

PRETRIAL REFORM EFFORTS AND THEIR USE IN TEXAS

by

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## **ABSTRACT**

Throughout the era of mass incarceration much attention has been paid to the collateral consequences of imprisonment. However, recent progressive approaches have shifted the focus from conviction to selection into the system and the (unlawful) detainment of individuals at the pretrial stage. While jurisdictions across the U.S. have adopted risk assessments to inform pretrial decision-making, many question whether the use of such tools can truly provide unbiased evaluations. In turn, criminal justice agencies have begun utilizing other strategies to curb the detention of those imprisoned due to unaffordable bail. This thesis seeks to document pretrial reform efforts that have taken place across Texas while focusing specifically on local cite and release initiatives. In addition, it also provides the findings from semi-structured, in-depth interviews of members of a local grassroots community organization that highlight the role of social activism in local criminal justice reform.

## I. INTRODUCTION

Beginning in the 1970s, the United States experienced a rapid increase in incarceration rates due to changes in legislation imposing “tough on crime” policies and practices that resulted in historically high rates of confinement for many decades (Gotsch & Basti, 2018). This era of mass incarceration has persisted, even after the country experienced a substantial decrease in crime that began in the mid-1990s: a trend that continued until crime rates returned to their pre-imprisonment binge levels of the 1960s (Baumer et al., 2018). Critics who oppose the excessive use of incapacitation have declared a dire need for reform throughout the system by arguing on behalf of disadvantaged individuals who are thrown into an environment that bleeds biases (Gotsch & Basti, 2018). Still, little progress has been made toward decarceration through sentencing reform. This standstill has caused many to redirect their efforts to front-end decision-making to reduce the number of people at-risk for harsh penalties (Baumer et al., 2018).

Among the concerns central to front-end justice reforms are those related to unaffordable bail and the disparate treatment of those detained. Proponents of bail reform advocate for reducing or eliminating the use of bail by implementing progressive approaches, especially given that 90% of the arrests in the U.S. are for misdemeanor offenses (Baughman, 2020). In other words, bail reformers believe that only individuals who pose a threat to the community or are potential flight risks should be detained. Moreover, pretrial detention is disproportionately experienced by people of color, which exacerbates inequality in the criminal justice system (Schlesinger, 2015; Martinez, Peterson & Omor, 2019). While some jurisdictions have eliminated the use of cash bail,

others have adopted risk assessments that guide court actors in their decision to grant release. However, many question whether the use of such tools can indeed provide unbiased evaluations (Desmarais, Monahan & Austin, 2021). In turn, criminal justice agencies have begun utilizing other strategies to curb the pretrial detention of those who do not pose an immediate risk to the public. This thesis zeroes in on one such approach: the use of cite and release by documenting initiatives that have taken place across Texas and recording the activism behind its implementation. In addition to a comprehensive review about the use of cite and release as pretrial reform, it also presents the findings from several in-depth interviews of members of a local grassroots organization that supported reform efforts that resulted in San Marcos, TX being the first city to implement cite and release into law. News sources note the critical role that grassroots organizations played in this reform effort, and thus a secondary purpose of this thesis will be to document the implementation of this law from a social activist perspective.

The following documents the history of bail in the U.S. and how the money bail system has continuously criminalized the poor, disproportionately targeting communities of color as they are forced to remain behind bars because they cannot afford their bail. As current bail practices are being recognized as unconstitutional, advocates have argued for the reform of pretrial detention practices that will allow more defendants to be released pretrial. The following sections will also address the implementation of progressive approaches at the pretrial stage that can help decrease the population of defendants that are being held due to unaffordable bail.

## **II. BACKGROUND**

### **Bail and Pretrial Release**

Bail is defined as a temporary release of a defendant from jail with set conditions in exchange for a form of security (Brown, 2020). In most jurisdictions across the U.S., bail is used as an incentive to ensure that a defendant will return for a future hearing or trial if they are released (Schnacke, 2018). To ensure that a defendant's constitutional rights are protected, they are to be brought before a magistrate or judge 24 to 48 hours following their arrest (Tex. Penal Code § 17, 1994). During this stage, the magistrate will evaluate the facts of the case and assess known risk factors to determine if monetary release from custody will be granted (Hart, 2019). Other elements that magistrates typically consider include prior flight or risk of flight, previous bail or court violations, whether the accused poses as a threat to the community, any existing felony murder or domestic battery charges, or whether any outstanding offenses are eligible for the death-penalty, etc (Tex. Penal Code § 17, 1994; Brunt & Bowman, 2018). Additionally, the courts ensure that the funds will be deposited back to the accused on the condition that the court's requirements are upheld; otherwise, the funds will be forfeited to the court as further punishment (Baughman, 2020).

Although bail is a constitutional right, denial of bail can be mandatory in some circumstances, and the court holds the power to exercise discretion that permits judges to detain offenders and set an appropriate bail amount (Brunt & Bowman, 2018). To further protect defendants' constitutional rights, the Eighth Amendment states that "excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted" (Seibler & Snead, 2017). However, it is important to distinguish

between excessive bail and unaffordable bail. In other words, just because bail is unaffordable does not make it excessive (Seibler & Snead, 2017).

In Texas, the state allows for the use of commercial bail which has been a form of release in the U.S. since the late 1800s (Liptak, 2008). While the U.S. is one of two countries that utilizes a for-profit bail bond industry, this industry has continuously withdrawn millions of dollars from Americans, predominantly poor people of color (Billings, 2016). As the usage of commercial bail bonds rose in the 1920s so did the rise in bail amounts for defendants which ultimately increased the rate of pretrial detainees unable to afford bail (Dabney, Paige & Topalla, 2017). This industry has also flourished by forming bail organizations, such as the National Association of Bail Insurance Company that have made efforts to end the courts' use of pretrial services and defendants being released on personal recognizance bonds as a way to promote commercial bail bonds (Billings, 2017). While this form of bail is controversial, the pretrial population has heavily relied on their release through private businesses such as bail bond companies. Defendants are required to pay a percentage of their bail amount to the bondsman, typically through a contract agreement, generally with a cosigner (Page, Piehowski & Soss, 2019). Under the agreement the bondsman is responsible for ensuring the defendant's appearance in court, and then pays the court the full bail amount in order to release the defendant (Page, Piehowski & Soss, 2019). However, unlike some pretrial release methods, if the defendant is present for all of their court appearances, the bondsman keeps the percentage the defendant paid them prior to their release (Rabuy & Kopf, 2016).

Commercial bail bonds have been used in a manner similar to most bail bonds, where the bond is viewed as a promise that the defendant will appear before the court when required and the location of the defendant will be known if that is a necessary condition set by the court (Page, Piehowski & Soss, 2019). If the defendant fails to appear to court the bondsman is required to pay the court the full bond amount or the bondsman will typically partner with a bounty hunter who will locate and apprehend the defendant, placing them back into custody (Seibler, 2017). Furthermore, bondsmen are allowed to bring evidence before the judge to prove to the court that the defendant has a likelihood of failing to appear or they have violated the conditions set for their release. From there the judge will determine whether the bondsman has established and proved their claim and whether the bail will be revoked, otherwise the defendant will be released again on the same bond (Rabuy & Kopf, 2016). The judge may also set new conditions which can include a higher bail amount (Rabuy & Kopf, 2016).

### **The History and Reform of Pretrial Practices in the U.S.**

The history of cash bail can be traced back to its origins in 1679 when the English Parliament enacted the Habeas Corpus Act. The act declared that offenders must come before the court to either be granted or denied bail within a specified time frame to guarantee that no one was unlawfully detained in jail (Seibler, 2017). By implementing this new law, it was anticipated that the incarcerated pretrial population would decrease due to the courts exercising the individual right to bail (Schnacke, 2018). Towards the end of the 17<sup>th</sup> century, common law pretrial release practices permitted the release of offenders who were charged within a certain class of offenses, but this was not afforded to those with the inability to make bail (Seibler, 2017). As time went on, the procedural

practice of pretrial release continued to balance the rights of the accused with the interests of society while ensuring the safety of the public and preventing the offender from absconding.

However, during the 1960s, the legislation pushed for reform and concluded that judges were not giving enough consideration to a defendant's financial state and were instead too focused on the nature of the crimes committed and the defendant's character (Maruna, Dabney, Topalli, 2012). To combat this lack of consideration for the ability to pay the bail set, Congress established the Bail Reform Act of 1966. With this act, judges were empowered to set bail for defendants charged with a non-capital, federal crime who posed flight risks (Shnacke, 2018). The reform act also granted the right for the accused to be released before their trials on personal recognizance bonds unless the courts objected to the release based on the determination that such incentives would not guarantee return appearances in court (Shnacke, 2018). Defendants were to be released pretrial with the least restrictive conditions possible, including ankle monitors, drug testing, house arrest, and weekly meetings with pretrial service staff (Hopkins et al., 2018; Baughman, 2020). This non-monetary release initially increased the eligibility of bail and made pretrial release more accessible to low-income defendants who faced charges for misdemeanor crimes. It also decreased imprisonment of the poor. However, with the rise in violent crime during the 1970s and 1980s, bail reform saw a second wave, favoring more restrictive bail conditions (Brunt & Bowman, 2018).

Around this time, President Richard Nixon's administration implemented tough-on-crime policies to combat the war on drugs and the violent crime associated with them. Pretrial release was made less accessible to defendants who would have otherwise been

granted bail (Johnson, 2019). Ultimately Nixon's rhetoric affected how the courts used monetary bail, as the hope was to decrease the number of defendants who engaged in crime while on release (Seibler, 2017; Johnson, 2019). In 1984, Congress passed another Bail Reform Act, which gave discretion to judges to deny bail when defendants posed a potential danger to the community (Brunt & Bowman, 2018). However, courts were still obligated to act according to the laws that prohibited the violation of individual rights regarding bail practices and pretrial detention.

Beginning in the early 2000s, reform efforts again zeroed in on the detention of those unable to afford bail. Many criminal justice advocates recognize monetary bail as a discriminatory practice that perpetuates the cycle of socioeconomic inequality within the U.S., as lower-income individuals cannot attain the resources needed to handle the collateral consequences of pretrial detention (Hopkins, Baina & Doyle, 2018). Furthermore, the money bail system has disproportionately targeted Black and Latino men as the courts have handed down bail amounts at a rate that is consistently higher than Whites who have committed the same crime (Brunt & Bowman, 2018). Currently, in the U.S., the median bail amount for pretrial detainees is about eight months of the defendant's income (Ashdown, 2018). Such an income loss is especially detrimental to defendants with hourly paid jobs, as they are likely faced with unemployment when released. Further, the stigma of any previous periods of incarceration leads to the possible risk of job limitations, a decrease in lifetime earnings, less educational opportunities, limited access to social services, and reinforces the generational cycle of poverty and incarceration (McGehee, 2021).

Similarly, commercial bail is a monetary sanction that has targeted people of color and has contributed to the racial disparities and inequalities within the criminal justice system and the bail system, as assets owned by poor defendants are being turned into revenue for the government (Page et al., 2019). Each year in Texas, millions of dollars are taken from people of color and their communities due to the lack alternative release options (Page et al., 2019). With limited access to funds and bail corporations having little oversight, millions of Americans turn to the for-profit bail industry to pay the nonrefundable amount to secure release (Rabuy & Kopf, 2016; ACLU, 2017). Commercial bail contributed to the mass incarceration issue and has aided in perpetuating debt and poverty amongst the most disadvantaged Black and Latinx neighborhoods (Gordon, 2021). Unsurprisingly, the number of Americans faced with unaffordable bail continues to increase and rates of pretrial detention are higher than ever (Billings, 2016; ACLU, 2017). However, contemporary reform efforts outside the federal system, are largely left to individual states and local jurisdictions. The following section highlights such efforts in Texas.

### **Pretrial Reform in Texas**

Political parties in Texas share views towards affirming the courts' discretion to allow violent crime offenders the opportunity to post bail before their trial; this notion also applies to pending cases (McCullough, 2021). Issues that have been politicized and have generated conflict include judicial training efforts, data collection and use of past criminal history, and whether to ban the release of defendants who are accused of violent crimes while allowing the release on personal bond (McCullough, 2021).

Personal recognizance bonds have been used as an alternative of pretrial release throughout Texas for majority of misdemeanor offenses and some felony offenses, and many courts are in favor of utilizing this bond due to better management within the court system along with the reduction in jail costs, overcrowding, racial disparities, and wealth-based discrimination (Johnson, 2019). Texas magistrates can exercise discretion and release the individual on personal bond without any sureties; however, such bonds can not be revoked by the court's judge who issued the arrest warrant unless sufficient cause is shown (David, 2020). Texas counties and judicial districts with a jurisdiction that is part of more than one county can get approval from the county commissioners to establish a personal bond office within said jurisdiction (Ofer, 2018). These offices are built for the county in which the defendant was detained with the intent of professionally trained personnel or sheriff's department staff to review the information that has been gathered on the accused (Ofer, 2018). A public safety report is then produced and presented to the judge while the case is pending. Data collection can further support whether the offender will comply with the court's conditions if eligible for release on personal bond (Tex. Penal Code § 14, 1994). While nationally there has been an increase in the use of the courts releasing state felony and misdemeanor defendants pretrial on personal recognizance bonds, that proportion is only around 24% (Baughman, 2020).<sup>1</sup>

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<sup>1</sup> Additionally, over half of the states rely on the evidence of the case and the likelihood of a conviction to determine bail decisions. While Texas' courts consider the defendant's residential status when deciding whether a defendant will be released on a PR bond, Colorado and Arkansas are the only states where the courts are required to consider both past and present residencies for the defendant along with other factors that imply the defendant has community ties that are strong enough to where the likelihood of the defendant fleeing is minimal (Baughman, 2020).

Civil rights advocates have continued to testify that Texas' heavy reliance on cash bail, the courts' restricted use of personal bonds, and the infringement of judges exercising judicial discretion will worsen the wealth-based detention issue that penalizes low-income offenders at high rates (McCullough, 2021). Alternatively, many Texas counties have pushed toward a more progressive approach, including Harris County, where reforms in March 2021 provided release for minor, low-level offenders without the defendants having to post bail (McCullough, 2021). Although this did not apply to misdemeanor defendants with previous bond violations or defendants charged with a first-degree felony, violent crime, or domestic abuse, thousands of individuals accused of misdemeanor offenses were freed (Godfrey, 2021).

In 2017, Harris County, TX publicly shared their approach to handling incarceration rates in their jurisdiction when the county went to trial and testified with public records, expert testimonies, and witnesses who documented the personal costs of money bail (Godfrey, 2021). Houston's chief judge on the bench accepted the legitimate facts acknowledging the bail system disproportionately targets the impoverished and agreed that the current procedures were unconstitutional (Banks, 2017). District Judge Lee Rosenthal requested the immediate release of indigent offenders being charged with a misdemeanor offense without the need to post bail as they waited for their cases to go to trial or end in a plea (Banks, 2017). This decision was made with the hope of directing the county to implement policies that would challenge past laws protecting the wealthy (Godfrey, 2021). Because Texas courts heavily depended on cash bail, Harris County proposed a contemporary approach to refuse monetary bail as a term of release and to release defendants being held for a low-level misdemeanor offense. The courts efforts for

85% of eligible misdemeanor offenders in Harris County to be issued their freedom while their case is pending (Hart, 2019).

Researchers at Loyola University collected independent data on Clark County that supported the fact that there was not an increase in new criminal activity committed by the released defendants, nor did the crime rates rise (Warner, 2021). These results were similar to previous studies done in Harris County. In response to the data collected, Cook County Chief Judge Timothy Evans made a general order to release misdemeanor pretrial offenders into the community prior to their trial. In addition, offenders who were ineligible for release found that time spent behind bars decreased. In other words, there were no significant adverse consequences that have stemmed from the new policies (Rossi & Woog, 2021). Furthermore, when the courts must impose monetary bail, disparities between racial and ethnic groups have also declined (Rossi & Woog, 2021; Warner, 2021). This is an important finding given Harris County's history of lawsuits issued saying that bail decisions have harmed a disproportionate number of people of color (McCullough, 2021).<sup>2</sup>

America's massive misdemeanor system files 13 million low-level cases each year, which should be a cause of concern for judges, prosecutors, and public defenders who are faced with handling a large caseloads. (Agan et al., 2021). Recently there has been a need to avoid collateral consequences that stems from criminal prosecution and instead establish an alternative to misdemeanor prosecution to diminish the probability of contact with the system (Agan et al., 2021). Considering prosecutorial power and the ability to exercise discretion throughout the entire process, reform efforts have pushed for

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<sup>2</sup> Similar to some Texas jurisdictions, it is notable that the city of Philadelphia followed suit by reforming their bail system in 2017.

the election of progressive prosecutors and district attorneys who hold similar views on how to properly approach the given situation of high incarceration rates and unlawful detainment.

Apart from this issue, a supplementary progressive approach that has received national attention and support from the courts and law enforcement agencies is the productive use of pretrial services. The sole purpose of adopting programs and services is inextricably tied to two primary functions that include investigative information gathering on the accused and a data presentation on recommending the most effective form of supervision and release options specific to each offender (Ofer, 2018). Together these functions are essential when developing release options that are appropriate and accommodate the special needs and risks of the defendant if they are released back into society. This includes a general assessment of the offender, which is vital to each jurisdiction to minimize the pretrial detention population and ensure the courts that conditions imposed on the alleged offender will be upheld while maintaining the integrity of the judicial process. Any deprivation of liberty is deemed unconstitutional and can be oppressive and interfere with the six legal principles including the presumption of innocence; the right to counsel; no self-incrimination; the right to due process; equal protection of the law; and no form of excessive bail (Ofer,2018). Courts make use of a wide array of programs and services to promote pretrial release. Such assistance includes the eligibility for diversion, drug testing and various treatment courts, educational classes, counseling sessions, community service hours, and other pre-adjudicated alternatives. The reasoning behind adopting pretrial services is to minimize incarceration costs totaling approximately 14 billion dollars each year (Hopkins et al., 2018). Indeed actors

within the justice system have concluded that conditional release is a better alternative than detaining defendants.

Within the past decade, the courts have tried to impose the least restrictive conditions on defendants being released on recognizance bonds. However, if a court were to impose conditions on a defendant, it is the burden of the court to prove that restricting the defendant is necessary based on various evidence (Baughman, 2020). Given advancements in technology, the use of electronic monitoring has been deemed a feasible solution (Ashdown, 2020). Even though electronic monitoring is typically used post-conviction, it can be used to allow more indigent defendants to be released pretrial while maintaining the safety of the community and is more cost-effective compared to pretrial detention (Johnson, 2019).

Texas' pretrial diversion is a voluntary program for misdemeanor offenders that allows the individual to avoid prosecution before they enter a guilty or a nolo contendere plea (Baughman, 2020). During this time, the prosecutor will stop processing the case while the offender completes the terms of the diversion program. Once the conditions are met and the program is completed, the charges are officially dropped. However, if there is a violation of the rules mandated by the diversion program the prosecutor will continue pursuing the case. Now, prior to the defendant receiving diversion it is essential that a pretrial service agency conducts a pre-first appearance assessment that will later be presented to a judicial officer. This assessment provides information that relates to the risk of flight, a possible threat to the community, if the defendant will appear in court, if the courts conditions will be followed, develop recommendations for release in response

to any risks that can occur while pending adjudication, etc (Pretrial Services Programs, 2021, Pretrial Release, 2022.).

Although there are some exceptions and flexibility in terms of being accepted into pretrial diversion, the certain criteria include being a first-time offender; the defendant must be charged with a misdemeanor offense; any offense that is related to family violence is disqualified; crimes of a sexual nature are ineligible unless it is a prostitution charge; and any documentation of being a gang member is not allowed (Baughman, 2019). Once the defendant is granted the opportunity to participate in pretrial diversion, they are given an individual set of requirements that must be met to satisfy the court and these requirements do not apply to everyone within the pretrial diversion program (Baughman, 2019)

Travis County uses a more comprehensive pretrial program where they focus on the evidence at hand and assist the court by upholding the importance of justice, equality, and the presumption of innocence by not only encouraging defendants to not violate the courts rules and conditions while on release but also ensure community safety (Tarrant County Specialty Programs, 2022). The Tarrant County Pretrial Services Division partners with Travis County CSCD where they conduct interviews and provide information to the court regarding whether the defendant should be released pretrial with or without certain conditions that will help guarantee the defendant's appearance in court. The interview questions help determine indigent status; make any personal recommendations for bond release or types of conditions the defendant must oblige by; prepare bail bond applications, and aid in supervision with the provided programs (Ofer,2018).

Likewise, Bexar County's pretrial programs were established to provide accurate information regarding the release decisions implemented in Bexar County, and the data collection has found a relationship between universal and impartial screening of defendants to guarantee their awareness of complying with the conditions and providing investigative reports to the courts at the time of the detained individuals arraignment hearing to increase the effectiveness of program completion. (Pretrial Services Bexar County, 2022). This is done as an effort to provide a supervision program for individuals who are granted the ability to access pretrial services and the regulated programs strive to promote the importance of effectiveness that provides defendants with purposeful resources such as treatment and assistance while maintaining the integrity of the judicial process and allowing the defendant the opportunity of avoiding pretrial detention (Cowell, Aldridge, Broner & Hinde, 2008).

Tarrant County has also expressed the importance of rehabilitation for offenders. Recent efforts have increased the number of diversion programs that are available to non-dangerous offenders and the courts have allowed these programs to be available to offenders post-conviction as well (Tarrant County Specialty Programs, 2022). The eligibility requirements are similar to other counties with pretrial services and programs where the defendant must be represented by a criminal defense attorney who can persuade the courts to avoid prosecution and, in the end, avoid a conviction if their client successfully completes the program's requirements. Tarrant County has adopted many diversion programs for offenders. These programs include The First Offender Drug Program, which allows participation of first-time nonviolent drug offenders into the program (Specialty Programs, 2022). Another diversion program is the Veterans

Treatment Court, “for Justice-Involved Veterans who are currently facing prosecution for one or more criminal cases.” This program allows for veterans to be supervised and receive treatment specific to their needs, but the program’s focus allows for rehabilitation instead of having veterans go through the entire criminal justice system (Pretrial Diversion Programs, 2022). Lastly, the Youthful Offender Diversion Alternative, a program that accepts violent first-time offenders, was adopted for those between the ages of 17 and 25 accused of domestic violence crimes, except for crimes against victims by blood or marriage (Youthful Offender Diversion, 2022).

For years, Harris County has focused its reform efforts on addressing overcriminalization in the jails and exploring alternatives such as diversion programs. Pretrial services in Harris County have received funds from the commissioner’s court while upholding the department’s key functions, which are to investigate and gather information on the defendants who enter into the Harris County Justice System. By expanding progressive approaches that acknowledge the collateral consequences of pretrial detention Harris County has partnered with the Harris County District Attorneys Office and the American Youthworks Texas Conservation Corps to implement a wide array of programs, such as the Clean and Green Program, designed with the incentive of allowing offenders the ability to erase their criminal records by engaging in community service that involves cleaning the bayous and waterways throughout Houston. As a result, 1,049 participants have been able to clean their records within the first year of the program (Programs and Diversion, 2022).

The Harris County’s DWI Pretrial Intervention Program is a strict entry diversion program. Defendants whose first offense is a DWI charge in Harris County could be

granted eligible to be placed in this program by a judge. The program involves a contract with the defendant's defense attorney and subjected to probation supervision for a year; monthly meetings with the probation officer to evaluate progress, community service; monthly fees; unscheduled drug tests; an educational class that covers drug and alcohol abuse, and installment of an alcohol monitoring device within the defendant's vehicle (Programs and Diversion, 2022). Harris County also offers the Judge Ed Mental Health Diversion Center, which provides treatment for offenders who were mentally ill that would not be obtainable if they were held within the jail (Programs and Diversion, 2022). Since 2018, 3,000 defendants charged with nuisance crimes have been placed in this program (Programs and Diversion, 2022).

Lastly, the District Attorney's Office in Harris County established a voluntary misdemeanor marijuana diversion program for offenders, no matter their prior criminal history, who could be admitted into this program not only as a way to decrease the spending on prosecuting misdemeanor marijuana cases but also to decrease the number of people, typically people of color, who suffer from the effects of an arrest and the entire pretrial process (Programs and Diversion, 2022). The push towards adopting this program came from the need for reform and rehabilitation rather than incarceration because there was no evidence that this offense was placing the public in more danger. Additionally, the program allows the attorneys and law enforcement to focus more of their time and resources on offenders who have committed serious offenses (Ogg, 2019).

### **Cite and Release**

Although progressive approaches have shifted the focus to alternative strategies to curb the detention of detainees due to their inability to afford bail, reformers' recent

attention has been on the use of cite and release. In 2007, Texas' legislation under article 14.06 of the Texas Criminal Code of Procedures passed the citation in lieu of arrest law to curb the detention of those imprisoned. This policy allowed law enforcement to issue a citation as an alternative to conducting an official arrest for specific offenses. The citation summoned the accused by stating they were required to report to the court's location specified on the ticket to answer the charges brought against them (Gupta, 2020). The policy permits the use of officer discretion if the department places this ordinance into their procedures while also explicitly stating the extent to which offenses within that jurisdiction could potentially be issued a citation, depending on the situation. While it's not mandatory, the cite and release directive is an important tool that allows nonviolent offenders to stay within their community and get their affairs in order (Gupta, 2020). Citations also divert individuals accused of nonviolent crimes and reserves limited space and resources specifically for violent offenders. Texas' legislature is responsible for defining and regulating the offenses that are eligible to receive a citation if it is an appropriate response to the breach of law. Despite the fact that this administrative policy is viewed as a means to resolve overcriminalization and provide a non-carceral alternative, departments have been slow to implement it into their practice, given that it is not mandatory. About a decade passed from the law's inception before San Marcos became the first city in Texas to codify the ordinance into effect. Reasoning behind the implementation of the ordinance in San Marcos, TX was that prior to cite and release being placed into effect in 2018, police officers failed to cite a single Black individual, instead deciding to arrest them (Gupta, 2020; Campaigns, 2020). Since the implementation of the law, San Marcos has been transparent in disclosing the types of

offenses where cite and release may be appropriate if a formal arrest is unnecessary. However, if an arrest is made by law the officers must document their reasoning behind it. The San Marcos Police Department has determined that if a certain set of circumstances are present, then an officers needs to make an arrest even if the offense is eligible for a citation (San Marcos Cite and Release Ordinance, 2020). Those circumstances include the individual not providing the officer with enough personal identification that includes the subjects government name, current address, and a photo that allows the officer to issue a citation or else the subject will be arrested; a situation where the subject committed an offense but they do not reside in the county where the crime occurred; the arresting officers believe the release of the offender will place the safety of the community in imminent danger (Cite and Release-San Marcos Police Department). In this situation the officer would assess the subject to determine if they have any mental or physical disorders that would lead the subject to threaten the safety of the community or harm themselves. The arresting officer can also refer the subject to a facility to treat the subjects needs. Additional circumstances include the subject having unlawful possession of a weapon; the subject has an outstanding arrest warrant; the subject is suspected of committing an offense that would not be eligible to receive a citation under state law; and an arrest can be made if the subject demands they be brought before the magistrate (Cite and Release-San Marcos Police Department, 2020).

Furthermore, to decrease the pretrial population, San Marcos' offense eligibility includes theft or service or property of less than \$375, criminal mischief that involves damages is less than \$375, graffiti with damage less than \$375, possession of marijuana less than 4 ounces, Class C misdemeanors (not including public intoxication, assault, and

family violence), and driving with an invalid license (Immigrant Legal Resource Center, 2020) Additionally, after the issuing of the citation, the individual charged will be evaluated by the district attorney's office, where the decision to pursue the case, dismiss the case, or refer the subject to diversion will be determined (Immigrant Legal Resource Center, 2020).

Similarly, in 2019 Bexar County implemented cite and release initiatives and has expanded the eligibility for nonviolent and low level misdemeanor offenses for subjects who are able to receive a citation, allowing the defendant to avoid being arrested. The changes will contribute to saving the county money on booking and jail costs and will allow for the redirection of the money to other pressing needs; and will decrease the reinforcement of arrest culture that has destabilized communities and left people detained pretrial due to financial strain (Cite and Release Bexar County, 2022.). Bexar County defendants by law have the right to avoid an arrest but once the citation is issued by law enforcement the subject will be referred to the Bexar County Re-Entry Center and must appear within 30 days of the citation being handed out (IRLC Bexar County, 2022). From there the prosecutor, based on the defendant's charges, will determine if a diversion program is appropriate to that individual's specific needs and if the defendant successfully completes the program there will be no arrest record (IRLC Bexar County, 2022). Additionally, the San Antonio Police Department chief of police felt the importance of releasing an interactive dashboard that publicly documents the county's data on cite and release in an effort to increase community trust and transparency. The Bexar County's District Attorney's office followed suit by collecting arrest data within an 18-month period to show San Antonio law enforcement officers avoided making over

3,500 arrests (KEN 5, 2021). A recent data report that outlines the San Antonio Police Department authorizing citations from July 1, 2021, to September 30, 2021, showed that during that period 873 incidents occurred where the person accused of committing a misdemeanor offense was eligible to be issued a citation, although, out of the 873 individuals, “510 individuals (58%) had outstanding warrants and/or multiple arrests, making them ineligible for citation and release while the other 363 (42%) encounters were able to receive a citation” (San Antonio Police Department, 2021).

Dallas, TX has also begun distributing citations as an alternative to an onsite arrest for marijuana possession of less than four ounces (KERA News, 2018). The department’s intent for cite and release was to cut down the costs of prosecuting lower-level offenses and keep individuals who pose no threat to society out of the overcrowded jails. However, citations have only been issued to a small fraction, about 6%, of all marijuana possession charges in Dallas County (KERA News, 2018).

Since cite and release was put into practice in a few Texas jurisdictions and the passing of House Bill 2391, departments have alleviated departmental issues such as understaffing and potential budget cuts. Although the intention of the ordinance was to mitigate racial profiling and harmful effects that result from an arrest many departments still reinforce an arrest culture. While citation in lieu of arrest is not taken advantage of by all Texas law enforcement agencies, those who have employed this policy have achieved improvements such as time management for officer responses to calls, more effective distribution of funding, and a significant decrease in time spent on arrest and booking procedures (Mathews, 2018). Neighborhood factors such as employment status, housing, strained family and community relationships, and high residential mobility that

were once used as a shorthand for pretrial decision making have received more protection and are less accounted for by the courts.

A great deal of progressive policy reform helped mitigate the high rate of imprisonment at the pretrial level. Nationwide grassroots organizations who have focused their work on criminal justice issues share common themes of working solely towards improving efficiency, equity, and accountability from the actors within the system along with how the system operates. Many grassroots organizations have taken the initiative from a social activist perspective to identify the underlying problems within the criminal justice system. From a local level, a progressive policy reform organization founded in 2017, Mano Amiga, aimed their organization towards protecting fundamental rights and representing the interests of the people directly impacted by the criminal justice system (Mano Amiga, 2017). Since being at the forefront of a social movement the organization's reform efforts have incorporated their focus by including personal testimonies from those who have been most affected by our justice system. This nonprofit organization has partnered with other grassroots organizations with the same agenda, such as MOVE Texas, the NAACP and many more to bring the system more aligned with the community's need by articulating the objectives that needs to be addressed and the goals that need to be achieved in order to bring improvements to the system and its community members (Mano Amiga, 2020).

Activist-led initiatives from neighboring Texas jurisdictions have also pushed a proposal in support of marijuana decriminalization, a policy change that would mirror Austin Police Department's efforts as law enforcement no longer cite or arrest those who were in possession of a Class A or B marijuana misdemeanor offense unless there was an

imminent threat to society or if the contraband was uncovered during a felony-level narcotics investigation (Knight & Leon, 2020). Nonprofit and national organizations including The Bail Project have worked in support of criminal justice reform by defending marginalized individuals within society, especially those who are imprisoned. Due to detainment creating a persistent problem as it relates to marginalized and poor individuals, communities are faced with dealing with a never-ending cycle of poverty and incarceration (Ziegelheim, 2018). Amidst this urgent need for change, recent efforts have included restoring the right to vote, adopting alternative forms of punishment, increasing the eligibility for parole, etc. Still, pretrial detainees (those not yet tried or convicted for the crimes in which they are charged) comprise 70% of the state jail population (Ashdown, 2020).

Social justice reformers advocating for advanced solutions to end mass incarceration in Harris County have re-envisioned how to handle the ways the justice system has imposed a penalty on those who are impoverished and have produced of wealth-based inequalities.<sup>3</sup> Two decades prior to the reforms the Texas prison population held 150,000 inmates which prompted the state to build additional prisons to keep up with the growing offender rate, but in 2007 Governor Rick Perry led the state through reform with the initiative to construct an effective prison system as a way to curb the issue of rising incarceration rates (Council of State Governments Justice Center, 2009). This was executed by legislation that funded treatment programs and corrections reform (Council of State Governments Justice Center, 2009). In turn, the legislation created a

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<sup>3</sup> Harris County is home of the largest prison and jail incarceration rates in the state of Texas (Understanding Houston, 2022).

network of resources to increase diversion programs; reduce sentencing verdicts for nonviolent offenders; mandate probation and drug rehabilitation as alternatives to incarceration for first time low-risk offenders; reduce probation sentences for successful probationers; and expand drug and specialty courts. Additionally, Texas' more progressive legislation helped push for programs for first time offenders including Harris Counties First Chance Intervention Program, which was intended to rehabilitate first-time offenders who were charged with a Class B possession of marijuana charge -- essentially allowing the defendant to avoid being convicted of a misdemeanor charge (Programs and Services, 2022). Since the program was adopted it has expanded to all of Harris County law enforcement agencies. In addition, several offenses have been added to increase the number of eligible offenders. The programs adoption has also encouraged the county to enact new policies and practices to maintain public safety while also decreasing the collateral consequences for nonviolent offenders.

### **III. THE PRESENT STUDY**

The present study seeks to understand the pretrial reform efforts of a grassroots organization by employing a qualitative research design to better understand how cite and release came to be signed into law in a central Texas city. In-depth, semi-structured interviews were used to elicit information from members of the grassroots organization as well as a city councilperson. The questions were designed to uncover key motivations and strategies so that other organizations and jurisdictions could benefit from their experiences when working to reform front-end criminal justice practices in their jurisdictions.

#### **Study Site**

San Marcos, TX was chosen as the study site given that in May 2020, it became the first city in the state to implement the cite and release ordinance. As previously stated, Texas' Code of Criminal procedure article 14.06 was passed back in 2007 by Texas' legislation that permitted law enforcement agencies to issue a citation for eligible misdemeanor offenses instead of executing an arrest. Because cite and release requires officers to use discretion, it is important that the agency determines what offenses are eligible for a citation to provide a clear direction for law enforcement.

As noted above, before the adoption of the ordinance, police officer discretion was contributing to the overcriminalization of people of color who were denied a citation and instead arrested. According to Hays County, SMPD did not issue a citation in lieu of arrest for a single black person out of the 72 instances in which offenders were eligible to receive this alternative (Rogers, 2019). Given this racial disparity, there was a need for a policy that required law enforcement to issue a citation in all eligible circumstances, regardless of the offender's race. Realizing this, a local grassroots organization began pushing for criminal justice reform to help keep community members out of the legal system. The remainder of this section focuses on the interviews of the social activists who were apart of this community campaign.

### **Data Collection and Analysis**

This study used strategies employed in the extant research exploring the interactions between grassroots organizations and the criminal justice system. Studies that seek an understanding the critical role of grassroots organizations on policy have emphasized the importance of acknowledging the advocates work and their experiences as they are at the forefront of research and policy change. (Brubaker, 2019; Lardier et al.,

2021). The advocates were able to provide their own narratives on influencing change and, recount personal testimonies from individuals affected by the current policies, which can be essential to strengthening the research (Lardier et al., 2021). These studies offer a framework for researchers by providing an in-depth understanding of social problems and various strategies that have been effective in implementing change (Brubaker, 2019). Past studies on grassroots organizations highlight the significance of educating the public on the harm that such policies are causing and enlisting a local representative to voice the needs of the community (Brubaker, 2019; Lardier et al., 2021). Additionally, there is an emphasis on fostering powerful relationships through community mobilization and creating a strong foundation of advocates who can challenge and form resistance against policies and those who oppose the reform efforts of grassroots organizations (Brubaker, 2019; Lardier et al., 2021). Questions designed in the semi-structured interviews draw from these important themes, while allowing for localized issues and strategies to emerge with the participants interviewed.

Interviews were conducted using a video platform called Zoom in order to audio-record and transcribe in-depth semi-structured interviews between May 18th through July 14<sup>th</sup> 2022. The interview included open-ended questions informed by prior research on social activism and its impact on criminal justice reform. The local grassroots organization that was selected to be a part of the study is rather small: three members were contacted via a recruitment email for interviews with two members responding to the request. Based on their recommendations, a local councilperson was also interviewed. In all, the three participants provided insight as to their role in criminal justice reform to

gain a deeper understanding of how their activism led to reform efforts that influenced the implementation of San Marcos' cite and release law.<sup>4</sup>

After obtaining consent, each participant was asked questions about their background, their role within the organization, previous advocacy work, pretrial practices in Texas, specific reform strategies, reform feedback, their impact on advocating for the implementation of the ordinance, and future reform efforts. After concluding the interviews and editing the transcripts, the interviews were coded using inductive and deductive coding methods to compare themes across the interviews. This analytical approach focused on capturing the participants' experiences as part of a grassroots movement in their own words, allowing them to share their experiences (Patton, 2015). Several themes were identified across participants' coded transcripts suggesting that the information provided by the members of the community organization were reliable.

## **Findings**

The strategies and experiences described by the participants regarding the implementation of the cite and release ordinance were consistent with studies that highlight the role of grassroots organization towards policy changes. All of the advocates made statements consistent with the change implemented being a monumental community effort: San Marcos was the first city to adopt a policy in response to police officer discretion that was racially biased and pretrial decision-making that imprisoned unconvicted petty offenders. In this section, I explain the various efforts described,

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<sup>4</sup> Prior to interviewing participants, the study sought approval and consent from Texas State University's Institutional Review Board (IRB) in order to conduct the study. The IRB reviews the research to determine if the human subjects' rights and well-being will be protected throughout the entire study. All procedures used were indeed approved and an approval letter is provided in Appendix A.

including cultivating relationships, various strategies used to advocate for policy change, the backlash and opponents who attacked the ordinance, and how this model is set up as a framework for other jurisdictions to follow suit and implement a progressive reform to better the community and reduce the collateral consequences of police officer decision making and pretrial detention.

*Identifying the issues in the justice system.* Participants noted that prior to campaigning and pushing towards reform grassroots organizations need to identify the issue and address where it is occurring within the system. One participant stated:

...[we] decided to start pushing for criminal justice reform to help keep or I should say criminal legal reform because there's hardly any justice to help keep our community members out of the legal system, all together, and thus out of the deportation proceedings.

The interviews all indicated that the laws in Texas, including the use of cash bail, target low income community members causing a disproportionate impact. As expressed by one of the advocates:

...You know this current state of mass incarceration is not only the new Jim Crow but also the new legal form of slavery and I think that this is just the next phase of the civil rights movement, trying to keep people out of the legal system.

This was followed by understanding that time is continuing to progress and racism is becoming more coded in the ways that they are advocating for policies that criminalize low-income people of color and they are pushing for more people to be locked up. Community members were continuously being picked up for petty offenses and being placed into the jail system and potentially the deportation pipeline. These policies and practices led to the separation of families whereas the cite and release ordinance allows individual to remain within the community. Also with cite and release, families do not

lose their mode of transportation. Previously cars were being impounded when individuals were being arrested due to a traffic infraction and they did not have the finances to get them back. Moreover, the ordinance will allow dependents to not be left without care, animals are not abandoned, students will not miss out on their education, individuals who work hourly jobs will not have to miss work and have to explain to their employer why. Cite and release also allows for individuals to get their affairs in order instead of being held pretrial. The following quote is in reference to the lack of support that low-income have to combat a system that suppresses them:

...I believe that there's a glaring lack of justice in what is called the justice system. There's many people who get exploited and abused within this system who are often forgotten, because these people who end up getting hurt by the legal system are people who usually don't have the resources to advocate for themselves, whether that be because of poverty or racial discrimination that makes their voice less loud in the system.

Jails have tried to mitigate the issue of overcrowding by outsourcing defendants, but many people do not agree to that being the solution. As low-level offenders are not a danger to society or themselves, there is a need to make sure due process is being done and these individuals are met with a fair system that does not ruin their lives because of a petty offense. For decades laws have worked against those who have a criminal record as they limit the ability to obtain certain jobs and apply for housing. From the stance of a public official, seeing the overwhelming number of the community members, hearing their testimonies, and debating with colleges to challenge their perceptions while crafting and compromising on policies, was beneficial. Yet a large part of society still views law enforcement in a punitive way

...reading the classics like Aristotle...some people still to this day think that if you break a law, the only way to know and feel in your heart that what you did was wrong was to face some sort of punishment. A lot of times it's sort of been

accepted in our society that if you're doing something illegal that there's something sort of defunct with you and this sort of this train of thought has existed since we've had the carceral system in America, where it's just a matter of removing unwanted people or immoral people.

From a more extreme viewpoint law enforcement is more apt to arrest versus issue a citation due to prejudice and biases which leads to a misguided sense of how we as a society should define justice. This can be tied to how officers are currently trained under the “warrior cop model”.

Going back to somebody like Plato where they have these ideas where there are warriors and there are scholars and all of us have our place in society and cops feel in some instances that they're protecting society from every wrong and every chance of doing wrong, and unfortunately they have been guided by historically racist and systemic principles.

These said principles are the reason as to why this organization made it their mission to push for the cite and release ordinance as the current laws, police officer discretion, and the injustices within the system did not equate to what the community found to be just.

***Building relationships.*** As a way to be effective in their message, grassroots organizations have consistently emphasized the importance of cultivating empowering relationships amongst public officials to increase the success in advocacy. Encouraging council members and recognizing the privileges amongst each other was an essential tactic used by this organization as there was a heightened important for members of office to be affirming in their stance: “...not just vote yes on the policy, but really advocate for it... and encourage them to fight to keep it a strong ordinance as it was written.”

Building as well as sustaining relationships amongst community members provides an opportunity where the power in numbers can help create change by forming

strong connections. It allows for organizations to show that they are a safe space and they value the communities efforts and participation through empowerment. As one participant explains:

...by making it a very open space for dialogue and a space where we wanted to make sure that anyone who volunteered had their needs met, they had water and food, and we just really fostered an environment where we were in this effort together.

Additionally, working with journalists has been effective as a way to keep the community informed but it takes a while to cultivate a relationship and build a sense of trust. Because important information being fed to them by the organization whether it involves cite and release data or retelling someone's personal story on how they have been mistreated by the legal system, it is important to get a sense of their own beliefs so that the articles do justice.

*Advocacy campaigns.* Campaigns generate visibility to the policies that are being challenged, such strategies involve engaging an audience in various teachings, civil rights trainings, and meetings to discuss the policy to increase awareness of the issue and public involvement. The grassroots organization was always coming up with new creative strategies for increasing their reach and their ability to engage the community.

Campaigns involved being present and filling the entire chamber at city council meetings, flooding council members' emails, displaying signs and T-shirts to show what the community is fighting for and demanding to see this change. As one advocate stated, "This is truly grassroots and community-driven pushing for policy change rather than electing someone and hoping they do the right thing when they're elected." Additional efforts included attending strategy sessions where they discussed different tactics and

who the organization was going to mobilize. Along with giving presentations on the Texas State campus to mobilize students, handing out flyers at the Texas State Quad, and getting the necessary amount of votes for progressive people to be elected into office.

***Community mobilization and outreach.*** Community mobilization is an empowering way to engage the community and allow them to come together to address their needs through building support alongside grassroots organizations. Strengthening support from the community allows organizations to provide guidance and encourage individuals to sign up for public comment to speak before the council in hopes of influencing local officials to pass certain policies. This essentially provides a sort of confidence through the grassroots organizations' teachings that community members have the power to influence policy when they advocate for what they believe to be just. The organization mobilized efforts by making posters outside of City Hall prior to the council's meetings, and having volunteers speak before the council by repeating over and over what their needs were and how cite and release would be beneficial. Strategies also included flooding the chambers and the organization, providing documents with talking points, and providing ideas for those presenting their speeches on why cite and release is a good model.

***Educating the public.*** Grassroots organizations can also generate an interest in the community by educating the public. This strategy allows for the opportunity to develop personal connections with members within the community and attract those who are more inclined to support this progressive reform. They engaged in public education teachings on what cite and release is and why it was necessary for the city of San Marcos to adopt the ordinance as it affects the San Marcos community in a more positive light

compared to the current laws and procedures. However, this was a movement that could not have made waves via the grassroots organization alone; the community united together to address the issues within the system as they relate to overcriminalization and police officer decision-making to create a lasting change. According to one of the advocates: "...the city never ever would have taken this upon themselves to initiate. It took a movement to get it done."

***The power of personal testimonies.*** Personal testimonies bring people together and create meaning behind the desired policy changes by using the voices of the people who have been directly affected. Personal testimonies bring value and empathy as we retold how current laws and policies have impacted many and how they have to live with this experience. While cite and release is an accomplishment, it does not go far enough, and there is a need to continue pushing to keep community members out of the judicial system. For example, one of the advocates recounted a story of an individual who did receive a citation but experienced mistreatment from the officers in court:

A few years ago, he was saying, "you don't just show up to your court date and it is a quick thing, it takes all day and you're just sitting there. The cops are just talking shit to you, on a lack of a better word, for hours." He was just sitting there and the cops were telling them to be quiet, for no reason. They were on a power trip just disrespecting them, and mistreating them, just making them feel inferior.

The state of Texas is behind in implementing progressive reform efforts that other states have already made. Many Texas jurisdictions are continuing to lock people up for small possessions of marijuana, an offense that over half of the states in the United States have decriminalized. As one advocate explained:

We think it's super important to first of all center the voices of people who have been directly impacted by the justice system... So we are very active in reaching

out and supporting family members and fixing the legal system and making sure that their voices are heard.

**Promoting officer accountability.** Additional efforts have been made towards repealing civil service laws for law enforcement which allows police to avoid being held accountable for their actions when they do not act in accordance with the law and uphold their responsibilities. In turn, the organization is providing their efforts towards taking the necessary steps that go beyond law enforcement officers only punishment being paid leave. Such efforts have included being a part of the meet and confer process where members will sit in on the police union contract agreement with the hope to ensure that accountability is built within the new framework for the police union contract. This proposal focuses around how the system failed, as one of the advocates mentioned,

There's basically this 180-day protection for police around their ability to be convicted for a crime that's not discovered and investigations within 180 days and they're let off the hook essentially, and so one of the things that we're proposing is that they extend this to 365 days.

Additionally, this centers around police officers being able to get away with crimes that ordinary citizens would be punished for so emphasizing the importance to accountability will decrease the number of people who are failed by the system.

**Opposition to reform.** When influencing policy change, grassroots organizations are met with individuals who oppose their reform efforts. The local organization describes how cite and release took a long time to catch on as an important part of reform effort when the Texas legislature passed the law back in 2007. Police viewed the policy as a means of taking away their discretion. However, their discretion was leading community members to be held pretrial with the inability to afford their release. One

advocate described the efforts made by opposers from the state-wide police union—an organization that is extremely organized and receives an immense amount of funding:

Immediately after cite and release was passed we saw that the statewide police union was pouring thousands of dollars against this campaign. Spending thousands of dollars on ads and newspapers against this campaign, because they knew that as soon as San Marcos became the first city to fight for this ordinance and get it passed, that cities all across the state we're going to follow suit and get the same thing past, which is the last thing that the statewide police union wants.

The local police union was vocal towards showing their intentions and perspective when it came to cite and release and they were involved with distributing intolerant ads that showed progressive council members' faces as mugshots. According to the councilperson, the retaliation no longer seemed political but more personal as they used their power to engage in spreading non-factual information and fear-mongering tactics by claiming that the council members in favor of the cite and release ordinance were also in favor of marijuana-related murders. But when discussing the initial reasoning behind the need for the ordinance as a means to be more effective through police officer decision-making and reducing the jails overcrowding, those points were overlooked by the opposers. Due to the preconceived notion of individuals who break the law who are viewed as morally debunked and in order to receive justice they are to suffer. There were additional issues related to the accuracy of the data provided by the San Marcos Police Department through their quarterly updates on cite and release. The data includes categories such as how many men and women are cited and the number of people of color who are cited, but there was an inconsistency when it came to numbers that involved Hispanics as they were being marked as white, causing the cite and release data to be skewed and unreliable information. Advocates recognized that there was a lack

of oversight and authority towards cite and release and those who favored qualified immunity allowed officers to continue to get away with unjust procedures while pushing back on the ordinance. Additionally, there was reluctance to implement cite and release because of the recurring discussion on the 40% failure to appear from individuals who were given a citation. In reality, when looking at the data, these percentages were a fear tactic, meant to scare the community. When looking at the raw numbers, the data showed that less than 10 people had a failure to appear, so the percentage did not represent the fact that this was a rare occurrence.

Furthermore, there was push back from people in office who favored the prosecution's side as they were making money from criminalizing community members. So there was some distortion of the truth not only from the police union but also from local officials. The media has also contributed by conditioning people to perceive people of color as criminals and when an individual is incarcerated, they are viewed as someone who needs to be isolated from society:

For that reason, people have kind of just accepted this belief and they've kind of found a sense of safety by having these criminals off of the streets. But the reality is that it's our neighbors, it's our community members, parents, brothers, and sisters who are being incarcerated and destroying their lives and the lives of the people around them...I think it's just a lack of understanding of the real human impact of it.

***Creating strategic partnerships.*** Grassroots organizations can increase their power through relationships and support from the community, but they can grant themselves an even stronger foundation through fostering partnerships with other grassroots organizations that fight for marginalized communities. Partnerships have brought enhanced expertise and resources that provide the organization to reach a larger audience

by implementing an online jail dashboard. This tool provides insight into the local jails, such as the defendant's length of stay, race, ethnicity, bail amount, offenses committed, and much more. There was also a great importance placed on the the dashboard's ability to break it down by Hispanic surname, especially in a community where Hispanics are the majority. By implementing this change, the dashboard could show how many Hispanic individuals are in jail relative to their overall population. Due to San Marcos being the first city in Texas to implement the cite and release ordinance their strategies have been recognized by other jurisdictions and to provide them with a framework on how to implement policy change. After the implementation of cite and release many cities such as Dallas, Laredo, San Antonio, and Houston began to implement the San Marcos model. For more rural counties there is a continuing issue with organizations lacking the staff needed to give all their energy otherwise it is difficult to stay sustainable which is what occurred in Laredo, Texas. However, other countries have been successful. For example, one of the advocates explains that in Houston, the Mayor issued a cite and release executive and specifically referenced the San Marcos model. The advocate further states, "It is really amazing to see our small town be you know mimicked by the fourth largest city in the nation."

*Future endeavors.* Getting policies passed at the local level can be less strenuous compared to at the state and national level due to organizations feeling unheard. By focusing their efforts at the local level they are able to pass laws in real time and see policies be implemented as the result of their efforts. This organization has been able to branch out into Caldwell County and the members envision being able to have a presence in Gomel and Guadalupe County as a way to fill in the gaps between San Antonio and

Austin where a lot of organizing is done. As one advocate stated, “Our primary focus is on just fighting for change at the local level, and especially in rural areas where you know they're often neglected.”

Conversations with the council member revealed that a logical progression has been discussed through the criminal justice reform committee, which focused its attention on mental health and its intersection with a lot of current issues. The council member explained that the communities needs a better understanding of “...where our mental health capacity is most constrained and understanding what partners we should be working with to have better diversion oriented policies in place so that we're not just putting people with a mental health issues in jail.” Furthermore, there is the push towards moving to cite and divert which will require an increase in mental health services and working with the county. Discussions have also included a law enforcement assistance diversion model where offenses do not end up on someone's record and to essentially mitigate people's interaction with the legal system while using referrals to other services, such as social workers and mental health workers, and community service. Additionally, the use of technology can help reduce the burden of just showing up to court for some individuals. The local level is also making strides towards decriminalizing marijuana in San Marcos as a ballot initiative. While cite and release is monumental it does not go far enough especially when it comes to possession of marijuana offenses.

To see an end to all legal penalties for low level possession is really important, and one really exciting thing about our ordinance that other cities don't have, that we got included in ours specifically is that it would also prohibit police from using the odor of marijuana for probable cause for search and seizure.

Frequently people were being stopped and if the cops smell marijuana by law they can search the car and all of the person's belongings. There are efforts towards getting a public defenders office for the entirety of Hays County because three quarters of the jail holds pretrial detainees who are unable to afford their bail. Establishing this office is in response to the court system assigning court-appointed attorneys to indigent defense, but because of high caseloads the individuals are not receiving effective counsel which contributes to people continuing to remain pretrial detainees.

### **Summary of Results**

The interviews provided essential historical context as to why Texas heavily relied on the use of bail and why it took so long for cite and release to catch on as a reform effort, even though local jurisdictions had the ability to enact such ordinances since 2007. The interviews revealed that San Marcos was willing to depart from the practice of arresting low level offenders and the issues that were occurring prior to the implementation of the ordinance. As well as inquiring about the most effective strategies that were used when advocating for this reform and whether these strategies were unique to the organization. While cite and release involves reconstructing police officer decision making and influencing local policies, the researcher inquired if opponents that have resisted the implemented of cite and release based on their own intentions and perceptions that have been formed on what they believe justice should look like. And as the new law was put into effect it provides a frame work for other jurisdictions to replicate within their own police practice, so the researcher questioned whether their strategies were sought out by other cities. Although cite and release aids in decreasing the pretrial population, the researcher wanted to determine, based on the research

participants' opinions, if there are other ways that the criminal justice system in San Marcos can be reformed and what are some of the biggest changes they hope to see in the coming years.

Like Mix (2011) and Martinez (2011), the interviews divulged on mobilizing community outreach to achieve sustainable outcomes that are implemented into new practices helps reflect the wants and needs of the community members. By encompassing strategies that produce long term effects and engaging the community to speak out this helps grassroots organizations push for change that represents the communities needs. Furthermore, grassroots leaders engaged in educating members of the community and provide training that is necessary in order for movements and policies to be adopted. Community mobilization has included lobbying and flooding the emails of council members, making posters that show what the community is fighting for, and signing up for public comment to place additional pressure on the need for policy change. The movements have focused on different strategies which include community needs assessments in order to have a successful outreach campaign that focuses on the issues that are consistently affecting community members in a way that is helping rather than hurting them.

As in Verfeman (2016) and Ranney et al. (2016), the interviews acknowledge that disparities exist all over whether it is throughout different organizations or systems. The current research highlights how starting at the first initial contact with law enforcement can occur based on racial biases. This is consistent with the interviews conducted as there is an underlying push to acknowledge these disparities that are occurring and how these reform efforts bring to light systems that are disproportionately targeting and treating

predominantly people of color in a manner that is not consistent with how their white counterparts are being treated. Additionally, the interviews for this study found that over criminalization towards a specific group of individuals is consistent with how the criminal justice system has produced a new form of slavery and one of the reasons why it has been placed in the forefront that has motivated reform movements. Grassroots organizations want to touch on how the system operates in a manner that is removing immoral individuals from society due to predisposed biases and misguided judgements.

Comparable to Godwin et al., (2011) and O'Leary (2017) the interviews highlighted accountability and how it is heavily relied upon when it comes to grassroots organizations and their motivations towards reform. This is essentially important because of discretionary power and there is ultimately a need to improve different aspects of the system including individual conduct when it comes to issuing citations or executing an arrest as stated in the interviews for this research. But also the importance of protecting the communities and ensuring that each citizen is being treated fairly and that law enforcement are to be held accountable for policies and practices that are discriminatory. Accountability repairs the harms and fosters stronger relationships or else by continuing to protect reputations conflict and illegitimacy will flourish. This was important for this study in terms of activist work and throughout the interviews the advocates stressed that the data be made public information that accounts for the demographics of the individuals arrested and the number of people in jails so that if there are issues the local grassroots organization can push to mitigate future wrongs.

Consistent with Christens (2010) and Levenshus the interviews revealed that an element used through grassroots activism was forming relationships with others which

include journalists, organization allies, political figures, and the community. As a strategic organizational initiative building personal relationships is essential in order to create a space that allows for open dialogue and needs being met. By working alongside different organizations it allows for more accurate and reliable data to be collected and more funding to be placed towards the movement. Relationships between community members embrace the personal testimonies and the voices of those who have been deeply affected. Similarly, cultivating relationships with journalists is effective in order to build trust and ensure that the data is being presented in a manner that does justice. With individuals who are in office, relationship building helps push for policy change and understanding their tactics while also utilizing them as advocates by affirming their stance and using their position in the most effective way. Constructive relationships that are formed between community members, grassroots organizations, and government leaders is a collaborative approach that is necessary as it can lead to policy change and more sustainable decisions for the community. But it can also improve the efficiency and transparency of informed decisions by recognizing the needs and interests of the community.

The interviews, consistent with Dumitrica & Felt (2010) and Harris & Morris (2017), revealed that with grassroots movements opponents who oppose the efforts being made will always be present. Many times there is push back when it comes to implementing change because this culture is embedded in those who are a part of it. Throughout the interviews there was a consistent trend in how preconceived notions and biases influence decision-making, along with training that embraces a mentality that says no one who does wrong should be given leniency in order to ensure community safety.

This study also found that discretion is a major player when it comes to decision-making and by restricting that and placing new reforms that include accountability there has been a push back because of liability and the possibility that negative perspectives will form towards those with power. Grassroots organizations often dealt with opposers by countering their misinformation that is used to scare the public which has fed more into the issue of government distrust. Additionally, many individuals oppose change due to favoring the old way of handling situations and trusting the media which has conditioned those to believe certain things and restricts people from understanding the human impact that current policies have on other lives. So in the interviews for this study opponents have consistently threatened and attacked those who push for change because it will limit their power and will force authority and oversight on them.

#### **IV. DISCUSSION**

This research sought to review the state of reform efforts in Texas, especially the development and use of a cite and release ordinance in San Marcos, TX. Specifically, it highlighted how the implementation of that reform led to racially biased implementation by law enforcement and documented the actions a local grassroots organization took to counter that bias. Their activism helped establish a mandatory cite and release law in the city, which ultimately removed law enforcement discretion to issue citations in lieu of arrests. The stories told in the in-depth analysis provide others with the information to achieve their social activism goals at the local level.

No story of societal reform, however, is complete without consideration of the future. Indeed, there is always more work to be done. Thus, this thesis closes with a

discussion orientated with a look toward the future of pretrial reform in Texas so that those reading this study can be motivated to pursue the change necessary to end criminal injustices and, ultimately, an end to mass incarceration.

## **The Future**

Future reform efforts are continuing to move in the direction of addressing the issue of defendants being unlawfully detained due to the inability to afford their release. Reformers within San Marcos have slowly highlighted the importance of establishing a public defender's office to ensure defendants who are financially unable to retain their representation, by law, will be appointed a public defender to provide the defendant with quality representation. However, there has been a lack of hurriedness and a low number of offices in Texas. Public defenders' offices are nonprofit organizations or government groups that provide funding for individuals being accused of a capital murder offense all the down to minor offenses and appeals, and for defendants in need of legal defense (Public Defender Primer, 2021).

Although Tarrant County's incarceration population is growing, the county lacks a public defender's office, and the county has yet to determine if an office will be constructed even though public officers are in support. The Tarrant County District Attorney's office does consist of full-time investigators, but the resources and time provided to the indigent defense are very limited, about 8 million dollars less than private attorney, and the funds cannot be equally distributed due to the high case load (Brown, 2021). The jurisdiction has also created a staff that consists of individuals who screen and interview the detainees after their hearing with the magistrate to guarantee that a defense attorney will be provided to those who are unable to afford one (Tarrant District Court

Plan, 2021). This was due to past policies that led a significant number of people to being detained, and a growing number of caseloads being placed in the hands of the overworked and understaffed indigent defense workers (Brown, 2021). In 2018, 474,000 cases were left to 19 public defenders' offices that around 40 counties in Texas use to some extent, but a large majority of the counties contract their work with private lawyers (Satija, 2019). While there has been an increase in oversight and funds from the Texas Indigent Defense Commission, Texas is still one of the states that is typically the lowest when it comes to allocating those funds (Satija, 2019).

An additional issue was the oversight of indigent defense by judges who would determine the case and the number of cases that each lawyer would be responsible for handling, their pay for each case, and the motions of the case. The overall quality when it comes to indigent defense receiving appropriate and effective defense services have been unfulfilled in many states across the U.S. Public defenders offices state wide have struggled to uphold their legal responsibilities and ethical obligations to their clients as they are having to handle an exorbitant amount of cases which goes against the Supreme Court ruling of *Gideon v. Wainwright*, where defendants have the right to effective legal representation. Furthermore, a causal relationship can be found between the states underfunding of Texas' defense offices and the limited resources which leads to defendants more likely to remain detained pretrial and receive a conviction especially with a lengthier and harsher sentence if the indigent are persons of color (Satija, 2019). In addition to the lack of successful indigent defense programs adverse consequences are disproportionately affecting people of color who are in dire need of qualified counsel to ensure their Sixth amendment right. Due to the deprivation of resources it restricts the

councils ability to conduct interviews properly and effectively for each client, file appropriate motions, seek pretrial release, nor can there be successful negotiations with the prosecution (Gottlieb, 2021). When representation is inadequate due to attorneys being overburdened by high caseloads, studies have proven that capital murder cases and death penalty case deadlines are being missed because there is a slow processing of cases, defendants are being left in jail longer than anticipated, and defendants are missing the opportunity to appeal. A 2015 study concluded in Texas in order to provide effective defense, attorneys can handle either 226 misdemeanor cases, 128 felony cases, or a combination of both, but those numbers must be approved (Satija, 2019). However, many defense attorneys are handling cases two to four times that amount. Considerable evidence has proven that these difficulties encountered by the lack of resources for indigent defense typically do not affect white offenders due to societal perceptions that perceive whites to associate with stronger community ties or the offense doesn't define their true character. On the other hand, perceptions of minority offenders can be strongly held throughout the court. By providing the client with a strong defense it can change the courtrooms views. Poverty and socioeconomic class for Black and Latinx offenders can limit the resources public defenders try to highlight on, which includes having a consistent job or community ties. Additionally, biases held by defense attorneys can affect the amount of time being spent on a minority defendant's case. Racial differences are also present when reflecting on the number of cases being handled by each public defender.

Furthermore, the counties in Texas that use a public defender's office are not all the same size in terms of population or the needs of the defendants in that county. But

these offices ensure quality performance, accountability, and appropriate resource distribution. On a national level studies have shown public defenders to have better case outcomes and a significantly reduced time that is needed for each case, and the probability towards a conviction has decreased 3%, and the actual sentence length for federal cases has gone down 16% and states cases by 26% (Texas Indigent Defense Commission, 2021). Although the lack of public defenders' offices in every jurisdiction is a prolonged issued that is still occurring in the present day, the 2001 Texas Legislation adopted the Texas Task Force on Indigent Defense, now named the Texas Indigent Defense Commission, due to these discrepancies towards handling defendants' cases majority who are people of color and their ability to access effective counsel. Data from the Census of Public Defender Offices and the State Court Processing Statistics found can support the discrepancies towards a defendant's race as they found "The average Black defendant is charged in a county that has 457 cases per public defender and 785 cases per support staff, while the average Latinx and White defendant have 384 and 400 cases per public defender and 655 and 603 cases per support staff respectively. (Gottlieb, 2021)".

Following Texas' Fair Defense Act Lubbock County's Public Defender's Office grew to influence other counties who for a long-time put-up resistance to provide quality defense for the indigent. The office operates with a staff that consists of mental health professionals and other trained specialists in order to provide effective representation for each client (Wilbanks, 2019).

Following their efforts Travis County adopted a private public defender's office called the Capital Area Private Defender Service Office to improve oversight, data

collection, and case monitoring by relieving overworked attorneys and to meet the legal and ethical requirements to effectively represent the indigent. Their efforts have been able to dismiss a little less than half of the mental health cases (Fair Defense Report, 2000).

Similarly, Harris County's Public Defender's office established back in 2011 has come to handle, "felony, misdemeanor, Juvenile, appellate, mental health, magistrate in, and post-conviction cases", and since their recent reform efforts within the past decade mentally ill defendants charged with misdemeanor crimes were having their cases dismissed at a rate five times higher than defendants who received assigned counsel to represent them (Texas Indigent Defense Commission, 2021).

In 2005, Bexar County built an office that consisted of six divisions, including, "Appellate, Mental Health - Misdemeanor, Mental Health - Felony, Mental Health - Civil, Magistration and Misdemeanor Trial" to represent the indigent defendants and appeals cases (Public Defenders Office Bexar County, 2022)

To conclude, Texas has the ability to take the necessary steps to reform the criminal justice system that disproportionately impacts the poor and people of color. This heavy reliance on incarceration has done more harm than good. Researchers are continuing to see this is a system that is damaging communities and is ruining individuals' lives. These are not dangerous offenders, these are individuals who have been accused of petty offenses who are by law innocent until proven guilty. Texas' pretrial population is continuing to grow, so necessary measures need to be taken to keep low-level nonviolent offenders from going to jail and instead use alternatives to incarceration. The state's reform efforts in some jurisdictions can be used as a model for

others in Texas. Such reforms include reducing or eliminating cash bail so low income defendants will no longer have to suffer the consequences of being detained pretrial due to unaffordable bail. The system has acknowledged that cash bail is a discriminatory practice that is contributing to the large pretrial population in Texas, so it needs to be fixed. As an alternative to release, personal recognizance bonds allow defendants to be released into the community, where defendants are not penalized and unlawfully detained because of their financial situations. Additionally, increasing the use of pretrial services is important and can be a valuable resource for courts to sentence offenders to programs and services within the community while providing supervision. With the high numbers of low income and people of color who are sitting in the Texas jails there is dire need for criminal justice reform. These changes can help address the harsh policies that disproportionately affect communities of color along with addressing the current policies and practices that are racially biased and increase the wealth-based discrimination. The system needs help and while these are a few efforts that can be made, it will affect many people who are currently sitting in the jails pretrial because they are poor.

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**Appendix A.**



*The rising STAR of Texas*

In future correspondence please refer to 8212

March 8, 2022

Gabriella Pauline  
Merschel Texas  
State University  
601 University Dr.  
San Marcos, TX  
78666

Dear Gabriella:

Your application titled, '*Pretrial Reform Efforts and Their Use in Texas*' was reviewed by the Texas State University IRB and approved. It was determined there are: (1) research procedures consistent with a sound research design and they did not expose the subjects to unnecessary risk. (2) benefits to subjects are considered along with the importance of the topic and that outcomes are reasonable; (3) selection of subjects are equitable; and (4) the purposes of the research and the research setting are amenable to subjects' welfare and produced desired outcomes; indications of coercion or prejudice are absent, and participation is clearly voluntary. In addition, the IRB found you will orient participants as follows: (1) verbal informed consent is required; 2) Provision is made for collecting, using and storing data in a manner that protects the safety and privacy of the subjects and the confidentiality of the data; (3) Appropriate safeguards are included to protect the rights and welfare of the subjects; (4) Participants will not receive compensation.

**This project was approved at the Exempt Review Level  
This project does not involve in person research activities with participants**

**Check the IRB website frequently for guidance on how to protect participants. It is the expectation that all researchers follow current federal and state guidelines. Approved research activities did not indicate face-to-face research with human subjects.**

The institution is not responsible for any actions regarding this protocol before approval. If you expand the project at a later date to use other instruments, please re-apply. Copies of your request for human subject's review, your application, and this approval are maintained in the Office of Research Integrity and Compliance.

Report any changes to this approved protocol to this office. Notify the IRB of any unanticipated events, serious adverse events, and breach of confidentiality within 3 days.

Sincerely,



Monica Gonzales  
IRB Compliance Specialist  
Research Integrity and Compliance  
Texas State University  
CC: Ashley Nichole Arnio, Ph.D.

OFFICE OF RESEARCH AND SPONSORED PROGRAMS  
601 University Drive | JCK #489 | San Marcos, Texas 78666-4616  
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*This letter is an electronic communication from Texas State University-San Marcos, a member of  
The Texas State University System.*