 21 AM 10:58

Judgment Nisi Cost Statement and Collection Request

Financial Balance Due: **\$446.00**

Filed in the 56th District Court
Of Galveston County, Texas

I, John D. Kinard hereby certify this cost statement represents a true and correct financial accounting of the balance due and payable to the District Clerk in the above numbered and styled case. This financial balance includes court costs, fees, interest, and Judgment amounts as awarded in the Court's Final Judgment.

Signed under my hand and seal of office on February 21, 2023.

John D. Kinard
District Clerk
Galveston County, Texas

Prepared By /s/ Destiny Martinez

District Clerk Internal Use Only

Date:	Cost bill and copy of Judgment sent to Sheriff by Destiny Martinez
Date:	Cost bill, remit letter, & copy of Judgment mailed to Surety by Destiny Martinez

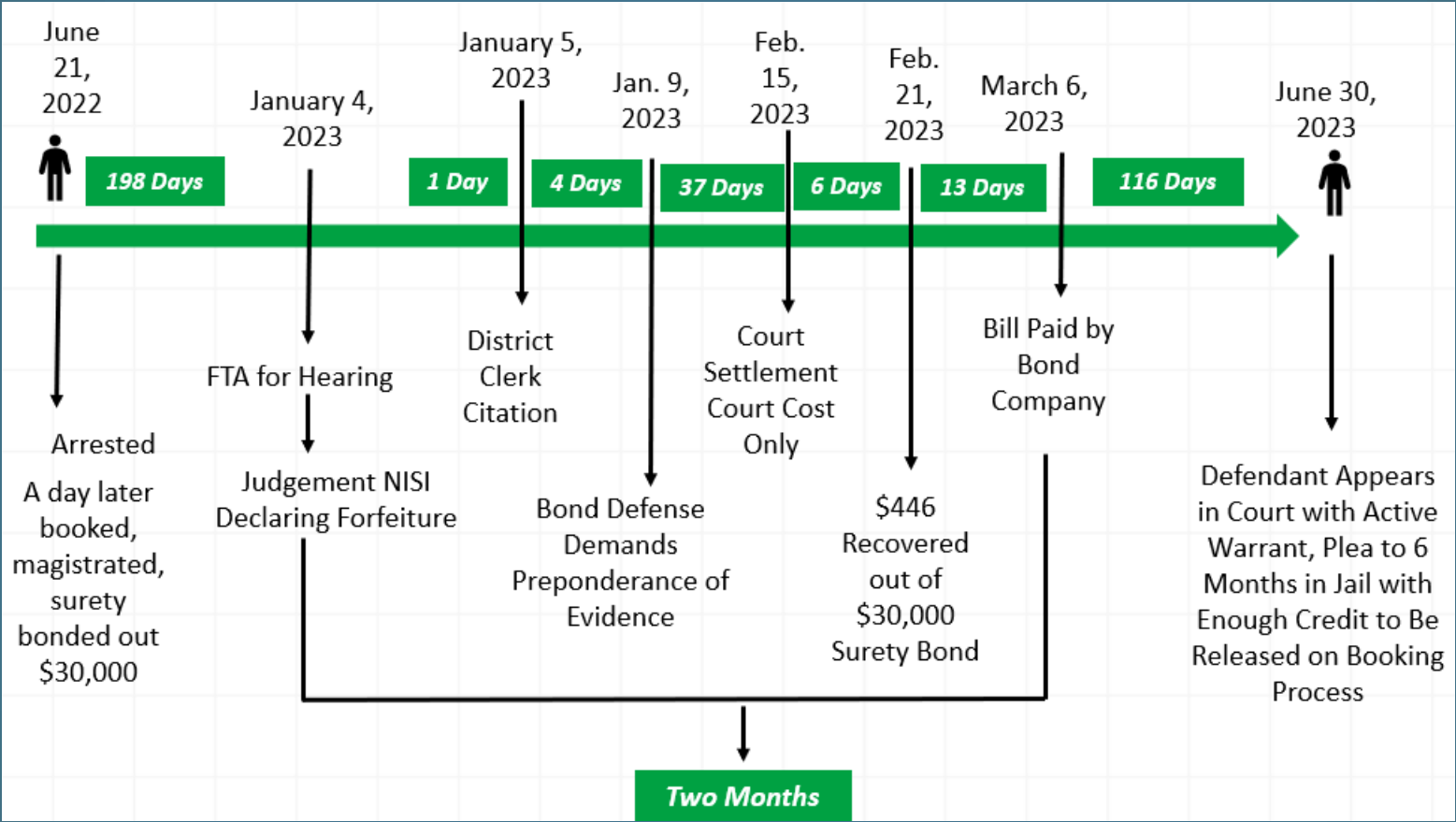
“This financial balance includes court costs, fees, interest, and judgment amounts as awarded in the Court’s Final Judgment”

February 21, 2023

**Bond Liability
\$30,000**

**“Financial balance
due: **\$446.00**”**

Overview of Case Study Timeline



\$30,000 "Skin in Game" = FTA, No Bond Funds Forfeited, Warrant for Arrest, Plea and Release on Booking Because of Jail Credits

Executive Summary of this Research

1. In relation to the number of pending court cases, Failure-to-Appear rates are low, at about 2% of pending court cases
2. When adjusted for data that is not routinely reported related to the ability to surrender surety bonds before their failures, the “failure” rate for defendants on surety bonds is higher than those on personal bond
3. State law makes it very difficult to forfeit surety bonds with many legal provisions making exceptions to forfeitures, the more impactful one stating that defendants rearrested within 270 days subsequent to the date of their failures to appear in court are exonerated of their bond liabilities
4. Galveston County recovers about 4% of the bond liabilities for cases violating their agreement with the courts, and a great part of the costs recovered are only for court fees and interest.
5. Short of changing state law, there are very few recommendations for localities to improve their surety bond collection rate.

Thank You!

Contact Information:

Aaron Johnson

President, TAPS

Director, Galveston County Personal

Bond, Magistrate and Collections

aaron.johnson@galvestoncountytexas.gov

409-770-5437