

ENHANCING FAIRNESS SERIES

# Challenging the Harmful Use of Bench Warrants



# this resource

Following arrest, most individuals must appear in court, often several times, until their case is resolved. Although most individuals appear as scheduled, some individuals struggle to attend court for many reasons (e.g., employment and caretaking responsibilities, lack of reliable transportation or accessible public transportation, or fear of the system in general). When individuals do not attend as scheduled, courts primarily rely on bench warrants to bring individuals back to court.

If law enforcement meet an individual with an outstanding bench warrant, they arrest and transport them to the jail for booking and subsequent court appearance. Or, they transport them directly to court to continue processing their court case.

While bench warrants may eventually secure an individual's appearance in court, they do not guarantee appearance. They also create additional financial, legal, and personal costs for individuals and impact length of stay in jail and case outcomes.

## This resource:

- Defines bench warrants
- Details the harms of primarily using bench warrants to secure court appearance
- Proposes practical alternatives promoting fairness



# missed court appearances and bench warrants

Following an arrest, individuals are required to appear in court to hear the charges against them. They also receive a decision from a judicial officer (e.g., judges, magistrates) about whether they will receive pretrial release. Although courts can decide to detain an individual in jail during their case processing, most courts rely on the presumption of pretrial release. As part of the release agreement, individuals must agree to attend all court hearings as scheduled.

Although there are no national numbers related to the average number of court hearings, individuals typically must attend:

- an arraignment hearing,
- status hearings related to evidence discovery and case updates,
- motion to suppress evidence hearings,
- plea hearings or trial hearings, and
- sentencing hearings.

While most individuals attend all of their hearings as scheduled, some individuals may miss one or many of these hearings. Prior research suggests individuals miss court because they are navigating personal obligations, logistical challenges, or previous negative experiences with the court system, or many of these challenges at the same time.

Importantly, individuals must navigate challenges for each scheduled court hearing, making continued absence more likely for individuals who have several challenges and limited resources.

## Reasons Individuals Miss Court

### Personal Obligations

Work, caregiving, sick or hospitalized, navigating houselessness



### Logistical Challenges

Live far away, no public transportation, unreliable car, virtual option barriers



### Previous Negative Experiences

Court actors unhelpful, refuse to help, are intimidating or seem purposefully aggressive; racist, ableist, stigmatizing experiences.



## CHALLENGING BENCH WARRANTS

When individuals miss their scheduled court hearing, judicial officers principally rely on bench warrants to secure their appearance in court. Once issued, if police make contact with the person for any reason—even for minor traffic offenses—the bench warrant gives the police the authority to arrest the individual and bring them to jail or directly to court.

Across most jurisdictions, courts automatically issue bench warrants for non-appearance regardless of whether an individual has a history of successfully appearing in court as scheduled. This means missing even one court hearing can result in a jail stay. Recent research suggests that 40% of all outstanding warrants were for court absences and a warrant for missing court is often why individuals return to jail during case processing.

**Courts may issue bench warrants for non-appearance regardless of whether an individual has a history of successfully appearing in court.**

While bench warrants may bring an individual back to court, they do not guarantee future court appearance. Therefore, bench warrants return individuals to jail for behaviors that are not new crimes.



# how bench warrants harm individuals and case outcomes

Missing court, for any reason, delays justice to victims, defendants, and their communities. However, there is an overwhelmingly false narrative about why defendants miss court and the impact of their non-appearance on court processing.

Defendants are not the only party to miss court. Emerging research suggests that other essential players in court cases—police, witnesses, victims, and lawyers—miss court **more often** than defendants. When these essential players miss court, that too creates additional case processing delays, uses more court resources, and requires defendants and other parties to attend an additional hearing they had not anticipated. These additional court requirements can further exhaust individuals' resources and impact their ability to get to future court hearings.

**Research shows police, witnesses, victims, and lawyers miss court more often than defendants.**

While other key players in court cases may miss court hearings, courts usually only punish defendants for their absence. Unfortunately, experiencing one or several bench warrants can have compounding consequences for individuals and their case outcomes. This can include increased financial burdens, increased surveillance during pretrial release, increased time in pretrial detention, and potential impacts on case outcomes.

## Harm to Individuals

### Increased Financial Burdens

When judges make a pretrial release recommendation at initial appearance, they may order an individual to pay bail to secure their release. If an individual receives a bench warrant and returns to jail, they will return to the court for a new release recommendation.

At this new hearing, a judicial officer may elect to increase the amount of bail under the presumption that more money may better secure the individual's attendance at future hearings.



Although research suggests bail does not consistently improve court appearance, there is prevailing assumption that higher bail will guarantee court appearance. This means for individuals who receive bench warrants, they may pay for their release from jail at least twice and these costs may rise. This escalating price may continue as individuals receive additional bench warrants for missing court, decreasing their ability to pay for their release and adding hundreds or thousands of dollars to their financial obligations.

Importantly, the individuals who are most likely to continuously miss court are also systematically under resourced. Therefore, the bench warrant process can deplete them and their family financially. For many, this financial strain forces impossible choices between essential needs of shelter, food, transportation, or caregiving with maintaining compliance with court appearance requirements.

### Increased Surveillance

At pretrial release hearings, judicial officers can order individuals to report to a pretrial monitoring agency. The frequency and modality (i.e., text, phone, in-person) of check-ins with the pretrial monitoring agency varies by jurisdiction, but agencies often require individuals with a history of court absences to check in more often.



Following a bench warrant, judicial officers may order more intensive pretrial monitoring or surveillance devices at their subsequent pretrial release hearing—practices research suggests do not improve court attendance. Further, many courts/pretrial agencies require individuals to pay for the monthly cost of pretrial monitoring, electronic monitoring, or alcohol monitoring (e.g. SCRAM devices).

Courts may use this increased surveillance to punish court absence and reinforce to individuals that court obligations must be a priority in an their life. However, this punitive approach can create additional barriers for individuals, making it more difficult to get to court as scheduled.

*continued, harm to individuals*

### Increased Pretrial Detention

While courts may generally rely on the presumption of release, multiple bench warrants for non-appearance may signal to judicial officers that an individual is unable to navigate both their court and personal obligations while in the community. In response, judicial officers may order unaffordable bail amounts which effectively keep an individual in pretrial detention or simply remand an individual to pretrial detention for the remainder of case processing. Pretrial detention can have devastating consequences for an individual's mental and physical health while jeopardizing employment, housing, and their family's stability.

## Harm to Case Outcomes

### Increased Likelihood of Conviction and Harsher Sentences

As individuals continue to collect bench warrants, judicial officers may default to pretrial detention to guarantee an individual's appearance in court. Research is clear that individuals who remain in pretrial detention are more likely to plead guilty or receive a conviction, receive sentences to jail/prison rather than community-based sentences, and receive longer sentences.

These more severe punishments do not necessarily reflect the seriousness of the initial charges, rather they may reflect non-criminal behaviors during case processing. Effectively, the bench warrant process creates more punitive case outcomes for individuals who simply lack resources.

**The bench warrant process creates more punitive case outcomes for individuals who simply lack resources.**



## the false and expensive promise of bench warrants

Across the country, courts principally rely on bench warrants to secure an individual's court attendance. However, this tool requires that individuals come in subsequent contact with police. This subsequent contact may be passive police contact where police coincidentally engage with individuals, generally through routine traffic stops. Or police may actively search out individuals with bench warrants.

In either case, there is a significant financial burden on taxpayers to act on bench warrants for court absence. This may include:

- the personnel cost needed to locate, arrest, and transport the individual to jail,
- the additional cost of booking the individual,
- the daily cost of detaining the individual, and
- the additional personnel and court fees associated with processing bench warrants.



Especially among jurisdictions which rely on passive execution of bench warrants, it may take months or years before police meet an individual, creating extreme case processing delays.

Although it varies by jurisdiction, courts often charge a warrant reimbursement fee to individuals. Some research shows that courts often spend more money trying to collect warrant fees than the total they collect.

Bench warrants drive up law enforcement and court workloads, clog arrest processing, and divert resources from enforcement of more serious offenses. Ultimately, **bench warrants are an incredibly expensive strategy for courts and communities to rely on with no guarantee of improvements to court appearance.**



# implementing new strategies to secure court appearance

Bench warrants do not guarantee appearance, disproportionately punish individuals who lack resources, and impose significant taxpayer costs. In response, courts should implement alternative approaches to secure court appearance. The following strategies can improve court attendance more effectively and, for many jurisdictions, at no-to-low-cost.

## No-to-Low-Cost Strategies

### Strategy: Reduce the Number of Required Hearings

Many jurisdictions require defendants to attend numerous hearings; however, defendants may legally only need to attend arraignment, plea hearings or trial hearings, and sentencing.

Courts should review the hearings which legally necessitate an individual's appearance in their jurisdiction and develop a process for defendants to waive their appearance at other hearings. This can immediately reduce court absences, especially for non-essential hearings, allowing individuals to focus their limited resources on only a few key hearings.

**Courts should review hearings which legally necessitate appearance.**

### Strategy: Create a Global Waiver of Personal Appearance

With fewer required hearings, individuals can more effectively use their limited resources to get to court as scheduled. For non-required hearings, courts will need to develop a global waiver process allowing defense attorneys to appear on the individual's behalf and should begin the waiver process at initial appearance. Courts and defense attorneys should collaborate to decide who is responsible for offering and processing this waiver.

*continued, no-to-low-cost strategies*

### **Strategy: Consider an Individual's Availability**

Current court scheduling practices prioritize prosecutor and defense attorney availability, yet do not consider a defendant's schedule and availability. This approach ignores the reality that many individuals work hourly jobs where missing work means lost wages or have caregiving responsibilities that cannot be easily rearranged.

Courts can consider an individual's ability by:

- asking about work schedules, caregiving needs, and transportation constraints during initial appearances or follow-up hearings prior to scheduling;
- offering multiple hearing time options during standard operating hours;
- creating new open dockets, particularly outside of standard hours such as at night or on weekends to increase the available options for individuals.

### **Strategy: Establish Open Dockets for "Make Up" Appearance Opportunities**

Courts can create regular opportunities for individuals to resolve missed appearances without experiencing arrest and jail booking. These "make-up" dockets may operate during evening or weekend hours at least monthly, with some jurisdictions with more capacity offering biweekly or even weekly options.

Some courts have successfully implemented walk-in hours where individuals who previously missed their hearing can appear voluntarily to resolve their cases. This approach reduces the cost to police and jails, while offering more flexibility to individuals. Marketing these opportunities through community organizations, defense attorneys, and social media ensures individuals know about these opportunities.



*continued, no-to-low-cost strategies*

### **Strategy: Increase Use of Virtual Appearances and Treat Them Equal to In-Person Appearances**

Research shows virtual technologies (e.g., Zoom, WebEx) can help individuals attend court more easily without exhausting their personal resources (e.g., time off work, cost to get to court, favors from support networks for rides). When physical presence is not legally required, courts should permit virtual attendance.

However, when offered, individuals sometimes avoid virtual options (even when it would be easier for them) because they perceive judicial officers treat virtual appearances less favorably than in-person attendance. Research participants reported they perceived judges were more punitive towards individuals who appeared virtually. To counteract this issue, courts must also actively promote these options as alternatives to in-person attendance and treat them as equal to in-person appearances.



To address this perceived bias, courts can:

- establish clear policies that virtual appearances receive identical consideration as in-person appearances;
- train judicial officers on maintaining neutrality regardless of appearance format; and
- provide technical support ensuring individuals can successfully access virtual platforms.

Courts should also ensure virtual options include proper interpretation services, private communication channels between defendants and attorneys, and backup plans for technical difficulties.

*continued, no-to-low-cost strategies*

### **Strategy: Implement Graduated Response Procedures**

Rather than defaulting immediately to bench warrants, courts should adopt a graduated response system that escalates interventions based on individual circumstances and case history.

#### **Step 1: Leverage Defense Counsel-Client Relationships**

Defense attorneys are uniquely positioned to identify client-specific conflicts. When an individual misses their hearing, courts should rely on defense counsel to contact the individual. Following this contact, the defense attorney can coordinate with the court to reschedule the hearing at a time the individual is available.

Formalizing communication channels between defense counsel and court clerks can expedite scheduling. This would leverage the same processes and allowances used for witnesses and victims who miss court.

#### **Step 2: Issue Cite-in-Lieu Warrants or Summonses**

If direct contact is not successful, courts can issue cite-in-lieu warrant or summonses that afford a fresh court date without a new jail booking. These court orders carry similar legal weight as bench warrants but allow individuals to retain their pretrial release status and resolve their missed appearances without a new arrest.

#### **Step 3: Use Bench Warrant as Last Resort**

Reserve bench warrants for individuals whose case charges or conviction history include violent offenses or for cases involving repeated missed appearances after all other interventions have been exhausted and unsuccessful.

**Defense counsel is uniquely positioned to manage court absence and help individuals return to court.**



## Strategies Requiring More Financial Resources

### Strategy: Implement Automated Court Reminder Systems

Automated court reminder systems (ACRS) are among the most well researched, effective, and equitable tools for securing court attendance. These systems can include postcards, text-messages, email reminders, automated calls, live calls, or a combination of any of these methods.

Research shows the most successful notification programs are those which notify individuals close to their court hearing, notify individuals multiple ways, provide the address and time of the hearing, encourage individuals to consider the arrangements they need to make to attend court, and explain the consequence for missing court. Studies consistently show that automated reminders reduce court absence rates by 13-37%, with text message programs being particularly cost-effective.



### Strategy: Offer Targeted Support to Individuals

Courts can partner with pretrial service agencies or community-based organizations to provide targeted assistance addressing common barriers to court appearance. While these interventions require financial investment, they typically cost significantly less than the current cycle of arrest, booking, and case processing associated with bench warrants.

#### Transportation and Mobility Support

Effective programs can provide bus passes or gas vouchers for defendants with vehicles, ride-share credits for areas with limited public transportation, childcare-accommodating transportation services, or coordination with paratransit services for defendants with disabilities.

#### Communication and Navigation Support

Many defendants benefit from court navigators who explain court processes and help defendants understand what is expected of them. Language interpretation services, including sign language interpretation, that extend beyond the courtroom into other aspects of the pretrial process can reduce misunderstandings and enhance clarity that helps facilitate court attendance. Case status updates can also help defendants stay aware and engaged in their court process, especially for tracking obligations across multiple cases.

# rethinking bench warrants

While many individuals attend court as scheduled, some individuals struggle to meet their court obligations—which often includes many hearings. They often struggle because they have competing obligations and/or because they lack the resources to get to court. Bail, pretrial monitoring obligations, and surveillance devices can complicate how easily individuals with few resources can get to one or all of their hearings.

Helping individuals get to court requires understanding how bench warrants specifically undermine attendance. It requires courts to critically challenge the false—and expensive—narrative that bench warrants secure court appearance.

**It is clear bench warrants can undermine court attendance.**

Courts will likely see increased court appearance and decreased case processing times when they rely on strategies which consider defendants and treat bench warrants as a last resort.



## Takeaway Points

### **Only Defendants Bear Consequences for Court Absence**

Defendants are likely to bear consequences for missing court, even though other key players are more likely to miss court and less likely to experience repercussions.

### **Bench Warrants Undermine Court Attendance**

Bench warrants punish individuals who lack resources and result in individuals spending time in jail for non-criminal behaviors, amplifying financial, legal and personal harms.

### **Alternative Strategies May Increase Attendance**

Relying on procedural changes, technology, and scheduling with individuals in mind—rather than bench warrants—can more effectively improve court appearance.



## SAFETY+JUSTICE CHALLENGE

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

This resource guide was created with support from the John D. and Catherine T. MacArthur Foundation, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails. Core to the Challenge is the need to reduce the over-reliance on jails, with a particular focus on addressing disproportionate impact on low-income individuals and communities of color.

**[www.SafetyandJusticeChallenge.org](http://www.SafetyandJusticeChallenge.org)**