

26th Judicial District Bail Policy Review

Overview

This report examines the bond setting outcomes of initial and first appearance hearings conducted during 2011; specifically, the conformity of bond decisions with the 26th Judicial District Bail Policy (2010). The latest policy iteration introduces a table of recommended bond amounts to be considered when conditions of release are set. The recommendations, presented as ranges and intended to improve uniformity among bonds, are ordered according to the type and severity of the criminal charge considered^{1,2}. As the severity of crime increases, so does the recommended bond amount.

The analysis begins by reviewing the alignment of initial hearing bonds with policy recommendations. A detailed review of the types of bonds assigned, impact on pre-booking releases, and release outcomes follows. The report concludes with similar considerations of first appearance bonds.

Initial appearance data was obtained from the Arrest Processing database and includes all arrests recorded in 2009 and 2011. To assess release outcomes in both years, a random selection of defendants released prior to booking was selected from each charge class. The 2011 sample included 1,002 arrest events; the 2009 sample size was 1,051.

The first appearance dataset was formed through random selection of defendants appearing on the docket July – December 2011. The sample included 377 defendants.

¹ *The use of ranges, as opposed to a pre-determined amount for each charge, ensures the unique characteristics inherent in individual cases may be factored into the bond decision.*

² *The 2010 bail policy provides recommended bond ranges in six categories: non-assaultive misdemeanors and traffic; assaultive misdemeanors; domestic violence misdemeanors; non-violent felonies; and violent felonies (sub-divided based on the nature of the violent act). The appropriate range is based upon the most serious charge. The policy states the judicial official shall take into consideration all charges filed against the defendant to determine an amount. Authority to set additional bonds per charge is provided. In all charges observed, the magistrate assigned a bond.*

Summary of Findings

- ◆ **Initial And First Appearance Hearing Bonds Consistent With Policy Recommendations**

89 percent of magistrate-set bonds and 81 percent of first appearance bonds are within the suggested bond ranges.
- ◆ **Use of Non-Financial Release Conditions Expanded Substantially**

43 percent of release bonds were non-financial in 2011, compared to 11 percent in 2009
- ◆ **Number of Pre-Booking Releases Increased**

Pre-booking release rate increased 8 percent from 2009 even as arrests declined, resulting in an additional 1,246 released.
- ◆ **Community Safety Improved**

The rate of post-release arrests declined 3 percent.
- ◆ **Court Efficiency Declined**

Failure to appear rate increased 2 percent.

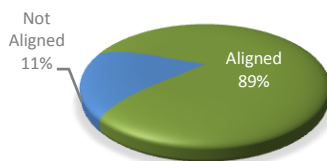
Initial Appearance

Policy Alignment

Overall, the magistrate's bond setting practices were consistent with policy recommendations.

In 89 percent of arrest events, the sum of set bonds fell within the policy's suggested range³. Where deviation was found, 10 percent of bonds were higher than suggested, while 7 percent were lower. See Figure 1.

Figure 1. Magistrate Set Bond Agreement - Policy Recommendation



Charges most frequently associated with higher-than-recommended bonds: *Driving While Impaired*, *Breaking and/or Entering with Force (Felony)*, and *Possession of a Firearm by Felon*. Charges most frequently associated with lower-than-recommended bonds: *Possession of Cocaine*, *Communicating Threats*, and *Assault or Simple Assault – Non-Aggressive Physical Force*.

Overview of Bonds

Magistrates are assigning secure bond terms with less frequency following adoption of the 2010 policy.

In 2009, secured bonds represented 87 percent of all bonds assigned⁴; by 2011, the rate had declined to 73 percent. Likewise, under the previous policy, non-financial conditions (unsecured, custody, and written promises to appear) were assigned in only 4 percent of cases; in 2011, they represented 17 percent of all set bonds. "No bond" are similar in both periods (approximately 10 percent)⁵. See Table 1.

³ This report examines both set and release bonds. The set bond is the most restrictive requirements ordered by the magistrate. The release bond is the conditions under which the defendant is ultimately released.

The bond conditions under which a defendant is released may differ from those recorded as the primary or "set" bond. An order for release may, and often does, include alternative conditions which a defendant may be discharged from custody. For example, the release orders of a defendant held on the charge *Intoxicated & Disruptive* may be "set" as a \$200 secured bond. However, the order may provide for an unsecured release if a sober adult will assume responsibility or allow release on the defendant's written promise at a certain time. The set bond serves to determine overall alignment with policy guidelines, while examination of the release bonds establishes the threshold at which releases occur and provides some indication of the alternatives that are being applied. Alignment is assessed using the sum of all assigned bonds.

⁴ The bail policy requires magistrates to assign a secure bond in an amount double the current bond, limiting bond-setting discretion. For this reason, only the most serious charge of each warrant- or visual-based arrest is considered.

⁵ Domestic violence charges require a "cooling off" period (typically 24 hours) before release may occur. In such cases, a "no bond" condition is set.

Table 1. Distribution of Set Bonds

	2009	2011
SECURED	87%	73%
CASH	-	<1%
CUSTODY	1%	4%
NO BOND	9%	10%
UNSECURED	1%	7%
WRITTEN PROMISE	2%	6%

Felonies remained the most likely charge secured.

Under the new policy, 90 percent of felony bonds were secured; followed by 75 percent of traffic violations and 64 percent of misdemeanors.

The use of secured bonds decreased across all charge classes.

Traffic defendants experienced the greatest drop in use of secured bonds. In 2009, 97 percent of traffic cases were assigned a secured bond; in 2011, that rate had declined to 75 percent. See Table 2.

Table 2. Set Bond by Charge Class

	2009			2011		
	F	M	T	F	M	T
NO BOND	6%	14%	-	5%	16%	0%
SECURED	94%	80%	97%	90%	64%	75%
CASH	-	-	-	-	-	0%
CUSTODY	-	2%	<1%	1%	6%	3%
UNSECURED	<1%	1%	2%	3%	7%	12%
WRITTEN PROMISE	-	2%	2%	1%	6%	10%

Median bond amounts were unchanged from 2009.

The median felony bond was \$10,000; traffic bond, \$1,000; and misdemeanor bond, \$500. In 2011, bond amounts ranged from \$20 to a maximum \$950,000. See Table 3.

Table 3. Set Bond Amount by Charge Class

		Mean	Median	Minimum	Maximum
2011	FELONY	\$ 20,945	\$ 10,000	\$ 100	\$ 950,000
	MISD	1,125	500	20	100,000
	TRAFFIC	1,031	1,000	100	10,000
2009	FELONY	\$ 24,436	\$ 10,000	\$ 300	\$ 999,999
	MISD	1,055	500	100	75,000
	TRAFFIC	1,160	1,000	100	70,000

Pre-Booking Releases⁶

The number arrestees released prior to being taken into the custody of the jail increased -even as the number of arrests declined.

In 2011, approximately 46 percent of arrestees⁷ were released prior to booking, compared to 43 percent in 2009. This increase, driven by emphasis upon non-financial conditions, permitted resulted in an additional 1,246 releases.

Secured bonds remained the dominant release condition in 2011, but have declined from 2009. In 2011, 52 percent of releases were secured; compared to 57 percent previously. Non-financial bond terms (unsecured, custody, and written promises) are increasingly likely to be assigned as an alternative release condition. In 2009, non-financial terms comprised only 11 percent of releases; by 2011, the rate of unsecured releases jumped to 43 percent.

Unsecured bonds, the most frequently applied non-financial condition, increased from 5 percent to 22 percent of all pre-booking releases; written promises, the second most frequent, represented 14 percent. See Table 4.

Table 4. Distribution of Release Bonds

	2009	2011
SECURED	49%	45%
CASH	8%	7%
CUSTODY	2%	7%
UNSECURED	5%	22%
WRITTEN PROMISE	4%	14%
PRETRIAL SERVICES	31%	5%

The distribution of releases among charge classes was little changed from 2009. Just over half (53 percent) of those released before booking were charged with a misdemeanor; traffic offenders accounted for 36 percent and felonies 11 percent. Nearly three-quarters of defendants released were held on a visual-based arrest. See Table 5.

Table 5. Pre-Booking Releases by Charge Class

	2009	2011
FELONY	10%	11%
MISDEMEANOR	52%	53%
TRAFFIC	38%	36%

⁶ Pre-booking releases are examined by the bond conditions under which the release occurred; hereinafter referred to as the "release bond".

⁷ Visual- or warrant-based only; does not include arrests rejected for probable cause, voided, or terminated.

Unsecured bonds and written promises increased substantially across all charge classes.

In 2009, only 5 percent of traffic releases occurred under an unsecured bond; in 2009, nearly one-quarter had. Similarly, unsecured misdemeanor releases increased from 6 percent to 23 percent of all pre-booking releases.

There was a simultaneous increase in secured and unsecured releases among felons between 2009 and 2011. Secured releases increased a modest 4 percentage points, while unsecured releases did so more substantially (14 percentage points). The increases followed a Pretrial Services policy change, implemented in July 2010, which excluded acceptance of felony defendants to supervision at the arrest processing stage. See Table 6.

Table 6. Release Bond Type by Charge Class

	2009			2011		
	F	M	T	F	M	T
SECURED	69%	45%	49%	73%	39%	44%
CASH	3%	8%	11%	2%	6%	9%
CUSTODY	<1%	3%	<1%	5%	10%	4%
UNSECURED	3%	6%	5%	17%	23%	24%
WRITTEN PROMISE	-	6%	3%	3%	16%	14%
PRETRIAL SERVICES	25%	31%	32%	1%	7%	5%

As with set bonds, median release bonds were unchanged from 2009.

The median felony bond of those released before booking was \$5,000; \$1,000 for traffic violations; and \$500 for misdemeanors. See Table 7.

Table 7. Release Bond by Charge Class

		Mean	Median	Minimum	Maximum
2011	FELONY	\$ 6,747	\$ 5,000	\$ 250	\$ 75,000
	MISD	1,009	500	100	15,000
	TRAFFIC	1,049	1,000	200	5,000
2009	FELONY	\$ 8,434	\$ 5,000	\$ 200	\$ 100,000
	MISD	923	500	100	5,000
	TRAFFIC	1,153	1,000	171	10,000

Forty-five percent of all pre-booking releases were related to one of five charges: *Driving While Impaired*, *Driving While License Revoked*, *Possession of Marijuana*, *Resisting Public Officer*, and *Simple Assault*.

Eighty percent of DWI defendants were released prior to booking as was 69 percent of those charged with *DWLR*. Seventy-one percent of those held for marijuana possession, 59 percent for *Resisting Public Officer*, and 37 percent of those charged with *Simple Assault* were also released before booking.

Release Outcomes

Success rates among those released pre-booking⁸ increased from 2009.

Overall, 67 percent of defendants released prior to booking reached case disposition without failure; that is, without being re-arrested or failing to appear for court. Likewise, 65 percent of those whose case remained open (152 days or more) had not reoffended or absconded. In fact, four of the five release groups experienced stable or improved rates of success from 2009. On the whole, re-arrests declined, while orders for arrest increased slightly.

Custody releases recorded the highest rate of success (78 percent).

The lowest success rate, 63 percent, was found with those released under a secured bond.

Change in the success rate was most pronounced in the unsecured release group, which declined 8 points to 69 percent.

The decline is attributed to the increased number of defendants released under such terms. In 2009, defendants suitable for unsecured releases were most likely to be released through Pretrial Services, artificially increasing success rates within the unsecured cohort.

Success rates among the secured cohort were dissimilar.

Those released under a cash bond⁹ were more successful than released under a secured bond. In 2011, the median cash bond was \$675, less than half the median secured bond of \$1,500. Half of all cash bonds were for *Driving While Impaired* and *Driving While License Revoked*; each which posted success rates 10 percent lower than the group average. Cash releases had the lowest re-arrest rate among all groups, but were the most likely to fail to appear for court. See Table 8.

Table 8. Outcomes by Release Bond

		Cash	Custody	Secured	Unsecured	Written Promise	Overall
2011	NO FAILURE	75%	78%	63%	69%	77%	67%
	RE-ARREST	4%	11%	25%	16%	10%	19%
	OFA	21%	11%	13%	16%	14%	14%
2009	NO FAILURE	70%	77%	63%	77%	80%	66%
	RE-ARREST	12%	18%	25%	13%	7%	22%
	OFA	18%	6%	12%	10%	13%	12%

⁸ Excludes releases to pretrial supervision.

⁹ Cash releases are recorded when the defendant held on a secured bond satisfies the full bond obligation with his own funds (e.g. pays the entire bond using his credit card). In contrast, a secured bond is recorded when the defendant's obligation is assumed by the signature of bondsman. In these cases, the defendant pays a non-refundable fee to the bondsmen (approximately 12 percent of the full bond amount.)

Success rates among charge classes were relatively uniform, ranging 65 percent to 69 percent.

Those released on a felony charge were most likely to reach case disposition without re-arrest or failing to appear. Traffic offenders were nearly equally successful.

Re-arrest rates declined across all classes. Failure to appear rates increased among misdemeanor and traffic, while declining at a similar rate among felonies. See Table 9.

Table 9. Release Outcome by Charge Class

	2009			2011		
	F	M	T	F	M	T
NO FAILURE	65%	64%	69%	69%	65%	68%
RE-ARREST	27%	24%	16%	26%	20%	12%
OFA	9%	13%	16%	5%	16%	21%

The majority (57 percent) of post-release failures occurred when the defendant was re-arrested.

Three charges accounted for nearly one-third of the new arrests¹⁰: *Driving While License Revoked*, *Possession of Marijuana*, *Driving While Impaired*. *Driving While License Revoked* occurred by far the most frequently, accounting for 21 percent of all new arrests; *Possession of Marijuana* accounted for 8 percent, and *Driving While Impaired*, 6 percent. Median time to re-arrest was 55 days, improving upon the 35 – 38 days observed in 2010.

Forty percent of those originally charged with *Possession of Cocaine* were re-arrested before case disposition, making them the most likely group to be re-arrested after their pre-booking release. There was no clear trend in charges associated with the re-arrests within the group. Post-release charges ranged from *Driving While License Revoked* to *Larceny to Attempted First Degree Murder*.

Certain defendants were more likely to be re-arrested on the same charge. One-third of defendants facing a *Possession of Marijuana* charge were returned to prior to case disposition; of these, 40 percent were re-arrested for the same charge. Likewise, nearly 30 percent of those released on *Driving While License Revoked* were re-arrested while awaiting trial; of these, just over two-thirds were re-arrested on a new *DWLR* charge. See Table 10.

¹⁰ *New arrests are distinguished from warrant-based and orders for arrests. New arrests are focused upon because they are indicative of criminal activity or violations which occur following release. For the purpose of this report, warrants are considered indicative of criminal activity that preceded the initial arrest.*

Table 10. Most Frequent New Arrest Charges

	% of All	Cumulative %
DRIVING WHILE LICENSE REVOKED	21%	21%
C/S-SCH VI- POSSESS MARIJUANA – (MISD)	8%	29%
DRIVING WHILE IMPAIRED	6%	35%
ASSAULT ON A FEMALE - NAPF	5%	40%
C/S-SCH II- P/W/I/S/D COCAINE	4%	44%

Overall, those arrested after release are not likely to commit more serious crime.

Of the misdemeanor defendants who were re-arrested, just over three-quarters were re-arrested on a new misdemeanor or traffic violation. Half of felony defendants re-arrested occurred for a new misdemeanor or traffic violation. Sixty-six percent of traffic violators re-arrested were held for a new traffic offense.

The balance of pre-booking release failures (43 percent) resulted when the defendant failed to appear for court as required.

Nearly two-thirds of those released on a *Driving While License Revoked* charge subsequently failed to appear for a scheduled court session. (*DWLR* was the second most-frequently released charge, accounting for 13 percent of all pre-booking releases). Twenty-six percent of those released on a *Possession of Marijuana* charge subsequently failed to appear, as did 20 percent of those chose charged with *Trespassing – Second Degree*. Collectively, these charges represented 45 percent of all OFAs recorded.

Median days to failure was 80; average: 116.

First Appearance

Policy Alignment

The majority of First Appearance bonds were within the policy’s recommended ranges.

Alignment was observed in 81 percent of cases brought before the court. In 14 percent of cases, bonds were higher than suggested; in 5 percent, lower.

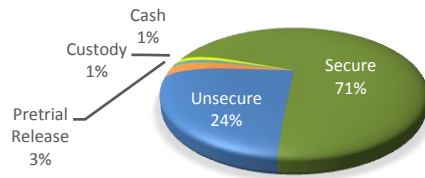
First appearance bonds were very consistent with the magistrate-set release conditions.

In 96 percent of cases, the amount set at first appearance was unchanged from the initial appearance bond. Where amounts differed, it was typically in the form of an increase and observed in cases where a “no bond” condition had been set originally. This was consistent across all charge classes.

The large majority of bonds remained secured following first appearance.

Seventy-one percent of first appearance bonds were secured and nearly 25 percent unsecured. In 3 percent of cases, the option for supervision through Pretrial Services was selected, while 1 percent each was assigned custody or cash release condition. See Figure 2.

Figure 2. First Appearance Bond



The majority (59 percent) of defendants reaching first appearance were charged with a misdemeanor.

Felony charges comprised 32 percent of all appearances and traffic violations, 9 percent.

Half of all defendants were held on bonds totaling \$2,000 or less. A full quarter was held on \$500 or less. The median traffic bond was \$1,300; misdemeanor, \$1,000; and felony, \$22,000. Median amounts were unchanged following first appearance. See Table 11.

Table 11. First Appearance Bond by Charge Class

	Median	Minimum	Maximum
FELONY	\$ 22,000	\$ 1000	\$ 4,200,000
MISDEMEANOR	1,000	100	50,000
TRAFFIC	1,300	250	10,000

Trespassing was the most frequent charge before the court, accounting for 7 percent of all charges. See Table 12.

Table 12. Most Serious Charges

	% of All	Cumulative %
TRESPASS – SECOND DEGREE	7%	7%
DRIVING WHILE LICENSE REVOKED	4%	11%
FUGITIVE/EXTRADITION OTHER STATE	4%	15%
LARCENY (MISD) UNDER \$50	4%	19%
DRUG PARAPHERNALIA – POSSESSION OF	3%	22%
RESISTING PUBLIC OFFICER	3%	25%

Outcomes

Release outcomes following first appearance were consistent with those observed in the pre-booking release cohort. Seventy-three percent of defendants who stood at first appearance reached case disposition¹¹ or had been released greater than 100 days without re-arrest or failure to appear. When only disposed cases were considered, the success rate reached 78 percent.

Felony defendants were the most successful of the released charge classes.

Eighty-three percent reached case disposition without re-arrest or failure to appear. Sixty-eight percent of those charged with a traffic violation or misdemeanor reached their case disposition successfully. See Table 13.

Table 13. Release Outcome by Charge Class – Disposed or >100 Days

	F	2011		Overall
		M	T	
NO FAILURE	83%	68%	68%	73%
RE-ARREST	16%	20%	15%	18%
OFA	1%	12%	18%	9%

No difference in outcomes was found between defendants whose bond amounts aligned with policy recommendations and those whose did not.

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¹¹ At the time of review, 87 percent of the first appearance group had recorded a final disposition.