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The Class of 1964 Policy Research Shop

BAIL REFORM IN NEW HAMPSHIRE

Assessing its Effects Across the State

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Prepared By:

Tanner Bielefeld Pruitt

Addison Dick

Justin Kramer

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Contact:

Nelson A. Rockefeller Center, 6082 Rockefeller Hall, Dartmouth College, Hanover, NH 03755

<http://rockefeller.dartmouth.edu/shop/> • Email: Ronald.G.Shaiko@Dartmouth.edu



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EXECUTIVE SUMMARY

New Hampshire recently implemented a sweeping reform of its pretrial release and bail system, from legislation to litigation. Much of the debate with regard to the bail reform centers on Failure to Appear (FTA) rates, which, to date, have not been estimated reliably in New Hampshire. Response to this recent bail reform has been mixed. This mixed response has been the result of several factors, including the lack of empirical evidence with regard to how this bill has affected the FTA rates. While some stakeholders argue that FTA rates have increased as a result of bail reform, others argue to the contrary. Nonetheless, reducing FTA rates remains a common goal of all stakeholders. To that end, in this research we conduct a review of studies that examine factors that affect and reduce FTA rates. For context we also discuss bail reform in other states. Finally, this research provides an overview of evidence-based solutions for reducing FTA rates. We hope this report will enable members of New Hampshire State Senate Judiciary Committee to make informed decisions in forming policy aimed at reducing FTA rates in New Hampshire.

1. INTRODUCTION

Over the past decade, bail reform in New Hampshire has become a salient issue. Following the nationwide push toward amending the criminal justice system, state legislators are facing increasing pressure from many different actors—from lawyers to jail superintendents to the American Civil Liberties Union (ACLU) of New Hampshire—to update the bail statutes in the state. When it comes to bail reform, there is a balance that must be met between public safety and the rights and well-being of defendants. Offenders are arrested for crimes and removed from society to prevent them from causing further harm to the public, but with the lagging speed of the criminal justice system, most defendants wait months after they are initially charged before they face trial. The bail system offers them a chance to leave custody until their court date. Under current bail law, when deciding bail amount, a judge must consider the danger that this defendant could pose to the public or himself or herself, the economic capacity of the defendant, and the likelihood that the defendant will show up in court for his or her trial. According to the *Concord Monitor*, the failure to appear rate for felony cases rose 2.1 percent in New Hampshire after the passage of bail reform law in 2018.¹ This data is only for felony cases, however, and New Hampshire currently lacks a statewide database that would allow researchers to reliably estimate FTA rates, examine the impact of bail reform of 2018 on FTA rates, and examine factors that increase the likelihood of defendants not appearing in court.

2. PURPOSE STATEMENT

The New Hampshire Senate Judiciary Committee asked the Class of 1964 Policy Research Shop to examine the effects of bail reform on FTA rates, and ways that FTA rates can be



reduced in New Hampshire. While current data on FTA rates in New Hampshire is limited, there are ongoing efforts in the state to collect and analyze reliable data on FTA rates. In this report we summarize factors that have been shown by prior research to affect FTA rates. For context, we also discuss the effect of bail reform on FTA rates in other states. Additionally, we provide an overview of evidence-based solutions to reduce FTA rates that have been employed in other states. It is essential to understand how to lower FTA rates in order to increase public safety while decreasing economic discrimination and other types of discrimination within the bail process. Through our research, we hope to provide a comprehensive analysis of the effects of bail reform on FTA rates and ways that FTA rates can be reduced across the Granite State.

3. BACKGROUND

In this section, we will give an overview of the background of bail and the criminal justice system in New Hampshire. We will lay out the basics of pretrial detention, review the current implementation of bail, and contextualize FTA rates within the state. We will also outline the recent legislative efforts concerning bail reform in New Hampshire.

3.1 Basics of Bail and Pretrial Detention

Bail is the practice of temporarily releasing people accused of crimes on the condition that a sum of money be lodged to guarantee their appearance in court. This method has been practiced in jails since the 1900s. Before this time, friends and family members of the accused served as sureties—they promised to pay the settled amount to the victim if the defendant fled.² The goal of bail is to prevent unnecessary negative consequences for accused people awaiting trial in jail while also keeping the public safe from dangerous individuals.³ As Chief Justice William Rehnquist said in *U.S. vs. Salerno*, “in our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”⁴ Stakeholders in the criminal justice community have long debated over how best to carefully limit the exception in order to maintain the liberty of the accused while keeping the public safe.

3.2 Current Pretrial Release Practices

Under the current pretrial system in the United States, there are three pretrial release practices that are most frequently used. After charges are filed against someone, a judge must decide whether the accused should be held without the possibility of release until the case is over.⁵ If the judge determines that the person does not need to be held without the possibility of release, they can choose between different pretrial release options. The judge can decide to release the person on personal recognizance, by which the accused is released if he or she promises to return for the court date. Another option is conditional release, under which the person is required to fulfill different conditions of their release. These



conditions may include undergoing drug testing, checking in with pretrial services, and being monitored electronically.⁶

The judge may also decide to release the accused on bail, either on secured or unsecured bond. Secured bond, often referred to as “money bail,” occurs when the person must pay an amount of money set by the judge to leave jail.⁷ The person must pay the money upfront before securing his or her pretrial release. The other type of bail is release on unsecured bond, where the accused does not pay the money upfront but owes a set amount of money if he or she is not present for the appointed court date.⁸ Personal recognizance, conditional release, and bail are the three most common pretrial release practices across the United States.

3.3 *Recent Activity on Bail Reform in New Hampshire*

Bail legislation in New Hampshire has undergone significant changes in recent years. First, S.B. 556 introduced major changes to how bail is determined. Then, S.B. 314 clarified some confusion regarding S.B. 556 and proposed new ways to collect data on the effects of S.B. 556. Additionally, in December 2019, the New Hampshire Supreme Court ruled on a case which will determine how the judiciary interprets the new bail reform law.

3.3.1 *State v. Christina A. Hill*

On October 16, 2019, the New Hampshire Supreme Court heard arguments in the case *State v. Christina A. Hill*.⁹ The defendant, Christina Hill, was detained before her trial because she could not afford her bail amount of \$25,000. The current statute, S.B. 556, allows a judge to hold a defendant without bail if he or she determines the defendant to be dangerous to themselves, others, or pose a flight risk.¹⁰ Lawyers for Ms. Hill argued that she was unlawfully detained because the trial court had previously found her not dangerous, and therefore the bail amount violated the current law. The state argued that the judge was justified in setting the bail to such a high amount because they held concerns that Ms. Hill posed a flight risk.¹¹ On December 13, 2019, the New Hampshire Supreme Court ruled in favor of the state, holding that RSA 597:2 “Release of a Defendant Pending Trial” permitted the court to detain Ms. Hill. The opinion reads, “RSA 597:2 allows a trial court to set unaffordable bail that results in detention based solely upon the court’s determination that an arrestee poses a flight risk.”¹²

3.3.2 *Senate Bill 556*

The most recent legislative effort relating to bail reform is the Criminal Justice Reform and Economic Fairness Act of 2018, or S.B. 556. This act includes a clause which states that no person should be subjected to pretrial detention on the basis of economic condition



alone.¹³ Judges are now required to consider what a defendant could reasonably afford before setting a bail amount. The bill also allows a judge to detain a defendant before his or her trial without bail if the judge finds sufficient concern that the defendant poses a danger or flight risk; this evidence includes acute depression and threats of suicide, violations of protective orders, and past threats or actions of violence against another person.¹⁴ Legislators were particularly focused on economic discrimination in the bail process, and included provisions to direct the judge to consider whether the defendant has children or is the sole provider for dependents before setting a bail amount.¹⁵

According to the Rochester Police Chief Paul Toussaint, while financial ability should not solely determine pretrial detention, S.B. 556 has made the public less safe because officers are forced to arrest the same people repeatedly for new crimes before their trials.¹⁶ In this “catch and release” environment, as a result of S.B. 556, a 22-year-old offender was arrested in a drug raid, released on personal recognizance, and was back in police custody again within 11 days on charges of injuring multiple city officers.¹⁷ The New Hampshire Association of Chiefs of Police began drafting legislation to address the critical holes they saw in this bail statute three months after the law’s initial rollout in 2018.¹⁸ This Association issued its recommendations in November 2018, which included provisions to protect victims from testifying at a defendant’s bail hearing and clarification on when a judge can detain a defendant suffering from substance abuse disorder before trial.¹⁹

3.3.3 *Senate Bill 314*

In the most recent session of the New Hampshire legislature, State Senator Martha Hennessey, the chair of the Judiciary Committee, sponsored ‘an Act relative to the release of a defendant pending trial,’ or S.B. 314. Broadly, the legislation proposes new ways to collect better data and clarify confusion on the bail reform implemented by S.B. 556. S.B. 314 is intended to amend how judges consider and determine the public and self-safety risk of a defendant before deciding whether to hold the defendant on bail or release them on personal recognizance. S.B. 314 strikes all specific language regarding evidence of danger to self or others, and instead broadens the language to include all “relevant factors” concerned with the potential risk to the public and others pending a release.²⁰ It brings into law the recommendation of the New Hampshire Association of Chiefs of Police to not require the testimony of a witness at the bail hearing, and establishes a formal Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial Services.²¹ S.B. 314 passed on June 25, 2019 and will fully take effect on November 1, 2020.

3.4 *Failure to Appear Rates*

FTAs have become a widely cited source of uncertainty for stakeholders in New Hampshire. Soon after S.B. 556 was passed, attorneys, lawmakers, county jails, and civil liberties activists presented thoughts and arguments for or against S.B. 556.²² The data



presented by these stakeholders, however, is marred with inconsistencies, largely because individual counties collect their own FTA data and a statewide FTA database does not exist. Since the data that does exist is on the county level, it does not represent the effects of S.B. 556 on the entire state. However, since felony cases cannot be heard in district courts, the state does have FTA data for felony cases. Between January and September 2017, the FTA rate for felony cases was 7.7 percent. After S.B. 556 took effect in 2018, the FTA rate for felony cases during the same nine-month period in 2019 was 9.8 percent, an increase of 2.1 percent.²³

4. DATA COLLECTION

In this section, we discuss the currently available data on FTA rates before and after bail reform and the limitations of this data, we also briefly discuss our data collection efforts. Moreover, we review ongoing efforts to collect and analyze data on FTA rates in New Hampshire.

4.1 Limitations of Existing Data

University of New Hampshire Law Professor Albert “Buzz” Scherr—who drafted the bail reform law—collected a limited scope of data over one day of arraignments from court case summaries. His data is composed of 178 circuit court arraignments statewide on September 17, 2018. This date is useful because some arraignments had bail set under the old bail statute, while others had bail set under the new bail statute. After comparing these two groups, Professor Scherr found a 16.9 percent FTA rate for those who had bail set under the old bail statute and a 7.8 percent FTA rate for those who had bail set under the new bail statute.²⁴ While this study provides some insight into the effects of bail reform law on FTA rates in NH, the data that is used in this study has limitations. Namely, it is based on a small sample size, and the data is based on one day, and as such is not representative of FTA rates throughout the year. Professor Scherr also included two anecdotal accounts on the effects of bail reform on FTA rates. The Chief Justice of the Superior Court and the Chief Administrative Judge of the Circuit Court each said that they had not seen any notable increase in FTAs since the implementation of the bail reform legislation.

4.2 Our Attempt to Obtain Data

Since there is considerable uncertainty surrounding FTA estimates and much value can be derived from analyzing reliable data on FTA rates, early in the research process we attempted to build our own comprehensive data set from public records. Our plan was to merge county-level data from the courts, sheriff departments, and jails. Throughout a two-month period we talked to officials in courts, jails, and police stations. From these interviews we have learned that a data set on FTA rates cannot be built from currently



available public records. For instance, after explaining our data collection efforts to Judge King, we have learned that currently the public can use electronic kiosks in courts to look up information about a case by case number. To build a more comprehensive dataset would require access to case management system, which is not accessible to the public.

4.3 Current Efforts to Collect and Analyze Data in New Hampshire

The State of New Hampshire has recently begun the process of collecting data on statewide FTA rates. It has also issued a \$45,000 grant to the Pretrial Justice Institute to analyze the effects of the bail reform on FTA rates.²⁵

4.3.1 New Hampshire's Current Efforts to Build Comprehensive Data Set

The Bail Reform Commission is currently in the process of collecting data on FTA rates. The Bail Reform Commission is a group of people from the courts, the state legislature, and other community stakeholders. According to New Hampshire State Senator Melanie Levesque, the chair of this commission, the purpose of the Bail Reform Commission is to gather relevant data in order to analyze the effect of bail reform on FTA rates and formulate policy recommendations by the end of summer of 2020.

On request of the commission, the courts hired the Bail Reform Coordinator Meghan Hall in January 2020. Her role is to collect and analyze data on FTA rates from Rockingham and Hillsborough counties, as these are the most criminally active counties. This data should be available to the public by the end of summer 2020. Hall has also been working on creating a business process for the text messaging reminder pilot that the New Hampshire is working on. As discussed in greater detail in section 7, reminder systems have been shown to reduce FTA rates.^{26, 27}

4.3.2 Pretrial Justice Institute Efforts to Examine Effects of Bail Reform on FTA Rates

The Pretrial Justice Institute received a \$45,000 state grant to examine the effects of the bail reform law.²⁸ In our interview with Pretrial Justice Institute Senior Manager John Clark, we learned that the state has not yet provided him with FTA data from jails or courts. Mr. Clark said that he is unable to perform his analysis on FTA rates before he receives this data.

5. FACTORS THAT AFFECT FAILURE TO APPEAR RATES

Despite the high stakes in failing to appear in court, a meaningful proportion of defendants continue to miss their court dates. In this section, we discuss the most cited reasons for why defendants don't show up in court, examine behavioral models that explain why some



defendants fail to appear in court, and review previous research on factors that affect FTA rates.

5.1 Reasons for No-Shows

In our research, we found five primary reasons why a defendant would not appear in court on the day of his or her hearing after being let out on personal recognizance or bail.²⁹ These are the most widely cited reasons that a defendant fails to appear. The defendant may have forgotten the court date and/or there was a lack of court notices received by the defendant; the defendant could be unable to travel to the courthouse; the defendant may fear what may happen at trial; the defendant may have an inability to find proper care for his or her child on the day of the trial; and/or the defendant may be unable to miss a day or shift of work without fear of repercussions or losing his or her job.³⁰

Behavioral factors also explain why people fail to appear in court. The University of Chicago Crime Lab and ideas42 conducted a study on FTA rates in New York City and laid out four main psychological mechanisms which drive no-shows: erroneous mental models, present bias, social norms, and inattention.³¹ Together, these four behavioral barriers help explain why defendants do not accurately weigh the costs and benefits of failing to appear. Inattention is the most limiting psychological flaw; with lots of time between the initial violation and court date, some defendants simply forget. Other defendants have erroneous mental models which result in a misalignment between what individuals perceive should merit a court appearance and what actually does. Erroneous mental models might compel defendants to think that minor offenses should not result in a court appearance, which they perceive as only necessary for serious crimes. Defendants also tend to overinflate the immediate costs of appearing in court and underestimate the long-term costs of failing to appear as a result of present bias. Even a full understanding of the future costs of an arrest warrant is not always enough to overcome powerful present bias. Finally, some defendants incorrectly believe that most people do not show up to court, whereas in reality, most individuals do show up for their court dates. Social norms compel defendant behavior, so if a defendant misperceives that a large percentage of other individuals do not attend court, he or she may mistakenly conclude that it is acceptable not to attend court.³²

5.2 Underlying Factors That Affect FTA Rates

In addition to individual reasons for no-shows, we also examine underlying systematic factors that affect FTA rates. According to Dartmouth Professor Jennifer Sargent, who previously worked as a defense attorney and judge, in her experience, most no-shows are the product of low socio-economic status.



As part of a study commissioned by the U.S. Department of Justice conducted in Nebraska, researchers looked at five different demographic factors to see whether they had an impact on FTA rates—race, gender, geographic location (urban versus rural), the type of offense, and the number of charges brought against the defendant.³³ The study found FTA rates were higher in urban than rural areas (15.0 percent versus 8.5 percent). This finding held in an experimental condition where respondents received a reminder to appear in court (12.4 percent versus 6.8 percent). Defendants were most likely to fail to appear when charged with Class II Misdemeanor (18.9 percent in the baseline condition, and 13.8 percent in a reminder condition). Importantly, defendants receiving multiple citations for an offense failed to appear substantially more often (18.2 percent versus 6.7 percent). This finding held for those who received a reminder (15.4 percent versus 5.4 percent). Gender did not significantly affect FTA rate, while the effects of race on FTA rate lost significance when controlling for the other aforementioned factors.³⁴

6. BAIL REFORM IN OTHER STATES

In order to further supplement our analysis of bail policy in New Hampshire, in this section, we discuss bail reform in other states. Namely, we discuss bail reform in New Jersey and District of Columbia. Moreover, we also review research on FTA rates in Nebraska. We chose to focus on Nebraska because it is a state whose demographics are most similar to New Hampshire.³⁵ In choosing this case study, we considered population size, demographics, average age, geography, prominence of urban versus rural areas, and availability of data.^{36,37} While no state will be identical to New Hampshire, we hope that review of FTA research in Nebraska will provide useful context for New Hampshire.

6.1 New Jersey and District of Columbia

One prominent example of recent bail reform is New Jersey. Criminal Justice Reform in the Garden State, enacted in 2017, drastically reduced dependence on cash bail,³⁸ and relaxed restrictions for low-risk individuals with evidence-based risk assessments.³⁹ New Jersey implements a nine-factor Public Safety Assessment to assess pretrial risk of defendants. Four of these factors are statistically significant predictors of individual likelihood of FTA. These factors are: pending charge at the time of the offense, prior conviction (misdemeanor or felony), prior FTA in the past two years, and prior FTA older than two years.⁴⁰ While there was concern in New Jersey—as there is in New Hampshire—that administering less cash bail would increase failures to appear, this effect was relatively mild, as the FTA rate increased from 7.3 percent to 10.6 percent.⁴¹



Additionally, the District of Columbia eliminated cash bail in the 1990s. Today, the district uses a “scientific risk assessment” and releases 94 percent of the people it arrests without using money.⁴² According to Superior Court Judge Truman Morrison, 88 percent of those released attended every single court appearance.⁴³ California has also eliminated cash bail, and many other states have enacted bail reform legislation.⁴⁴ The reforms in these states are similar to the reforms in New Hampshire.

6.2 Nebraska

A study conducted in Nebraska found that the FTA rates were higher for defendants with multiple charges (15.4 percent for defendants with two or more charges versus 5.4 percent for those with only one charge).⁴⁵ Failure to appear varied depending on geographic location. It was higher in urban counties (12.4 percent) than rural counties (6.8 percent). Since the population of New Hampshire is substantially spread out over rural counties, but its few major cities have a high density of low socio-economic households, this data is important for understanding FTA rates in the state. Figure 1 shows survey data reflecting reasons why defendants appeared or did not appear in court. Using a five-point scale, participants rated the importance of each of six factors in determining whether they appeared or not.⁴⁶

Though the data is descriptive, as it only provides means and standard deviations, Figure 1 provides preliminary answers to core questions about FTAs. Critically, participants cited scheduling and work conflicts as larger drivers of their FTA (2.77 and 2.39 on a five-point importance scale) than forgetting about the hearing date (1.89). Among participants who did appear, practical goals to avoid punishment were rated as the most compelling reasons to appear (about 4.60), but normative factors also played a key role, as respondents cited a desire to obey the law as another main motivation for court appearance (4.38). A similar study could be replicated in the state of New Hampshire to analyze the reasons for FTAs in the Granite State.



Figure 1: Reasons for Appearing or Not Appearing for Court in Nebraska

Reasons for Appearing	M	SD
Wanted to avoid additional offense for FTA.	4.60	1.02
Wanted to avoid additional penalties.	4.59	0.98
Felt I should obey the law.	4.38	1.05
System depends on compliance from people like me.	3.73	1.37
Wanted to tell my side of the story.	3.16	1.62
Reasons for Not Appearing	M	SD
Had scheduling conflicts.	2.77	1.81
Had work conflicts.	2.39	1.66
Had transportation difficulty.	2.07	1.59
Forgot about the hearing date.	1.89	1.50
Had family conflicts (e.g. childcare)	1.84	1.44
Afraid of what the outcome would be if I went.	1.72	1.20

Source: “Reducing Courts’ Failure to Appear Rate: A Procedural Justice Approach”⁴⁷

A study conducted in Nebraska examined the effects of different reminders on FTA rates. Specifically, it examined the impacts of simple reminder postcards (reminder-only), reminder postcards with information on the negative consequences of FTA (reminder-sanctions), and reminder postcards with information on sanctions as well as the procedural justice benefits of appearing (reminder-combined). All postcards were effective in reducing FTA rates in comparison to FTA rate for respondents who did not receive a postcard. However, some postcards were more effective in reducing FTA rates than others. The most effective reminder system was the reminder-sanctions postcard.⁴⁸

This research study also examined how the effect of reminder postcards varied by racial groups. The results indicate that postcards had a statistically significantly different effect on different groups.⁴⁹ Figure 2 shows the breakdown for Whites, Blacks, and Hispanics, as well as the total FTA rates. It is worth noting that a simple reminder is ineffective for all racial groups except Whites. On the other hand, a reminder mentioning potential consequences is most effective reminder for all groups.⁵⁰



Figure 2: Failure to Appear Rate in Nebraska by Treatment and Race/Ethnicity

Reminder Postcard Treatment	FTA Rates			Total (n=7,122)
	Whites (n=5,487)	Blacks (n=793)	Hispanics (n=842)	
Control	11.7%	18.7%	10.5%	12.4%
Simple Reminder	9.6%	18.8%	11.8%	11.0%
Reminder Sanctions	8.0%	13.5%	4.7%	8.1%
Reminder PJ	8.8%	13.6%	10.1%	9.5%
Total	9.5%	16.4%	9.4%	10.3%

Source: “Reducing Courts’ Failure to Appear Rate: A Procedural Justice Approach”⁵¹

7. EVIDENCE-BASED PROGRAMS TO REDUCE FTA RATES

States have implemented several programs that have been shown to decrease FTA rates. Most of these deal with reminders, while one program suggests altering the court summons form to highlight key information.

7.1 Court Date Reminder Systems

Many counties and states have implemented notification systems to remind defendants of their court dates to reduce FTA rates. Reminder systems largely fall into three main categories: automated calling systems, live-caller systems, and targeted text reminders.

7.1.1 Automated Calling Systems

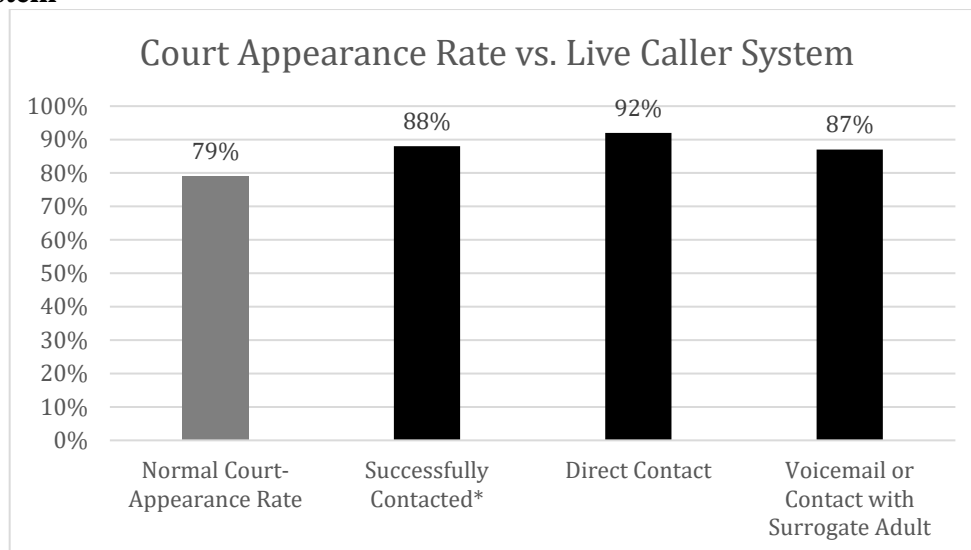
Multnomah County, Oregon, the county which surrounds Portland, provides one example of successful implementation of the automatic calling system in reducing FTAs. Their Court Appearance Notification System called defendants three days before their scheduled court appearance to remind them of the date and time they were expected to appear. If the call was answered or was recorded over voicemail, FTA rates decreased by 43-45 percent in the six-month span of the study. This system saved the state over \$500,000 in those six months by reducing the need for new warrants and jail holding.⁵² A follow up study in Multnomah County the next year found that by placing automated reminder calls for 11,747 court appearances, they saved roughly \$1 million by averting over 1,000 FTAs and 400 new warrants.⁵³



7.1.2 Live-caller Systems

Jefferson County, Colorado took an alternative approach to combat its FTA problem, implementing a live-caller system in which a human—rather than computer—spoke directly over the phone with defendants.⁵⁴ In their ten-week FTA Pilot Project, the live caller dialed a randomized assortment of 2,100 defendants, emphasizing their choice between attending court or facing serious sanctions. Calling defendants one week before their trial with their court date and directions to the court reduced FTA rates from 21 percent to 12 percent, a relative reduction of 43 percent. Moreover, defendants who were reached directly failed to appear only eight percent of the time while defendants who received the call indirectly through another household member or voicemail. Figure 3 demonstrates the increases in appearance rates for individuals who were successfully contacted either directly or indirectly. Reminding individuals who still failed to appear about a warrant issued in their name compelled 50 percent of them to return to court within five business days, compared to the county’s typical 10 percent rate. The success of the pilot program convinced Jefferson County to expand the live-caller system into a full Court Date Notification Program using a live caller, which sharply increased the court appearance rate for defendants who were “successfully contacted” through direct contact, voicemail or surrogate answer up to 92 percent within a few years.⁵⁵

Figure 3: FTA Rates in Jefferson County, Colorado improve with Live Caller System



Note: Successfully contacted refers to defendants who were directly contact, delivered a voicemail, or had another responsible adult answer the phone in their stead.

Source: Data from FTA Pilot Project in “Increasing Court-Appearance Rates...”⁵⁶



7.1.3 Text Message Reminder Systems

As New Hampshire prepares to implement text message reminders, it is important to carefully consider the content of these messages. Behavioral studies provide one potential basis for the content of these text reminders. The University of Chicago Crime Lab and ideas⁴² incorporated the four aforementioned psychological factors that increase FTAs (inattention, social norms, mental models, and present bias) into text message reminders to lower the staggering 41 percent FTA rate for low-level offenses in New York City.⁵⁷ To combat mental biases and promote court appearance, the researchers utilized two forms of text messages—consequence reminders and plan-making reminders—sending automated reminders seven days, three days, and one day before defendants’ court dates. Both messages provided court date reminders but varied in approach. An example consequence reminder three-days before read, “Remember, you have court on Mon Jun 03 at 346 Broadway Manhattan. [Tickets could be dismissed or end in a fine (60 days to pay).] [Missing can lead to your arrest.]” Plan-making reminders, on the other hand, read “You have court on Mon Jun 03 at 346 Broadway Manhattan. [What time should you leave to get there by 9:30AM? Any other arrangements to make? Write out your plan.]”⁵⁸

Through randomized control trials, researchers found that combining elements of both messages was most effective, reducing FTAs by 26 percent, though consequence reminders drove most of that effect. Combining these combination reminders with additional consequence messaging if defendants failed to appear lowered the number of open warrants by 32 percent. These pointed messages could be useful for New Hampshire in deciding how best to implement a text reminder system.⁵⁹

7.1.4 Combination of Voluntary Reminder Systems

Durham County, North Carolina allowed defendants the option to choose through which medium their reminder would be delivered. Though their FTA rate was already relatively low at 10 percent, after the implementation of a new reminder service, FTA rates dropped to just four percent.⁶⁰

The voluntary nature of the Durham County system differs from that of the other approaches we examined. Participants in Durham County signed up for one of three options: text, call, or email reminders, while participants in Multnomah County were called using the phone numbers already on file with the court. Lastly, the Durham County reminder service not only reminded defendants of their upcoming court date three days before, but also one day before.⁶¹

This system was largely effective. The lessons learned from these systems can be aggregated into two maxims to remember when designing reminder systems. First, engage the people you are trying to reach and emphasize both consequence and planning



messaging when designing your communications style. If you are trying to reach people with upcoming court dates, ask those people what businesses or areas of town they frequent, then target advertising to those areas. Additionally, engage non-system partners. There is inherent bias in virtually all aspects of the criminal justice system, so it is important to partner with companies and groups that are not directly involved in the system when devising advertising or court reminders.⁶²

7.2 Design of Court Summons Form

The idea⁴² and University of Chicago Crime Lab study in New York City also found that simply redesigning its court summons ticket can have meaningful effects in lowering FTA rates.⁶³ Going off the assumption that many people do not read their summons forms carefully, New York City issued a new form with clear warnings for missing a court appearance and details about the court date/time and location moved to the top of the form and bolded. A new title, “Criminal Court Appearance Ticket” cut to the chase of the issue, emphasizing the next task for defendants.⁶⁴ This form redesign lowered FTA rates by 13 percent (6.4 percentage points) compared to those receiving the old form. Considering form redesign is a simple and easily scalable process.⁶⁵ Interested readers can view the old and new court summons form in the Appendix.

8. CONCLUSION

In this report we summarize the current bail legislation in New Hampshire, discuss limitations of currently existing data of FTA rates, and ongoing efforts to collect more reliable and representative data on FTA rates in New Hampshire. In this report we also provide context for effects of bail reform in New Hampshire on FTA rates by discussing bail reform in other states. Moreover, we reviewed previous research on why defendants fail to appear in court. Finally, we review evidence-based solutions to reduce FTA rates implemented in other states. We hope this research will inform legislators in forming policy aimed at reducing FTA rates.



9. APPENDIX

Appendix I: An Old and New Summons Form in New York City

OLD	NEW
<p>CRC-3206 (5/12)</p> <p>Complaint/Information ①</p> <p>The People of the State of New York vs.</p> <p>Name (Last, First, MI)</p> <p>Street Address Apt. No.</p> <p>City State Zip Code</p> <p>ID/License Number State Type/Class Expires (mm/dd/yy) Sex</p> <p>Date of Birth (mm/dd/yy) Ht Wt Eyes Hair Plate/Reg</p> <p>Reg State Expires (mm/dd/yy) Plate Type Veh Type Make Year Color</p> <p>The Person Described Above is Charged as Follows:</p> <p>Time 24 Hour (Ah:mm) Date of Offense (mm/dd/yy) County</p> <p>Place of Occurrence NYC Park Corp Precinct</p> <p>In Violation of Section Subsection VTL Admin Code Penal Law Park Rules Other</p> <p>Title of Offense:</p> <p>Bronx Criminal Court - 215 E 161st Street, Bronx, NY 10451</p> <p>Kings Criminal Court - 346 Broadway, New York, NY 10013</p> <p>Redhook Community Justice Center - 88-94 Visitation Place, Brooklyn, NY 11231</p> <p>New York Criminal Court - 346 Broadway, New York, NY 10013</p> <p>Midhown Community Court - 314 W 54th Street, New York, NY 10019</p> <p>Queens Criminal Court - 120-55 Queens Boulevard, Kew Gardens, NY 11415</p> <p>Richmond Criminal Court - 67 Targee Street, Staten Island, NY 10304</p> <p>Defendant stated in my presence (in substance):</p> <p>I personally observed the commission of the offense charged herein. False statements made herein are punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law. Affirmed under penalty of law.</p> <p>Complainant's Full Name Printed Risk/Full Signature of Complainant Date Affirmed (mm/dd/yy)</p> <p>Agency Tax Registry # Command Code</p> <p>The person described above is summoned to appear at NYC Criminal Court Summons Part County located at:</p> <p>Date of Appearance (mm/dd/yy) At: 9:30 a.m. ②</p> <p>DEFENDANT'S COPY</p>	<p>GLUE LINE</p> <p>CRC-3206 (1/16)</p> <p>Criminal Court Appearance Ticket ①</p> <p>Name (Last, First, MI) Date of Birth (mm/dd/yy)</p> <p>Cell Phone Number (where court may contact you) Home Phone Number (where court may contact you)</p> <p>() ()</p> <p>② Show up to court on: Court Appearance Date (mm/dd/yy): at: 9:30 a.m.</p> <p>③ Your court appearance location: <input type="radio"/> Other (specify)</p> <p><input type="radio"/> Bronx Criminal Court <input type="radio"/> Kings & New York Criminal Court <input type="radio"/> Midhown Community Court <input type="radio"/> Redhook Community Justice Center <input type="radio"/> Queens Criminal Court <input type="radio"/> Richmond Criminal Court</p> <p>**To avoid a warrant for your arrest, you must show up to court.** At court, you may plead guilty or not guilty. Please see back for exceptions for Public Consumption of Alcohol and Public Urination offenses.</p> <p>Court Locations: You must appear at the court location identified above.</p> <p>Bronx Criminal Court 215 E 161st Street, Bronx, NY 10451 Kings & New York Criminal Court 1 Centre Street, 16th Floor, New York, NY 10007 Redhook Community Justice Center 88-94 Visitation Place, Brooklyn, NY 11231 Midhown Community Court 314 W 54th Street, New York, NY 10019 Queens Criminal Court 120-55 Queens Boulevard, Kew Gardens, NY 11415 Richmond Criminal Court 26 Central Ave, Staten Island, NY 10301</p> <p>You are Charged as Follows:</p> <p>Title of Offense:</p> <p>Time 24 Hour (Ah:mm) Date of Offense (mm/dd/yy) County</p> <p>Place of Occurrence Precinct</p> <p>In Violation of Section Subsection VTL Admin Code Penal Law Park Rules Other</p> <p>For Additional Information and Questions:</p> <p>Visit the website or call the number below for additional information about your court appearance and translation of this document.</p> <p>www.mysummons.nyc OR Call 646-760-3010</p> <p>Defendant stated in my presence (in substance):</p> <p>I personally observed the commission of the offense charged herein. False statements made herein are punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law. Affirmed under penalty of law.</p> <p>Complainant's Full Name Printed Risk/Full Signature of Complainant Date Affirmed (mm/dd/yy)</p> <p>Tax Registry # Agency Command Code</p> <p>DEFENDANT'S COPY</p>

Source: *Using Behavioral Science to Improve Criminal Justice Outcomes*⁶⁶



REFERENCES

- ¹ Dandrea, Alyssa. "N.H. Bail Reform Data Remains Elusive as Repeat Offenders Bog down Courts." Concord Monitor. Concord Monitor, October 12, 2019. <https://www.concordmonitor.com/NH-Legislature-bail-reform-29137969>.
- ² Allen, Kelly. "The Evolution of Money Bail Throughout History." Burns Institute, April 4, 2018. <https://www.burnsinstitute.org/blog/the-evolution-of-money-bail-throughout-history/>.
- ³ McIntyre, Mary. "N.H. Law Enforcement Officials Frustrated with Bail Reform." New Hampshire Public Radio, May 6, 2019. <https://www.nhpr.org/post/nh-law-enforcement-officials-frustrated-bail-reform#stream/0>.
- ⁴ United States v. Salerno 481 U.S. 739 (No. 86-87)
- ⁵ "Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing." Harvard Law Review, February 9, 2018, p. 1126. <https://harvardlawreview.org/2018/02/bail-reform-and-risk-assessment-the-cautionary-tale-of-federal-sentencing/>.
- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ Ibid.
- ⁹ Mary McIntyre, "N.H. Supreme Court Hears Case On Bail Reform Statute," accessed October 30, 2019, <https://www.nhpr.org/post/nh-supreme-court-hears-case-bail-reform-statute..>
- ¹⁰ McIntyre.
- ¹¹ McIntyre.
- ¹² "State v. Christina A. Hill, 2018-0637 (N.H. 2019)," accessed March 2, 2020, <https://www.courtlistener.com/opinion/4686804/state-v-christina-a-hill/>.
- ¹³ "New Hampshire SB556 | 2018 | Regular Session," LegiScan, accessed October 30, 2019, <https://legiscan.com/NH/text/SB556/id/1790810>.
- ¹⁴ Ibid.
- ¹⁵ Ibid.
- ¹⁶ The Exchange, "Bail Reform Debate: Success Stories Overlooked & More Community Corrections Programs Needed," accessed October 30, 2019, <https://www.nhpr.org/post/bail-reform-debate-success-stories-overlooked-more-community-corrections-programs-needed>.
- ¹⁷ "N.H. Bail Reform Data Remains Elusive as Repeat Offenders Bog down Courts," Concord Monitor, October 12, 2019, <https://www.concordmonitor.com/NH-Legislature-bail-reform-29137969>.
- ¹⁸ "N.H. Law Enforcement Complain of Missed Court Dates in Wake of Bail Reform Law," accessed October 30, 2019, <https://www.concordmonitor.com/Commission-NH-bail-reform-recommendations-21449661>.
- ¹⁹ Sarah Gibson, "Commission To Issue Recommendations On Bail And Pretrial Detention," accessed October 30, 2019, <https://www.nhpr.org/post/commission-issue-recommendations-bail-and-pretrial-detention>.
- ²⁰ Martha Hennessy, "AN ACT Relative to Release of a Defendant Pending Trial.," Pub. L. No. 314 6/25/2019.
- ²¹ Ibid.
- ²² Dandrea.
- ²³ Ibid.
- ²⁴ Sherr, Buzz. "FTA rates in Circuit & Superior Courts." New Hampshire Bail Reform Commission. Accessed February 7, 2020.
- ²⁵ Paul Cuno-Booth, "Jumping to Conclusions? Data Needed to Analyze Effects of Recent NH Bail Reforms," accessed March 1, 2020, https://www.sentinelsource.com/news/front_and_center/data-needed-to-analyze-effects-of-recent-nh-bail-reforms/article_92d8f715-9592-56c8-a6c8-2e8c4ed21c8d.html.



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- ²⁶ Cooke, Brice, Binta Zahra Diop, Alissa Fishbane, Jonathan Hayes, Aurelie Ouss, and Anuj Shah. "Using behavioral science to improve criminal justice outcomes." (2018).
- ²⁷ Vasquez-Noriega, Carla, Marina Duane, Travis Reginal, and Jesse Jannetta. "Supporting Individual Agency in the Pretrial Release Process." (2018).
- ²⁸ Paul Cuno-Booth, "Jumping to Conclusions? Data Needed to Analyze Effects of Recent NH Bail Reforms," accessed March 1, 2020, https://www.sentinelsource.com/news/front_and_center/data-needed-to-analyze-effects-of-recent-nh-bail-reforms/article_92d8f715-9592-56c8-a6c8-2e8c4ed21c8d.html.
- ²⁹ "Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing."
- ³⁰ Ibid.
- ³¹ Cooke, Brice, Binta Zahra Diop, Alissa Fishbane, Jonathan Hayes, Aurelie Ouss, and Anuj Shah. "Using behavioral science to improve criminal justice outcomes." (2018).
- ³² Ibid.
- ³³ Brian Bornstein, Alan Tomkins, and Elizabeth Neeley, "Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach," Research Report (U.S. Department of Justice, May 2011), <https://www.ncjrs.gov/pdffiles1/nij/grants/234370.pdf>.
- ³⁴ Ibid.
- ³⁵ "U.S. Census Bureau QuickFacts: New Hampshire." Census Bureau QuickFacts. U.S. Census Bureau, July 1, 2018. <https://www.census.gov/quickfacts/NH>.
- ³⁶ "U.S. Census Bureau QuickFacts: Nebraska." Census Bureau QuickFacts. U.S. Census Bureau, July 1, 2018. <https://www.census.gov/quickfacts/NE>.
- ³⁷ Nate Silver, "State Similarity Scores," *FiveThirtyEight* (blog), July 7, 2008, <https://fivethirtyeight.com/features/state-similarity-scores/>.
- ³⁸ "Pretrial Justice Reform," accessed March 3, 2020. ACLU New Jersey. <https://www.aclu-nj.org/theissues/criminaljustice/pretrial-justice-reform>
- ³⁹ "2018 Criminal Justice Reform Report to the Governor and the Legislature." New Jersey Courts, April, 2019. <https://njcourts.gov/courts/assets/criminal/2018cjrannual.pdf>.
- ⁴⁰ "Public Safety Assessment (PSA)." Public Safety Assessment (PSA). National Partnership for Pretrial Justice. Accessed November 3, 2019. <https://www.psapretrial.org/about/research>.
- ⁴¹ "2018 Criminal Justice Reform Report to the Governor and the Legislature." New Jersey Courts, April, 2019. <https://njcourts.gov/courts/assets/criminal/2018cjrannual.pdf>.
- ⁴² "What Changed After D.C. Ended Cash Bail." NPR. NPR, September 2, 2018. <https://www.npr.org/2018/09/02/644085158/what-changed-after-d-c-ended-cash-bail>.
- ⁴³ Ibid.
- ⁴⁴ Park, Madison, "California eliminates cash bail in sweeping reform," accessed March 4, 2020. <https://www.cnn.com/2018/08/28/us/bail-california-bill/index.html>
- ⁴⁵ Bornstein, Tomkins, and Neeley, "Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach."
- ⁴⁶ Ibid.
- ⁴⁷ Ibid.
- ⁴⁸ Ibid.
- ⁴⁹ Ibid.
- ⁵⁰ Ibid.
- ⁵¹ Ibid.
- ⁵² Nice, Matt. "Court Appearance Notification System: Evaluation Highlights." (2006).
- ⁵³ O'Keefe, Matt. "Court Appearance Notification System: 2007 Analysis Highlights." (2007).
- ⁵⁴ Schnacke, Timothy R.; Jones, Michael R.; and Wilderman, Dorian M., "Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County,



Colorado, FTA Pilot Project and Resulting Court Date Notification Program." (2012.) *Court Review: The Journal of the American Judges Association*. 393. <https://digitalcommons.unl.edu/ajacourtreview/393>

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Cooke, Brice, Binta Zahra Diop, Alissa Fishbane, Jonathan Hayes, Aurelie Ouss, and Anuj Shah. "Using behavioral science to improve criminal justice outcomes." (2018).

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Vasquez-Noriega, Carla, Marina Duane, Travis Reginal, and Jesse Jannetta. "Supporting Individual Agency in the Pretrial Release Process." (2018).

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.