

Progress Report and Recommendations
Dallas County Bail Bond Task Force
February 21, 2012

Background

Dallas County created a task force to perform a comprehensive review of the bail bond forfeiture processes and practices within the County. The efficiency of the bail bond forfeiture process requires the cooperative efforts of multiple elected officials and county departments. The task force was given the responsibility to review existing processes and practices and to make recommendations for improvement to the Dallas County Criminal Justice Advisory Board (CJAB) and Dallas County Commissioners Court.

This progress report summarizes the work to date of the task force and includes recommendations for action going forward. As specific issues have been identified by the task force, work has been initiated to resolve those issues.

Task Force Membership and Work Progress

The task force is chaired by Dr. Elba Garcia, Commissioner of Precinct 4 and Chair of the Dallas County CJAB. Task force membership includes the elected County and District Clerks, the Dallas County Auditor and staff from County departments involved in the bail bond forfeiture process. The task force has met regularly since its inception. It is recommended that the task force become a standing committee of the Dallas County CJAB and continue to meet to review progress in implementing recommendations and to respond to additional issues as they arise.

Members of the task force have been very active in working on the whole bail bond forfeiture process. Meetings involve tasking out action items that are then reported out at the next meeting. The following Dallas County elected officials and staff have been active in the work of the task force and are recognized for their good work. Input from the local bond industry has been coordinated by Drew Campbell, a consultant for the Dallas County Bail Bond Association.

Sheriff's Department

Daniel Simon
Marlene James
Scott Jones

District Attorney's Office

Gordon Hikel
Ellyce Lindberg

County Clerk

Hon. John Warren
Stephen Dyson
Lola Roberts

District Clerk

Hon. Gary Fitzsimmons
Virginia Etherly
Tia Finney-Davenport

Auditor's Office

Virginia Porter
Tim Morton

County Judge's Office

Shay Cathey
Maria Arita

Commissioners Court Administration

Ryan Brown
Darryl Martin

Criminal Justice Department

Ron Stretcher
Duane Steele
Jill Reese

Criminal Justice Advisory Board

Dr. Elba Garcia
Dr. Michael Noyes
Brooks Love

District Criminal Courts

Hon. John Creuzot
Hon. Dorothy Shead
Hon. Terri McVea
Kerry Young
Dana Wisner

IT Services

Mary McPhaul
Mark Crooks

County Criminal Courts

Hon. Douglas Skemp
Patricia Johnson

Bond Forfeiture Processes

The bond forfeiture process in Texas Counties is complex with multiple decision points. Attached is a “*Flowchart for the Issuance of Bond Forfeitures*” that provides an overview of the general process. The Texas law related to bail in general is found in Chapter 17 of the Code of Criminal Procedures. Forfeiture of bail is found in Chapter 22 of the Code of Criminal Procedures. Also attached is a “*Glossary of Terms Used in Bond Forfeiture Proceedings*” that helps explain the terms used throughout the bail bond forfeiture process.

Scope of Issue

An initial priority of the task force was to determine the exact scope of a central issue in the overall bail bond forfeiture process: the amount of uncollected monies due to Dallas County from bond forfeitures. This has proven to be a challenging task and remains a work in progress. An initial review of available data indicated a total of \$35.8 million in unresolved bond forfeitures. This amount is further divided into two categories: bond forfeitures and bond forfeiture court costs and related assessments. Extensive additional research is underway by the District and County Clerks to confirm or refute the validity of these unresolved bond forfeiture receivables. Based on currently available information, it appears that only a relatively small portion of the initial \$35.8 million is actually due. A summary of the two categories of unresolved bond forfeitures is provided below.

\$23.6 million in bond forfeiture receivables identified in the current system:

- Represents 21,448 bonds
- Cases totaling \$22.5 million need specific research to resolve data conversion errors, duplicate receipt numbers and other anomalies to confirm how much are actually valid assessments
- \$17.5 million from 15,941 cases is over ten years old (74.35% of the \$23.6M total)
- \$7.07 million appears to be from Pre-trial release and Personal bonds, which have not historically been pursued for forfeiture

\$12.2 million in bond forfeiture court costs and related assessments are recorded in a now-discontinued mainframe application system without corresponding assessments on the current system:

- Represents 30,216 bonds
- 99.9% of the \$12.2M is greater than 10 years old
- Only \$3.1M of this total is from bonds issued after 1989

IT Systems

The biggest challenge identified by the task force is the lack of a central electronic system for processing all activities related to bail bonds and bond forfeitures. Information related to bonds is located in four non-integrated systems:

- Criminal Receipt Inquiry System (CRIN) – mainframe financial assessment and payment records for bond forfeiture activity accessible by the bond number
- Bond (BN10) – a discontinued mainframe application
- AIS – the Adult Information System contains details about bond activity
- Adult Information Bond (AIBN) – a mainframe application that contains bond records and forfeiture assessments, created to allow staff to create financial assessments

As the task force started its work, Dallas County IT Services began developing a consolidated data base that collected data from the separate sources into a single system. The consolidated bond data base is now in production. Staff has been trained and can now utilize this data base to research the status of all bonds accepted since January 1, 2007. Sometime soon, IT Services will expand the consolidated bond data base to include bail bonds posted prior to that date. Attached is an overview of this system, “*Consolidated Bond Systems Reporting Tool.*”

While developing this new data base, IT Services was also able to resolve some long-standing issues with the processing of bonds within Dallas County’s electronic systems. For example, a flaw in the bond number creation mechanism was identified that periodically led to duplicate bond number values, which caused ambiguity in the electronic records. This defect was corrected and bond number values for outstanding bonds affected by the problem were cleaned up accordingly. However, IT Services has only prepared reports based on end user needs and responded to specific issues within the data system. IT Services has not been tasked with an overall re-engineering of the electronic systems used in processing bonds and bond forfeitures. Dallas County is partnering with the Conference of Urban Counties and other Texas counties to develop a new adult criminal courts case management system (ACMS). It is critical that the new ACMS includes all required functionality needed to process bail bonds and bond forfeitures. IT Services’ prepared the attached review of the bond system, “*Observed Technical Issues with Dallas County Bond Systems.*” This report is a

critical part of the requirements for the new ACMS. A review of potential developers of the new ACMS is underway. It is anticipated that initial portions of the ACMS will be implemented within an eighteen to twenty-four month timeframe.

Auditor's Review of Bond Processing

The Dallas County Auditor conducted a review of financial records and electronic bond forfeiture activity within the disparate systems. The Auditor's final report, "*Bail Bond Receivables*," released December 19, 2011 is attached. The report is addressed to the County Clerk and District Clerk and includes the findings of the Auditor's review and specific recommendations for resolving discrepancies in the available data. The District and County Clerks have both started working on the recommendations in the Auditor's report.

County and District Clerk Activities

Both County Clerk John Warren and District Clerk Gary Fitzsimmons have been active in the work of the task force. They and their respective staff have also worked closely with the Auditor's Office in the above-detailed review. Staff members of both offices have already begun to conduct the research needed to resolve pending bond cases. Due to the problems noted with current electronic systems, much of this research will take quite some time to complete because the review is labor intensive and requires a physical review of the numerous case records. Mr. Fitzsimmons and Mr. Warren are first focusing on bond forfeiture cases from January 1, 2007 forward. Once these more recent cases are resolved, both offices will begin working on older cases.

District Clerk Gary Fitzsimmons' office sampled 192 outstanding bond forfeiture cases. His report of the results of this audit is attached. County Clerk John Warren's office has to date reviewed 939 bond forfeiture actions. The review found that for 719 cases (76.6%), all monies due Dallas County were received and no additional action was needed other than correcting data reporting entries. The remaining 220 cases reflect an outstanding balance owed to Dallas County of \$116,387. To date, 39 of these cases have been referred for Court action with the remaining cases still in process.

District Attorney Recommendations

The task force requested and received recommendations from the District Attorney's office related to improving the overall bond forfeiture process in general and establishing a bail bond unit within the DA's office specifically. Attached to this report are the written recommendations from the DA's Office on the staffing necessary to form a bail bond unit. Because the forfeiture of a bail bond is an adversarial process, the task force strongly recommends that the District Attorney be centrally involved in the bond forfeiture processes and procedures moving forward and that the request for dedicated staffing be given due consideration by Commissioners Court.

Policy and Process Issues

The task force's review of the local bail bond processes and procedures finds a need for coordinated policy and process decisions at several critical points. There are 17 felony criminal courts and 13 misdemeanor criminal courts in Dallas County. When the task force started its work, there were no consolidated local rules for processing bond forfeiture cases. While there has been some alignment of processes, the Courts generally process bond forfeiture cases somewhat differently. The task force recognizes that each Judge has some discretion to exercise a certain amount of judicial preference in bond forfeiture cases. However, it is critical that there be common rules and practices followed by all Courts in how decisions on bond forfeiture cases are reported and implemented. To that extent, the Honorable John Creuzot, Criminal District Court No. 4, and the Honorable Douglas Skemp, County Criminal Court No. 3, have taken the lead on coordinating efforts of the judiciary to improve the bail bond process.

Members of the local bail bond industry requested that the task force review current processes for notifying the Court when a defendant is in custody in another jurisdiction and when a bond agent has reason to believe that a defendant has absconded. The processes are provided for in Sections 17.16 and 17.19 of the Code of Criminal Procedures. As with most issues related to bail bonds, multiple departments have roles within these processes. A detailed analysis of these processes is underway by a senior business analyst and a recommendation for improvement will be ready soon.

The task force has spent significant effort on reviewing the processes employed when a defendant fails to report for a Court date. There was general agreement among all stakeholders that, in many cases, the defendant has not truly "absconded" but either was not aware of the Court date or had some reason for not being present as required. The task force recognized that, in some cases, the process for setting Court dates may contribute to some defendants not appearing. Significant staff time is then spent on processing a case action that becomes unnecessary when the defendant is located and returned to Court. The task force recommends that a process be developed and implemented that allows for the defendant to be located and made available to the Court before initiating forfeiture action. The District and County Criminal Court Judges have agreed to consider such a process. A senior business analyst is currently working with all stakeholders to develop this process, which will be piloted in a few Courts. Once all stakeholders are confident that the new process is working, it will be expanded to all Courts.

Input from the Bail Bond Industry

The task force recognizes that the ultimate purpose of a bail bond is to ensure that a defendant returns to Court to resolve pending cases. The fewer times an individual case requires Court action, the less the cost to the system. The Courts, the bail bond industry, and the entire system must work in partnership to gain the efficiencies needed to improve the local system. Representatives of the

local bail bond industry have participated in the work of the task force and have submitted recommendations for the task force's consideration. Attached are two documents submitted by bail bond industry: "*Dallas County Bail Bond Task Force Process Recommendations*" and "*Dallas County Bail Task Force-Second Letter of Recommendations.*" Please note that these two documents were submitted by representatives of the local bail bond industry. The task force makes no assurances as to the accuracy of any of the information provided or of any statutes cited in the documents. Those recommendations are summarized as follows:

1. Improve the bail bond industry's access to real time data involving bond cases.
2. Standardize bond forfeiture processes among all Courts with a specific request to consider a process that provides an opportunity to resolve failure to appear issues.
3. Standardize processes for releasing a bond under Section 17.16 of the Code of Criminal Procedures and for requesting the issuance of a warrant or capias to allow the arrest of an absconder as provided for in Section 17.19 of the Code of Criminal Procedures.

Task Force Recommendations

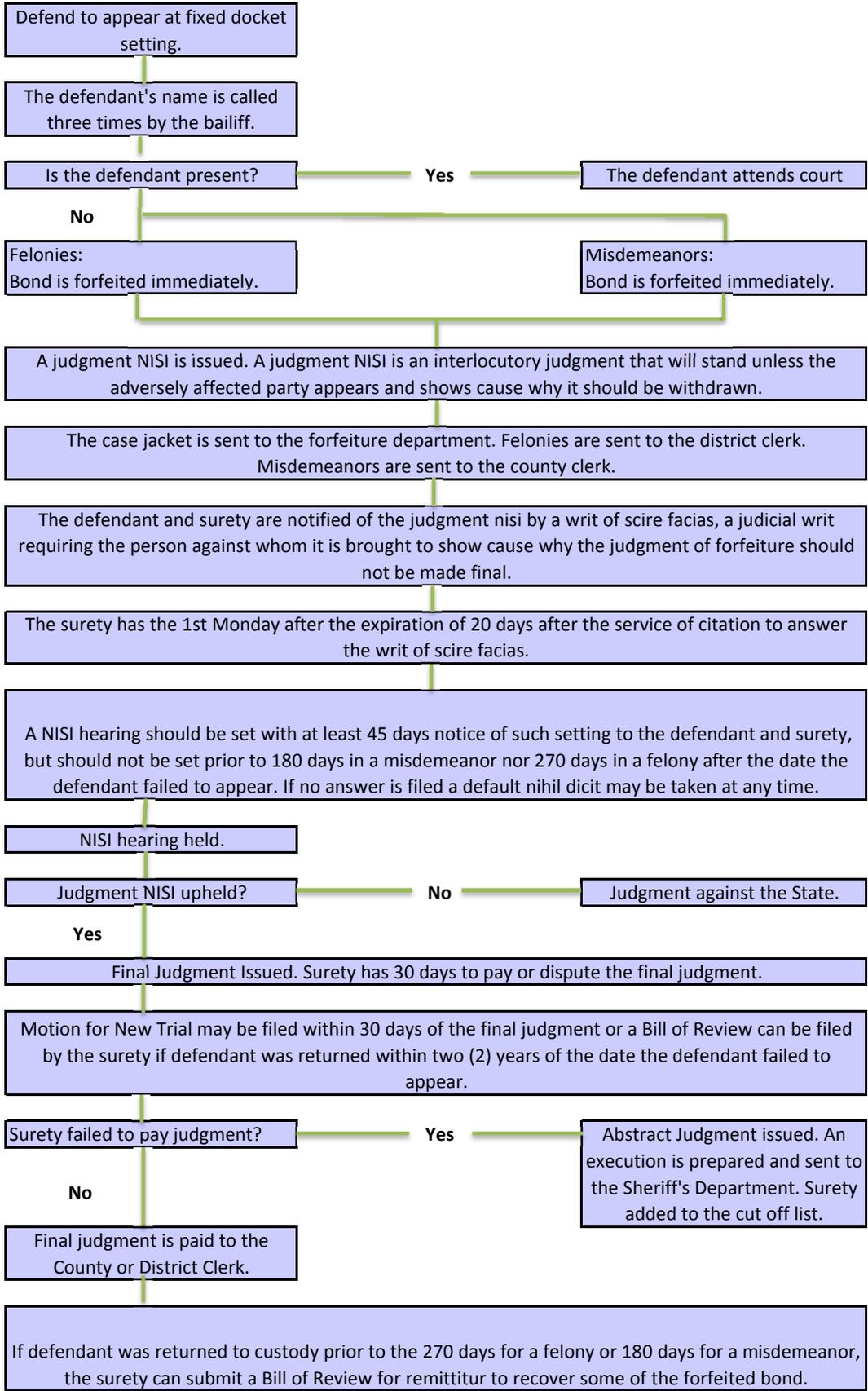
The following recommendations are a result of the work of the task force to date. Work is already underway on many of the tasks included in each recommendation. The task force will continue to update Commissioners Court and the Dallas County CJAB on progress towards implementing these recommendations.

1. Continue to improve the functioning of IT systems to support all processes relating to bail bonds. The consolidated bond reporting database should be continued and expanded to include cases prior to 2007. The database should also be used to produce regular reports of Dallas County bonding activities. Existing systems should be utilized to provide the bond industry with real time access to the data needed to process bonds and monitor case status. IT Services staff are currently evaluating options to provide the bond industry with improved access to "real time" data within the constraints of existing systems.
2. Ensure that all bail bond processing is provided for in the new Adult Case Management System (ACMS) currently in development. Stakeholders must be involved in the ACMS development and provide detailed requirements related to bond processing to ensure that the new system improves processing.
3. The Dallas County Commissioners Court is asked to provide funding for dedicated staff for the District Attorney's office for processing bond forfeitures. The task force recognizes the current pressures upon Dallas County's budget

and understands that this request is outside of the normal budget cycle. However, the task force believes that dedicated District Attorney Staff is necessary to attain the system improvements that are needed and to ensure that Dallas County collects on any bail bond forfeiture receivables which are owed.

4. The District Criminal Court Judges, County Criminal Court Judges, District Clerk and County Clerk should continue to evaluate process changes that will benefit the entire system. Any proposed process changes should be piloted in a small number of Courts. No changes should be made system-wide until all stakeholders are comfortable that any changes will produce the desired results and that adequate process support is available from current IT systems. Work is already underway on processing bond actions under CCP 17.16 and 17.19 and the processing of cases that fail to appear in Court. Recommendations for improvement will be available in the near future.
5. The District and County Clerk should continue their work to resolve cases following the recommendations of the Auditor. Both offices have already begun to review and correct individual cases. The District and County Clerks should provide monthly reports on their progress that includes any amounts collected as a result of their work.
6. The Bail Bond Task Force should become a standing committee of the Dallas County Criminal Justice Advisory Board. The committee will continue to meet as needed to monitor progress in implementing these recommendations and address new issues related to bond forfeitures that may arise.

FLOWCHART FOR THE ISSUANCE OF BOND FORFEITURES



GLOSSARY OF TERMS USED IN BOND FORFEITURE PROCEEDINGS

Judgment <i>nisi</i>	the interlocutory judgment rendered and signed by the court declaring the bond forfeited and directing the issuance of a <i>capias</i> (translation, “judgment unless”)
<i>Scire Facias</i>	the citation, a copy of the judgment of forfeiture (judgment <i>nisi</i>), a copy of the forfeited bond, and a copy of any power of attorney attached to the forfeited bond
Answer	response to <i>scire facias</i> filed by the bonding agency by 10:00 am on the first Monday after the expiration of 20 days from the date the bondsman was served with the citation
Final Judgment	the written decision/verdict of the Court determining whether the State recovers a judgment and the amount and terms of such judgment
Abstract of Judgment	document recorded with the County Clerk in the property records giving public notice of a judgment lien
Writ of Execution	a process from the Court to enforce a judgment and to collect costs issued to any Sheriff or Constable in the State of Texas
Nulla Bona	the Sheriff’s return of the Writ of Execution indicating a diligent search and the inability to find property for seizure to satisfy a monetary judgement
Motion for New Trial	pleading filed within 30 days of the final judgment asking the Court to reconsider and rectify a trial error by granting a new trial
Special Bill of Review	a new lawsuit filed not later than 2 years after the date of final judgment in the same Court where the judgment was taken seeking to reform the judgment or seeking remittitur

Consolidated Bond Systems Reporting Tool

Prepared by D. Mark Crooks
Dallas County Information Technology
November 9, 2011

Overview

Introduction

This document describes, at a very high level, the system developed to increase visibility into the data underlying the current Dallas County bond process. The system is a consolidated database environment that merges information from several disparate platforms, allowing users to gain a more unified view of the bond process from a data perspective.

It is not intended for this implementation to be a long-term solution. Instead, it is an intermediary step that helps facilitate bond account research in the existing environment while Dallas County plans the transformation to a more robust and sustainable solution.

Access and Interaction

NOTE: First time access requires users to log off and log back on to their computer before proceeding. To access the system, open the link <http://10.11.12.172/ReportServer/Pages/ReportViewer.aspx?/Bonds/BondTable&rs:Command=Render> and enter Windows credentials when prompted. *Be sure to add the link to browser favorites for quick future reference.*

Sample interface

Available Parameters:

Start / End date	Restricts the record set based on the bond date
Case No	Limits record set to bonds associated with a single case number
Case Type	Felony or Misdemeanor
Open NISI	Bonds with associated NISI forfeiture activity that doesn't have a subsequent Set Aside or Discharge activity.
Bond Co	Bond company / surety or attorney responsible for the bond
Bond No	Limits record set to bonds with the specified bond number value
Bond Receipt No	Limits record set to bonds with the specified bond receipt value
Bond Status in AIS	The 'Discharged' checkbox in AIS
Bond status in Court	The 'Bond Discharged' field in the mainframe
Forfeiture Activity	Limits record set to bonds that have associated forfeiture activity with the selected status(es). Order of activity is not considered.

Remember that all parameters work together. The values '(unlimited)' and 'NULL' indicate that the associated parameter will not be considered when the query is evaluated.

Available Report Columns

Bond No	Primary identifying moniker for a bond record (SOURCE: AIS)
Bond Dt	Date the bond record was written (SOURCE: AIS)
Defendant Name	Name of the defendant for whom the bond was posted (SOURCE: AIS)
Bond Amount	Amount of the bond (SOURCE: AIS)
Bond Payment Type	Type of payment posted to satisfy the bond record (SOURCE: AIS)
Bond Receipt	Primary identifying moniker for a bond receipt record (SOURCE: AIS)
Bond Rcpt Fee(s)	Amount(s) posted against the bond record (SOURCE: AIS)
Fee Acct(s)	Account(s) associated with the bond receipt fees (SOURCE: AIS)
Fee Comments	Comment(s) associated with the bond receipt fees (SOURCE: AIS)
Bond Type	Type of bond issued (SOURCE: AIS)
Amount Assessed	Amount ordered by the court for the defendant to pay in fines and court costs (SOURCE: MF)
Date Assessed	Date the assessment was generated (SOURCE: MF)
FCC (MF) Rcpt Total	Sum of all receipt amounts posted against an assessment (SOURCE: MF)
FCC (MF) Receipt History	Listing of each receipt record (SOURCE: MF)
Discharge in AIS	Boolean indicating whether or not a bond has been manually 'discharged' in AIS (SOURCE: AIS)
Discharge in Court	Boolean indicating whether or not a bond has been discharged by the court (SOURCE: MF)
MF B080 Comments	B080 Comments from J166 Screen (SOURCE: MF)
Comments	Comments associated with bond records (SOURCE: AIS)
Forfeiture Activity History	Listing of each forfeiture activity (SOURCE: AIS)
Case	Primary identifying moniker for a case (SOURCE: AIS)
Offense	Description of the offense (SOURCE: AIS)
Filing Agency	Agency that filed the case (SOURCE: AIS)
Court	Court to which the case is assigned (SOURCE: MF)
Last Setting	Code associated with the latest court setting (SOURCE: MF)
Last Setting Dt	Date of the latest court setting (SOURCE: MF)
Disp	Disposition of the case (SOURCE: MF)
Disp Dt	Date the case disposition was set (SOURCE: MF)
Acct	Primary identifying moniker for the party that posted the bond (SOURCE: AIS)
Account Name	Name of the party that posted the bond (SOURCE: AIS)
Address	Address of the party that posted the bond (SOURCE: AIS)
City	City of the party that posted the bond (SOURCE: AIS)
St	State of the party that posted the bond (SOURCE: AIS)
Zip	Zip of the party that posted the bond (SOURCE: AIS)

It is intended that the resulting record set be exported to another platform for further analysis and reporting.

The following formats are available by selecting the disk icon (

- XML
- CSV
- PDF
- HTML
- Excel
- TIFF
- Word

Tips and tricks

- For more information about each field on the report layout hover over the corresponding column header with your mouse (website only).
- Click on the link in the Bond No field to activate a consolidated report for the selected record.
- Click on the link in the F/CC Receipt Total field to see the account distribution of the receipt values.
- To enable sorting in Excel, deactivate the 'Merge and Center' button for the selected area.
- Red font indicates active warrant status according to AIS.

Technology

The consolidated bond system reporting tool is based on SQL Server 2008 R2 and uses SQL Server Reporting Services (SSRS) as the primary user interface.

Behind the scenes, SQL Server Integration Services (SSIS) gathers information from various sources and launches a series of SQL stored procedures that process and consolidate related information into a data warehouse environment which serves as the basis for the SSRS reports.

Data cannot be modified directly through the reporting tool. Users must modify associated records in the corresponding source systems if necessary. AIS information is automatically refreshed every day at 5:00am and mainframe information is automatically refreshed every Sunday at noon.

Security is controlled through an SSRS security model that references a dedicated group in Active Directory.

Observed Technical Issues with Dallas County Bond Systems

Prepared by D. Mark Crooks
Dallas County Information Technology
November 7, 2011

Overview

Introduction

As a part of the Bond Taskforce Initiative established in 2011, Dallas County IT Services developed a consolidated database environment that combines information from multiple systems, allowing users to gain a comprehensive view of the entire bond process.

During the discovery and development phases of this project, several design flaws and technical inefficiencies were identified in the source systems as having a potentially adverse impact on the overall bonding segment of Dallas County. It is the purpose of this document to report those issues so they may be acknowledged and addressed in current and future systems.

Disclaimer

This document does not signify an exhaustive technical analysis of the systems that support the Dallas County bond segment. Rather, it is a byproduct of the effort to increase visibility into the bond process and serves to illuminate some of the issues discovered during that exercise that are thought to impede, complicate or endanger the bond process.

Technical Issues

Disparate, Unclear Procedures

It's outside the scope of this document to discuss or recommend procedural changes. However, the lack of a clear and coherent vision pertaining to the bond process perpetuates the dysfunction of the systems that support it. Strong, clear and unambiguous requirements must be established and set forth before the technical environment can reasonably be expected to help sustain the process.

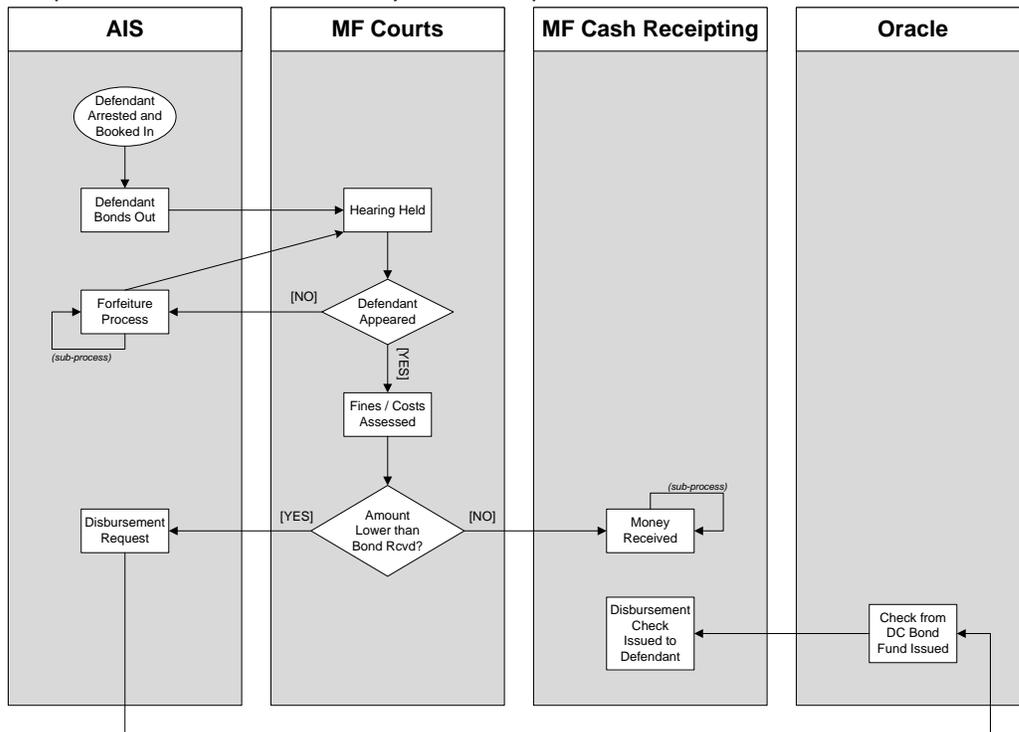
Reliance on Multiple, Disjointed Systems

While information systems routinely work together to achieve common goals, the overall level of complexity and the potential for failure increases with each additional system interface. From synchronization and timing concerns to structural incompatibility and data format issues, successful system interaction must be carefully planned, well executed and stringently maintained.

It's common knowledge that Dallas County remains in a long-term transition phase concerning IT systems. The migration of mainframe functionality to alternative environments has been particularly slow, leaving some tasks simultaneously dependent upon multiple systems, none of which provide a comprehensive view of the overall task and the sum of which is less stable than the component pieces.

In no area is this issue more evident than in the bonding segment. Below is a drastically simplified diagram of the bond process showing how various stages rely on different systems, thus complicating and potentially destabilizing the overall course while simultaneously obscuring the 'big picture'.

Simplified Bond Process Flow --Systems Perspective



Bond Amount History Untracked / Unclear

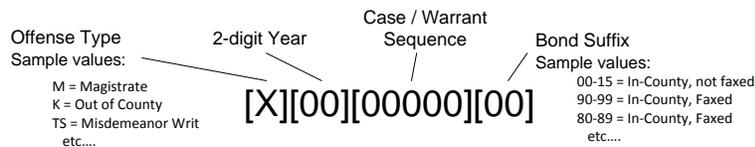
Currently, there is no reliable mechanism for recording the history of a bond's value. Procedurally, clerks are encouraged to type comments into a free-form text field in the mainframe describing / justifying changes to the bond amount. However, no entry is required and the data that is captured in comment fields is neither reliable nor easily minable.

Continued Reliance on Antiquated Naming Conventions and Joins

A key is used to tie related information together in a database. In the case of the Dallas County bond process, this key is often the bond number. Records associated with a given bond (such as forfeiture activities) reference the bond number at the table level to maintain a relationship in the database.

Currently, bond number key values are pieced together from individual bits of information:

Bond Number Construct



Theoretically, this type of approach to key nomenclature allows information to be gleaned by deciphering the individual elements of a single, multi-purposed field. However, modern database methodology has largely moved away from this practice because it can't be consistently relied upon to yield unique values. The recently addressed problem with duplicate bond numbers in Dallas County exemplifies this phenomenon.

Additionally, a key produced in this manner can easily become out-of-sync with the fields that were used to populate it, leading to the misrepresentation of contemporary data. Conversely, modifying the key to reflect changes in underlying data can result in the disassociation (or orphaning) of related records.

For the most part, the database side of this issue has been mitigated in AIS by behind-the-scenes usage of unique identifier fields in SQL Server. However, the problem persists in several key areas including:

- GROUP BY clauses in SQL statements (i.e., GROUP BY BondNo instead of BondID).
- Relationships to cases and warrants predicated upon the case / warrant segment of the bond number.
- All communication to and from the mainframe.

It should also be noted that considerable resources are used to generate bond number values in the production environment of AIS. At present, it takes multiple tables and over 400 lines of SQL code consisting of a labyrinth of multi-tiered, nested conditional statements to generate bond number values in their current format. This structure is prone to errors, is hard to support, leads to performance degradation and would not be necessary if the bond number model was simpler and leveraged the reliability and efficiency of identity seeding devices native to SQL Server.

From the end-user perspective, consumers continue to rely on columnar information contained in the bond number despite the potential for the data to be out-of-sync with the rest of the record.

Other Non-Identity Seed-based Keys

Certain field values that should be unique are set by procedural logic instead of identity seeding mechanisms. This leaves room for errors while also consuming unnecessary resources. In AIS, these values aren't typically used as database keys, but they are often used in conditional clauses in queries and are commonly referred to in the office environment because they appear on official documentation and portend to represent a single legal item. For example, the bond receipt number is a field that should be unique (one unique receipt per bond). However, there are currently over 4,000 receipt records that have conflicting receipt number values.

Lack of Workflow Intelligence

Statute dictates a series of steps be taken in the bond forfeiture process. The Dallas County IT system that handles bond forfeiture activity, AIS, provides a basic mechanism that simply stores information entered by the forfeiture clerk into what ultimately amounts to a spreadsheet.

Input of forfeiture activity records is minimally regulated and there are no mechanisms that evaluate the associated database tables for milestones or triggers. Instead, bond clerks can enter activity in any order they choose and are free to ignore stipulations concerning forfeiture activity and case disposition. For example, a clerk may elect not set the bond disposition to 'Discharged' status even after the bond has been set aside or discharged by the court.

Usage of 'Catch-all' Accounts

Certain account number values are used to qualify particular types of bond. For example, account 249 is used to indicate a personal recognizance bond. Since there is no bond company with account number 249 and because of the very nature of PR bonds, reports and other interfaces that don't account for this particular scenario are potentially misleading.

Bonds vs. Bond Receipts

When a bond is posted, a receipt is issued that shows the amount received or owed. In practice, it is understood that a bond shouldn't exist without a bond receipt (and vice-versa). However, AIS does not require the creation of a receipt when a bond is created.

This fact leads to several system vulnerabilities, including the possibility of circumventing the account limit restriction on bond companies. Because the receipt value feeds the total amount liable by the bond company (the account balance), if a receipt is not issued in association with a bond, the bond amount will not contribute to the overall account balance, potentially allowing the company to exceed the imposed limit.

Furthermore, all known internal and external bond reports treat the bond record and the bond receipt record as mutually inclusive (with a SQL INNER join). In other words, if one item is missing, neither will be displayed. While this design doesn't necessarily encumber bonding a defendant out of jail, it prevents bonds that don't have an associated receipt from being displayed on all known reports, including the weekly report of outstanding bonds sent to the bond companies and attorneys.



**DALLAS COUNTY
COUNTY AUDITOR**

TO: Honorable John Warren, County Clerk
Honorable Gary Fitzsimmons, District Clerk

FROM: Virginia A. Porter *Virginia A. Porter*
County Auditor

SUBJECT: Bail Bond Receivables

ISSUE DATE: September 13, 2011
RELEASE DATE: December 19, 2011

SCOPE

As part of ongoing reviews of County Departments and compliance with statutory regulations, we have performed a review of financial records and electronic bond forfeiture activity within the Criminal Receipt Inquiry (CRIN) system, the discontinued mainframe Bond (BN10) application, the Adult Information System (AIS) bond tab details, and the mainframe Adult Information Bond (AIBN) records, for the County Clerk and District Clerk bond forfeiture assessments.

BACKGROUND

Bond forfeiture fees assessed by both offices have historically varied by officeholder. District Attorney (DA) Civil Section and Attorney General (opinions) have provided guidance.

LEGAL

Statutes governing bail bonds and forfeitures include Code of Criminal Procedure, Chapters 17 and 22, and Occupations Code Chapter 1704. Official opinion issued by the Court of Appeals for the First District of Texas on November 7, 2008 indicated that 'civil filing fees' should be collected in bail bond forfeiture cases referencing a 1993 Court of Criminal Appeals *Dees v. State* opinion which rejected the argument that civil court costs do not apply because bail bond forfeitures are criminal matters.

REVIEW PROCEDURES

Limited review processes were applied to data from the departments in order to evaluate receivable reporting accuracy within the CR system, but did not include a review of original hard copy bond records, case jackets, and/or other court documentation. A random sampling of total activity was selected for certain procedures. Review steps included, but were not limited to, the following:

- Obtained various electronic files of AIS bond extracts, CRIN receivable report R12058, and AIBN/BN10 data for select bonds from IT Services
- Matched bond data from separate files to compile master files of bond activity
- Reviewed sample bond activity on AIS, CRIN, BN10, and/or AIBN

FINDINGS

Receivables

1. Approximately, \$23.6 million in calculated bond forfeiture receivables for 21,448 bonds on R12058 as per data extracted from unpaid assessments on CRIN as of July 11, 2011. CRIN bond forfeiture receivables aged greater than ten years for 15,941 bonds total over \$17.5 million of the \$23.6 million receivable balance or 74.35%.
2. Approximately, \$12.2 million in bond forfeiture fine amounts on BN10 (use of BN10 discontinued after conversion to AIS in 2005) for 30,216 bond records **without** corresponding assessments on CRIN or notations of payment on BN10. While data conversion to the mainframe Central Criminal Receipt System in November 1989 may have resulted in some purged payment records, bonds issued after 1989 totaling over \$3.1 million are part of the \$12.2 million BN10 total without CRIN payment records. BN10 bond amounts aged greater than ten years account for 99.9% of the \$12.2 million.

Partial Analysis of \$23.6 Million CRIN Receivable Balance

3. Various data conversion errors from BN10 to AIS in 2005 including 3,835 bonds with unpaid assessments totaling \$6,690,580.99 on CRIN with a status incorrectly reflected as 'Final Judgment – Remittitur' on AIS when remittitur was not part of the status on BN10. Partial analysis of data revealed an estimated 90% of accounts and 73% of the receivable dollars should reflect a status of Abstract of Judgment, Execution Issued/Returned, or execution returned Nulla Bona rather than the status reflected on AIS. Two defunct bonding companies and out-of-county bonds account for \$4.4 million of the \$6.7 million in unpaid assessments reflected on CRIN.
4. 2242 bonds with assessments totaling \$4,105,454.91 (over \$3.9 million of the total is a bond fine assessment) on CRIN with a status of Final Judgment Against State on AIS or 'JGAS' on AIBN. Approximately, 97% of the assessments are pre-AIS. 2158 of the 2242 were not converted to AIS due to 'JGAS' status. Sample review of bonds on BN10 revealed 'Judgment Against State' without an entry of Final Judgment. Reason for assessments recorded to CRIN could not be determined.
5. 654 bonds with assessments totaling \$983,696.97 (approximately \$928,000 of the total is a bond fine assessment) on CRIN including 636 with a status of 'PAID' or 'PD' on AIBN. 618 of the 654 bonds were not converted to AIS due to 'Paid' recorded on BN10. Sample review of bonds revealed assessment errors on CRIN, partial payments only with balances due, forfeited cash bonds returned to the surety, or fees paid for motions for new trial, bills of review, and/or superseadas appeal bond fees.
6. 999 bonds with assessments totaling \$1,592,441.76 (approximately \$1.5 million of the total is a bond fine assessment) on CRIN with a status of 'Discharged' on AIS or 'DSG' on AIBN. 167 of the 999 bonds were not converted to AIS. Sample review of bonds revealed 'Judgment Against State' without an entry of Final Judgment, forfeited cash bonds not correctly applied to assessments or the correct bond number, order to set aside, bill of review granted, motion for new trial granted, etc.
7. 2561 bonds with assessments totaling \$885,606.29 (approximately \$845,000 of the total is a bond fine assessment) on CRIN with limited information on BN10 or no corresponding information on BN10, AIBN, or AIS to validate the accuracy of the receivable.

8. 9284 bonds with assessments totaling \$7,269,609.94 on CRIN with a status of 'Abstract of Judgment' (AB), 'Execution' (E), or 'Nulla Bona' (NB) on AIS, AIBN, and/or BN10. Approximately, \$6.4 million of the \$7.3 million is for Pre-Trial Release or Personal Recognizance bonds.
9. Separate file provided by IT Services on July 18, 2011 included 2672 bonds with NISI amounts totaling \$7,721,206 (\$2.4 million of the total is for Personal Recognizance bonds). Sample review revealed: most with NISI as the only action; others with last status of Scire Facias Returned, Paid, Set Aside, FJAS tax costs, etc. including one dating to 1966; two contained date errors; and three were missing the NISI date. Approximately, \$6.4 million (1909 bonds) of the \$7.7 million total was over 180 days for misdemeanor cases or 270 days for felony cases from the date of NISI. Approximately, \$4.7 million (74.63%) of the \$6.4 million and 646 (33.84%) of the 1909 bonds were aged greater than 5 years from the date of NISI.

NISI Without Final Judgment

10. A review of existing AIS bond reports revealed: an ad hoc or standard report of non-discharged 'bonds written' by surety is not available within AIS. AIS bail bond reports comparable to previously existing Mainframe bail bond reports available prior to conversion were not replicated in AIS. A listing of non-discharged 'bonds written' with NISI or Final Judgment by surety is **not** available within AIS while bondsman or attorneys that request to receive a weekly listing of non-discharged bonds for their specific account receive an email version from IT Services. Account numbers '000' {Cash} and '249' {Pre-Trial Release} are not part of the Bond Company Maintenance summary information and a listing by surety name for account number '342' {Out-of-County} is not available.

Status: IT Services has provided data extracts to the Clerks based on individual specific requests, but standard reports are still lacking within AIS. In November 2011, IT Services provided a link to a newly created bond database for the Clerks to extract information based on user defined parameters.

Miscellaneous

11. Incomplete system functionality within the bond forfeiture tab. Inquiry access is incomplete preventing view of all bond receipt details on AIS entered by the Sheriff including bond company and attorney maintenance screens.
12. Anomalies in data analysis were caused by: multiple bonds issued for the same case without a change in the bond extension (for example sequencing did not increase from 01 to 02 on the next bond); duplicate issuance of receipt numbers; data conversion errors from BN10 to AIS; AIS bond detail tab for bonding company name or bonding attorney name and/or account number not in agreement with AIS bond receipt history tab for bond company name or attorney name and/or account number; or bond status date on last bond forfeiture action the same as other bond forfeiture status dates.

Status: IT Services updated programming processes to prevent future occurrences of duplicate bond suffix numbers. IT Services created a one-time systemic fix to the bond extension on AIS only. Any affected bonds with an existing assessment on CRIN were not fixed on the mainframe side which will result in unmatched receivable items going forward.

RECOMMENDATIONS

1. **Test unpaid forfeitures for follow-up action and validity.** Procedures should include continuing the practice of placing bonding companies/bondsman/attorneys with unpaid forfeitures on the cut-off list provided to the Sheriff Bail Bond section, issuing writs of execution, and filing abstracts of judgment (now valid for twenty years). Consider referring delinquent receivables exceeding 180 days to the DA – Civil Section for possible litigation and/or third party collection.

Response: The Clerks have created task forces within their specific offices to research as time allows unpaid forfeitures for follow-up action and validity. Initial priority will be given to bonds created on or after January 1, 2007.

2. **Prioritize research of BN10 forfeitures without assessments.** Prioritize forfeitures for those bonding companies/bondsman/attorneys that are still active. If forfeitures are proven valid, accurate, and unpaid, assessments should be created through CRAM by the bond forfeiture clerks with collection actions pursued.
3. **Develop a test environment and re-populate erroneous conversion statuses from BN10 to AIS.** Document and communicate to IT Services bond reporting requirements within AIS including reports containing detailed listings of non-discharged bonds written with statuses of NISI and final judgment for out-county-bondsman account number 342 by bondsman name. Clerks in conjunction with the Sheriff and DA should develop a process to monitor financial viability of insurance companies and ensure Dallas County is listed as creditor when insurance companies file or are forced into bankruptcy.
4. **Review forfeiture assessments on CRIN (for validity and accuracy) and corresponding bond documentation with a forfeiture status on AIS or AIBN of 'JGAS', Final Judgment Against State, Final Judgment Against State (No Cost), Bill of Review (BORG) Judgment Against the State (No Cost), etc.** Invalid assessments should be removed / cleared through CRAM and incorrect assessment amounts should be revised by supervisory personnel. Reinforce training of court clerks and bond forfeiture staff responsible for recording assessments to **not** record assessments through CRAM when judgments have been made against the State without costs due. If subsequent judicial actions (after an entry of final forfeiture judgment had been ordered by the court) result in the bond forfeiture fine amount set aside or reduced, the bond forfeiture clerks should correspondingly adjust the existing bond forfeiture fine amount through CRAM. Court costs, re-arrest fees, and interest accrued on the bond amount from the date of forfeiture should be collected on special BOR's granted in accordance with Code of Criminal Procedure, § 22.17.

Response: The Clerks have created task forces within their specific offices to research as time allows unpaid forfeitures for follow-up action and validity. Initial priority will be given to bonds created on or after January 1, 2007.

5. **Review forfeiture assessments on CRIN (for validity and accuracy) and corresponding bond documentation with a forfeiture status on AIBN of 'PAID' or 'PD'.** Invalid

assessments should be removed / cleared through CRAM and incorrect assessment amounts should be revised by supervisory personnel. Bonds with partial payments only that failed to convert from BN10 to AIS should be identified. Clerks should request IT Services assistance to populate bond activity in AIS that failed to convert from BN10 (for valid unpaid bond forfeiture receivables) to AIS after successful completion in a test environment.

Response: The Clerks have created task forces within their specific offices to research as time allows unpaid forfeitures for follow-up action and validity. Initial priority will be given to bonds created on or after January 1, 2007.

- 6. Review forfeiture assessments on CRIN (for validity and accuracy) and corresponding bond documentation with a forfeiture status of 'Discharged' on AIS or 'DSG' on AIBN.** Invalid assessments should be removed / cleared through CRAM and incorrect assessment amounts should be revised by supervisory personnel. Forfeited cash bonds should be accurately and timely applied to assessments. Clerks should request IT Services assistance to populate bond activity in AIS that failed to convert from BN10 (for valid unpaid bond forfeiture receivables) to AIS after successful completion in a test environment.

Response: The Clerks have created task forces within their specific offices to research as time allows unpaid forfeitures for follow-up action and validity. Initial priority will be given to bonds created on or after January 1, 2007.

- 7. Research (for validity and accuracy) the 2561 bond receivable assessments on CRIN with limited or no information on BN10, AIS, and/or AIBN.** Invalid assessments should be removed / cleared through CRAM by supervisory personnel.
- 8. Consider referring delinquent receivables exceeding 180 days to the District Attorney – Civil Section for possible litigation and/or third party collection.**

Response: The District Attorney's office has presented a proposal to create a special unit to handle bail bond cases and pursue unpaid forfeitures.

- 9. Set bond forfeiture hearings after judgment NISI in accordance with statutes and Rules of Civil Procedure.** Defendants and sureties exonerated from liability of the forfeiture upon the incarceration of the defendant within 180 days misdemeanor and 270 days felony after the defendant's failure to appear in court are still liable for the payment of court costs, any reasonable re-arrest fees, and interest accrued on the bond amount from the date of judgment NISI to the date of the defendant's incarceration in accordance with Code of Criminal Procedure, § 22.13(a) (5) and (b).
- 10. Document and reinforce ongoing training requirements to comply with applicable laws and regulations for necessary system and control edits to produce accurate and reliable information.** Document and communicate to IT Services bond reporting requirements within AIS including reports containing detailed listings of non-discharged bonds written with statuses of NISI and final judgment.

11. **Expand functionality of bond tab details to allow the clerks to record all relevant forfeiture activity.** Forfeiture activity should be listed in date order processes occur and include the use of system edits to prevent inaccurate date entries. Clerks should be granted inquiry access rights to review all related bond information maintained by the Sheriff and visa versa.
12. **Create system edits within AIS to prevent duplicate issuance of the same bond number with automated sequencing of the bond extensions.** System edits should exist within AIS to prevent duplicate issuance of the same bond receipt number. Bond receipt history tabs and bond forfeiture detail tabs should contain the same bond company/attorney names and/or account numbers.

Response: Resolved.

13. **Enter the bond fine forfeiture amount recorded by the magistrate or Judge to AIS and CRAM.**
14. **Complete all pending bond forfeiture actions (including refund of cash bonds) prior to court ordered expunction of records.**

Response: Agreed.

15. **Record comment notations on CRIN and AIS when refunds are issued through the request for payment process.** Record cash bond disbursements on AIS cash bond tab (County Clerk in conjunction with IT Services developed an automated process in 2010 and refined in 2011).

Status: Systemic process developed by IT Services for the County Clerk to automatically record the disbursement information created through Oracle Accounts Payable was not fully tested and resulted in incomplete and inaccurate available balances on AIS and duplicate payments. Additional testing and research to address these issues are ongoing.

16. **Review (for accuracy and validity) and correct existing assessments on non-final actions or no-amount-due cases.** Bonds with negative court costs balances, negative bond fine balances, or negative special fund balances should be reviewed and corrected as necessary by supervisory personnel. IT Services assistance may be required to adjust previous assessment amounts carried over from the 1989 Central Criminal Receipt System conversion.
17. **Provide appellate court decisions to the bond forfeiture section for follow-up action based on the opinion rendered.**

Response: Agreed.

SUMMARY

This report is intended for the information and use of the Clerks' Offices. While we have performed a limited review of bond financial records, this review will not necessarily disclose all matters of a material weakness. It is the responsibility of the departments to establish and maintain effective internal control over compliance with the requirements of laws and regulations applicable.

Accurate / timely recording of bond forfeiture transactions impact operational liabilities and financial risks. Identified risk factors include the amount and volume of transactions processed, the lack of a standard AIS bond reports, and the lack of an interface (which requires duplicate work effort) between AIS and the mainframe assessment system for bond forfeiture activity. Technology enhancements providing management information and outstanding work flows should continue. Ongoing management oversight and coordination of all responsible departments relevant to bond data details should be periodically affirmed. The Clerks' and Sheriff should coordinate development of additional AIS bond reports and update of bond forfeiture procedures. The Clerks' and judiciary should evaluate effect of set asides and subsequent incarceration on outstanding receivables.

Our review was conducted on a test basis and was not designed to identify all deficiencies in internal control. Adherence to and follow-through with the recommendations should strengthen internal controls and compliance with Dallas County's policies and procedures.

Cc: Commissioners Court
Honorable Judge Martin Lowy, LADJ



**DALLAS COUNTY DISTRICT CLERK
GARY FITZSIMMONS**

VIRGINIA ETHERLY, CHIEF DEPUTY

TO: RON STRETCHER

FROM: GARY FITZSIMMONS *GF*

DATE: DECEMBER 6, 2011

SUBJ.: DISTRICT CLERK'S BOND FORFEITURE AUDIT

ABSTRACT

The District Clerk sampled 192 outstanding bond forfeiture cases with NISI dates ranging from January 2007 to July 2011.

An "outstanding" bond forfeiture case is defined as a case with no discharge entered into the record.

Of the 192 cases, 80 were pending as of July 31, 2011. A pending case would be one in which a Nisi was issued but had not been finally adjudicated.

Of the remaining outstanding cases:

- 59% were "set aside" by the court after the issuance of the Nisi but before the case was set on scire facias docket.
- 20% of the cases resulted in a "Final Judgment Against the State" at some point in the life cycle of the bond forfeiture action. This includes both initial judgments made by the magistrate and judgments made at a new trial or on appeal.
- 6% of the cases were brought to resolution involving an execution issued by the clerk's office.
- 5% of the cases were denied on appeal for which a mandate was received from the Court of Appeals but the clerk had not issued an execution.
- 4% of the cases involved ATGOB's filed by the surety with the court recalling the bond forfeiture warrant or not issuing the bond forfeiture warrant.
- 4% of the cases appear to have been "dropped" when the underlying case was dismissed.
- 1% of the cases involved overdue bills of review.



DALLAS COUNTY DISTRICT CLERK GARY FITZSIMMONS

VIRGINIA ETHERLY, CHIEF DEPUTY

- 1% of the cases were errors in which bond forfeitures were entered incorrectly into the case record but not removed.

The District Clerk has made the following observations relative to his bond forfeiture operations:

- Lack of effective overall management and oversight of the bond forfeiture process;
- Lack of effective management reporting tools to ensure catch and reduce the incidence of error;
- Ineffective communication between court clerks and the bond forfeiture desk resulting in incomplete records;
- Inadequate understanding of the bond forfeiture process and varying practices among the courts;
- The development of informal processes designed to accommodate bond forfeiture set asides in order to avoid warrant recalls;
- The inability to discharge new bonds set by the court after the bond forfeiture action has been set aside and the original bond reinstated;
- Disconnect between the appeals desk and the bond forfeiture desk after mandates are received from the Court of Appeals;
- Accounting and data entry issues addressed in the Auditor's Report;
- AIS record is insufficiently granular to account for and track bond forfeiture activity;
- Information on bond forfeitures kept in FORVUS and AIS;
- Equipment deficits in the bond forfeiture section and the preservation of superfluous legacy processes.

DISCUSSION

The criminal court magistrates are deputized with the task of adjudicating bond forfeiture actions. The district clerk's bond forfeiture desk manages the process after the Judgment NISI's are forwarded by the courts to them.



DALLAS COUNTY DISTRICT CLERK GARY FITZSIMMONS

VIRGINIA ETHERLY, CHIEF DEPUTY

Fortunately, the bond forfeiture desk is staffed with seasoned deputies with long tenure in the department. Those deputies have effectively managed the process meeting timeliness standards with a high level of accuracy.

However, the deficiencies identified in the District Clerk's audit of his business process reveal that in the absence of those deputy's experience and individual work ethic, the entire system would likely break down and result in a loss for the county. Specifically, the lack of reporting tools and consequent lack of oversight means that any systematic error is replicated throughout the process. The task of the district clerk's office is to create effective reporting tools and ensure that information is communicated appropriately between the courts, bond forfeiture desk, appeals desk and the Sheriff.

The audit reveals that up to 60% or more of all bond forfeiture actions are terminated within 24 hours to 2 weeks after the clerk has entered the Judgment Nisi. The frequency of these set asides has resulted in an enormous volume of recalled bond forfeiture warrants. Staff has attempted to delay the issuance of capias and citations for up to three days so as to avoid having to issue recalls. As there is a 10 day time period required for the issuance of process from the date of the Nisi, this increases the likelihood that clerks may miss the cut off time.

In addition, set asides by the court that happen after the process is issued and the bond forfeiture (B/F) case is placed on the scire facias docket is not reliably being communicated to the B/F desk causing confusion and making it difficult to identify the status of the action.

The district clerk has noted a long and regrettable pattern of mismanagement in his criminal process section. That mismanagement is most acute in the appeals section. As a result, mandates received from the Court of Appeals are not being reliably routed to the B/F desk and subsequent executions not issued. The district clerk found that of the 192 cases surveyed, executions had not been issued in 6 cases returned on appeal.

The district clerk has determined that some courts are misinterpreting the nature of bond forfeiture actions such that some of those actions are being terminated when the underlying case is dismissed or when a warrant is issued secondary to the filing of an ATGOB. In addition, it appears that there is a misunderstanding of vocabulary used to describe B/F actions. The discharge of a bond does not "discharge" the B/F actions, yet that is what appears to be occurring.

The most difficult problem is the dispersion of critical information between the court file, FORVUS and AIS that should all be consolidated into AIS. The AIS record does not include sufficient granular level information to suitably track the life cycle of bond forfeiture actions. After the implementation of AIS and the migration of B/F tracking from FORVUS to AIS, no reporting capability was developed for B/F actions to replace the old FORVUS reports.



DALLAS COUNTY DISTRICT CLERK GARY FITZSIMMONS

VIRGINIA ETHERLY, CHIEF DEPUTY

RESOLUTION

The deficiencies previously identified make it difficult for management to track and report out the status of bond forfeiture actions for any given time period. However, the district clerk's audit reveals that his office is reliably processing the bond forfeiture actions submitted to him by the court.

The district clerk has developed a reporting tool to assist management in the tracking of B/F cases. Further work needs to be done to perfect the report, but it is expected within the next two months.

The AIS record has been substantially modified to include granular level information. The office has eliminated the old paper "call sheets" and now manages the actions exclusively in the AIS system. Further training is needed by both the court clerks and appeals desk to better use the AIS system and migrate fully off FORVUS. In addition, court clerks have received additional training to ensure that information is properly communicated to the B/F desk.

It is not the district clerk's role to second guess decisions made by the judiciary. However, the district clerk does have an interest in ensuring that the county receives payment for court costs associated by his activities. The district clerk has notified the judiciary that the practice of set asides may inhibit him from collecting court costs and has requested that they moderate their practice of the same.

The appeals desk is under new management and has been given a technology overhaul. Training deficits have been identified and corrected. Mandates received from the Court of Appeals secondary to bond forfeiture actions are now being reliably transmitted to the B/F desk so that executions may be issued.

The district clerk continues his use of the "courtesy call" to sureties prior to the issuance of an execution. That practice has been very successful in ensuring payments are received without the necessity of issuing the executions and abstracts.

Beginning in January, it is expected that management will produce a monthly bond forfeiture report documenting activity for the past month along with outstanding issues. This report will be submitted with criminal sections monthly reporting and reviewed by senior management at the monthly meeting. This will ensure accuracy and accountability.

The Dallas County Auditor has identified procedures needed to ensure that the AIS record matches the FORVUS financial records. In addition, the auditor has identified a backlog of cases stretching back some 40 years in which financial documents do not reflect the court's record. The district clerk will be concentrating on reviewing and perfecting records from January 1, 2007 to present and will address older records after he is confident that there are no outstanding issues involving current records.



**DALLAS COUNTY DISTRICT CLERK
GARY FITZSIMMONS**

VIRGINIA ETHERLY, CHIEF DEPUTY

GLOBAL RECOMMENDATIONS

Local Rules for the criminal district courts should be adopted by the judiciary stipulating the process for handling bond forfeiture actions, the issuance of warrants, the use of set asides and rules governing the submission of ATGOB's.

Forms documenting the reasons for set asides submitted by defense attorneys or sureties should be implemented similar to those used in Travis County to ensure the process has maximum transparency.

A standard set-aside "order" should be implemented in each of the courts rather than the use of the "stamp" on the docket sheet.

Support the development of a District Attorney bond forfeiture team and develop a close working relationship to ensure accurate and timely communication and movement on issues.

Develop a method for pursuing pre-trial release bond forfeiture actions.

Improve communication between the Magistrate Court at Sterret and the courts.

Develop an appropriate system for routing Sheriff Verifications to the courts.

QUESTION PRESENTED:

What recommendations would you make in creating a bail bond unit for the Dallas County Criminal District Attorney's Office?

General Rules and Law:

“The laws of Texas vest in district and county attorneys the exclusive responsibility and control of criminal prosecutions and certain other types of proceedings.” *Meshell v. State*, 739 S.W.2d 246, 259 (Tex. Crim. App. 1987); TEX. CONST. Art. V, § 21; TEX. CODE CRIM. PROC. ANN. art. 2.01;; TEX. GOV'T CODE ANN. § 44.157. While bail bond forfeitures follow the rules of civil procedure, they are substantively criminal cases. TEX. CODE CRIM. PROC. ANN. art. 22.10; *Dees v. State*, 865 S.W.2d 461, 463 (Tex. Crim. App. 1992); *Williams v. State*, 707 S.W.2d 40, 43 (Tex. Crim. App. 1986); *International Fidelity Insurance Company and State*, No. 10-03-178-CR, 2003 Tex. App. LEXIS 10658 (Tex. App.—Waco 2003). Therefore, the District Attorney has a core function of prosecuting bail bond forfeitures.

Nevertheless, the prosecution of bail bond forfeitures requires a co-operative effort among the District Attorney, County and District Clerks, Sheriff's Department, Judges, and Bail Bond Board. Any one of the departments can cause the whole system to fail through either a failure to follow the law, or a failure to co-operate with one or more of the other departments. Rebuilding a bond forfeiture program for Dallas County, given good co-operation among the departments, will require two to five years. There may need to be changes in policies and procedures in most of the departments and offices.

The Process:

The forfeiture process begins with the defendant's failure to appear at any proceeding at which his presence is required. TEX. CODE CRIM. PROC. ANN. art. 22.01. In most counties, the Judges call the announced and posted docket and, within a reasonable time period after the stated appearance time, will direct the bailiff to call the defendant, and will record the failures to appear. When the docket is called, the prosecutor should request bond forfeiture on each case where the defendant failed to appear timely. The granting of the judgment *nisi* is a ministerial duty once the elements are present. TEX. CODE CRIM. PROC. ANN. art. 22.01; *Allegheny Mutual Casualty Company v. State*, 710 S.W.2d 139 (Tex. App.—Houston [14th Dist.] 1986). However, in Dallas County, the Judges, while posting dockets, allow defendants and attorneys to appear at will. This makes the systematic forfeiture of bonds exceptionally difficult and requires prosecutors to be constantly on call. The Dallas County open docket call may be unique. Dallas County does not make use of the “certificate of call” for the bailiffs and relies upon the Judge and the court staff to keep bond forfeiture records. The certificates of call are made a part of the court's record and are elsewhere used as evidentiary support in forfeiture cases. (The law does not require the use of certificates of call.)

Once the failure to appear occurs and is recorded, the clerks (County or District, respectively) prepare a judgment *nisi* for the Judge's signature. The clerks routinely delay the processing and filing of judgments *nisi* because of the large number of judicial set asides and declarations of insufficiency. The judgment *nisi* is the basis for the State's litigation over the bail bond and begins the enforcement proceeding. *Cheatam v. State*, 13 Tex. Ct. App. 32 (1884); *Swaim v. State*, 498 S.W.2d 988 (Tex. Crim. App. 1973). Unless waived by the surety, the clerks issue citations to the surety and notice is provided to the defendant. TEX. CODE CRIM. PROC.

ANN. art. 22.04. After citation is issued, the clerks place the cases on a civil docket or a *scire facias* docket. TEX. CODE CRIM. PROC. ANN. art. 22.10. Dallas County uses the *scire facias* docket format.

Both the surety and the principal are entitled to the benefits of any civil proceeding including discovery and a trial on the merits of the bond forfeiture. This is an adversarial proceeding as is any criminal trial, but in bond forfeitures, the State is also entitled to conduct discovery. *Kubosh v. State*, No. 01-04-00268-CV, 2005 Tex. App. LEXIS 998 (Houston [1st Dist.] 2005). Once the notices for trial are given in accordance with the Rules of Civil Procedure and the local rules, the case may proceed to trial on the merits or the District Attorney may negotiate a settlement. TEX. CODE CRIM. PROC. ANN. art. 22.125. Currently, in Dallas County, the District Attorney does not appear to be involved in the negotiation or trial of misdemeanor bond forfeitures. Felony bond forfeitures, however, are handled in magistrate courts and prosecutors are present but are rarely in charge of the proceedings on behalf of the State.

Even though the State may obtain a final judgment in a bond forfeiture case, the surety can delay the collection of a final judgment through legal maneuvers for two to six years. (This is the reason some counties set up settlement schedules in which the various remedies such as appeal, remittitur, and bills of review are waived.) Even if the county collects the judgment from a surety, the surety can force a refund from the county through the statutory remittitur process for up to two years if the principal is apprehended within the two years following the judgment. TEX. CODE CRIM. PROC. ANN. art. 22.16 and 22.17. An equitable bill of review may even be possible for up to four years after the judgment.

Staffing for a bail bond unit in the District Attorney's Office:

Experience has shown that to have an efficient and meaningful bail bond forfeiture unit in the District Attorney's Office, there is a need for the following: two attorneys (One ADA VI and One ADA V, ~~preferably~~ all bail bond attorneys will be required to have civil litigation experience and be subject to licensing in federal district courts and the 5th Circuit Court of Appeals].

Responsibilities

The **supervisory attorney** will be responsible for administrative duties as well as being an active litigator **with the other attorney** working on felonies and misdemeanors case. Since bond cases may be appealed to the intermediate appellate courts and the Court of Criminal Appeals, the attorneys will need to be able to address those appeals. To collect on final judgments on bondsmen outside Dallas County, the attorneys may be required to engage in litigation in other counties that will require more than a novice level of litigation and procedural experience. If a bondsman files bankruptcy or the insurance company is placed in receivership, the bond litigation will move to the federal courts and become subject to that appellate process and another set of rules of procedure.¹

Two **legal secretaries** (LS 10). The secretaries will need experience in developing and maintaining forms related to litigation as well as experience in formatting and filing appellate briefs. They will also assist in obtaining and organizing the documentary evidence for hearings and trials.

¹ Harris County's Chief of Bail Bond Forfeitures indicates that she now spends a substantial portion of her training budget and time with bankruptcy seminars.

In most counties with bond forfeiture departments, the forfeiture attorneys report to the chief of the civil division and operate out of the civil division. The location of the bail bond forfeiture unit and its lines of reporting are important. The resolution of the bond forfeiture matter should not be an element of the criminal case and should not be connected directly. It is not uncommon for bond forfeiture to continue well after the defendant has been tried and sentenced. The independence and separation of the criminal case and the bond forfeiture may best be compared to the similar process in Chapter 59 asset forfeiture cases and the underlying criminal proceeding. TEX. CODE CRIM. PROC. ANN. art. 59.

Bond forfeitures are paper intensive and the State presents the majority of its case through documentary evidence which must be prepared in advance. While one attorney can generally prosecute numerous cases, a minimum of two attorneys should be available to handle the various matters which may arise and to cover any scheduling conflicts. Legal secretaries are essential because of the volume of paperwork and need to obtain documents from various criminal courts. They also route the various notices and filings to the proper case files and generally keep the dockets updated for the attorneys. An investigator is often needed to serve subpoenas and obtain supporting evidence.

A bond forfeiture attorney must work with all other departments, including the District and County Clerks, the Sheriff's Department, the judiciary, and fellow prosecutors. The bond forfeiture attorney must have considerable discretion in litigation including the ability to compromise or dismiss cases. Once a bond forfeiture unit is established, the District Attorney should set out a general policy and guidelines for the prosecution of bail bond forfeitures and the collection of final judgments. Line prosecutors should receive training in routine procedures which affect the prosecution of bail bond forfeitures. Such policies and guidelines need not be in writing; the general rules to follow in bond forfeitures for both the prosecutors and the judiciary are found in the Code of Criminal Procedure Article 22.

General Duties:

Prosecute or negotiate settlements in both misdemeanor and felony bond forfeiture cases to obtain final judgments. TEX. CODE CRIM. PROC. ANN. art. 22.125.

Attend (prosecute) hearings on motions for new trial, applications for remittitur, statutory bills of review (2 years), and equitable bills of review (4 years)

Advise County and District Clerks, Treasurer, Auditor, Bail Bond Board, and Commissioners Court (the bail bond funds collected go to the general fund TEX. CODE CRIM. PROC. ANN. art. 103.004) on bail bond issues and procedures (this is a county attorney function subsumed in the criminal district attorney duties). This can be a substantial duty and very time consuming.

Monitor and assist prosecutors in obtaining judgments *nisi* from courts

Be prepared to appear in court for motions to set aside, CCP 17.19 affidavits, and a variety of attempts by bondsmen or attorneys to affect the judgments *nisi*

Monitor issuance of writs of execution and filing of abstracts of judgment for in county final judgments

Establish and prosecute the collection of final judgments on out of county bonds in conjunction with the District and County Clerks including abstracting and writs of execution

Monitor the issuance of citations and notices from Clerks' offices

Brief and argue appeals of bail bond cases (this depends upon DA office policy on appeals)

Monitor the filing of the CCP 17.16 affidavits to release sureties (new duty from May, 2011 statute – SB 877)

Monitor and report unpaid final judgments to the Bail Bond Board along with the clerks

Represent the State (or the County) in both state and federal courts when the prosecution and collection of final judgments moves into bankruptcy or receivership litigation

What will a bail bond prosecution unit cost?

The funding for a bail bond unit will cost the County approximately, \$382,696.57 in salaries and benefits annually. Please see the attached chart of salaries including benefits for the members of a bail bond prosecution unit.

What can the bail bond prosecution unit provide for the County?

Currently, based upon reports from the District and County Clerks, the County has collected approximately \$845,000.00 in misdemeanor bond forfeitures and approximately \$237,000.00 in felony bond forfeitures.² The following counties, which have smaller populations than Dallas County, and each county has a dedicated bail bond prosecution unit and have recently had the following annual results³:

Tarrant County – \$1,500,000.00
 Denton County – \$700,000.00
 Ellis County – \$200,000.00 (pop. 170,000)
 Travis County – \$2,000,000.00
 El Paso County – \$850,000.00

The Harris County prosecutors continue to lead in the prosecution of forfeitures both in terms of the development of the law and in the number of collections. They have experienced a substantial reduction in staff and in the rate of collection. Harris County reports approximately \$2,700,000.00 in annual collections.

By forming a bail bond prosecution unit and co-ordinating the efforts of the District and County Clerks, the Sheriff's Department, the Bail Bond Board, the judiciary, and the line prosecutors, Dallas County should be able to double its current bail bond forfeiture collections. Depending upon the future actions of the Legislature⁴, Dallas County should be able to achieve

² This makes \$1,082,000.00 total collections for fiscal 2011.

³ The listed counties were kind enough to provide data estimating their collections over at least the past two years. Each county reports substantial declines in collections over the past few years.

⁴ A brief review of legislative history beginning in 2003 to the present, reveals that the bondsmen have been successful in modifying the various codes related to bail bond forfeitures to make it very difficult for the State to collect and retain 100% of a bail bond forfeiture. Even after a final judgment, the bondsmen petition the courts to order counties to refund a portion or all of their collections on a bail bond for up to two years after the payment of

and maintain annual bail bond collections of approximately \$2,000,000.00. This substantial increase of collections will not be immediate, but will require from two to five years to achieve through education, training, and policy changes throughout the County.

	Monthly Salary	Service Incentive	Monthly Salary	Annual Salary	Medicare 1.25%	FICA 6.4%	Retirement 10.4%	Insurance	Annual Total	Monthly Total
Assistant District Attorney VI	\$9,425.24	\$400.00	\$9,825.24	\$117,902.88	\$1,709.59	\$7,309.98	\$12,261.90	\$8,100.00	\$147,284.35	\$12,273.70
Assistant District Attorney V	\$8,270.48	\$160.00	\$8,430.48	\$101,165.76	\$1,466.90	\$6,272.28	\$10,521.24	\$8,100.00	\$127,526.18	\$10,627.18
Legal Secretary 10	\$3,236.13	\$0.00	\$3,236.13	\$38,833.56	\$563.09	\$2,407.68	\$4,038.69	\$8,100.00	\$53,943.02	\$4,495.25
Legal Secretary 10	\$3,236.13	\$0.00	\$3,236.13	\$38,833.56	\$563.09	\$2,407.68	\$4,038.69	\$8,100.00	\$53,943.02	\$4,495.25
									\$382696.57	

**DALLAS COUNTY BAIL
BOND TASK FORCE
PROCESS
RECOMMENDATIONS**

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DALLAS COUNTY BAIL BOND TASK FORCE PROCESS RECOMMENDATIONS

INTRODUCTION

We want to thank the Dallas County Bail Bond Task Force for providing us the opportunity to help create a successful system that assures; *Transparency, Accountability* and *Fiscal Oversight*, while maintaining a primary focus on *Public Safety* and *Good Public Policy*.

We identified several areas of concern and places we could provide input and recommendations that would be helpful in the architecture of a successful system.

Our goal is to help Dallas County create a “*best practices model*” as it relates to the release and supervision of a criminal defendant as he/she moves through the criminal justice system.

We have identified the “*stakeholders*” as; (1) *criminal defendants*, (2) *the judiciary*, (3) *Dallas County*, (4) *the surety companies* and (5) *the taxpaying citizens of Dallas County*, which require us to consider the following when managing a system or creating procedures or protocol;

1. *Public Safety*
2. *Good Public Policy*
3. *Transparency*
4. *Accountability*
5. *Fiscal Oversight*

DISCUSSION POINTS

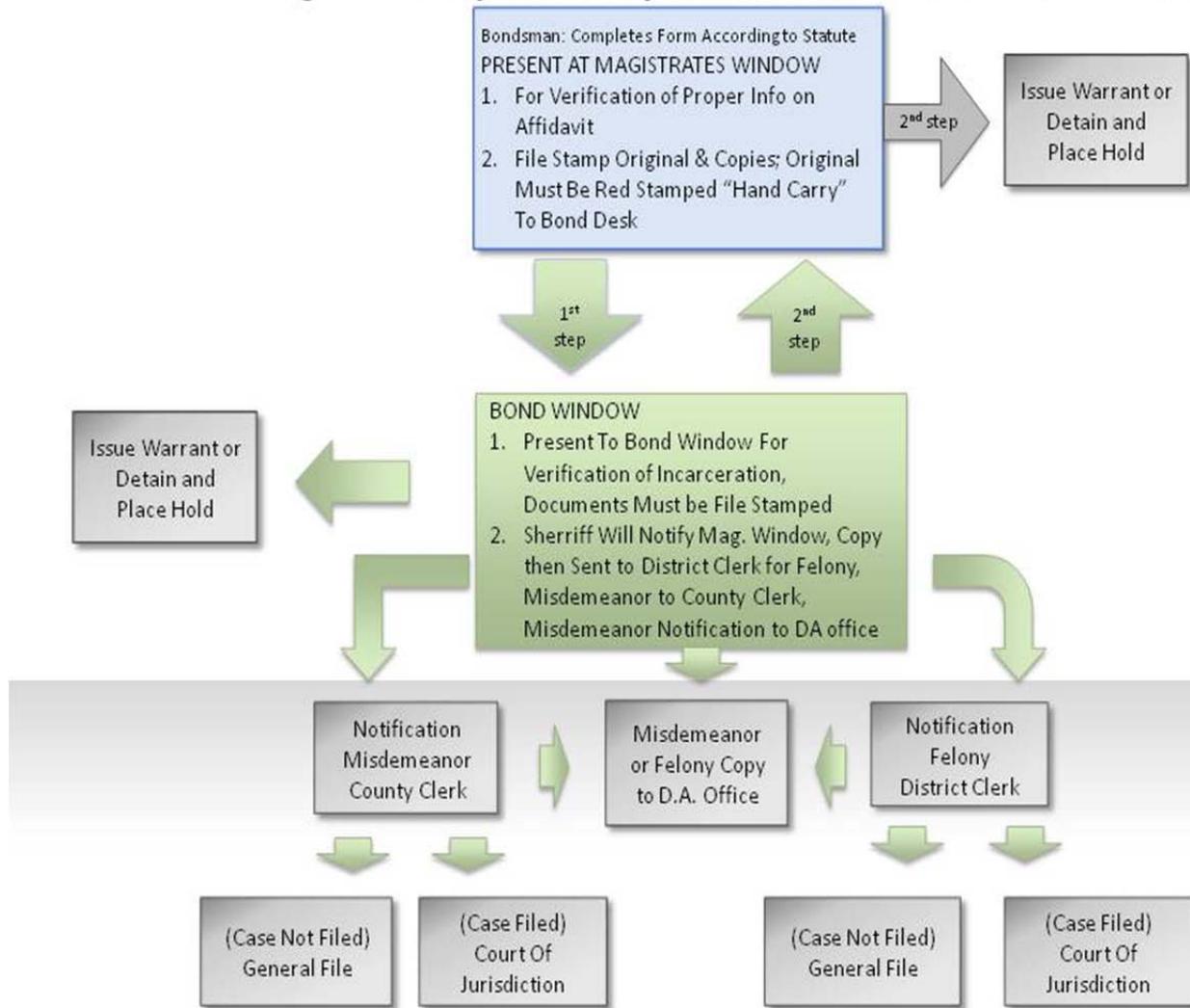
We think the following are areas to which we can give insight and guidance;

1. **IT Issues & Information Exchange**
2. **17.16 and 17.19 process and procedure with flowchart**
3. **“Best Practices” Appearance Model and flowchart**

INFORMATION TECHNOLOGY ISSUES AND TRANSFER

TOPIC	PROBLEM	CONSEQUENCES	SOLUTIONS
JAIL INFO AVAILABLE FOR DEFENDANT RELEASE ON COUNTY WEBSITE	ONLY PARTIAL INFO AVAILABILE	<i>STILL HAVE TO PHYSICALLY CONTACT DALLAS COUNTY AND UTILIZE COUNTY MANPOWER TO OBTAIN INFORMATION</i>	<i>ALL REAL - TIME INFORMATION THAT IS NEEDED TO FACILITATE THE TIMELY RELEASE OF A DEFENDANT FROM THE COUNTY JAIL</i>
COURT NOTIFICATIONS	NO STANDARDIZED FORMAT OR UNIFORMITY OF COURT NOTICES. THEY RANGE FROM: PHONE CALL, US MAIL, FAX, EMAIL, OR NO NOTICE AT ALL	<i>1,000's OF MANUAL / PHYSICAL INTERACTIONS WITH DALLAS COUNTY STAFF EACH MONTH EXHAUSTING 100's OF HOURS OF MANPOWER</i>	<i>HAVING SURETY EMAIL ADDRESSES ON RECORD WITH COURTS AND COUNTY WOULD HELP WITH NOTIFICATION PRACTICES.</i>
<ul style="list-style-type: none"> • UPDATE OF COURT RESETS • CHANGES OF STATUSES • UNFILED CASES • NOT RESET CASES 	<ul style="list-style-type: none"> • *PRINTED / ELECTRONIC FORMAT DELIVERED WEEKLY • *CASE STATUS NOT CLEARLY DEFINED • *NO CLEAR DEFINED PROCEDURE RELATING TO NOT FILED CASES • *LACK OF TRANSPARENCY FOR CASES NOT RESET & UNFILED 	<i>1,000's OF MANUAL / PHYSICAL INTERACTIONS WITH DALLAS COUNTY STAFF EACH MONTH EXHAUSTING 100's OF HOURS OF MANPOWER</i>	<i>THE DEVELOPMENT OF AN ELECTRONIC FORMAT THAT DELIVERS TRANSPARENCY AS IT RELATES TO COURT RESETS AND STATUS CHANGES OF CURRENT CASES</i>

Discharge of Surety's Liability Due to Defendant Detained 17.16



Art. 17.16. DISCHARGE OF LIABILITY; SURRENDER OR INCARCERATION OF PRINCIPAL BEFORE FORFEITURE. (a) A surety may before forfeiture relieve himself of his undertaking by:

(1) surrendering the accused into the custody of the sheriff of the county where the prosecution is pending; or

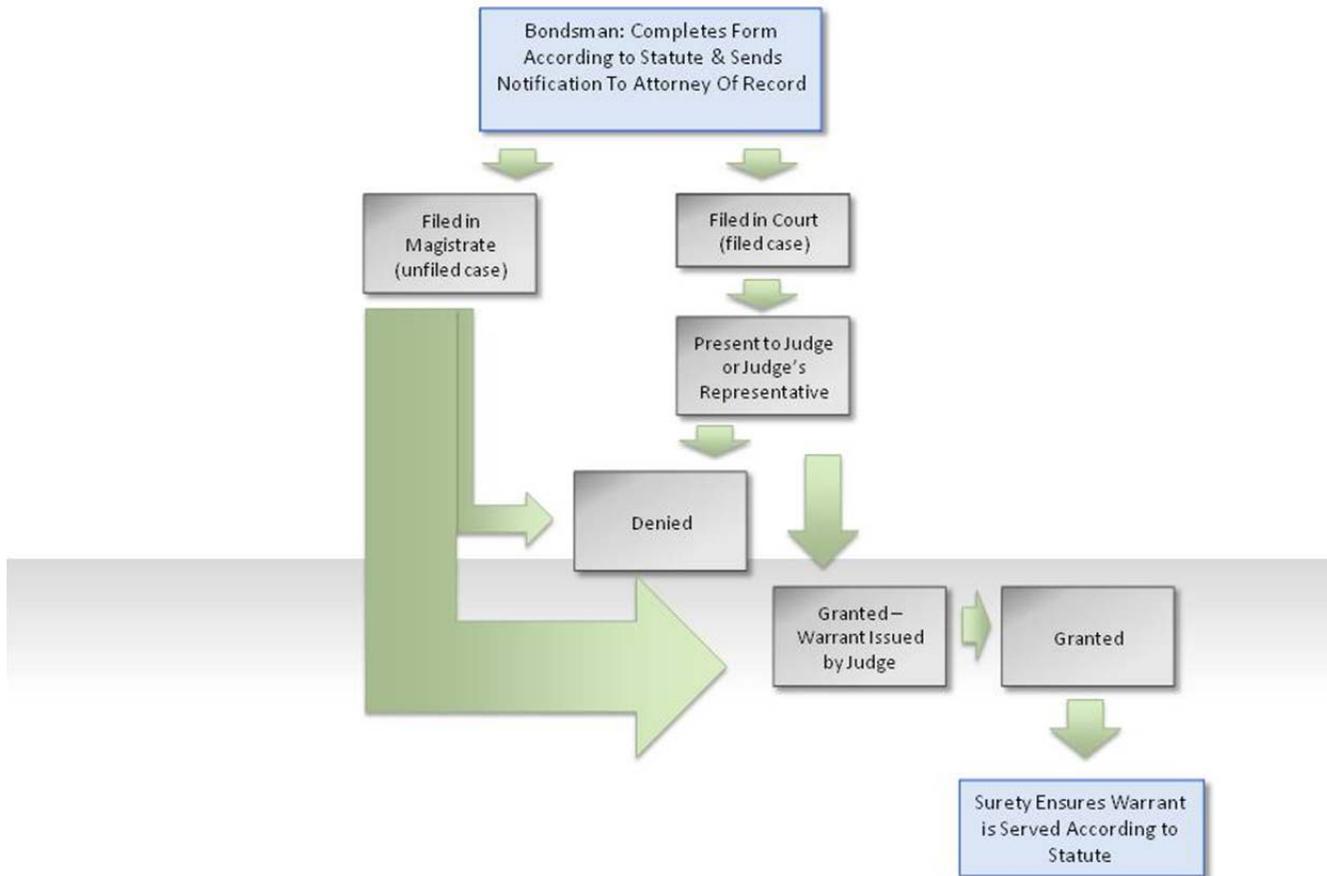
(2) delivering to the sheriff of the county where the prosecution is pending an affidavit stating that the accused is incarcerated in federal custody, in the custody of any state, or in any county of this state.

(b) For the purposes of Subsection (a)(2) of this article, the bond is discharged and the surety is absolved of liability on the bond on the sheriff's verification of the incarceration of the accused.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Texas Legislature Website: TX.gov

CURRENT AFFIDAVIT TO GO OFF BOND – 17.19



Art. 17.19. [285] [333] [321] SURETY MAY OBTAIN A WARRANT. (a) Any surety, desiring to surrender his principal and after notifying the principal's attorney, if the principal is represented by an attorney, in a manner provided by Rule 21a, Texas rules of Civil Procedure, of the surety's intention to surrender the principal, may file an affidavit of such intention before the court or magistrate before which the prosecution is pending. The affidavit must state:

- (1) the court and cause number of the case;
- (2) the name of the defendant;
- (3) the offense with which the defendant is charged;
- (4) the date of the bond;
- (5) the cause for the surrender; and
- (6) that notice of the surety's intention to surrender the principal has been given as required by this subsection.

(b) If the court or magistrate finds that there is cause for the surety to surrender his principal, the court shall issue a warrant of arrest or capias for the principal. It is an affirmative defense to any liability on the bond that:

- (1) the court or magistrate refused to issue a warrant of arrest or capias for the principal; and
- (2) after the refusal to issue the warrant or capias the principal failed to appear.

(c) If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to any other magistrate in the county and that magistrate, on a finding of cause for the surety to surrender his principal, shall issue a warrant of arrest or capias for the principal.

(d) An arrest warrant or capias issued under this article shall be issued to the sheriff of the county in which the case is pending, and a copy of the warrant or capias shall be issued to the surety or his agent.

(e) An arrest warrant or *capias* issued under this article may be executed by a peace officer, a security officer, or a private investigator licensed in this state.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Amended by Acts 1987, 70th Leg., ch. 1047, Sec. 2, eff. June 20,

1987; Acts 1989, 71st Leg., ch. 374, Sec. 3, eff. Sept. 1, 1989;

Acts 1999, 76th Leg., ch. 1506, Sec. 3, eff. Sept. 1, 1999; Acts

2003, 78th Leg., ch. 942, Sec. 4, eff. June 20, 2003.

SECTION 2. Articles 17.19(b) and (c), Code of Criminal Procedure, are amended to read as follows:

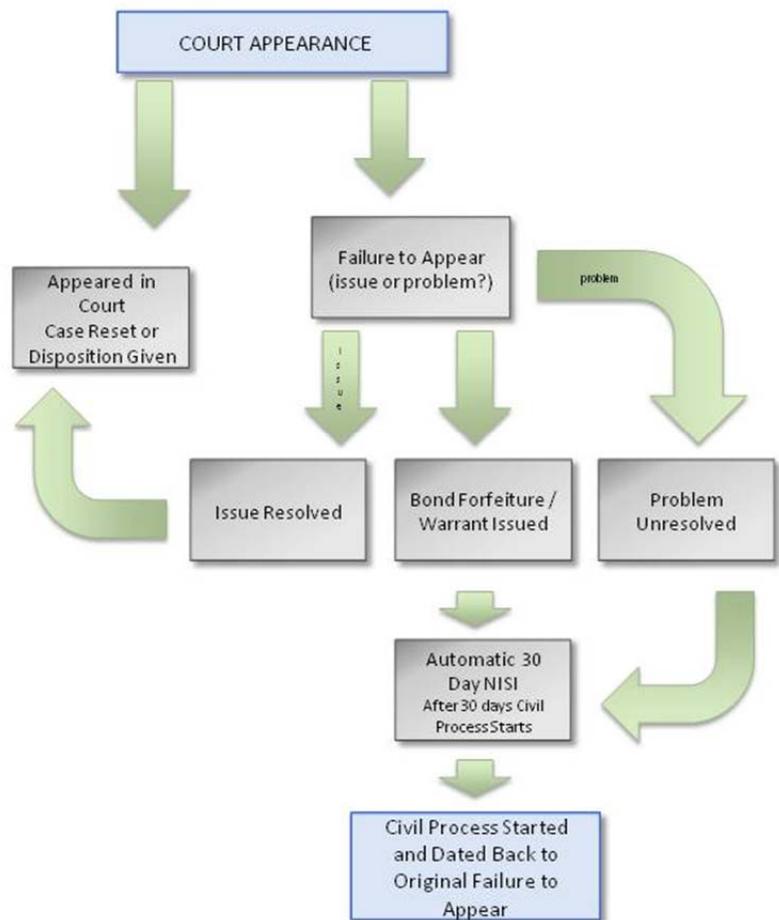
(b) In a prosecution pending before a court, if [H] the court [or magistrate] finds that there is cause for the surety to surrender the surety's [his] principal, the court shall issue a [warrant of arrest or] *capias* for the principal. In a prosecution pending before a magistrate, if the magistrate finds that there is cause for the surety to surrender the surety's principal, the magistrate shall issue a warrant of arrest for the principal. It is an affirmative defense to any liability on the bond that:

(1) the court or magistrate refused to issue a *capias* or warrant of arrest [or *capias*] for the principal; and
(2) after the refusal to issue the *capias* or warrant of arrest, [or *capias*] the principal failed to appear.

(c) If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to any other magistrate in the county and that magistrate, on a finding of cause for the surety to surrender the surety's [his] principal, shall issue a warrant of arrest [or *capias*] for the principal.

Texas Legislature: TX.gov

BEST PRACTICES COURT APPEARANCE MODEL



Best Practices Model “Failure is not an Option”

When given the opportunity to help with the collaboration of designing a system that would be a benefit to the entire criminal justice process and the tax payer of Dallas County, we knew this would be no easy task but we’re excited about the opportunity.

The first thing we felt we must do is identify the stakeholders and how this new system will affect each of them either positively or negatively.

As we identified earlier we believe the stakeholders are: *1) Defendant 2) Judiciary 3) Dallas County 4) Surety Companies or Bondsmen 5) Citizens or Tax Payer.*

We wanted a system that is predicated on success and not incentivized by failure. We feel this is a must. After reading some of the articles and seeing that they were basing success on how well one county did over another by how well they handled their failures.

Our goal is to have a system that circumvents failure as often as possible and promotes the success of having the criminal defendant complete his or her case successfully. We found that when the defendant was unsuccessful we all became unsuccessful, there clearly were no winners. With that in mind, we identified the important topics, which were kept in mind as we built the *“Best Practices Model”*.

- 1) Public Safety*
- 2) Public Policy*
- 3) Transparency*
- 4) Accountability*
- 5) Fiscal Oversight*

Here are a few resources we used in gathering information to build our *“Best Practices Model”* titled *“Failure is not an Option”*.

- 1) We have compiled and gathered information from Legal Scholars, Criminal Justice Experts and Attorneys. These professionals had experience in criminal defense, advising counties and bail bond boards across the state and together have more than 75 years of practical experience.

- 2) We also used excerpts of other successful **“Best Practices Models”** we found working well in other counties. We used information from Harris, Tarrant, Collin, and Dallas counties as well as information from the award winning bail bond program printed in the Texas Association of Counties (TAC) newsletter from Nacogdoches County.
- 3) We also used recommendations from the (NGA Center) “National Governors Association Center for Best Practices to build this model.

Research Validated Best Practice	A program, activity or strategy that has the highest degree of proven effectiveness supported by objective and comprehensive research and evaluation.
Field Tested Best Practice	A program, activity or strategy that has been shown to work effectively and produce successful outcomes and is supported to some degree by subjective and objective data sources.
Promising Practice	A program, activity or strategy that has worked within one organization and shows promise during its early stages for becoming a best practice with long term sustainable impact. A promising practice must have some objective basis for claiming effectiveness and must have the potential for replication among other organizations.

As used in the (NGA Center) chart

- 4) We used our **“Field Tested Best Practices”** and practical experience as it relates to a defendant successfully completing their court cases. We used our model of: “Issues vs. Problems” - Solve the “Issues” before they become “Problems”.

On any given day in Dallas County 15% of our case load of defendants required to appear in court are not reset the following day. After our **Court Service Representatives (CSR)** start to work on the “Issues” we will solve all but about ½ to 1% of the cases in this category in just a few days. Thus, circumventing an *“Issue”* from becoming a *“Problem”* that is costly to all stakeholders.

- 5) We also explored the use of the latest technology and software to track all systems.

THE COST OF FAILURE

Consequences of a Failure to Appear

When a defendant fails to appear for a required proceeding, the presiding judge or magistrate generally issues a Bench Warrant for his or her arrest. The defendant may remain a fugitive, or, as more likely, he/she may return to court either by surrender or apprehension.

If the defendant surrenders to the court, the court will recall the warrant, the defendant will be re-booked, and a new proceeding may be held to re-determine the conditions of release. If the defendant is arrested, he will be booked and detained. Upon booking the defendant appears in court where a new determination of release conditions will be made. A hearing may be held to determine whether the original bail bond, if there was one, is to be re-instituted or forfeited.

It is clear that a Failure to Appear (FTA) imposes additional costs on the taxpayers and on the general population. Even if the individual surrenders there are additional process and detention costs. Re-arrest of a defendant imposes even greater costs on the taxpayer. If the defendant remains a fugitive all of the original booking and hearing costs are wasted and the integrity of the criminal justice system is further compromised. Every defendant that remains a fugitive undermines the crime control efforts of local government.

Costing the Consequences of Failure to Appear

In order to gain some appreciation of the magnitude of the costs that every failure to appear imposes on taxpayers and on society in general, it is helpful to attach dollar values to both their relatively straight-forward budgetary (or fiscal) impacts as well as to their more difficult at assess social costs. In previous study of this topic Steven Twist and Michael K. Block, PhD. Professor of Economics & Law University of Arizona, developed a rather detailed set of failure to appear cost estimates based on data they were able to obtain from LA County. A very brief summary of their estimates appear in the tables. In both cases the costs have been re-indexed and expressed in current (Year 2010) dollars.

Table 1		Table 1 presents the budgetary costs of a failure (FTA) to appear corresponding to the method by which the defendant is returned to court. It includes estimates of the additional budgetary costs attributable to an FTA if the defendant eventually surrenders; if the defendant is arrested on a Bench Warrant for the FTA, if the defendant is eventually rearrested for a new crime or if the defendant is never returned and remains a fugitive. In the latter case we consider that all costs before the defendant became a fugitive are wasted once he/she becomes a fugitive. Hence, all of the expenditure up to the time the defendant failed to appear is considered a budgetary cost of this type of FTA.
Estimated Budgetary Costs of a FTA by Type of Eventual Return – Current Dollars		
Return Method	Budgetary Cost	
Surrender	\$572.21	
Arrest on a Bench Warrant	\$1,026.00	
Arrest on a New Crime	\$3,330.35	
Fugitive/No Return	\$2,639.71	

Table 2			
Estimated Average Budgetary and Social Costs of a FTA by Type of Release – Current Dollars			
Type of Release	Average Budgetary Cost	Average Social Cost	Average Total Cost
Surety Bond	\$1,361.36	\$8,035.34	\$9,396.69
ROR/CR	\$1,559.47	\$11,687.76	\$13,247.24

In Table 2, under the column labeled “Average Budgetary Costs”, we report the results of taking the costs reported in table 1 and weighting them by the proportion of defendants who are returned by each method. This weighting generates an estimate of the average budgetary cost of an FTA. Because Surety Bond releases and ROR releases have different return profiles they have different estimated budgetary costs.

Since counting only the budgetary cost of an FTA that ends with the defendant in fugitive status seriously underestimates the impact on society of that event, we also calculated a social cost of fugitive status. This social cost calculation (based again on the previous study of LA County) attempts to attribute to fugitive reduction in crime control that result from their status and the increased costs of crime associated with that reduction in crime control. The previous study suggests that every fugitive costs society more than \$36,524.25 in lost crime control benefits.

Hence since the average FTA in these large urban counties has between a 22% and 33% chance of ending in fugitive status after 1 year, we estimated that the social cost is likely to be between \$8,035.35 and \$11,687.76 per FTA.

**For a more complete discussion of our methodology in calculating social cost see, Runaway Losses; Estimating the Cost of Failure to Appear in the Los Angeles Criminal Justice System.*

Closing

As we see the true cost associated with a failure it is easy to recognize that it is not only our “Goal” but our “Role” and “Responsibility” to create a system with procedures that give the defendant his or her best opportunity to be successful in completing their obligation to the Judicial System, Dallas County, The Surety and the Tax Payer.

Dallas County Bail Task Force

Second Letter of Recommendations

Required Information

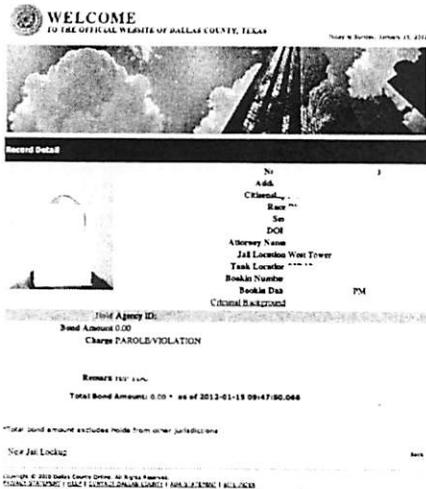
Current Dallas County Inmate Information

Currently, the most efficient way to gather information about an inmate in Dallas County is through the use of the online public access website. With a few, substantial exceptions this website can provide the majority of information necessary to complete a bond form. Although the critical information is addressed, bondsmen generally like to have more information to assess risk.

The most commonly used access address is:

<http://www.dallascounty.org/jaillookup/search.jsp>

It contains a full list of charges and important defendant information, i.e. name, date of birth and book-in number. However it does not list the defendants address information or emergency contact information.

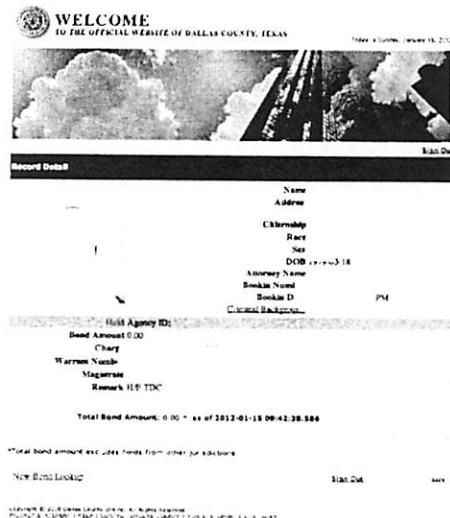


A less common access point with more information pertinent to bail bondsmen (specifically, the defendant's listed home address) can be found at this address:

<http://www.dallascounty.org/bondsearch/login.do>

However the second listing requires a login/password to access. The information regarding its existence is not actively given out to bail bondsmen. Most bail licensees use the public access point and rely on co-signers to give accurate information about the defendant. It is strictly passed along by 'word of mouth'.

Both of these systems fail to update once a defendant is booked-in and arraigned. The systems do not always accurately reflect the status of the defendant's INS standing. If a defendant's bond amount is changed for any reason it will not be shown through this access point. If any charges are dropped after a defendant has been arraigned, they will not be removed from the web listing. All of this results in many calls to the jail requesting information about the defendant. Keep in mind that is likely



that a defendants family may call multiple bail bond companies. It is not uncommon for friends, co-conspirators, victims and spouses to all work unbeknownst to the others, gathering information. The result can be hundreds of phone calls to jail regarding one defendant. Bail bondsmen serve as a good gateway to disseminate information to loved ones. The bondsmen usually keep a log regarding incoming calls to reduce duplicity in their workload also. If web access is inaccurate or not working, the jail will immediately be overwhelmed with phone calls. The "on hold" times can quickly exceed 1 hour and then the defendants family starts to call the jail directly, thinking that the bondsmen are not trying to get the information.

Quick list of required information:

DEFENDANT INFORMATION

NAME
DATE OF BIRTH
ADDRESS
RACE
GENDER
PICTURE
BOOK IN NUMBER
BOOK IN DATE

CHARGE INFORMATION

TITLE/STYLE OF CHARGE
CASE NUMBER
ARRAIGNING JUDGE
BOND AMOUNT
FILING AGENCY

LIST OF REQUESTED INFORMATION

CONTACT PHONE NUMBER
ALIAS INFORMATION
HEIGHT / WEIGHT
IDENTIFYING MARKS

LIST OF DEFENDANTS PRIOR CONVICTIONS
INS STATUS: NONE / STILL INVESTIGATING / HOLD FOR INS
POLICE REPORT

The most important thing that needs to change is the way IT updates the status of current inmates. The present system does not update the inmate status in real time, if at all. Additional information would helpful in assessing risk.

Dallas County Court Information

As a defendant moves from the jail system to the court system the information needed to track, update and process the defendant becomes more complicated. In addition to identifying information, now the bondsmen need case information. Although the weekly report generated by the county provides a great deal of the information needed, it is difficult to process that data without an expensive conversion process. The burden undoubtedly falls on the bondsman to manipulate that data as his business requires. If a bondman can not find the necessary information in the data he has been given then it is safe to assume the he will contact the court clerks or the Sheriffs department trying to locate the missing information. If an effort to reduce the burden on the county personnel, it is recommended that the county be proactive in decimating as much information as possible to the bondsmen. This strategy will help move cases swiftly through the courts system.

The current system has two main ways to collect information in additional to the county's weekly bail bond report.

Article 17.19

Article 17.9 is titled : "Surety May Obtain a Warrant."² This is the bail bondsman last resort in dealing with a defendant who will not comply with requests made by the bondsman. These requests can be for anything from good contact information to additional cosigners in the face of added risk. The Judge has limited authority to determine sufficiency of the document.

In an effort to ease concerns over the use of 17.19, the county may wish to require that the bail bondsman to include some confirmation of attorney notification. Included with this letter is an example of a 17.19 affidavit with language for attorney notification. Dallas County may require that all bondsmen use this form or one like it. The courts may choose to reject a 17.19 not submitted using this language.

² Art. 17.19. SURETY MAY OBTAIN A WARRANT. (a) Any surety, desiring to surrender his principal and after notifying the principal's attorney, if the principal is represented by an attorney, in a manner provided by Rule 21a, Texas Rules of Civil Procedure, of the surety's intention to surrender the principal, may file an affidavit of such intention before the court or magistrate before which the prosecution is pending. The affidavit must state:

- (1) the court and cause number of the case;
- (2) the name of the defendant;
- (3) the offense with which the defendant is charged;
- (4) the date of the bond;
- (5) the cause for the surrender; and
- (6) that notice of the surety's intention to surrender the principal has been given as required by this subsection.

(b) In a prosecution pending before a court, if the court finds that there is cause for the surety to surrender the surety's principal, the court shall issue a *capias* for the principal. In a prosecution pending before a magistrate, if the magistrate finds that there is cause for the surety to surrender the surety's principal, the magistrate shall issue a warrant of arrest for the principal. It is an affirmative defense to any liability on the bond that:

- (1) the court or magistrate refused to issue a *capias* or warrant of arrest for the principal; and
- (2) after the refusal to issue the *capias* or warrant of arrest, the principal failed to appear.

(c) If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to any other magistrate in the county and that magistrate, on a finding of cause for the surety to surrender the surety's principal, shall issue a warrant of arrest for the principal.

(d) An arrest warrant or *capias* issued under this article shall be issued to the sheriff of the county in which the case is pending, and a copy of the warrant or *capias* shall be issued to the surety or his agent.

(e) An arrest warrant or *capias* issued under this article may be executed by a peace officer, a security officer, or a private investigator licensed in this state.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1987, 70th Leg., ch. 1047, Sec. 2, eff. June 20, 1987; Subsec. (b) amended by Acts 1989, 71st Leg., ch. 374, Sec. 3, eff. Sept. 1, 1989; Subsec. (a) amended by Acts 1999, 76th Leg., ch. 1506, Sec. 3, eff. Sept. 1, 1999; Subsec. (b) amended by Acts 2003, 78th Leg., ch. 942, Sec. 4, eff. June 20, 2003; Subsec. (c) amended by Acts 2003, 78th Leg., ch. 942, Sec. 4, eff. June 20, 2003; Subsec. (d) amended by Acts 2003, 78th Leg., ch. 942, Sec. 4, eff. June 20, 2003; Subsec. (e) amended by Acts 2003, 78th Leg., ch. 942, Sec. 4, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. ~~1263~~, Sec. 2, eff. September 1, 2007.

Grace Period

As we explore the process and procedures that constitute the life of a bond in Dallas County we inevitably come to the situation where a defendant misses a court date. At that point it can be argued that the bond is forfeited and the bondsmen role in the case is complete. Or we can look closer at the circumstances involved and find that there are many times when it unreasonable to expect the defendant or his attorney to appear. If the movement of information were absolute, then a defendant would always know about his court date and the court would always know when a person is not available to appear. In reality, information never flows as comprehensively as needed and mistakes arise. This is important because the circumstances where the civil process can be avoided and the criminal case resolved within days, save the county money, time and manpower. It also promotes fairness and moves the wheels of justice with less interruption. Currently the Judge exhibits his discretion in times of confusion and will reset a case, wherein the Judge recalls the warrant and sets aside the NISI judgement; allowing the criminal case to move forward without long hesitation or great expense to the defendant, county or bondsmen.

In an effort to draw a common set of practices for all courts to use, Dallas County may wish to formalize these policies so that all parties involved understand how the system will work moving forward. To that end, it makes sense to allow the bondsmen to have some period of 'Grace' to either collect the defendant or rectify the court setting. Keeping in mind that the bondsman has a strong financial incentive to find the defendant and deliver him to court. However, the county also has a strong financial incentive to allow the defendant an opportunity to surrender himself or provide good cause for his absence and move the case forward.

Based on a study in the 1990s by Steven Twist and Michael Block of the University of Arizona³. The cost associated with with a missed court date and subsequent forfeiture can be deceptively high. Any effort to reduce the budgetary and social cost of this event will have substantial impact on the county budget and judiciary system.

Return Method	Cost of Return (National Avg)
Surrender	\$483.16
Bench Warrant	\$1,156.88
New Crime	\$2,423.38
Fugitive	\$2,391.82

The Bail Industry has a long history of working with the county and its officials, as partners in the criminal justice system. The industry comes under fire from time to time, as all industries do. Bail works so closely with the government that it is often regarded as improper to generate profits, the opposite is true. A bail company that can successfully return the largest number of defendants to court, while maintaining a good reputation with it's customer-base, should profit. It should be rewarded. It is not the county's responsibility to coddle bail bondsmen but it is the governments responsibility to make path for small business to succeed. That is what we are doing here today.

³ Michael K. Block, Ph D. and Steven J. Twist "Runaway Losses: Estimating the Cost of Failure to Appear in the Los Angeles Criminal Justice System" American Legislative Exchange Council - Report Card on Crime, (May 1997) p22