

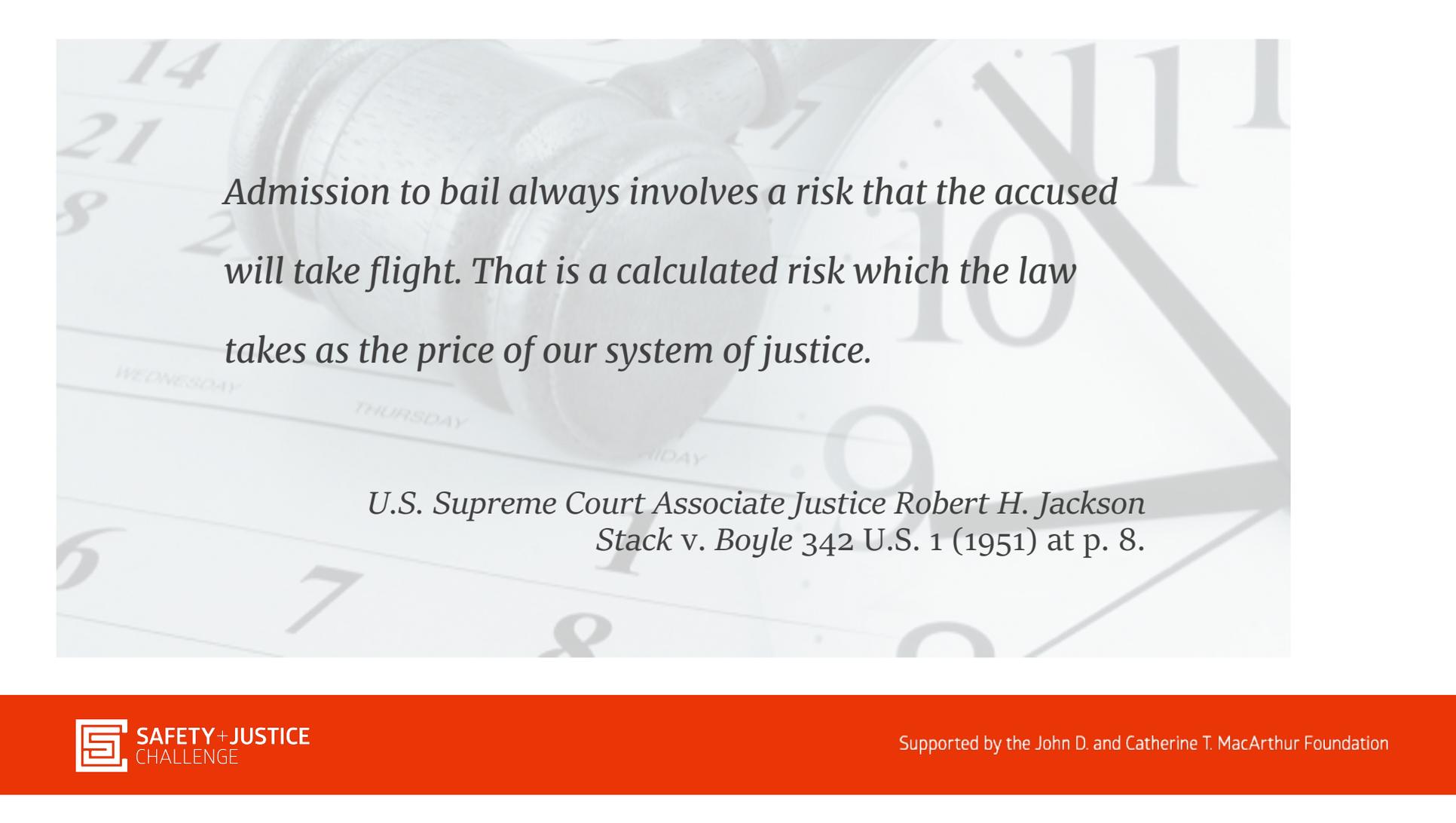
# REDEFINING “PRETRIAL RISK”

Understanding Court Nonappearance and Identifying  
Non-Detention Responses

September 29, 2022



Supported by the John D. and Catherine T. MacArthur Foundation



*Admission to bail always involves a risk that the accused will take flight. That is a calculated risk which the law takes as the price of our system of justice.*

*U.S. Supreme Court Associate Justice Robert H. Jackson  
Stack v. Boyle 342 U.S. 1 (1951) at p. 8.*

# What We Know about Missed Court Appearance



*MISSED COURT DATES ARE  
NOT THE NORM IN MOST  
JUSTICE SYSTEMS*



*MISSED COURT DATES  
OFTEN ARE NOT WILLFUL*

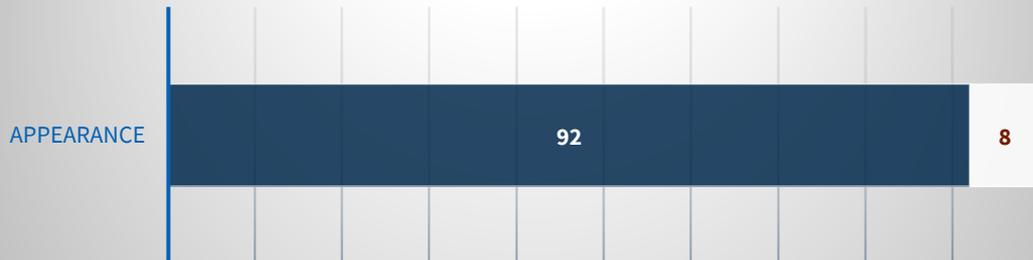


*CURRENT RESPONSES OFTEN  
DO NOT MATCH NON-  
WILLFUL BEHAVIOR*



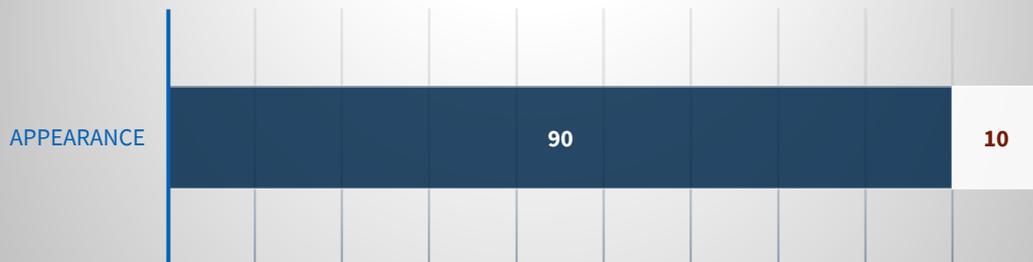
*RESPONSES EXIST THAT  
MATCH BEHAVIOR AND  
ENCOURAGE RESOLUTION*

## Washington, D.C.



*Pretrial Services Agency for the District of Columbia (2023). Congressional Budget Justification and Performance Budget Request: Fiscal Year. (p. 33)*

## New Jersey.

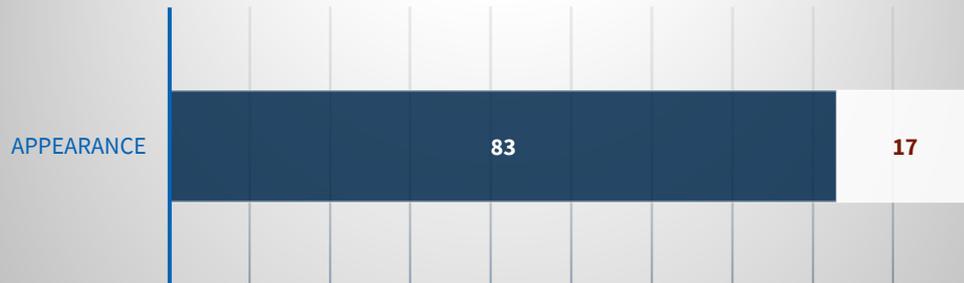


*Grant, G.A. (2019). Criminal Justice Reform: Report to the Governor and the Legislature. Trenton, NJ: Administrative Office of the Courts. p. 5-6.*

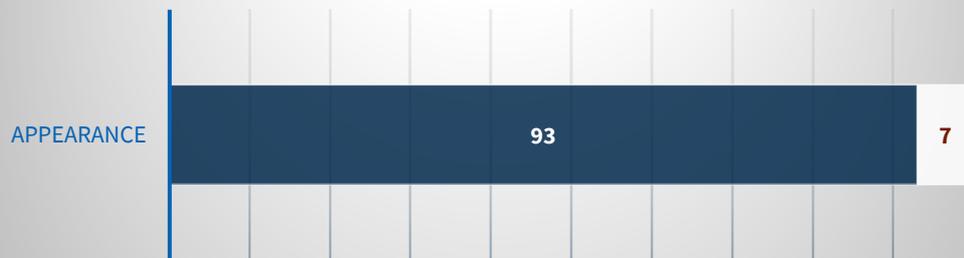
Stemen, D. and Olson, D. (2020). *Dollars and Sense in Cook County: Examining the Impact of General Order 18.8A on Felony Bond Court Decisions, Pretrial Release, and Crime*. Chicago, IL: John D. and Catherine T. MacArthur Foundation.

Collins, K. (2018). *Allegheny County Pretrial Services Outcome Reports: 2018*. Pittsburgh, PA: Allegheny County Pretrial Services.

### Cook County (Chicago), IL. (Felony-charged Individuals)



### Allegheny County (Pittsburgh), PA.



# Missed Court Dates often are not Willful

- NYC's "Safe Surrender" bench warrant resolution program found the most common reasons for non surrender on outstanding warrants were 1) fear of incarceration (65%) and 2) lack of funds to pay bail/fines (60%).
- Court date reminder studies cite as common reasons for missed appearances transportation, work/childcare problems, forgotten court dates, lost citations or court notices, not understanding the seriousness of missed appearances, not knowing whom to contact about missed dates, and fear of the justice system.
- In San Mateo County (Redwood City), CA, common reasons for missed court dates included persons not knowing whom to contact to find out where to appear, not understanding the seriousness of the charges, and believing that employment and childcare obligations were valid excuses to miss a court date.

*"...people who miss court dates for reasons beyond their control are counted the same as defendants who intentionally avoid court. While bail theoretically discourages people from joining the latter group, there's little evidence to suggest that absconding is a problem*

Corey, E. and Lo, P. (2019). "The 'Failure to Appear' Fallacy." *The Appeal*.  
<https://theappeal.org/the-failure-to-appear-fallacy/>

# Missed Court Dates often are not Willful

- In Harris County (Houston), TX an outside vendor, Ideas42, conducted several evaluations of the court nonappearance in the misdemeanor system, using a mix of methods.
- The report emphasized throughout that when people do not appear in court, it is typically not because of their “characteristics or intentions,” but rather because of poverty and “chronic scarcity.”
- The experience of scarcity both limits the mental bandwidth that individuals have available to coordinate getting themselves to court and requires people to work harder and through more challenges to get to court.

*“...people who miss court dates for reasons beyond their control are counted the same as defendants who intentionally avoid court. While bail theoretically discourages people from joining the latter group, there’s little evidence to suggest that absconding is a problem*

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# Current System Responses do not Match Non-willful Behavior

- SCPS data show FTA convictions increasing as FTA rates remain steady.
- All states besides MD, MS, and WY make FTA a new criminal charge.
  - OH and MT: criminal FTA applies just to non-financial releases.
  - MN: 1/2 the maximum penalty for the underlying felony offense.
  - RI: up to 10 years imprisonment.
  - TX: 1 year (Class A and B misdemeanors) to 2-10 years (felonies).
- FL does not distinguish between willful and non-willful missed court dates and prohibits defendants with past missed dates from future OR release.
- NC revokes driving privileges for persons who miss court dates on a motor vehicle offense: as a result, 1 in 10 state residents of driving age are prohibited from operating a motor vehicle.

*“Under the current FTA regime, courts treat all FTA’s like criminals. Instead of offering a hand, they brandish a warrant.”*

Bernal, D. (2017). “Taking the Court to the People: Real World Solutions for Nonappearance.” *Arizona Law Review*, Vol. 59:547 2017, pp. 547-571.

# Current System Responses do not Match Non-willful Behavior

- A DOJ study in Ferguson, MO found 16,000 of the city's 21,000 residents had outstanding warrants. Ferguson's population is 67 percent African American.
- In 2014, Pima County (Tucson) AZ jailed 10,005 individuals on outstanding FTA warrants for a total of 216,477 jail bed days. African Americans comprised nine percent of FTA arrests, but 4.1 percent of the county's population. Native Americans comprised eight percent of FTA arrests, but 4.3 percent of the population.
- In North Carolina, African Americans made up 22 percent of the state's population, but accounted for 49 percent of missed court appearances.

# Better Responses Exist

**Virtual Court Appearance:** 38 states, Washington, D.C., and Puerto Rico mandate or encourage the use of virtual court hearings.

- Failures to appear in NJ dropped from 20 percent to 0.3 percent after courts in the state began conducting virtual hearings.
- MI's failure to appear rates dropped from 10.7 percent to 0.5 percent from April 2019 to April 2020.
- El Paso, TX's missed court date rate dropped from 13.6 percent to 4.4 percent from January 2019 to April 2021.

# Better Responses Exist

## Michigan 2020 Jail Reforms

Given research showing that many missed court appearances are not true abscondences, in 2020, the MI Legislature established a **rebuttable presumption against bench warrants** issued for certain first-time failures to appear. The law created a 48-hour grace period for individuals to appear voluntarily. If the person fails to show, the court must issue a warrant unless it believes there is good reason to schedule the case for further hearing. Courts may overcome the presumption of a grace period and issue a bench warrant if it has a “specific articulable reason to suspect” that the defendant has committed a crime or that a person or property will be endangered if a bench warrant is not issued.

# Better Responses Exist

## Washington State Rules for Appearance of the Defendant

Responding to the COVID-19 pandemic and a ruling in a state appeals court cases that revised how and when individuals can appear in court, WA revised its Court Rules on how and when individuals must appear in court. Under the new rules, individuals may appear in court “in person, by video or remote appearance, and through counsel.”

The rule also defines “necessary hearing,”—or those where the individual’s physical or remote presence is required—as arraignment, all trial stages, the return of a verdict, and sentencing.

# Better Responses Exist

## New York City Criminal Justice Agency's Outreach Team

New York City's Criminal Justice Agency (CJA) has a dedicated "Outreach Team" that contacts individuals who have missed a court date and encourages them to come back voluntarily. Through CJA's live call center, the Outreach staff assist hundreds of people per day in navigating the pretrial system to attend their upcoming court dates.

# Better Responses Exist

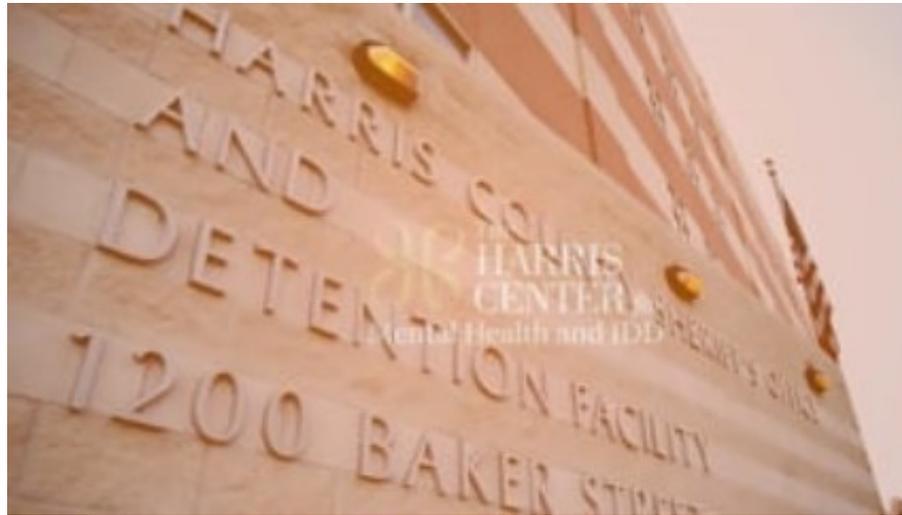
## Harris County's *ODonnell* Consent Decree

Independent Monitor Brandon Garrett and Deputy Monitor Sandra Guerra Thompson state Harris County's Fifth Report of the Court-Appointed Monitor, "An important pillar of the Consent Decree reforms has been the changed system for court appearance. The ODonnell court appearance policies have now been implemented. That system introduces a new clarity and consistency to the rules regarding court appearance. These reforms also introduced much-needed flexibility regarding court appearance. Persons charged with misdemeanors do not need to be present at every appearance. Many appearances can be handled by counsel. Further, many appearances can and should be rescheduled, when work is still progressing on a case and an appearance is not useful. Further, the Consent Decree required Harris County to implement an electronic court notification system, to better inform people of their court appearance obligations. These reforms are extremely important. They provide greater supports for appearance, but also provide that people need not appear when it is not necessary for a case to move forward."

# Better Responses Exist

Harris County's *ODonnell* Consent Decree

Piloted a resource program to mitigate nonappearance in the Harris County Joint Processing Center.



# Better Responses Exist: Approaches Within SJC

- ✓ ALLEGHENY COUNTY
- ✓ PIMA COUNTY
- ✓ HARRIS COUNTY



# Court Nonappearance and New Case Filings Redefining Pretrial Misconduct



# Questions?



[SafetyAndJusticeChallenge.org](https://SafetyAndJusticeChallenge.org)