



# Monitoring the Misdemeanor Bail Reform Consent Decree in Harris County, Texas

BY BRANDON L. GARRETT & SANDRA GUERRA THOMPSON

**M**aranda ODonnell was driving to her mother's house to pick up her four-year-old daughter when she was stopped by police and arrested for driving with a suspended license. As was the practice in many counties, Harris County judges at the time set bail according to a fixed cash bail schedule, with no regard to ability to pay or whether a person posed a public safety or flight risk. A judge set ODonnell's bail at \$2,500.<sup>1</sup> Like tens of thousands of others, she could not afford to make bail and was detained in jail. If she'd had access to the \$250 (nonrefundable) fee that a bondsman would typically charge, she would have been released within a few hours, like so many people of means. As a poor person, however, she remained locked up solely on account of her poverty. She could not buy her release from jail.

Just like ODonnell, who joined with other plaintiffs to challenge the Harris County bail system in federal court, people across the country face bail systems that have operated in a similarly unfair fashion. For people with

the means to pay money bail (or to pay ten percent of the bail as a non-refundable fee to a bail bondsman), an arrest has minimal disruptive effect on their lives. Within hours of an arrest, a person with money can walk out of jail and return to her job or to care for her children. The trauma and danger of time spent in jail is also minimal. But for the poor person, an arrest for a minor crime can have devastating effects. Those effects are heightened during and after COVID-19, as jails have become some of the nation's largest epicenters of the pandemic.

We have now served for one-and-a-half years as court-appointed monitors in the ODonnell case. We write to describe the litigation and to offer our perspective on how the misdemeanor bail system in Harris County has changed since that litigation began.<sup>2</sup> The ODonnell Consent Decree that resulted from the lawsuit has the potential to set an important model for pretrial reform. We describe what that consent decree provides and the work to come.

## THE MISDEMEANOR BAIL REFORM LAWSUIT IN HARRIS COUNTY

In 2016, ODonnell and other plaintiffs charged with misdemeanors brought a federal class action against Harris County and moved for a preliminary injunction to end the practices that led to these detentions. The complaint noted that, on a typical night, 500 people arrested for misdemeanors were detained in the Harris County jail,<sup>3</sup> and that, between 2009 and 2015, 55 people who could not afford bail died in Harris County jail while awaiting trial.<sup>4</sup> It bears reiterating that these people were not in jail serving a sentence after being convicted of a crime — they were merely accused of misdemeanor offenses and awaiting their day in court.

At the time ODonnell filed the lawsuit, arrestees in Harris County appeared before magistrates without the assistance of attorneys to speak on their behalf. Nor were they allowed to speak in their own defense. They were not informed of their rights. In hear- ▶

ings that typically lasted for a minute or two, magistrates almost invariably set monetary bail amounts according to a fixed bail schedule, without regard to a person's ability to pay.<sup>5</sup> People like O'Donnell, who were too poor to post a financial bond, languished in the Harris County jail. And studies show that holding low-risk people in jail, even for just a day or two, significantly increased their likelihood of committing another crime after release.<sup>6</sup> The system made the public less safe by needlessly locking up poor people.

The unfairness of the Harris County misdemeanor bail practices also exacerbated racial disparities in the Harris County jail population. As the federal district court found, a 2011 study showed that in Harris County, 70 percent of white misdemeanor arrestees obtained early pretrial release from detention, but only 52 percent of Latino misdemeanor arrestees and 45 percent of African American misdemeanor arrestees did.<sup>7</sup>

While convictions for nonviolent drug offenses have driven mass incarceration in federal and state prisons, the money bail system has driven it in county jails, wasting taxpayer dollars to lock up the poor and, disproportionately, racial minorities, for no reason other than their inability to pay. Chief Judge Lee H. Rosenthal, of the United States District Court for the Southern District of Texas, relied on a comprehensive set of factual findings in concluding that "Harris County's [bail] policy and practice violates the Equal Protection and Due Process Clauses of the United States Constitution."<sup>8</sup>

## THE O'DONNELL CONSENT DECREE

After three years of litigation, including an appeal to the U.S. Court of

**Studies show that holding low-risk people in jail, even for just a day or two, significantly increased their likelihood of committing another crime after release. The system made the public less safe by needlessly locking up poor people.**

Appeals for the Fifth Circuit, the parties reached a settlement resulting in a landmark consent decree, approved on Nov. 21, 2019.<sup>9</sup> The O'Donnell consent decree represents the first federal court-supervised remedy governing bail. It sets forth a blueprint for creating a constitutional and transparent pretrial system to protect the due process and equal protection rights of misdemeanor arrestees. The terms of the decree envision transformative, lasting change.<sup>10</sup>

First, the decree sets out categories of arrestees who are entitled to a prompt release. It incorporates the new Amended Local Rule 9 of the Harris County Criminal Courts at Law,<sup>11</sup> which had been adopted by the county criminal court judges — many of whom had won their first elections as judges running on campaign promises to improve the bail system.<sup>12</sup> The rule rescinded the prior secured money bail schedule, provided for a new set of procedures, and required the prompt release of misdemeanor arrestees, except for six "carve-

out" categories of offenses. Persons arrested for misdemeanors that do not fall within the six categories of carve-out offenses must be promptly released under a personal bond or a General Order Bond.<sup>13</sup> Persons arrested for the six types of carve-out offenses must receive a hearing.

Second, the decree requires far more robust procedural protections at misdemeanor bail hearings, mandating that judges make their findings "by clear and convincing evidence" that the arrestee has the ability to pay the amount required, or does not have that ability to pay but that "no less-restrictive condition or combination of conditions" could "reasonably" prevent flight from prosecution and protect the safety of the community.

A hearing officer now must explain to an arrestee:

I cannot order that you be detained or require you to pay an unaffordable amount of money bail as a condition of release unless I make a finding by clear and convincing evidence that no other condition or combination of conditions is adequate to reasonably assure public safety or to reasonably protect against flight from prosecution.

Further, a hearing officer must explain:

I must identify and explain the reasons for my decision and the evidence and information I relied on in making that decision on the record, so that you can challenge the decision at a later date. Requiring unaffordable money bail or ordering you detained must be the last resort, and I will order detention after this hearing only if I make a finding that there are no alternatives for reasonably assur-

ing the safety of the community and reasonably protecting against your flight from prosecution.

That requirement reflects the constitutional standard, drawing on the U.S. Supreme Court's ruling in *United States v. Salerno*, which held that pretrial detention was permissible under the federal Bail Reform Act of 1984 only where the government provided a robust, adversarial, on-the-record hearing and a judge made a finding by clear and convincing evidence that detention was necessary.<sup>14</sup> It is also consistent with prior cases that held that, under the Due Process Clause, when the government seeks to detain a person presumed innocent and not yet convicted of any crime, and seeks to deprive that person of liberty, it must do so only based on a strong evidentiary showing.

Importantly, the decree provides that all persons charged with misdemeanors are guaranteed the right to a public defender or other counsel at a bail hearing, and that such counsel shall have access to the client and the discovery needed to prepare for the bail hearings.<sup>15</sup> Harris County has now implemented a system for electronic discovery to ensure that counsel has the documents needed to prepare before the hearings.

The decree provides that a person is "indigent," and cannot be assessed any fees associated with bond or conditions of release, if that person lacks the ability to pay any amount of secured bail and if they struggle to meet basic necessities. "Indigency" includes individuals who are deemed indigent under indigent defense guidelines; who are homeless; who themselves or whose dependents receive public assistance; whose household income does not exceed 200 percent of the

federal poverty guidelines; and who are currently incarcerated.<sup>16</sup>

Third, following this pretrial stage, the decree provides for improved procedures upon release, including an improved approach towards scheduling and notifying people regarding court appearances. People who have misdemeanor cases now benefit from a clear and consistent court appearance policy, which sets forth options for waiving or rescheduling appearances. Further, Harris County is now implementing a new court notification system, studying the causes of nonappearance, and conducting trainings on the decree policies. Harris County has retained the National Association for Public Defense to study and suggest improvements in standards for indigent defense in misdemeanor cases.

Fourth, the decree provides that robust data will be made available, including information on misdemeanor pretrial release and detention decisions, demographic and socioeconomic information on each misdemeanor arrestee, and also historical data dating back to 2009.<sup>17</sup> The decree provides for public meetings and input, county reports published every 60 days, and online information regarding implementation of the decree.<sup>18</sup>

Finally, the decree calls for a monitor tasked with a set of responsibilities to evaluate decree compliance and to approve a range of decisions to be made as the decree is implemented. On March 3, 2020, we were honored to be appointed to serve as the monitors for the consent decree. We have since provided two reports to Chief Judge Rosenthal at the conclusion of each six-month period during our work. Here, we provide an overview of our work and of our findings during our first year.<sup>19</sup>

## OUR MONITORING WORK

### Implementing the Consent Decree

The principal task of this monitorship is to report to the court as we oversee and support the Harris County officials who are implementing a new pretrial justice system. The goals of that system are to restore the public's trust, safeguard constitutional rights, and in fact accomplish the twin aims of bail: to keep the community safe and promote the integrity of the judicial proceedings by preventing people from fleeing justice. Thus, as the decree summarizes in its introduction, the decree "is intended to create and enforce constitutional and transparent pretrial practices and systems that protect due process rights and equal protection rights of misdemeanor arrestees."<sup>20</sup>

The entire first year of our work was marked by the COVID-19 pandemic, which has upended all of our lives. The pandemic has added a new deadly risk for people detained in a custodial facility. The first COVID-19 case was reported in the Harris County Joint Processing Center on March 29, 2020, shortly after our appointment as monitors. The Harris County Sheriff's Office (HCSO) adopted a range of precautions in response to the pandemic. Nevertheless, the sheriff reported on Jan. 12, 2021, that the "jail is bursting at the seams," and "new inmates who test positive have no place to quarantine because the surveillance tank is full and the general population is grid-locked." Additionally, "[s]ix inmates and two HCSO staff members have died from the virus."<sup>21</sup> The HCSO administered over 25,000 COVID-19 tests. From March 29, 2020, through January 2021, a total of 1,558 COVID-19 positive inmates were released from the jail, of which 49 were charged with misdemeanors only, and of which 1,115 ►

were charged with a misdemeanor and a felony offense. As of Jan. 27, 2021, of the 1,082 COVID-19 positive persons in the jail, 12 persons were COVID-19 positive and charged solely with a misdemeanor. An additional 286 were charged with a misdemeanor and a felony offense.<sup>22</sup>

Despite the crisis posed by COVID-19, which has meant that many county administrators have been working remotely, remarkable progress has already been made as a result of Rule 9 and the consent decree. A new system of electronic discovery was created to provide information to defense counsel prior to bail hearings; new court appearance rules have been implemented (with court appearances and setting types captured beginning Dec. 5, 2020); and trainings on the misdemeanor bail process have begun (on Dec. 11, 2020). In addition, a new misdemeanor pretrial-disposition form that better reflects the consent decree process was adopted and implemented by criminal court judges.

### **Empirical Findings**

In Harris County, secured money bonds are no longer required for most misdemeanor cases under Rule 9. Most people are released promptly without a hearing. As a result, the number of misdemeanor arrestees who are released has dramatically increased, and the reliance on cash bail for and detention of those who lack the resources to make bail has dramatically decreased. For example, we find that in recent years a larger proportion of persons arrested for misdemeanors have been released from jail either on the same day or one day after being booked into jail. In more than 80 percent of the cases since 2017, people arrested for misdemeanors spent two days or fewer in jail before their release (80 percent

in 2017, 82 percent in 2018, 85 percent in 2019, and 86 percent in 2020). The largest reductions in the length of pretrial detention are observed in 2017 and 2019, the years when the ODonnell preliminary injunction and Rule 9 became effective, respectively.

The reforms likely had an important impact on the types of bonds approved for misdemeanor arrestees, substantially reducing arrestees' financial burdens. Prior to the implementation of Rule 9 in 2019, most misdemeanor cases did not involve a personal or General Order Bond. This meant that most people were held on secured bonds, so that they could not obtain release unless they had the money to pay a fee to a bail bondsperson. In 2015, virtually every misdemeanor case (92 percent) had a secured money bond set. In 2020, that share was down to just 14 percent. Most people, therefore, did not have to pay cash up front to obtain a release in a misdemeanor case. As a result, there has been a stunning drop in the cost of bonds set by the courts since the implementation of Rule 9, from \$135 million in 2015 to \$13 million in 2020 — one-tenth of the previous amount.

These reforms have resulted in far more people released to the community, who would otherwise have been jailed based on inability to pay, and they have also benefited public safety. The rate of repeat offending has remained largely stable — and appears even to have slightly declined. We have observed, in general, slightly declining rates of individual people arrested for misdemeanors who repeat-offend in each year from 2015 to 2019 (from 23.4 percent in 2015 to 20.5 percent in 2019). Recall that the misdemeanor bail reforms took effect in early 2019. We do observe a slight increase in the share of misdemeanor cases that are followed by a new felony case (from 10.7 percent

in 2015 to 11.4 percent in 2019). Nor did the number of “frequent flyers” change. Only about one percent of the people arrested for a misdemeanor offense in 2019 were re-arrested on four or more separate occasions within 365 days, a rate that has not substantially changed from 2015 to 2019. We also observe that people arrested who had mental-health flags and who were recorded as homeless were about twice as likely to be re-arrested than other people arrested. We are concerned that so many persons in vulnerable populations cycle through the misdemeanor system and are continuing to study that problem.

Previously, the share of Black arrestees who bonded out (through either cash or personal bonds) was much lower than white arrestees, especially in 2015 and 2016. But since the adoption of Rule 9 in early 2019, this disparity has almost entirely disappeared. A gender gap, with female persons more likely to bond out in earlier years, has also gradually declined over time. We have seen little change from 2015 to 2019 in the sex and racial distribution of misdemeanor arrestees, but we have seen a gradual increase in the share of Latinx misdemeanor arrestees.

Much of the central architecture of misdemeanor bail reform is now in place. However, important work remains as we assist county officials in reaching their goal to build a model system for misdemeanor pretrial justice. Implementation of a range of policies will occur in the months ahead, including court appearance notification and scheduling options, indigent defense planning, and ongoing training. Also forthcoming are a series of additional data analyses, including regarding court appearances, merits outcomes, and further analysis of recidivism outcomes, together with feedback on Harris County's work creating a



fully functional data portal for misdemeanor cases. We continue to conduct cost-benefit analyses of this bail reform undertaking in Harris County.

### **Bail Reform in Harris County, Texas, and Nationally**

Ironically, although Harris County has experienced excellent early results in transforming its misdemeanor bail system, some local law enforcement officials have expressed dismay at the changes, pointing to examples of individuals who committed murders while out on personal bonds or on low money bonds after an arrest for a prior violent crime.<sup>23</sup> We note that homicides and shootings have gone up in a wide range of jurisdictions across the country. At the same time, in Harris County, as in many other jurisdictions nationwide, a wide range of crimes, including other violent crimes like simple assault, have also declined during the pandemic.<sup>24</sup> These patterns during the pandemic year will no doubt be much studied by criminologists. One thing is clear: The national spike in firearms violence cannot likely be attributed to any particular localities' practices or policies.

Some elected officials have made disparaging statements about the new bail system, which has made it more difficult for us as monitors to help the community understand that the changes brought about under the consent decree have clearly produced positive results. What detractors of the new bail system seem to misunderstand is this: The consent decree applies only to misdemeanor cases. For people charged with serious violent crimes in felony cases, there has been no "bail reform." Further, under the consent decree, individuals charged with specific categories of serious misdemeanors are not automatically entitled to release on personal bonds.

**These reforms have resulted in far more people released to the community, who would otherwise have been jailed based on inability to pay, and they have also benefited public safety. The rate of repeat offending has remained largely stable — and appears even to have slightly declined.**

Serious misdemeanor cases (as is generally also true in felony cases) must have bail decided at hearings before magistrates who have the full panoply of options that have always been available: personal bonds, secured financial bonds, and other conditions of release such as protective orders, GPS monitoring, and the like. For those serious misdemeanor cases, judges have the authority to require secured financial bonds at whatever amount they deem appropriate. Indeed, the consent decree actually addresses the dangers of a cash bail system, whereby individuals who pose a public safety threat can nevertheless pay to make a cash bond, obtain release, and then proceed to re-offend. Thus, the complaints about "bail reform" are misplaced, and are really complaints about recent decisions made by magistrates and judges

in setting bail under the same cash-bail oriented rules that have existed for many years.

At the state level, the concerns expressed regarding bail have spurred the Texas Governor to make fixing the state's "broken bail system" a major priority for the current legislative session.<sup>25</sup> Presently, Texas legislators are considering two bills that would reform the bail system in dramatically different ways. One bill would reduce the state's reliance on financial bonds and move the state toward risk-based bail determination, utilizing validated risk-assessment instruments and disallowing fixed bail schedules. At the same time, this bill would broaden preventive detention by increasing the list of charges for which bail can be denied, as well as disallowing personal bonds for a broader list of more serious charges.<sup>26</sup>

By contrast, the other bill would instead explicitly allow the use of fixed bail schedules, eliminate the authority of magistrates to issue personal bonds to most people, and make it hard for charity bail organizations to operate in the state.<sup>27</sup> This bill would require pretrial hearings for large numbers of persons across Texas, who under current court rules would be eligible for prompt release. This bill would have the effect of moving the state toward a broader use of secured financial bonds across the board. If adopted, this bill would impose enormous costs on hearing officers, judges, and local governments. The bill would also conflict with some of the terms of the O'Donnell Consent Decree. Concerns about this conflict have motivated the Harris County Commissioners Court to vote (along party lines) to condemn the bill.<sup>28</sup> The County's Justice Administration Department has testified against the bill, positing that the bill could "expos[e] Harris County to costly litigation" and ►

noting that the ODonnell litigation has already “cost Harris County taxpayers \$60-\$100 million.”<sup>29</sup>

It remains to be seen, as of this writing, whether the state will adopt legislation that will pose a conflict with the rules required under the federal consent decree. Regardless of what legislation the Texas legislature may adopt, we expect that Harris County will continue to follow the criminal court rules for misdemeanor bail as required under the consent decree. But we watch with concern as the legislation moves forward.

There are lessons to be learned nationally from the Harris County experience. Indeed, other jurisdictions have looked to the ODonnell Consent Decree when considering how to improve their own pretrial systems, or they have adopted similar models for similar reasons. In February 2021, Illinois lawmakers adopted a statewide reform, titled the “Illinois Pre-Trial Fairness Act,” as part of a package of criminal justice measures. The statute adopts the same standard set out in the ODonnell consent decree, the *Salerno* rule that: “All defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence” that the person poses a specific public safety threat or a flight risk.<sup>30</sup> Further, prior to pretrial hearings, the state must provide discovery, including copies of the person’s criminal history and any statements by the defendant to be relied on by the state, as well as any police reports. A person has the right to counsel at such hearings. The Illinois approach very much follows the approach adopted in this consent decree, and it will be implemented over the next two years.

We also note that the constitutional approach underlying the ODonnell con-

**The American Bar Association has recommended since 1998 that counsel be present at all bail hearings, and in 2007 recommended a clear and convincing evidence standard for pretrial decision-making. It is noteworthy, however, that these recommendations are only recently being implemented in a comprehensive way in large jurisdictions.**

sent decree has recently been cited by the California Supreme Court in a similar case.<sup>31</sup> In its ruling, the California court found a due process violation in the use of money bail without taking into account the defendant’s ability to pay and without considering whether less-restrictive alternatives could adequately protect the public, the victim, and ensure a person’s appearance in court.<sup>32</sup> Further, a preliminary consent judgment in a civil rights case brought in Alamance County, North Carolina, has also adopted key elements mirroring the ODonnell Consent Decree’s approach, including the use of a *Salerno* standard.<sup>33</sup>

Of course, the ODonnell Consent Decree itself reflects preexisting mod-

els. For example, the American Bar Association has recommended since 1998 that counsel be present at all bail hearings, and in 2007 recommended a clear and convincing evidence standard for pretrial decision-making.<sup>34</sup> It is noteworthy, however, that these recommendations are only recently being implemented in a comprehensive way in large jurisdictions.

## CONCLUSION

In sum, the misdemeanor bail system in Harris County has already undergone a remarkable transition. This model includes a broad set of categorical entitlements to release, far more robust hearing procedures, and supportive services upon release. The empirical findings after the first year of monitoring show positive trends: more arrestees released pretrial without financial conditions attached, a stable or slightly reduced rate of reoffending by those released pretrial, and a reduction in the racial and gender disparities in pretrial releases. We are grateful for the opportunity to serve as court-appointed monitors as this transformation continues in the years ahead.

<sup>1</sup> Class Action Complaint at 1, *ODonnell v. Harris Cty.*, No. 4:16-cv-01414 (S.D. Tex. May 16, 2016), ECF No. 3; Meagan Flynn, *Group Sues Harris County Over Bail System that Keeps People in Jail Just Because They’re Poor*, HOUS. PRESS, May 20, 2016, <https://www.houstonpress.com/news/group-sues-harris-county-over-bail-system-that-keeps-people-in-jail-just-because-theyre-poor-8417193>.

<sup>2</sup> This piece substantially updates an earlier piece published in the *Houston Lawyer* in Fall, 2019. Our second monitor report, dated March 3, 2021, is available here: <https://sites.law.duke.edu/odonnellmonitor/wp-content/uploads/sites/26/2021/03/ODonnell-Monitor-Second-Report-v.-31.pdf>.

<sup>3</sup> Class Action Complaint, *supra* note 1, at 2.

<sup>4</sup> *Id.*

<sup>5</sup> Memorandum and Opinion Setting Out Findings of Fact and Conclusions of Law, *ODonnell v. Harris Cty.*, 251 F. Supp. 3d 1052, 1100-01 (S.D. Tex. Apr. 28, 2017), ECF No. 302 (“The court finds



**BRANDON L. GARRETT** is the L. Neil Williams, Jr. Professor of Law at Duke Law School and director of the Wilson Center for Science and

Justice. A leading scholar of criminal justice outcomes, evidence, and constitutional rights, Garrett conducts research and teaches in the areas of forensic science, eyewitness identification, corporate crime, constitutional rights and habeas corpus, and criminal justice policy.



**SANDRA GUERRA THOMPSON** is the Newell H. Blakely Professor of Law and director of the Criminal Justice Institute at the

University of Houston Law Center. She is widely published in the areas of criminal law, evidence, the regulation of forensic science, and federal asset forfeiture. She is an elected member of the American Law Institute since 1999 and was appointed to the Board of Advisors for the ALI's sentencing reform project.

and concludes that in the typical case, Hearing Officers set secured money bail as a condition of detention operating only against those who are indigent and cannot pay the bail, rather than as a mechanism for pretrial release.”)

- 6 Prior research in Harris County has found that for similarly situated individuals, those detained for misdemeanors pretrial were “25% more likely to be convicted and 43% more likely to be sentenced to jail.” Paul Heaton, Sandra G. Mayson & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 717 (2017).
- 7 Memorandum and Opinion Setting Out Findings of Fact and Conclusions of Law, *ODonnell*, 251 F. Supp. 3d at 1122.
- 8 *Id.* at 1060.
- 9 Consent Decree, *ODonnell v. Harris Cty.*, No. 4:16-cv-01414 (S.D. Tex. Nov. 21, 2019), ECF No. 708.
- 10 *Id.* ¶12 (“[T]he terms of this Consent Decree are intended to implement and enforce fair and

- transparent policies and practices that will result in meaningful, lasting reform . . .”).
- 11 Memorandum and Opinion Approving the Proposed Consent Decree and Settlement Agreement and Granting the Motion to Authorize Compensation of Class Counsel, *ODonnell v. Harris Cty.*, No. 4:16-cv-01414, 2019 WL 6219933 at \*5-7 (S.D. Tex. Nov. 21, 2019), ECF No. 707. Amended Local Rule 9 of the Harris County Criminal Courts at Law was adopted on Feb. 16, 2019, nine months before the decree went into effect.
- 12 See Maura Ewing, *Harris County Judges May Face a Reckoning Over Bail On Election Day*, TEX. OBSERVER (Nov. 4, 2018), <https://www.texasobserver.org/harris-county-judges-may-face-a-reckoning-over-bail-on-election-day/>; Brian Rogers, *Republican judges swept out by voters in elections*, HOUS. CHRON. (Nov. 8, 2018), <https://www.chron.com/news/houston-texas/houston/article/GOP-Free-Zone-Republican-judges-swept-out-by-13376806.php>.
- 13 “The General Order Bond is a judicial release order, requiring the Sheriff, pursuant to judicial order, to release the arrestee from Harris County custody. The bond is pre-approved by the CCCL Judges or the Presiding Judge.” Consent Decree, *supra* note 9, at n.73.
- 14 481 U.S. 739, 751-52 (1987); see also *Addington v. Texas*, 441 U.S. 418, 432 (1979).
- 15 Consent Decree, *supra* note 9, at ¶30 § 9.12.1.
- 16 *Id.* ¶17(h).
- 17 *Id.* ¶¶83-85.
- 18 *Id.* ¶¶87-88.
- 19 Both reports, as well as other documents concerning our work, are available on our monitor website, at: <https://sites.law.duke.edu/odonnell-monitor/>.
- 20 Consent Decree, *supra* note 9, at ¶2.
- 21 Report of Sheriff Ed Gonzalez January 12, 2021 And Request for Emergency Hearing, *Russell v. Harris Cty.*, No. 4:19-cv-00226 (Jan. 12, 2021), ECF No. 364.
- 22 Sheriff Ed Gonzalez and Ericka Brown, *Effectively Managing the Health of the Harris County Jail Population During a Pandemic*, IN SESSION (Just. Admin. Dep’t. Newsletter), February 2021, <https://myemail.constantcontact.com/JAD-Newsletter---Vol-4-February-2021.html?soid=1134847033030&aid=Cx7yjQD-dUY>.
- 23 The former Houston Police Chief Art Acevedo and the Harris County District Attorney Kim Ogg have been vocal critics of “bail reform,” expressing a concern that judges are not adequately safeguarding the public. See, e.g., *Rise in Violent Crime with Art Acevedo & Chuck Wexler*, WASH. POST LIVE (Mar. 11, 2021), <https://www.washingtonpost.com/washington-post-live/2021/03/11/rise-violent-crime-with-art-acevedo-chuck-wexler/> (Chief Acevedo states that some people “have taken that bail reform mentality . . . and they’re applying it to . . . people charged with murder, with robbery,” and that such people are being released “on \$300 bonds, on \$1,000 bonds.”); Andrew Schneider, *Proposed GOP Bail Legislation would put Harris County at Legal Risk, Texas Senators Hear*, HOUS. PUB. MEDIA (Mar. 18, 2021), <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2021/03/18/393915/supporters-and-opponents-of-gop-bail-reform-clash-in-senate-hearing/> (stating that Harris County District Attorney Kim Ogg testified about an increase of individuals released on bond and who commit new offenses).
- 24 For a detailed analysis, see Memorandum from the Harris County Justice Administration Department, *Data On Crime, Overall Crime Trends in the City of Houston and Harris County, ODonnell Consent Decree Implementation, and Solutions to Address Violence and Support Crime Survivors* (Feb. 16, 2021), [https://jad.harriscountytexas.gov/Portals/70/documents/FOR%20COURT%20SUBMISSION%202021-02-07%20Bail%20Reform%20Crime%20and%20Violence%20Memo.pdf?ver=cWZ8pdLXqf1p7O-ki\\_oXA8g%3d%3d](https://jad.harriscountytexas.gov/Portals/70/documents/FOR%20COURT%20SUBMISSION%202021-02-07%20Bail%20Reform%20Crime%20and%20Violence%20Memo.pdf?ver=cWZ8pdLXqf1p7O-ki_oXA8g%3d%3d).
- 25 See Jeremy Wallace, *Gov. Greg Abbott calls for another fix to ‘broken bail system,’* HOUS. CHRON. (Jan. 21, 2021), <https://www.houstonchronicle.com/politics/texas/article/Gov-Greg-Abbott-calls-for-another-fix-to-15888901.php>.
- 26 H.B. 20, 2021 Leg., 87th Sess. (Tex. 2021), <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/HB000201.pdf#navpanes=0>.
- 27 S.B. 21, 2021 Leg., 87th Sess. (Tex. 2021), <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB000211.htm>.
- 28 Andrew Schneider, *Harris County Leaders Vote to Condemn GOP-Backed Bail Legislation in the Texas Senate*, HOUS. PUB. MEDIA (Mar. 30, 2021), <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2021/03/30/394745/harris-county-leaders-condemn-gop-bail-reform-bill/>.
- 29 See Schneider, *supra* note 23.
- 30 725 ILCS 5/110.6.1.
- 31 *In re Kenneth Humphrey*, 482 P.3d 1008 (Cal. Mar. 25, 2021).
- 32 *Id.* at 1018-19.
- 33 Consent Order for Preliminary Injunction, *Allison v. Allen*, No. 19-cd-1126 (M.D.N.C. May 8, 2020), ECF No. 56.
- 34 *Expanded Pretrial Release*, AM. BAR ASS’N. (Feb. 22, 2021), [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resources/covid-19-resources/expanded-pretrial-release/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resources/covid-19-resources/expanded-pretrial-release/).