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Judge in Houston Strikes Down Harris County's Bail System



Video These videos were played in court during a lawsuit in Texas over bail fairness. In one, a hearing officer sets a \$5,000 bond for a man arrested on charges of illegally sleeping under a freeway overpass.

BRETT COOMER/HOUSTON CHRONICLE

By **ELI ROSENBERG**

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A federal judge in Houston has overturned the county's bail system for people charged with low-level crimes after finding that it disproportionately affected indigent residents and violated the Constitution.

The judge, Lee H. Rosenthal of Federal District Court, ordered Harris County to stop keeping people who have been arrested on misdemeanor charges in jail because they cannot pay bail.

The ruling, part of a civil rights lawsuit against the county, came Friday in a case that began when a woman was arrested on a charge of driving without a license and spent more than two days in jail because she could not post \$2,500 in bail.

Judge Rosenthal wrote in the ruling, "Harris County's policy is to detain indigent misdemeanor defendants before trial, violating equal protection rights against wealth-based discrimination and violating due process protections against pretrial detention." She cited statistics showing that 40 percent of people arrested on misdemeanor charges in the county had been detained until their cases were resolved.

The order is not final; it is a temporary measure as the larger case works its way through the courts. But legal scholars and the groups that brought the case said the ruling was a victory in the movement to overhaul the bail system that has been growing around the country. Judge Rosenthal's order came after eight days of witness testimony and the presentation of volumes of evidence — 300 written exhibits, and 2,300 video recordings of hearings in which bail was set.

The judge wrote that the plaintiffs had “demonstrated a clear likelihood of success” on the merits of their claims against Harris County.

“I think it represents a real change in our legal system,” said Alec Karakatsanis, the executive director of Civil Rights Corps, a legal nonprofit based in Washington, which brought the case along with another nonprofit, the Texas Fair Defense Project, as well as the private law firm Susman Godfrey. Mr. Karakatsanis described the ruling as a “comprehensive and robust condemnation of the existing money bail system” that would reverberate beyond Texas.

Harris County is not alone in its bail procedures, but its size and prominence — Houston, the county seat, is the fourth largest city in the United States, and its county jail system is the third largest — make the ruling particularly significant, said Fred Smith Jr., an assistant professor at Berkeley Law School.

“If a judge is willing to take the time to have the hearing and put out a 193-page order, it’s sort of hard to imagine her coming out the other way down the line,” Mr. Smith said.



Christina Swarns of the NAACP Legal Defense and Educational Fund in October in Washington. Ms. Swarns, who had filed a brief in support of the plaintiffs, called the Harris County ruling “a shot across the bow to other metropolitan areas.”
GARY CAMERON / REUTERS

Christina Swarns, the litigation director of the NAACP Legal Defense and Educational Fund, who had filed a brief in support of the plaintiffs, called it “a shot across the bow to other metropolitan areas.”

Robert Soard, an assistant county attorney for Harris County, said the county was reviewing the court’s decision and had not decided whether to appeal.

The practice of demanding money as bail is standard in the majority of jurisdictions in the United States. But a series of lawsuits and a growing body of research has led to questions about its efficacy and potential disparities based on race and income. In January, New Jersey dropped its money bail system for minor crimes, and Colorado has changed its bail systems. The discussion has been percolating in other states, as well.

The challenge in Harris County has drawn the support of the new sheriff, Ed Gonzalez, a Democrat, and one of the 16 criminal court judges who are defendants in the case, Darrell Jordan, also a Democrat. The other 15 judges, all Republicans, continue to oppose it, a spokesman said. The county has retained Charles J. Cooper, a high-profile conservative litigator, to help in its defense.

Lawyers for Harris County have pointed out that it has already started making substantial changes to its bail system, including a planned switch to more sophisticated method of setting bail that takes into account how likely an arrestee is to flee or commit a new crime. And they have argued that the county's policies adhere to Texas' laws on criminal procedure law, that they do not violate the Constitution and that they are not intended to needlessly detain arrestees.

The order issued on Friday takes effect on May 15. People arrested on misdemeanors charges are to be interviewed about their financial conditions for an affidavit. Those who have been deemed eligible for release at a hearing will have the option of being released within 24 hours of their arrest, regardless of whether they can afford bail.

Heidi Li Feldman, a professor at Georgetown University Law Center, said the ruling indicated that the lawsuit could open the door to expensive litigation against the county.

“This gives tremendous force to those pushing for the reforms because they can say, ‘Look, it’s not just an unwise use of county resources, but the lawsuit has cleared the first hurdle of there being a viable extensive money damages claim,’” Professor Feldman said. “The judge has written an extraordinarily thorough, comprehensive, carefully reasoned memorandum in support of the order. Any challenge to it from either side is going to take a serious amount of work and expenditure.”

The lawsuit was filed in May 2016 on behalf of Maranda Lynn ODonnell, who spent more than two days in jail because she could not afford to pay her \$2,500 bond after she was arrested on charges of driving with an invalid license. It was soon merged with another lawsuit filed by Loetha Shanta McGruder — a mother of two who was pregnant when she was arrested and held because she could not pay a \$5,000 bail — and Robert Ryan Ford.

Lawyers for the plaintiffs have contended that about 500 people arrested on misdemeanor charges are detained in the Harris County jail system on an average night.

Correction: May 2, 2017

A picture with an article on Sunday, about a judge overturning part of the bail system in Houston, was published in error. It showed a building that was once the Harris County jail, it is no longer used for that purpose.

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