

PRETRIAL RELEASE & PROBATION IN TEXAS

- History, Legal Basis, Functions, and Key Differences

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OBJECTIVES

- Explain history of pretrial release and probation in Texas
- Identify statutory bases and modern reforms
- Compare functions, goals, actors, and standards
- Discuss implications for justice officials

CITATION



Much of this information is referenced by Tim Schnacke in his publication *“Pretrial Release and Probation: What is the Same and What is Different?”*

Produced by National Institute of Corrections (NIC) and the National Association of Pretrial Services (NAPSA)

ROADMAP

1. What are Pretrial Release and Probation?
2. History of each in Texas
3. Key statutes (Ch. 17 & Ch. 42A)
4. Side-by-side comparison and Practical implications
5. Recommendations

WHAT IS PRETRIAL RELEASE IN TEXAS?

- Bail = process of release
- Process from arrest to case disposition
- Personal Bond, Surety Bond, Cash Bond = Pretrial release mechanism
- Governed by Texas CCP Chapter 17

WHAT IS PROBATION (CSCD) IN TEXAS?

- Post-conviction or deferred adjudication supervision
- Court retains jurisdiction
- Conditions for rehabilitation, restitution, or deterrence
- Governed by CCP Chapter 42A

HISTORICAL ROOTS: BAIL & RECOGNIZANCE

- Derived from English common law and Magna Carta
- Early Texas adopted recognizance and surety systems
- Basis for modern personal bond structure

EVOLUTION OF PERSONAL BOND IN TEXAS

- Early reliance on personal sureties and cash bail
- Gradual acceptance of recognizance releases
- Codification in 1965 under Art. 17 (bail and release authority)
- Modern reforms emphasize restrictive use of Personal Bonds (SB6 2021/SB9 2025)

EVOLUTION OF PROBATION IN TEXAS

- Early 1900s: suspended sentence laws
- 1957: Adult Probation Act formalized system
- 2017: Chapter 42A consolidated and modernized prior provisions
- Probation as alternative to incarceration emphasizing rehabilitation

CHAPTER 17 (BAIL) HIGHLIGHTS

- Art. 17.01: Defines bail (includes personal bond)
- Art. 17.03: Magistrate may release on personal bond
- Art. 17.028: Magistrate must use least restrictive conditions

CHAPTER 42A (COMMUNITY SUPERVISION) HIGHLIGHTS

- Art. 42A. Framework for community supervision
- Governs eligibility, conditions, modification, revocation
- Includes both straight and deferred adjudication supervision

PURPOSE COMPARISON

Pretrial: reasonable assurance of court appearance and public safety for all cases

Probation: Post-conviction rehabilitation and accountability for those granted

→ Distinct legal stages but overlapping themes of supervision, not overlapping goals

ACTORS & TIMELINES

Personal Bond: Magistrates, assigned Courts/Judges, pretrial officers, sheriffs (pretrial phase)

Probation: Judges, probation officers, treatment providers (post-conviction)

ELIGIBILITY & LIMITS

Personal Bond: Restricted for certain violent or repeat offenses (Art. 17.03)

Cash/Surety Bond: No restriction but no public safety aspect – bond revocation for FTA Only

Probation: Determined by offense severity, plea, and statutory authorization (Ch. 42A)

CONDITIONS IMPOSED

Personal Bond: Court Appearance and No New Arrests

- Can also include curfew, travel limits, drug testing and electronic monitoring. Not evidenced based but must be least restrictive-Art 17.028 (b)

Probation: Reporting, restitution, counseling, community service. Based on assessments and court order.

ENFORCEMENT & CONSEQUENCES

Personal Bond Violations: Bench warrant, re-arrest,
possible detention

Probation Violations: Revocation hearing, modification,
incarceration

REVOCACTION DECISION STANDARDS

Personal Bond revocation: Magistrate discretion based on Art. 17.40 factors if they hold jurisdiction; otherwise recommendation for revocation sent to court of jurisdiction

Probation revocation: Court hearing & preponderance of evidence for revocation

CONSTITUTIONAL & POLICY CONTEXT

Presumption of innocence vs. punishment phase

- Eighth Amendment and excessive bail and is a “right”
- Rehabilitation and proportionality under probation is typically articulated as a “privilege” or in lieu of Jail/Prison

SIMILARITIES BETWEEN THE TWO

- Conditional liberty under court authority
- Use of supervision and compliance checks
- Aim to reduce incarceration burden

KEY DIFFERENCES SUMMARY

Timing: Pretrial vs. Post-conviction

Purpose: Court Appearance/Public Safety vs.
Rehabilitation/Restitution

Sanction: Short term detention vs. Revocation and
Prison Sentence

Authority: Magistrate (until filing) vs. Sentencing court

OPERATIONAL DIFFERENCES

Pretrial Services vs. Surety Agencies vs. Probation Departments

- Funding and staffing distinctions
- Data collection and reporting frameworks differ

CASE EXAMPLES

Case A: Defendant on personal bond fails to appear →
warrant

Case B: Probationer misses counseling sessions →
revocation hearing

POLICY TRENDS

- Recent Texas reforms restrict personal bonds in high-risk cases
- Probation modernization: risk-based supervision, evidence-based practices

BEST PRACTICES

- Distinguish pretrial and post-conviction roles
- Impose least restrictive conditions Pretrial – recognized overuse of electronic monitoring and conditions
- Strengthen data-driven oversight
- Ongoing training and interagency coordination

CLOSING & DISCUSSION

Review goals:

- Pretrial Release – least restrictive conditions to reasonably assure court appearance and public safety pre-disposition
- Probation – post-adjudication assessment and case plan to with rehabilitation and restitution goals