

ENHANCING FAIRNESS SERIES

Rethinking Pretrial Compliance Reporting



this resource

This resource unpacks:

- why courts assign individuals to pretrial supervision,
- the research related to pretrial release compliance, and
- how pretrial supervision agencies have historically reported compliance and noncompliance to the court.

The resource ends with providing pretrial supervision staff and agencies guidance on how to respond to court reporting requirements via both written and oral responses through an equity lens.

This guidance will help officers and agencies more clearly describe for the court an individual's barriers, system barriers, and highlight what is going well for the individual, while acknowledging how the pretrial agency supported an individual to be compliant.

Providing this level of detail to the court creates a strength-based and equity-focused approach to pretrial compliance reporting.



why courts assign pretrial supervision as a condition of release.

Following an arrest, individuals must appear in court to hear the charges against them. The local court (i.e., judge or magistrate) will also decide whether to detain or release the individual to the community pretrial. If the court decides to release the individual, they can choose to release them on their own recognizance and order conditions of release (e.g., attend court as scheduled, avoid a new arrest, report any changes to address or phone number to the court, remain in the county or state).

Alternatively, the court could choose to release the individual to the supervision of the local pretrial supervision agency.

Pretrial supervision varies vastly across the country, but in some places works similarly to post-conviction community supervision (probation and parole). The court will order general conditions of release, may order additional conditions of release (e.g., electronic or GPS monitoring, substance use monitoring – SCRAM), and may order the individual to follow additional conditions set by the pretrial agency (e.g., report as assigned to the pretrial supervision officer, meet curfew, submit to search of their person, property or home, or complete a substance evaluation and submit to drug urinalysis tests).

The number and nature of the pretrial release conditions varies considerably across jurisdictions.

For jurisdictions with pretrial supervision agencies, the pretrial agency staff are mainly responsible for updating the court on the individual's compliance with the conditions of their release.



what the evidence says about pretrial release compliance.

The presumption is that if the court imposes conditions on released individuals, this will prevent individuals from engaging in activities that may create opportunities for rearrest and/or missing court.

Current research does not support the assumption that the presence of conditions alone is enough to ensure people attend court and remain arrest free while on pretrial release. Further, research shows that too many pretrial release conditions can increase the probability that the court revokes an individual's pretrial release status and returns them to jail. Additionally, research on the effectiveness of pretrial supervision shows mixed results on its impact on compliance with conditions, court attendance, or rearrest, especially among the most under resourced individuals.

Importantly though, many individuals successfully comply with the conditions of pretrial release – with some research estimating that 60% of individuals charged with low-level offenses and 87% of individuals charged with violent-offenses resolve their case without rearrest or missing court, regardless of whether the judge assigns them to pretrial supervision.

However, for the approximately 15 to 40% of individuals who experience noncompliance, this can result from both individual level *and* system factors.



EXAMPLE CHALLENGES TO PRETRIAL SUPERVISION COMPLIANCE

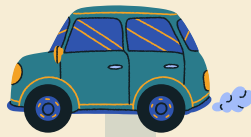
system factors

Challenges with public transportation.

Court held during typical working hours.

Court or UA testing agency doesn't consider individual ability to pay.

Court/testing centers doesn't offer child care and/or allow children..



individual factors

No personal transportation.

No/Limited Flexibility to take time off work.

Can't afford fees.

No available childcare.

continued, evidence about compliance.

Research suggests that often noncompliance during pretrial supervision is not related to illegal activity, but rather from breaking rules/technical release conditions that are overly burdensome.

For example, individuals may not be able to afford pretrial urinalysis (UA) testing fees or have limited or no access to public transportation required to regularly report to pretrial services. Individuals may not have the flexibility to take time off from work to attend court hearings or report to pretrial services. Additionally, they may not have access to reliable and affordable childcare that allows them to meet reporting requirements.

This may be even more true among Black, Latine, Indigenous and other historically racially minoritized individuals under pretrial supervision.

Therefore, noncompliance may be the result of both individual behavior and factors beyond the individual's control.

reporting pretrial noncompliance to the court.

If individuals do not comply with the conditions of pretrial release, pretrial agencies must report this noncompliance to the court.

As varied as conditions are across jurisdictions, **responses to violations of pretrial release conditions vary as well**. Some pretrial agencies have zero tolerance approaches where pretrial officers submit written reports to the court for all noncompliance. In other jurisdictions, the person on pretrial monitoring might get several chances before a pretrial officer must submit the violation report to the court. Or the pretrial agency may only submit their report at the time of the scheduled court hearing.

There is also **variability related to *what* is reported to the court and reports often lack information about the individual's unique circumstances or the context of violations**. For example, reports submitted to the court may name the technical violation (e.g., failure to report to pretrial), but lack context about *why* this noncompliance happened, such as an individual's lack of access to transportation or childcare, or their inability to take time off work.

Current reporting standards also fail to account for accessibility issues, such as language barriers, disability accommodation needs, or mental health diagnoses that may impact a person's ability to comply. Reports often do not include information about whether the noncompliance was situational or part of a pattern of behavior, nor do they describe any progress individuals are making more broadly.



continued, reporting noncompliance..

As a result, reports submitted to the court often give the sense that noncompliance solely reflects an individual's choices versus **recognizing that noncompliant behavior is often related to the context of the individual's life and the ways in which the system and neighborhood inequities play a part** in the noncompliance.

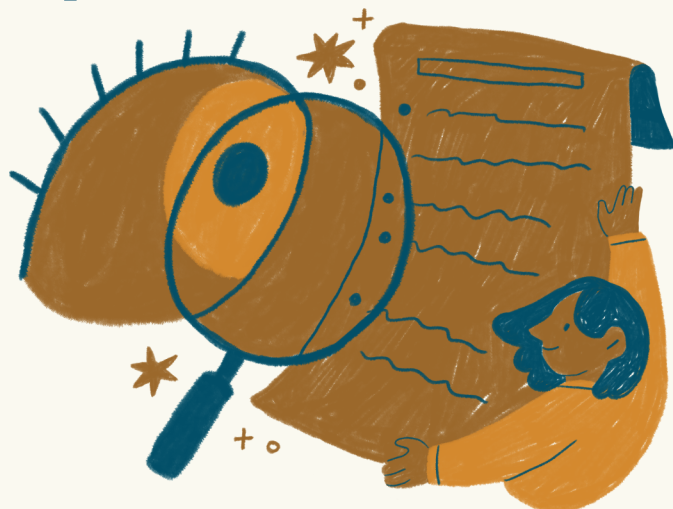
Particularly for under resourced individuals, current standards for reporting noncompliance to the court can create expedited returns to jail on bench warrants – even for breaking the rules that are not illegal outside of the context of pretrial supervision (e.g., not reporting to pretrial services).

These expedited returns effectively punish poverty.



taking an equity lens to reporting pretrial supervision noncompliance.

Taking an equity lens to pretrial reporting requires pretrial supervision officers to tell the court how often an individual is compliant, how much progress they have made while released, and document noncompliance when it occurs.



This may include acknowledging that while an individual was previously noncompliant with a condition, they have since become compliant. It may also include describing other ways an individual has improved themselves or their circumstances, including securing a new job, remaining employed, purchasing or leasing a vehicle, purchasing a new and reliable phone, and/or securing reliable housing. Acknowledging progress also provides mitigating reasons as to why returning the individual to jail or requiring more restrictive release conditions (e.g., GPS monitoring) would disrupt an individual's life and progress.

Ultimately, the goal of pretrial supervision is to support individuals to appear in court and remain arrest free while they navigate their court case.

By balancing noncompliance reporting with progress/successes, courts can make more informed decisions about people that are more humane, empathetic, and equity focused.



equity focused questions for noncompliance reporting.

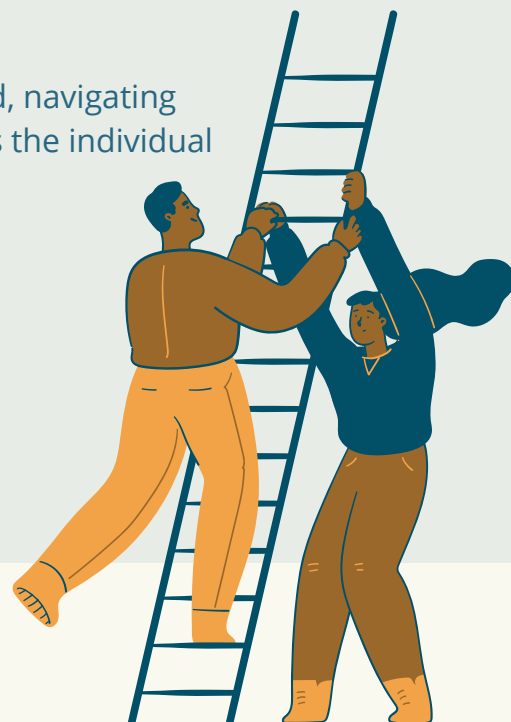
Taking an equity lens to pretrial noncompliance reporting to the court requires detailing progress and the context individuals face.

Below are questions to guide pretrial supervision officers in written and verbal reporting to the court. This guidance takes a strength-based approach to compliance reporting while also more equitably contextualizing noncompliance.

Including this information as part of written documentation submitted to the court will provide judges with more information about how systemic factors may more directly and explicitly interfere with pretrial supervision compliance.

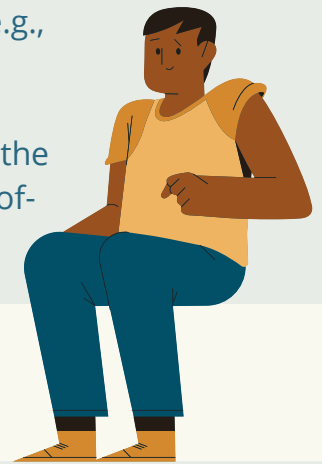
REPORTING SUCCESS FIRST

- In what ways has the individual been successful under pretrial supervision (e.g. they are working, taking care of children, attending school)? Have they appeared in court and remained arrest-free?
- What strengths does the individual have? In what ways has the individual built on those strengths during pretrial release (e.g., secured employment, maintained employment, kept/built community ties/relationships)?
- If the individual is navigating multiple cases and, navigating these cases across jurisdictions, in what ways is the individual doing this successfully?



REPORTING INDIVIDUAL CONTEXT

- Does the individual have access to reliable transportation or live near accessible public transportation?
- Does the individual have competing obligations (e.g., employment, school, or caregiving responsibilities)?
- Is the individual also navigating accessibility concerns (e.g., disability or language accommodation needs)?
- If relevant for pretrial conditions, what challenges does the individual experience with insurance coverage and out-of-pocket expenses?



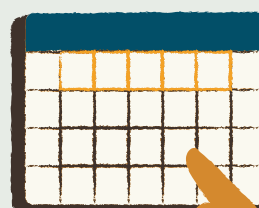
NONCOMPLIANCE POSITIVE URINALYSIS TESTS

- How often has the individual tested positive for substances? Was this situational or a behavior pattern?
- How many days has the individual gone without using substances between positive tests? Has this changed over time? In what ways is the individual showing progress towards sobriety while under pretrial supervision?



**NONCOMPLIANCE
FAILURE TO REPORT TO PRETRIAL**

- For every required pretrial supervision appointment previously attended, what did the individual have to arrange to attend as scheduled (e.g., secure childcare, take time off work, loss of wages)?
- How often did the individual not report to pretrial? Was this situational or a behavior pattern? How often have they not reported as scheduled in the past? Have they since been compliant with reporting requirements?
- Did the individual communicate why they did not report as required? What was the context of the absence?
- How often is the individual required to report? Is the frequency/format too hard for the individual given their resources and competing obligations (e.g., employment, caregiving, other court cases)? In what ways have you as a pretrial officer or the agency worked with the individual to meet the reporting requirements using other formats (e.g., virtual or over the phone)? In what ways have you aligned appointments with court dates to reduce the volume of requirements for the individual?
- What other challenges is the individual navigating (e.g., mental health diagnosis, physical health diagnosis, accessibility concerns, language barriers)? How do these challenges impact compliance to pretrial supervision reporting? In what ways has the pretrial supervision agency accommodated for these challenges?
- To what extent have you as a pretrial officer worked with the individual to reschedule missed appointments?



**NONCOMPLIANCE
MISSING URINALYSIS (UA) TESTING APPOINTMENTS**

- For every UA testing appointment previously attended, what did the individual have to arrange to attend as scheduled (e.g., secure childcare, take time off work, loss of wages, pay testing fee out-of-pocket)?
- How often does the individual miss UA testing appointments? Was this situational or a behavior pattern? How often have they submitted testing appointments as scheduled in the past?
- Did the individual communicate why they missed the appointment? What was the context of the absence?
- Is UA testing a necessary condition? How often is the individual required to submit UA tests? Is the reporting frequency too hard for the individual given their resources and competing obligations (e.g., employment, caregiving, other court cases)? In what ways have you aligned appointments with court dates to reduce the volume of requirements on the individual?
- Is the individual responsible for paying out-of-pocket for UA tests? If so, how might that contribute to missing UA testing appointments?
- Is the individual already responsible for submitting UA as part of ongoing treatment? In what ways is UA testing by the court duplicative and too onerous for the individual?
- What other challenges is the individual navigating (e.g., mental health diagnosis, physical health diagnosis, accessibility concerns, language barriers)? How do these challenges impact compliance to UA testing requirements? In what ways has the pretrial supervision agency accommodated for these challenges?







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