

ENHANCING FAIRNESS SERIES

Improving Initial Appearances



this resource

Following an arrest, individuals must appear in court to hear the charges against them. In many sites, judges also make decisions about pretrial release or pretrial detention at this hearing. In other sites, judges may make a release decision at the next hearing. If a judge agrees to release an individual, they may order the individual to pay cash bail for release, assign restrictive conditions (e.g., GPS monitoring, urinalysis testing) following release, or may allow the individual to secure their release on recognizance.

These early hearings where courts arraign individuals on charges and make a pretrial release decision are referred to as initial appearances.

Pretrial detention and restrictive pretrial release conditions disproportionately impact historically racialized Black and Brown individuals.

Enhancing fairness and reducing disparities at initial appearance requires (1) the presence of defense counsel and (2) defense counsel to present compelling information to the court to secure the least financially burdensome and least restrictive pretrial release possible.

This resource provides an overview of

- The importance of the presumption of the least restrictive pretrial release,
- The impact of defense counsel at initial appearance,
- The type of defense counsel practices increasing the likelihood of the least restrictive pretrial release possible, and
- Sample questions defense counsel can use to gather information to support the least restrictive pretrial release possible.



importance of the least restrictive pretrial release possible

Following an arrest, courts regularly detain individuals pretrial. [Research](#) shows pretrial detention can have compounding impacts on individuals' health, employment, income, housing, and access to government benefits.

Pretrial detention can also have devastating impacts on an individual's case outcomes including greater likelihood of conviction, receiving jail/prison sentence, and receiving longer sentences. For Black, Latine, Indigenous, and other historically racialized groups, these impacts occur at disproportionate rates compared to their white peers.

Even when an individual is not detained pretrial, judges may require individuals to pay money for release, report to pretrial monitoring, wear electronic monitoring (EM) or Global Positioning Systems (GPS) monitoring devices, or a combination of all these pretrial release conditions. These conditions are often financially burdensome, stigmatizing, and lead to pretrial release revocations because of barriers to compliance.

The presumption of pretrial release is no longer enough to reduce racial and ethnic disparities at initial appearances and among case outcomes.

Instead, there is a need for the ***presumption of the least restrictive pretrial release possible***. This could include release on recognizance (ROR) or the fewest judicially ordered conditions possible.

Securing the least restrictive pretrial release possible requires an attorney at initial appearance.



impact of defense counsel at initial appearance

In nearly 50% of jurisdictions across the country, individuals face initial appearance without the assistance of a lawyer. With the growing understanding of the need for the least restrictive release possible, defense providers across the country have taken on a greater role at initial appearances.

In particular, local indigent defense providers across three sites – Cook County, Illinois; Lucas County, Ohio; and Multnomah County, Oregon – have led strategies which systematically enhance fairness at initial appearance.



These strategies include meeting with individuals prior to initial appearance to answer any legal questions about their case, collecting more information about individuals prior to initial appearance, and presenting this information at initial appearance to make the most compelling arguments for the least restrictive pretrial release possible. Research from these sites, as well as other jurisdictions, demonstrate that defense attorney-led strategies at initial appearance:



Decrease the use and amount of money bail



Reduce the number of additional judicially ordered pretrial release conditions (e.g., pretrial supervision, EM/GPS, drug testing), and



Reduce how often judges order individuals to pretrial detention.

changes to initial appearance to enhance fairness

In the three sites defense attorneys made three specific changes:

1. Met with clients prior to initial appearances,
2. Collected more information about clients at this meeting, and
3. Represented clients at initial appearance with this information.

Meet with Clients Prior to Initial Appearance

During these meetings, defense attorneys explain to clients the charges against them, how the initial appearance process works, and offer – if applicable – reasons an individual may remain detained (e.g., warrants, probation revocation hearings). They also answer questions the individual may have about their case or the process. In doing so, these confidential and private meetings provide greater transparency of the initial appearance process and can reduce stress.

Collect Information about the Client

Defense attorneys also collect information about the client regarding their ability to appear in court, mitigating factors about previous court absences, and ability to live in the community on pretrial release without a new arrest. With this information, defense counsel can vet the relevant information and present compelling arguments at the initial hearing to secure the least restrictive release possible.



strength-based approach to initial appearances

When attorneys provide the court with information about an individual's stability, ability to get to court as scheduled, and ability to remain arrest free—strength-based information—the court is more likely to impose the least restrictive conditions. Leaning on this information not only provides convincing information to the court, but also centers and humanizes individuals in their own court proceedings.

Gathering this in-depth strength-based information prior to initial appearances may be near impossible for defense attorneys. However, defense attorneys may be able to ask their clients *some* questions to offer more information to the court.

Below, we offer a menu of question options for defense attorneys to ask clients to present more information to the court for the least restrictive release possible.

COLLECTING INFORMATION ABOUT SUCCESS, FIRST

- Are there circumstances in the individual's life that demonstrate resilience and an ability to solve problems? For example, the individual has struggled to obtain housing but has successfully navigated the city's shelter system.
- In what ways has the individual been successful on pretrial release previously? Have they remained arrest-free previously?

ACCESS TO TRANSPORTATION

- Does the individual have access to reliable transportation?
- Does the individual live near public transportation? What is their knowledge and comfort with navigating public transportation routes?
- Does the individual have support networks who can pledge to help drive/escort the individual to court?



continued, strength-based questions for clients**STABILITY AND SUCCESS**

- Is the individual employed (what type of work, how many hours, and where) or attending school or other training?
- Does the individual have stable housing (own or rent) or family and friends that will provide reliable housing?
- Does the individual have a local support network (family, friends, colleagues, mentors)? Can the individual rely on this network to help them to remember court dates and provide help, when needed to attend court as scheduled? If possible, these individuals should be identified, contacted, and asked to attend the hearing in support of the individual.
- Are there any other recent events or developments in a person's life that demonstrate stability (e.g., rented an apartment, purchased a car, secured employment)?
- Do they currently receive food assistance (e.g., SNAP, WIC), income assistance (e.g., Medicaid), or housing assistance? How will pretrial detention interfere with these supports?

SUBSTANCE USE DISORDER & MENTAL HEALTH

- Is the individual motivated for treatment? What is their motivation?
- What type of treatment has mitigated use or altered the individual's use patterns in the past? Are they actively involved in treatment at this time?
- Will their medication or treatment be interrupted or discontinued with a period of pretrial detention?

continued, strength-based questions for clients**MITIGATING HARMFUL INFORMATION**

It is important to acknowledge that many individuals appear in court with instability, extensive conviction histories, and several court absences particularly for minor offenses. Judges weigh an individual's conviction history and court absences heavily and it is essential that defense attorneys effectively distinguish or mitigate this negative information at the pretrial release hearing.

COURT ABSENCES

- Were the individual's previous court absences a result of being in custody?
- Was the individual without a phone or not enrolled in a reminder system at the time of the court absence?
- Was there a text message reminder program offered at the time of the court absence?
- Has the individual's circumstances changed (e.g., lives near public transportation now, has a car) since the court absences?

CONVICTION HISTORY

- Are the individual's past convictions minor?
- Were these previous cases related to homelessness?
- Were the past cases when the individual was a juvenile or emerging adult?
- What was the context of the past conviction history? Has the individual's circumstances changed (e.g., employed, stable housing) since the past arrest?





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