

UNDERSTANDING COURT
ABSENCE AND REFRAMING
“FAILURE TO APPEAR”

LAKE COUNTY, IL



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www.SafetyandJusticeChallenge.org.

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ABOUT JSP

JUSTICE SYSTEM PARTNERS

JSP is a non-profit, multidisciplinary team committed to assisting criminal and juvenile legal systems and community partners with transforming their systems. We help our partners reimagine their work by combining research, technical assistance, and knowledge of evidence-informed strategies. We infuse creativity, innovation, and passion into our work, taking an integrated approach to system transformation to help our partners operationalize meaningful change.

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TABLE OF CONTENTS

5	WHY STUDY “FAILURE TO APPEAR” WARRANTS	21	FINDINGS, PART 1 WHY PARTICIPANTS MISSED COURT
6	LANGUAGE CHOICES	39	FINDINGS, PART 2 NAVIGATING DYNAMIC EXPERIENCES
8	EXECUTIVE SUMMARY		
11	LAKE COUNTY, IL OVERVIEW	43	FINDINGS, PART 3 COURT REMINDERS & VIRTUAL COURT
15	RESEARCH QUESTIONS, DATA & APPROACH	49	RECOMMENDATIONS

WHY STUDY

“FAILURE TO APPEAR” WARRANTS

Failure to Appear warrants are warrants issued by judges to individuals who do not appear in court. If an individual experiences police contact after a judge issues a bench warrant, the warrant requires police to arrest the individual and return them to jail – even for minor traffic violations. Individuals who return to jail can remain detained for the entirety of their case processing.

Pretrial detention is the temporary period where individuals wait in jail after an arrest and while the court processes their case. While it ensures individuals attend all their court hearings, detention – even for a few days – can have costly impacts. It can affect an individual’s employment and income, housing stability, custody of their children, and enrollment in school, vocational programs, and treatment. Individuals held in pretrial detention are more likely to agree to plea agreements, receive sentences to jail or prison rather probation or other community-based alternatives, and receive longer sentences.¹ Pretrial detention creates irreparable harm to individuals while also increasing jail populations.

In response, jurisdictions are moving to release more individuals from jail and are relying on strategies to encourage individuals to come back to court. These strategies include virtual hearings and court reminders via email, text, and calls. However, even across jurisdictions using various strategies to encourage people get to court as scheduled, individuals still “fail to appear,” receive a bench warrant, and return to jail. Unfortunately, courts do not fully understand the various challenges individuals experience trying to get to court. This lack of understanding may lead court actors to conflate “failure to appear” with a defiant unwillingness to appear, potentially increasing the likelihood of issuing bench warrants.

Not appearing in court as scheduled, even one time, can have compounding impacts on an individual.

Courts need a better understanding about *why* people do not get to court as scheduled. With this shared knowledge, courts can design more thoughtful strategies to meaningfully help people attend court, reconsider the scale of bench warrants for non-appearance, and reduce the legal system’s footprint on people and the community.

A NOTE ABOUT LANGUAGE CHOICES

At JSP, we recognize reporting on criminal legal systems requires a consistent and persistent evolution of language.

At JSP, we recognize that reporting on the criminal legal system requires a consistent and persistent evolution of language. This evolution of language reckons with the origins, implementation, and manifestations of power structures, and who benefits least from these power structures. JSP is a blend of scholars, practitioners, and technical assistance providers who hold responsibility in shaping this language evolution. With this responsibility, we pledge to use person-first language because it both prioritizes personhood over identity-labels while showing dignity and respect for all people. We also pledge to avoid coded language which is the process of substituting neutral terms which disguise explicit and implicit discrimination.

Throughout this report we have made language choices and shifted how scholars historically write about court processes.

Traditionally, researchers and practitioners use the term “failure to appear.” The term describes any situation where a person does not attend court. In practice though, court actors and researchers often infer from this behavior an intentionality to not come to court, abscond, avoid accountability, or evade justice. Importantly, the term “failing” in its description minimizes the structural obstacles individuals may face in *trying to get to court*.

We believe there is a need for a new and more neutral term describing this event.

This is not the first attempt at a language shift for this event. Prior researchers^{2 3} and practitioners have called attention to the concerns related to “failure to appear.” Researchers have called for the separation of “willful non-appearance” from “unwilful non-appearance”⁴ and suggest different response policies related to the differing absences. However, the data from this study indicate even when individuals choose not to come to court, they do not make this decision in a vacuum. Rather, there is important context at play in these decisions, including prioritizing basic needs or equally important personal obligations over their court hearing. We believe the push for separation between “willful” and “non-willful” language is well intended but may inadvertently penalize some of the most disadvantaged individuals.

For these reasons, we shift our terms from “failure to appear” to the terms “recorded court absence” or “not getting to court as scheduled.”

We believe this more accurately reflects the court experience in Lake County, IL.

We recognize that as we continue to learn about language broadly and the use of language in the criminal legal system and court processes, the choices we have made today may change. We pledge to continue to check in with ourselves and potentially update our language.

¹ Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. M. (2013). *The hidden costs of pretrial detention*. LJAF.

² Cooke, B. et al (2018) Using Behavioral Science to Improve Criminal Justice Outcomes, Preventing Failures to Appear in Court. Ideas 42: New York, NY.

³ McAuliffe, S. et al (2022) Navigating the real-life challenges of appearing in court.

⁴ Gouldin, L. (2018) Defining Flight Risk. *University of Chicago Law Review*. 85, 677-741.

EXECUTIVE SUMMARY

UNDERSTANDING COURT ABSENCE & REFRAMING “FAILURE TO APPEAR”

Pretrial detention is the temporary period where individuals wait in jail after an arrest and while the court processes their case. While it ensures individuals attend all their court hearings, detention – even for a few days – can have costly impacts. In response, jurisdictions are moving to release more individuals from jail and are relying on strategies to encourage individuals come back to court.

However, even across sites using various strategies to help people get to court as scheduled, individuals still do not appear for court and receive a warrant issued by a judge (bench warrant) for their arrest. When these individuals encounter police again, even for minor traffic offenses, the bench warrant requires police arrest and return the individual to jail where they experience, again, the compounding impacts of incarceration.

Courts need a better understanding about *why* people do not get to court as scheduled.

The goal of this research is to develop a deeper and more nuanced understanding about why people miss court. With this shared knowledge, courts can design more thoughtful strategies to meaningfully help people attend court, reconsider the scale of bench warrants for non-appearance, and reduce the legal system’s footprint on people and the community.

There are three primary research questions driving this work:

- (1) What barriers do individuals face when trying to get to court as scheduled?
- (2) What services or supports would help individuals get to court as scheduled?
- (3) Do notification systems and virtual court proceedings help individuals get to court as scheduled?

DATA OVERVIEW

JSP used an iterative recruitment strategy for participation, but predominantly relied on Public Defender investigators to conduct interviews. The findings come from 50 interviews with people who previously went to jail for missing court or who were in custody for missing court at the time of the interview.

KEY FINDINGS

- Participants describe three major barrier domains: *life responsibilities and challenges, logistical and technical concerns, and past experiences and emotional reactions*. Over a third of participants, 36%, describe navigating more than one major barrier domain at the time of their court recorded absence.
- 60% of participants described *life responsibilities and challenges* as a primary barrier to getting to court as scheduled. This includes managing mental health challenges; serving as a primary caregiver; working; simultaneously navigating custody and divorce cases, and; securing shelter or navigating homelessness.
- Over a quarter of individuals, 28%, reported attending their court hearing would risk losing basic needs like food or shelter.
- 90% of individuals were not aware of either the Public Defender or Pretrial Services court reminder notification system. Of those who were not aware of this system, 90% said they would opt-in if offered again.
- Some individuals said they preferred in-person hearings compared to virtual hearings, even if attending virtually was logistically easier for them. They stated they preferred in-person because they perceived judges as more forgiving and kinder to people who attend in-person.

KEY STUDY TAKE AWAYS

┌ We must recognize the language of ‘failure to appear’ is inaccurate in both language and measure. People are *trying* to get to court. Individuals described navigating multiple obligations, competing demands, and barriers too challenging to overcome. Some individuals described the need to prioritize basic needs, like food and shelter, over their court obligations.

┌ When individuals return to jail from an “FTA” bench warrant, it can have cascading impacts on their life. This includes exacerbating challenges managing their existing personal obligations thereby making it more challenging to get to court in the future. It is time the court consider alternatives to warrants for missing court hearings.

┌ The threat of a bench warrant and returning to jail is not compelling for individuals who do not have the material resources to get to court. We must critically challenge the need to punish individuals at all who are so clearly experiencing cumulative disadvantage and navigating poverty. Helping individuals who repeatedly miss court meet their court obligations will require a radical shift in traditional case processing.

┌ Participants perceive judges are more willing to extend grace to individuals who appear in-person rather than virtually. As a result, individuals risk missing court altogether by trying to prioritize appearing in-person, dis-serving those who may benefit most from virtual hearings. Judges must reckon with the implicit biases they have for individuals who use virtual court to navigate their case.

┌ Policies governing case processing practically force people to consider their court obligations as the most important obligation in their life and prioritize it above any other personal obligation including work, caretaking, or personal appointments. It is time we consider that many individuals navigating the court cannot prioritize court *over* their personal obligations. Helping individuals with limited resources meet the obligations of their case will require developing policies treating court is one of many important obligations in their life.



**LAKE COUNTY, IL
OVERVIEW**



LAKE COUNTY, IL

Lake County, Illinois Sheriff's Office recognized detention in jail, even for one day, can disrupt the lives of their residents and have compounding impacts on them and their families. In response, the Sheriff's Office convened a group of stakeholders to join the MacArthur Foundation's Safety and Justice Challenge (SJC) to address the drivers of their local jail population. The team locally became the Lake County SJC Leadership Team.

In their review of court processes driving the jail population, the stakeholders found bench warrants, or warrants issued by the judiciary to individuals for not appearing in court as scheduled, contributed to the county's rising jail population. These warrants also meant individuals experienced the disastrous impacts of jail a second time in their case. In 2018, Lake County court reported they issued 2,387 warrants to individuals for missing court. Lake County believed they could help reduce returns to jail for missed court appearances by implementing an evidence-based court text notification system (Uptrust). Funded by the Safety and Justice Challenge, the service included voluntary enrollment for Public Defender clients to keep track of their court dates to avoid bench warrants and re-arrest. The text-based alerts included information about a resident's court date, time, and location of the courthouse. During the first year of the program, from September 2019 through September 2020, nearly 400 Public Defender clients enrolled in the opt-in/voluntary text service. Of these clients, only 4.44% (n=43) did not appear in court as scheduled.

On August 1, 2021, Lake County pretrial services implemented an expanded opt-in court reminder system through Automan (AIMS) for all individuals on pretrial supervision. This service also included emails and phone calls. Residents receive their first notification seven days prior to court, their second notification two days before court, and their last notification the day before court. From April 2021 through May 2022, the system enrolled 3,281 phone numbers for opt-in text messages, 2,240 phone numbers for opt-in phone calls, and 1,808 emails for opt-in emails.

In late 2020, the Lake County SJC Leadership Team continued their momentum discussing drivers of their jail population and formed the Equity Team to focus on racial/ethnic disparities in their courts and jail. They partnered with the W. Haywood Burns Institute to discuss, collect, and analyze data to understand which processes were driving disparities. The W. Haywood Burns Institute reviewed a sample of first appearance reports (465 of 1,240 bond court cases) from January through June 2020. Their analysis revealed bench warrants for missing court as one driver of racial/ethnic disparities.

Specifically, they found the court issued 98 bench warrants for missing court. Black individuals accounted for nearly half, 49%, of these warrants and returns to jail, even though they only represent 7% of the county's adult population. They also found Hispanic residents accounted for 30% of these warrants but only represent 19% of the community's population. However, white individuals only accounted for 20% of these bookings but account for 65% of the county's population.

Black residents account for nearly half of the warrants for missed court dates but only represent 7% of Lake County's adult population.

The W. Haywood Burns Institute also found most individuals who returned to jail for missing court appearances had an underlying non-violent misdemeanor case. Further, they found individuals who returned to jail for these bench

5.7 DAYS

was the average length of stay when someone returned to jail for missing a court hearing

but ranged from **1.8 to 43 DAYS**

stayed, on average, 5.7 days but the total number of days individuals stayed in jail ranged from 1.8 to 43 days. These findings showed returning to jail for missing court as scheduled most affected Black and Hispanic people and people with non-violent misdemeanor charges.

Black and Hispanic individuals disproportionately returned to jail for bench warrants where they continued to experience the compounding effects of incarceration, exacerbating inequities for these groups.

MOVING LAKE COUNTY, IL >>> FORWARD

The court reminder system and its expansion efforts improved the information shared with individuals and helped more individuals get to court as scheduled. However, despite the notification service, some individuals still do not get to court as scheduled and return to jail. Why this population continues to miss their court hearings and what they need to get to court as scheduled is a critical gap in Lake County Court's understanding of the population they serve. Reducing returns to jail and the collateral costs of jail stays is an important goal for the Public Defender's office, the SJC Leadership Team, and the Equity Team.

The Equity Team collaboratively decided to learn more about the reasons individuals do not get to court as scheduled.

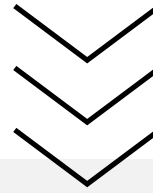
Unpacking the reasons why individuals do not get to court as scheduled can directly inform more targeted services offered by the court's pretrial services department and improve how the court helps individuals meet their court obligations.

**RESEARCH QUESTIONS,
DATA & APPROACH**

The bottom of the page features a decorative graphic consisting of overlapping geometric shapes. A large, solid orange shape is at the bottom left, extending towards the center. Overlapping its top-right edge is a larger, semi-transparent yellow shape that extends towards the right edge of the page. The overall effect is a modern, abstract design.

RESEARCH QUESTIONS

Three primary research questions drive this work:



- (1) What barriers do individuals face when trying to get to court as scheduled?
- (2) What services or supports would help individuals get to court as scheduled?
- (3) Do notification systems and virtual court proceedings help individuals get to court as scheduled?

STUDY RECRUITMENT

FIRST RECRUITMENT STRATEGY

Recruitment for the study began August 2021 and participation eligibility required: (1) the individual speak English or Spanish; (2) be at least 18 years of age or older, (3) have no open/pending criminal cases, and (4) received a bench warrant for missing court as scheduled. Based upon this eligibility, we took a convenience sample approach. First, the Lake County Probation Department provided a list of 76 individuals with closed cases but had received a bench warrant for not appearing in court as scheduled. Prior to providing this list, the Probation Department removed any individuals who completed their sentence for which they received a bench warrant but had an open case as the point of recruitment. JSP research staff reached out to all individuals on the list by phone, email, or letter correspondence. When the research staff member reached out to perspective participants, they provided information about the study, described the risks and benefits, and offered \$50 Visa gift card⁵ as compensation for participating. This process allowed Lake County stakeholders to know the participant pool, but not who volunteered to participate.

Only three individuals responded to these messages, and we conducted one interview using this recruitment strategy.

⁵ JSP believes centering the voices of individuals who experience the criminal legal system is paramount to moving the system forward. In this way, their legal system experience makes participants subject matter experts, and we believe in paying people for their expertise. To ensure research confidentiality, we rely on gift cards which operate like a debit card and chose Visa gift cards because they are accepted nearly everywhere. Intentionally, we do not purchase store-specific gift cards ensuring participants can spend the money they have earned as they wish. We believe store-specific purchases, while well intentioned, are paternalistic, infantilized research participants, and undermine the philosophy they are experts.

SECOND RECRUITMENT STRATEGY

We used the first recruitment strategy from August 2021 until November 2021 with little success. We worked with the Lake County team to brainstorm a new recruitment approach. These brainstorms led to a community-based approach where we hung flyers with study information in two non-profit community centers. The flyers included a QR code directing potential participants to a SurveyMonkey link to sign up for the study. Once an individual signed up for the study via the SurveyMonkey link, a member of the research staff contacted them.

Using this strategy, we received six inquiries and conducted three interviews.⁶

THIRD RECRUITMENT STRATEGY

We relied on the second strategy between November 2021 and February 2022. We contacted the Public Defender's office to update the team on the pacing of recruitment. During this call, the Public Defender's office recognized the "open-case" exclusion criteria made participant recruitment challenging.

We put this exclusion criteria in place to protect participants from potential legal harms. The Public Defender's office was concerned if participants told us *why* they previously missed court and at any point offered this was an ongoing issue, the interview notes could be subject to a subpoena and used against them at any point in their court proceedings.

To address this concern but provide JSP access to a larger pool of potential participants, the Public Defender's office agreed to have their investigators ask our interview questions to individuals currently in jail for a bench warrant and send us de-identified interview data. With this new strategy, the lead JSP researcher worked with the Public Defender's investigation unit to train them on asking for informed consent, the interview protocol, and writing interview notes.

Each morning, the lead investigator would check the Bond Hearing List for individuals who were currently in custody for missing court and assigned to the Public Defender's office for representation. The investigator could only meet with an individual in custody *after* the individual met with an attorney from the Public Defender's office which occurred within 24 hours of booking. This ensured the first point of contact for the individual was an attorney to answer their questions about their case and not an investigator eliciting participation in a research study. At times, individuals who met participation criteria would post money bail to secure their release before an investigator could meet with them to conduct the research interview.

⁶ Three people were ineligible to participate because they did not receive a bench warrant associated with their case.

THE THIRD AND MOST SUCCESSFUL RECRUITMENT STRATEGY

The new inclusion criteria included: (1) the individual speaks English or Spanish; (2) is at least 18 years of age or older, (3) previously met with an attorney while in custody, and (4) currently in-custody for a bench warrant for missing court as scheduled. If an individual met the inclusion criteria, then the lead investigator would assign the individual to a junior investigator. The junior investigator would meet with the individual in custody to conduct the interview, usually within 48-72 hours of initial booking. If an individual participated, the junior investigator put a \$50 Visa gift card in the individual's property where they received it upon release.



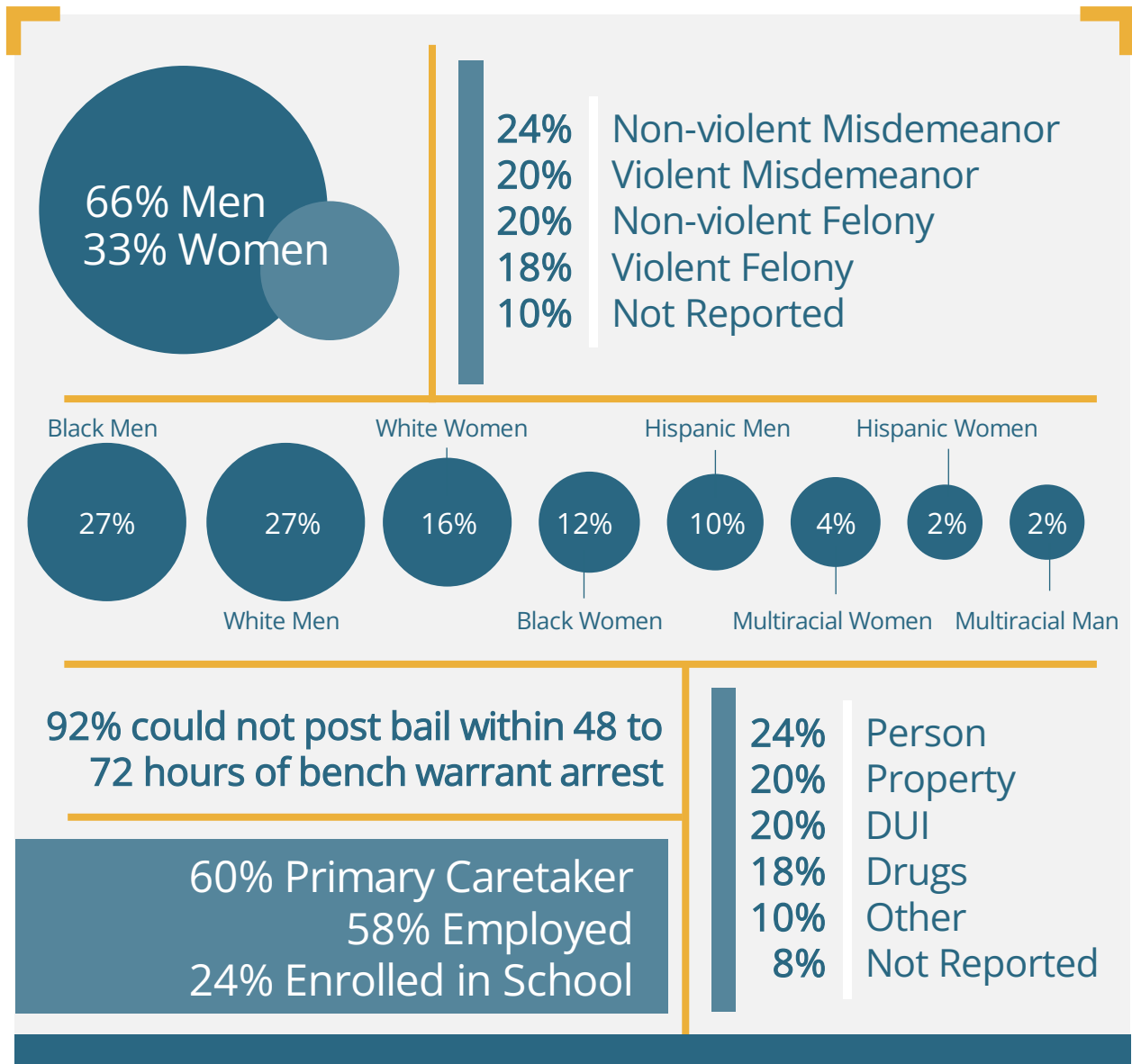
THIS NEW STRATEGY YIELDED
46 INTERVIEWS FOR A TOTAL OF
50 REAL STORIES
ABOUT
PEOPLE WHO
RETURNED TO
JAIL FOR
MISSING
COURT.

RECRUITMENT REFLECTION

The lack of understanding about why individuals do not attend court as scheduled is deeply rooted in recruitment challenges. In our experience, individuals we recruited in the community were skeptical of the research despite JSP researchers diligently working with potential participants to allay concerns. Expanding the court's understanding about why people miss court will likely require continued in-custody study recruitment. Based upon the recruitment iterations in this study, we believe Public Defenders will be the most critical actor in advancing this research more broadly.

SAMPLE

Most participants were men⁷ (66%), either Black⁸ men (27%) or white men (27%). While navigating their court case and returning to jail, 24% of participants were actively in school, 58% were employed at the time they returned to custody, and 60% were the primary caretaker in their home. The research sample exclusively included individuals represented by the Public Defender’s office, and 92% of whom could not post bail within 48 to 72 hours.



⁷ We rely on self-reported gender in this sample profile. We asked participants to select from: man, woman, transgender man, transgender woman, non-binary, prefer not to say. The goal of capturing transmen and transwomen as their own category was to understand if there was a unique trans experience related to missing court. No participants identified as transmen or transwomen, although it is possible our sample included transgender men or women who identified without a trans-identifier. We understand this self-selection best reflects their gender identity.

⁸ We rely on self-reported race. One participant did not disclose their race. We present these proportions out of a total of 49 participants who disclosed their race.

Based upon their representation by the Public Defender's office and inability to post bail within 72 hours, it is reasonable to believe study participants might be disproportionately poorer or characteristically different than participants who we recruited through our initial recruitment strategies. While this difference might exist, the goal of this research was simply to understand *why people miss court*. Therefore, potential uniqueness of our sample provides additional opportunity to contextualize their reasons for missing court rather than dismissing them.

The final sample is a vulnerable group who are not only navigating the court system, but who cycled between missing a court date and returning to jail for this absence.

Understanding their challenges presents an opportunity to learn about the needs of the population most impacted by bench warrants for missing court.

ANALYSIS

Following the interview, we uploaded all transcribed interviews into a qualitative analysis software and used a semi-grounded theory approach. This means, we used each of the four focal areas listed below to guide our initial coding scheme but then allowed themes to emerge within these areas.

FOCAL AREAS

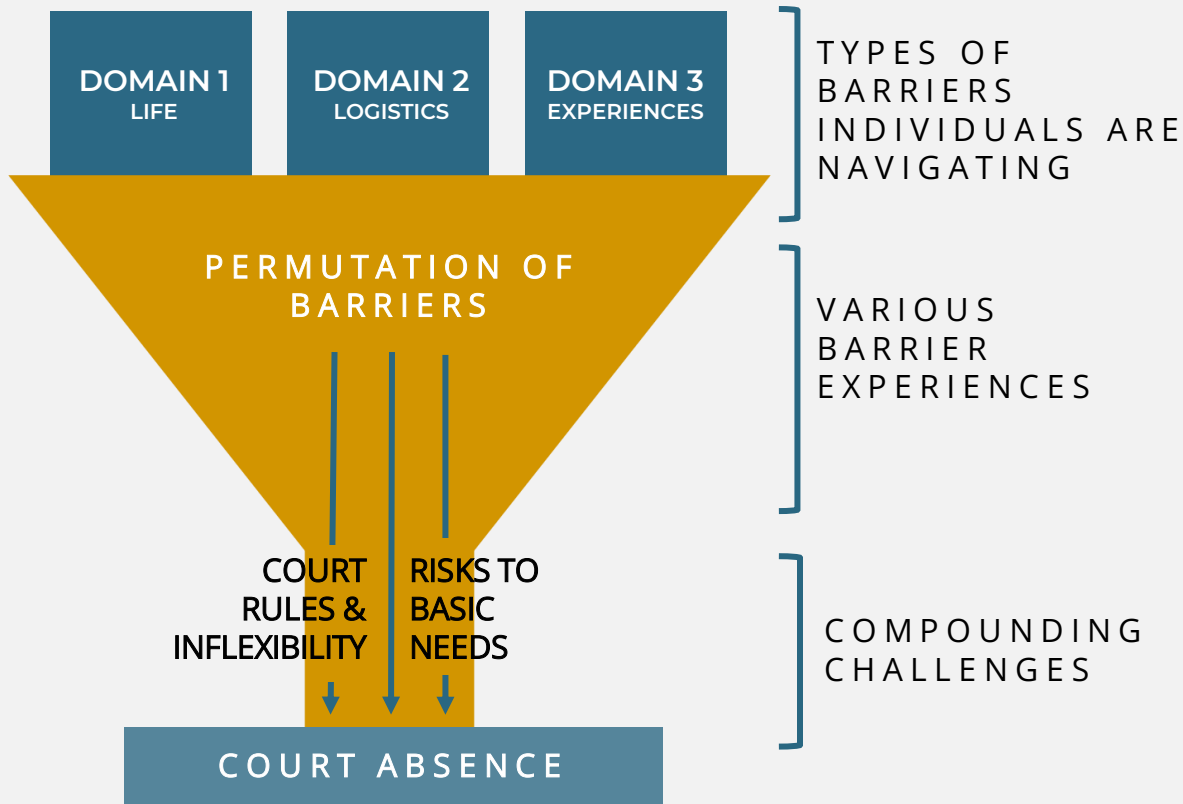
- (1) reason individual did not get to court;
- (2) consistent or situational barrier;
- (3) perception of court reminders and virtual court, and;
- (4) recommendation for services or support needed to get to court as scheduled.

We present the most representative quotes with pseudonyms when describing emergent themes. We use pseudonyms for two main reasons. First, it allows us to protect the confidentiality of known participants. Second, the use of pseudonyms, instead of "research participant" or "interviewee" humanizes the voices of individuals who either returned to jail or were currently in jail for missing court.

FINDINGS, PART 1

WHY PARTICIPANTS MISSED COURT AS
SCHEDULED

FIGURE 1 **A FRAMEWORK TO UNDERSTAND COURT ABSENCE**



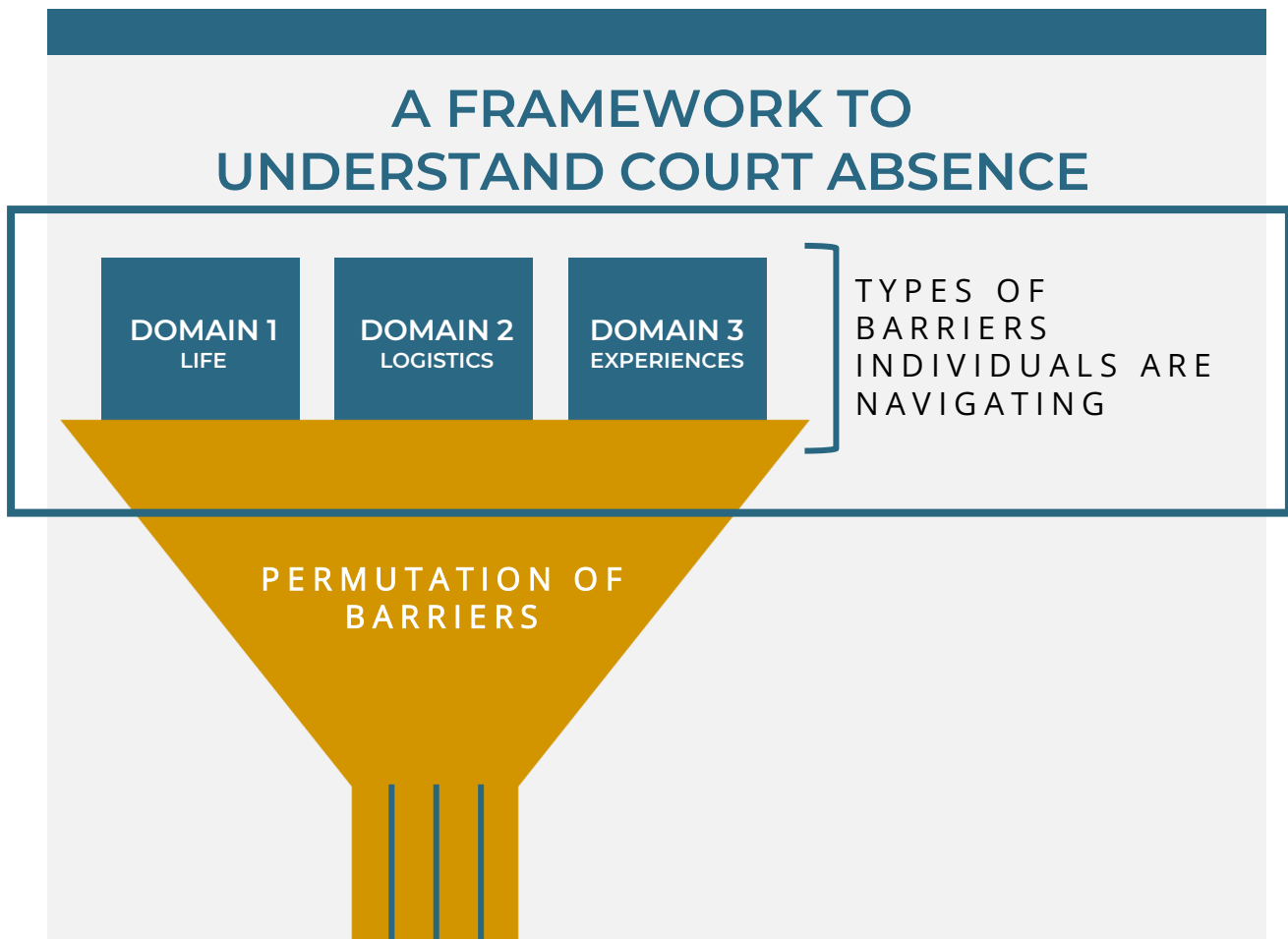
We present 50 REAL STORIES from people who missed at least one court hearing and returned to jail on a bench or “FTA” warrant.

From these stories, we offer an organizing framework to better understand why individuals do not attend court as scheduled, as shown in *Figure 1*. This framework shows participants are navigating three barrier domains when trying to get to court: (1) life responsibilities and challenges; (2) logistical and technical issues, and; (3) past experiences and emotional reactions. Importantly for participants, these barriers are not mutually exclusive – individuals may experience a permutation of barriers or all barriers at one time. For some individuals, there are more compounding challenges that make getting to court harder. These compounding challenges included court rules and inflexibility and risks to their basic needs.

Importantly, individuals can return to jail for only one court absence but may also cycle between release and jails for many court absences. We offer commentary about how this framework applies to recurring absences.

TYPES OF BARRIERS

Study participants are navigating three major barriers when trying to get to court. When asked to describe the types of barriers they faced, participants most often described navigating life responsibilities and challenges. Participants also described logistical challenges getting to in-person court and technical issues related to virtual court. Lastly, participants described working through their past or ongoing experiences with the court system and experiencing overwhelming emotions.



DOMAIN
1

BARRIERS TO GETTING TO COURT

LIFE RESPONSIBILITIES & CHALLENGES

Narratives reveal when individuals missed court, they reported managing *life responsibilities and challenges* which are competing obligations and distractions. Over two-thirds, 68%, of participants described at least one life responsibility challenge acting as a barrier or the primary reason they were unable to attend court.

DESCRIBED LIFE RESPONSIBILITIES

MANAGING MENTAL HEALTH
DIAGNOSIS & MEDICATION
COMPLIANCE

MOVING A LOT, SECURING
SHELTER, NAVIGATING
HOMELESSNESS

SERVING AS A PRIMARY CAREGIVER

MANAGING DRUG USE &
TREATMENT RESPONSIBILITIES

NIGHTSHIFT, NEWBORN
EXHAUSTION & FORGETFULNESS

NAVIGATING CUSTODY AND DIVORCE
CASES

CHALLENGING FAMILY &
RELATIONSHIP DYNAMICS

MANAGING WORK
RESPONSIBILITIES

COVID/SICK OR HOSPITALIZED

68%

OF PARTICIPANTS
DESCRIBED
LIFE RESPONSIBILITIES
ACTED AS A BARRIER
TO GETTING TO COURT

Men and women reported these challenges at similar rates and overall variation did not exist across race of participants or offense type, except all Hispanic participants describe competing family obligations as a reason they missed court. And, nearly all, 92%, of participants with an underlying non-violent misdemeanor charge reported navigating at least one life responsibility challenge.

For some, like Samuel, this included managing their mental health and medication compliance,

“I DIDN’T GET TO COURT BECAUSE I OVERSLEPT. I HAD STOPPED TAKING MY MEDS – I HAVE A MENTAL ILLNESS – AND WHEN I [DON’T TAKE MY MEDS], I GET DROWSY AND SLEEP A LOT. COURT WAS ON A MONDAY, BUT I SLEPT UNTIL WEDNESDAY. I DIDN’T MEAN TO SLEEP THREE DAYS. WHEN I WOKE UP, I WENT TO WORK AND DIDN’T FOLLOW UP WITH THE COURT BECAUSE I KNEW I ALREADY MISSED IT. IT WAS A BAD DECISION ON MY PART.”

Samuel describes missing court as an outcome for his non-compliance with his medication for his diagnosis. Similarly, Omar explains navigating his partner’s health issues while also managing work and moving homes,

“I HAD RENTED A ROOM, BUT THEN MOVED TO ANOTHER APARTMENT. I WAS WORKING THE NIGHTSHIFT AND MY WIFE RECENTLY WAS DIAGNOSED WITH CANCER. MY DAILY SCHEDULE WAS REALLY BUSY AND I HAD ALSO MISSCHEDULED MY COURT DATES. HONESTLY, COURT IS A BIG PRIORITY FOR ME, BUT I COULDN’T KEEP UP WITH MY OTHER RESPONSIBILITIES AND SCHEDULES.”

Like Omar, other participants also described the reoccurring challenges and responsibilities of consistently moving, securing shelters, and navigating homelessness. Additionally, other participants commented they were also the primary caregiver to partners, children, and other people. Or, they described trying to take care of competing treatment responsibilities for substance use disorder. Some described working nightshift, newborn exhaustion and general life fatigue all impacting their forgetfulness of their court responsibilities. Others described challenging family and relationship dynamics impacting the ability to get to court or described prioritizing court dates associated with child custody or divorce cases. Many people described they felt pressure from work supervisors to choose work or described not having the time off from work. In total, many participants described at least one competing responsibility or situation presented as a direct barrier to getting to court as scheduled.

DOMAIN
2

BARRIERS TO GETTING TO COURT

LOGISTICAL & TECHNICAL CONCERNS

The second domain is *logistical and technical concerns* and refers to challenges navigating transportation and scheduling of in-person court and/or issues accessing the virtual court platform. More than half, 54%, of participants describe experiencing at least one logistical/technical challenge and 20% of participants described experiencing between two and four different types of logistical challenges which prevented them from getting to court as scheduled.

DESCRIBED LOGISTICAL/TECHNICAL CONCERNS

LIVE IN ANOTHER COUNTY/STATE & NO/CHALLENGING PUBLIC TRANSIT

UNRELIABLE CAR & NO/SUSPENDED DRIVER'S LICENSE

BUS SEGMENTS DON'T LINE UP

NO COMPUTER/INTERNET TO USE VIRTUAL OPTION

NO PASSWORD TO ZOOM/PASSWORD NOT WORKING

NO DIRECTIONS FOR ZOOM/NOT LISTED ON ZOOM

ADDRESS ISSUES FOR NOTICES

54%

OF PARTICIPANTS DESCRIBED LOGISTICAL OR TECHNICAL ISSUES ACTED AS A BARRIER TO GETTING TO COURT

Men and women reported these challenges at similar rates, and Black and Brown⁹ participants report these challenges at lower rates than they did challenges related to domain one. Overall variation did not exist across offense severity but 90% of all individuals navigating an underlying DUI offense reported at least one logistical/technical challenge. The most cited challenge from this domain, and across all three domains, relates to transportation issues as described by Tyra,

“I COULDN’T GET A RIDE TO THE COURT. THE ACTUAL DAY OF MY COURT, I WAS TOLD I HAD TO COME IN-PERSON. AND, BY THE TIME I FOUND THAT OUT, IT WAS TOO HARD TO GET TRANSPORTATION ON THE DAY OF.”

Other participants described the lack of public transportation or the bus transfers making it near impossible to travel from rural or distant parts of the county to the courthouse. Other participants described the troublesome transportation from the neighboring state Wisconsin to Lake County, Illinois. While some participants discussed having an unreliable car and no/suspended driver’s license. Rochelle unpacks some of the transportation challenges she was navigating when she missed court,

“TRANSPORTATION IS AN ISSUE. I HAVE NO LICENSE AND I ALWAYS NEED TO GET A RIDE TO COURT. IT CAN TAKE 2-3 HOURS SOMETIMES BECAUSE I NEED TO FIND SOMEONE TO TAKE ME THERE. AND, THEN IT TAKES TIME TO ACTUALLY GET INTO THE COURTHOUSE WITH ALL OF THE SCREENING. TRANSPORTATION AND GETTING IN ARE PROBLEMS FOR ME.”

Tyra’s narrative challenges the belief court absence is willful. Instead, these narratives describe people navigating transportation and day-of scheduling issues. The willingness to come to court is no truer than for those who experienced technical issues – Teagan explains,

“I COULDN’T FIND MY NAME IN THE ZOOM COURT ON THE DAY OF MY COURT HEARING. THERE WAS NO COURT CASE UNDER MY NAME – I WASN’T LISTED. I STILL DON’T KNOW WHAT NAME I WAS LISTED UNDER. I BAILED FROM THE ZOOM BECAUSE I DIDN’T KNOW WHICH ZOOM COURT TO ATTEND. THEN, THEY ISSUED THE WARRANT.”

In Teagan’s case, and for a few others, she *did* appear for court as scheduled but technology created an added barrier complicating the concept of “failure to appear.”

DOMAIN
3

BARRIERS TO GETTING TO COURT

PAST EXPERIENCES & EMOTIONAL REACTIONS

The third domain is past experiences and emotional reactions. This domain refers to an individual's perceptions, attitudes, and cynicism acquired from previous interactions with the court and/or the overwhelming emotions people experience navigating the process. Over a quarter of participants, 28%, described at least one challenge from this domain.

DESCRIBED LOGISTICAL/TECHNICAL CONCERNS

FEARFUL/SCARED ABOUT
PROCESS & GOING TO JAIL

NERVOUS/SCARED

OVERWHELMED

COURT ACTORS ARE
UNHELPFUL OR REFUSE TO
HELP

COURT ACTORS ARE INTIMADATING OR
SEEM PURPOSEFULLY AGGRESSIVE

CONFUSING PROCESS, LACK OF
INFORMATION, TOO MUCH
INFORMATION, CONFLICTING
INFORMATION

CONFUSING NAVIGATING
BUILDING/TECHNOLOGY

RACIST, ABLEIST, STIGMATIZING
EXPERIENCES WITH THE COURT

28%

OF PARTICIPANTS
DESCRIBED
AN EMOTIONAL
REACTION
ACTED AS A BARRIER
TO GETTING TO COURT

Men and women reported these challenges at similar rates, and Black and Brown participants report these challenges at lower rates than they did challenges related to domain one. However, only Black participants cited “feeling overwhelmed” as an added barrier they experienced while navigating court. Variation did not exist across offense type or offense severity.

Participants describe the court process as a source of intense stress and trauma. Lavaughn describes the extreme emotions he feels navigating his court case,

“I WAS SCARED AND FELL INTO DEPRESSION. I’M ALSO GOING THROUGH DIVORCE COURT. I HAVE A LOT GOING ON AND I WAS SCARED TO SHOW UP AND CONTINUE WITH MY CASE.”

Similarly, Candace describes how her past experiences create ongoing emotional labor and stress,

“MY JUDGE INTIMIDATES ME AND MADE ME CRY AT THE LAST HEARING. IT IS NOT PLEASANT TO ATTEND COURT WITH THAT JUDGE.”

And, Javier describes his previous experiences with other court actors,

“AFTER MY ARREST, I TRIED TO ATTEND ZOOM COURT, BUT I COULDN’T ACCESS IT WITH THE CORRECT PASSWORDS AND STUFF. I CALLED THE PUBLIC DEFENDER’S OFFICE AND PRETRIAL SERVICES, BUT THEY WOULDN’T HELP ME WITH THE RIGHT LOGINS.”

Some participants agree that court actors are unhelpful or refuse to help, believe navigating the process is overwhelming because there is sometimes lack of information, too much information, and conflicting information.

Other participants describe experiencing racism, ableism, stigma with the process and feeling as though they do not want to navigate the court system and experience continued dehumanization.

⁹ We refer to Brown participants as any individual who self-identifies as Hispanic or multiracial.

In total, participants described twenty-two unique challenges getting to court across three domains: (1) life responsibilities and challenges; (2) logistical and technical issues, and; (3) past experiences and emotional reactions.

Importantly, these narratives suggest participants who returned to jail are not flippant about their court obligations and are not intentionally evading accountability but are struggling to navigate several co-occurring challenges.

DOMAIN
1

LIFE RESPONSIBILITIES &
CHALLENGES

DOMAIN
2

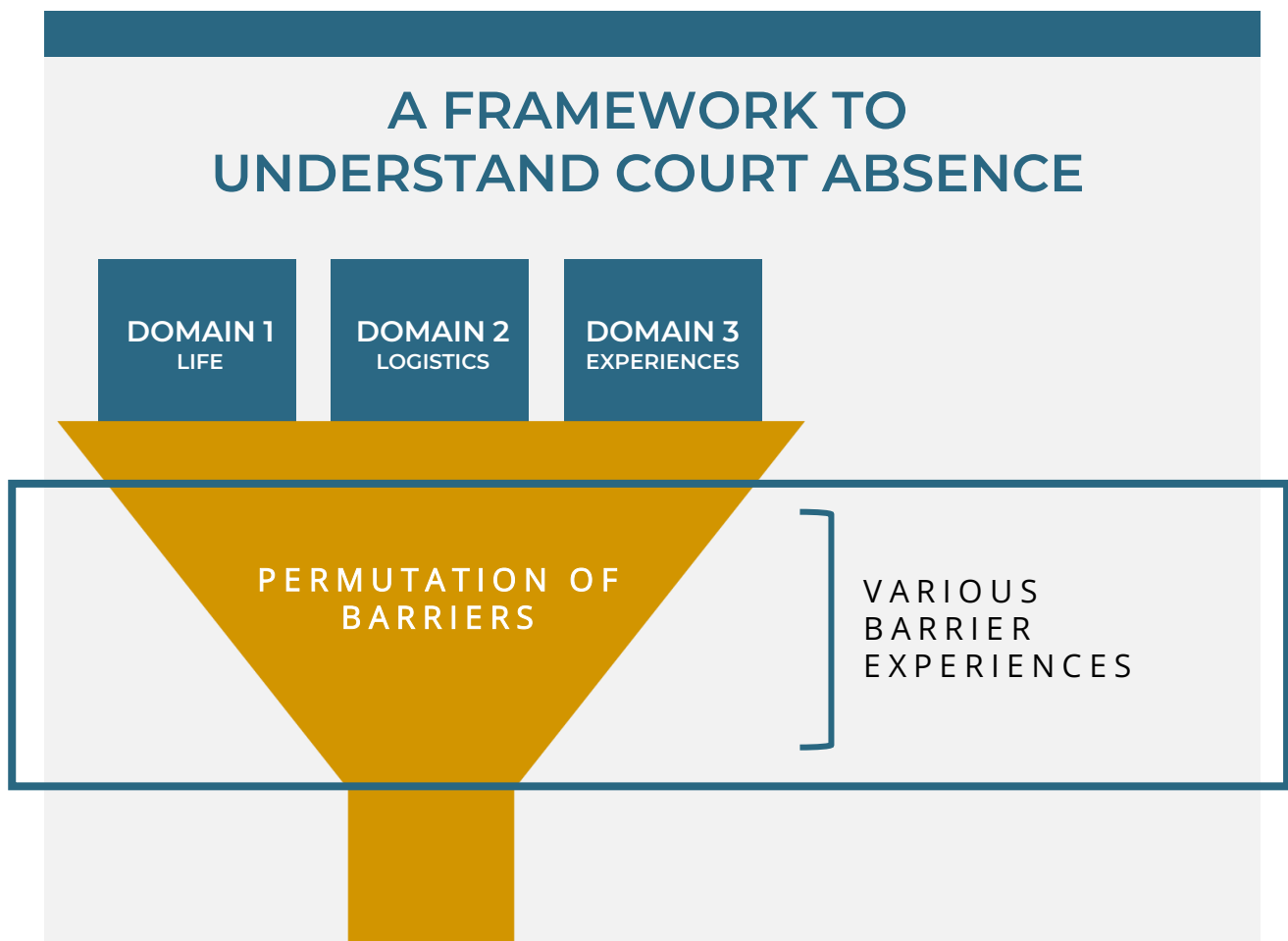
LOGISTICAL & TECHNICAL
CONCERNS

DOMAIN
3

PAST EXPERIENCES &
EMOTIONAL REACTIONS

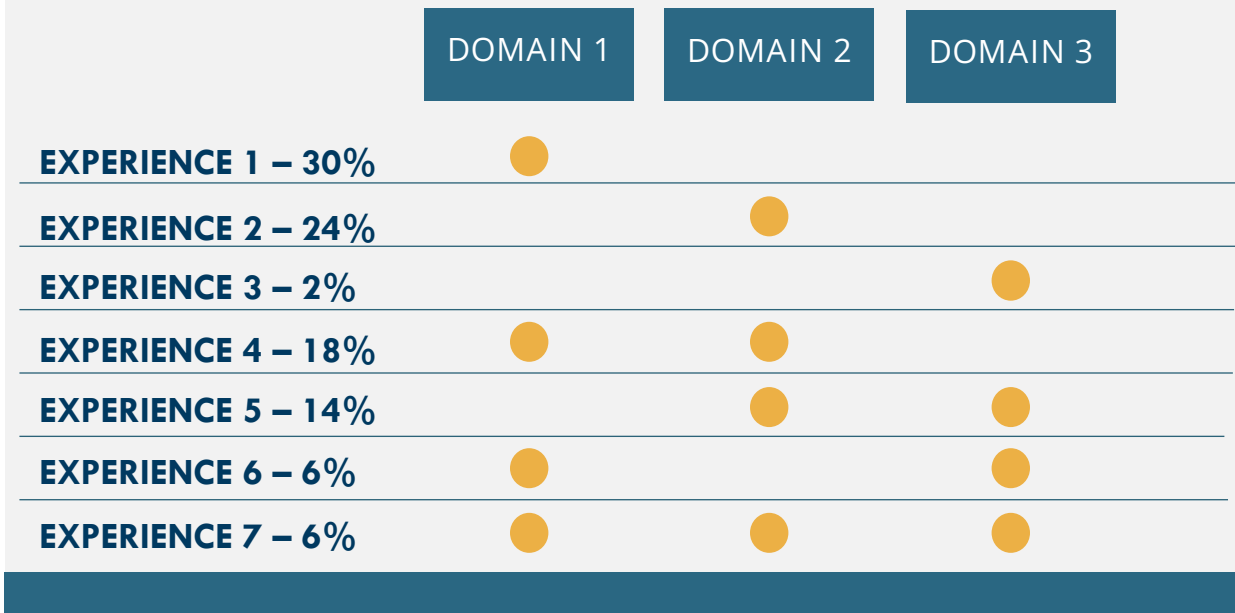
PERMUTATION OF BARRIERS

Study participants describe navigating three major barrier domains when trying to get to court. Navigating these barriers are not mutually exclusive, and individuals may be navigating one barrier domain, two barrier domains, or all three at one time.



BARRIER EXPERIENCES

INDIVIDUALS MAY NAVIGATE TO GET TO COURT AS SCHEDULED



There are seven permutations or barrier experiences an individual might navigate to make a scheduled court hearing. For example, 30% of participants describe only navigating challenges – which could include multiple challenges -- from domain one (experience one). Nearly one-fifth, or 18%, of participants describe experience four, navigating challenges from domain one and domain four. Most individuals describe navigating only challenges from domain 1, domain 2, or domain 1 and 2 together.

We return to Candace’s narrative described in earlier in Domain 3 and learn more about what else she was navigating at the time she missed court,

“MY JUDGE INTIMIDATES ME AND MADE ME CRY AT THE LAST HEARING. IT IS NOT PLEASANT TO ATTEND COURT WITH THAT JUDGE. AND, I DON’T HAVE A DRIVER’S LICENSE, SO I CAN’T DRIVE. PLUS, I LIVE OVER THE BORDER [IN WISCONSIN] AND THE RIDE TO [THE COURTHOUSE] IS PRETTY FAR.”

In this extended narrative, Candace is experiencing two occurring domain barriers: *logistical concerns* and *institutional experiences* – experience five. Although she does not comparatively weigh the concerns in her narrative, navigating both at the same time potentially compounds the energy and intentionality it takes to overcome each one individually.

38%

OF PARTICIPANTS
DESCRIBED
NAVIGATING
MORE THAN ONE
DOMAIN BARRIER
FOR THE COURT
APPEARANCE THEY
MISSED

Like Candace, Jamie is also navigating two domain barriers: *life responsibilities* and *emotional reactions* – experience six. Jamie says,

“I DIDN'T GO TO COURT, BUT IT WAS ONLY AN ISSUE IN THIS PARTICULAR CASE. I WAS SCARED OF GOING TO JAIL. I WAS WORRIED ABOUT BEING ABLE TO TAKE CARE OF MY CHILDREN AND I WAS GOING THROUGH A LOT.

In this excerpt, Jamie is not only managing feelings of anxiety and fear generally, but he is also experiencing them in context to what it means for his children as the primary caregiver. Over a third, 36%, of participants described navigating more than one major barrier domain for their most recent court absence. Importantly, these narratives continue to dispel the perception that court absence is willful and intentional. Instead, these narratives showcase individuals attempting to navigate several co-occurring barriers and concerns with limited means and support.

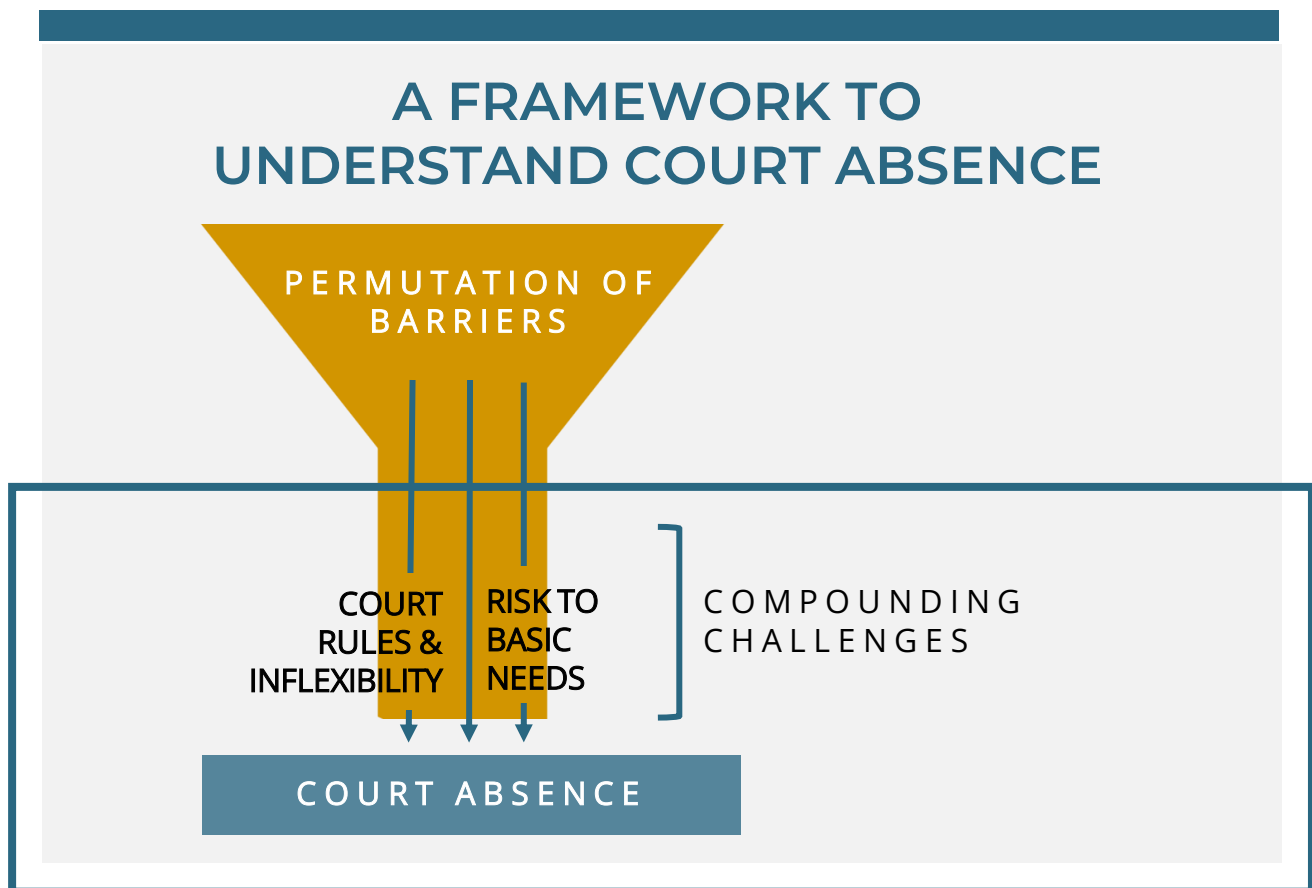
THESE NARRATIVES **CONTINUE TO DISPEL** THE PERCEPTION THAT COURT ABSENCE IS WILLFUL AND INTENTIONAL.

INSTEAD, THESE NARRATIVES HIGHLIGHT INDIVIDUALS ATTEMPTING TO **NAVIGATE** SEVERAL CO-OCCURRING **BARRIERS WITH LIMITED MEANS AND NEARLY NO SUPPORT.**

COMPOUNDING CHALLENGES

Individuals are navigating a litany of serious and co-occurring barriers when trying to get to court. Across interviews, 38% of participants detail compounding challenges that made these barriers *more* unmanageable. Specifically, 10% of individuals reported the courts rules and inflexibility made the barriers they were facing unmanageable and court absence unavoidable. Over a quarter of individuals, 28%, reported attending court on that specific day presented a risk to their basic needs.

It is important to note that we did not directly ask individuals about court rules or basic needs. This added context came up organically and might suggest how salient these concerns were to their overall experience. This does not mean the remainder of participants did not also experience compounding challenges, but instead, did not emerge as a direct concern for them at the time of the interview.



COMPOUNDING CHALLENGES

COURT RULES & INFLEXIBILITY

We return to Candace's extended narrative where she unpacks the barriers she is experiencing and compounding challenges related to the *court's inflexibility*,

"MY JUDGE INTIMIDATES ME AND MADE ME CRY AT THE LAST HEARING. IT IS NOT PLEASANT TO ATTEND COURT WITH THAT JUDGE (domain three). AND, I DON'T HAVE A DRIVER'S LICENSE, SO I CAN'T DRIVE (domain two). PLUS, I LIVE OVER THE BORDER [IN WISCONSIN] AND THE RIDE TO [THE COURTHOUSE] IS PRETTY FAR. I RELY ON MY PARENTS TO DRIVE ME. THEY WORK, AND I TOLD THAT TO THE JUDGE. I DID TELL MY JUDGE THAT I COULD MAKE IT TO COURT BY 3:00PM AND ASKED IF I COULD MAKE IT BY THEN. THE JUDGE SAID THAT WASN'T SOON ENOUGH AND HE ISSUED A WARRANT (compounding challenge)."

In this excerpt, she explains that *despite* her logistical barriers and her previous negative past experiences she is *willing* to go to court but requires additional flexibility from the judge. This is one of five examples where a participant discusses a judges' unwillingness to negotiate accommodation or consider the individual's needs when rescheduling. Participant Danny provides another example of judges' unwillingness to work with individuals,

"MY FTA WAS NOT FOR MISSING COURT; IT WAS BECAUSE I DIDN'T REPORT TO PRETRIAL SERVICES FAST ENOUGH. I WAS ON A ZOOM COURT AROUND 2:00PM AND THE JUDGE ORDERED ME TO REPORT TO PRETRIAL BY 4:00PM THE SAME DAY. I HAVE NO CAR AND I USE BUSES TO GET TO COURT. I LIVE [PRETTY FAR AWAY] AND WITH THE TRANSFER [AT THE MAJOR HUB], THE RIDE WAS GOING TO TAKE THREE HOURS TO GET TO COURT. I KNEW THERE WAS NO WAY FOR ME TO GET THERE IN TIME, SO I DIDN'T GO. THE JUDGE WAS UNREASONABLE IN DEMANDING I GO TO PRETRIAL ON SUCH SHORT NOTICE."

For Danny, the court only let him know he needed to attend in-person on the day of his court hearing. While the court may have reasonable justification to want to see Danny and other participants in-person quickly, there is a need to understand what is realistic for individuals. Continuing to demand reporting requirements that are unrealistic and likely impossible for some individuals will only further non-reporting. This example continues to challenge the language "failure to appear" and willful non-appearance as a concept.

Tyrell explicitly connects the court's rigidity with his own situation and needs,

"WE'RE HUMAN, WE MAKE MISTAKES. LAKE COUNTY IS VERY STRICT WITH COURT. I WAS SUPER LATE TO COURT, SO I DIDN'T BOTHER TO SHOW UP. I KNEW THEY WOULD ISSUE A WARRANT THE MINUTE I WAS LATE. IF I SHOWED UP LATE, I KNEW THEY WOULD REMAND ME TO JAIL. INSTEAD, I TOOK MY CHANCES AND STAYED OUT. BY MISSING COURT, I WAS ABLE TO KEEP ARRANGING MY MEDICAL SERVICES AND MY SOCIAL SERVICES. IF I WAS REMANDED AT THE TIME, I WOULD HAVE LOST MY JOB AND SOME SERVICES I WAS USING."

Tyrell's narrative emphasizes two co-occurring points. First, the court's rules and rigidity are, at times, fostering non-appearance. Second, participants explicitly discuss they are willing *and* able to attend court. However, they perceive the strict tardiness rules as unforgiving and any lateness as inexcusable. This suggests that people may reluctantly choose not to attend court because they believe appearing for court late and not appearing at all will both result in a warrant.

If there is a preference for tardiness rather than absence, there is a critical need by the court to reeducate residents and communicate informal norms more explicitly.

COMPOUNDING CHALLENGES

RISKS TO BASIC NEEDS

Over a quarter, 28%, of participants described attending court would cost them their basic needs like income, food, and shelter. In this way, the barriers to attendance are so prominent and the consequences of court attendance so severe, individuals are making a *survivalist decision* not to attend court. Cooke and colleagues (2018)¹⁰ refer to this as *present bias* because immediate costs of attending court loom larger than the risk of receiving a warrant and going back



to jail (p.9). We recognize the language of “present bias” reflects the weighing of immediate costs. However, we believe this term underrepresents the dire, frantic, and crises individuals are managing. Our preference for *survivalist decisions* elevates the seriousness that court appearance would present to these individuals and the potential disastrous impacts it would have on their livelihood.

For example, Jack articulates how going to court would risk his shelter,

“I’M HOMELESS. AS PART OF THE AGREEMENT WITH THE LOCAL SHELTER, THEY DROP SEVERAL OF US AT THE COMMUNITY LIBRARY AND TELL US TO STAY THERE UNTIL 2:30PM. IF I LEAVE, THE SHELTER WON’T GUARANTEE MY PLACE FOR THAT EVENING. I CALLED PRETRIAL SERVICES TO LET THEM KNOW I COULDN’T VISIT THEM BECAUSE I WAS STAYING AT THE LIBRARY. I EMAILED THEM TOO USING MY PHONE. NO RESPONSE, BUT MY PHONE CAN BE SPOTTY. ALSO, I COULDN’T ZOOM FROM THE LIBRARY. I THOUGHT MY MESSAGES TO PRETRIAL WOULD RESCHEDULE MY COURT. AS IT TURNS OUT, IT DIDN’T RESCHEDULE. I DIDN’T WANT TO JEOPARDIZE MY SHELTER FOR THAT EVENING BY LEAVING THE LIBRARY.”

Jack’s passive communication to pretrial services speaks to a need to educate residents about what constitutes suitable rescheduling communication. More importantly, though, Jack discusses how his homelessness, by itself, is not a barrier to getting to court but attending court on that day would directly cost him shelter for the evening.

¹⁰ *Ibid*, 2.

Although it is not clear when the court issued this warrant, it is important to note that Lake County, Illinois is a midwestern city where seasonal fall and winter average nightly temperatures range from the low teens to the 30s. Therefore, nightly shelter not only secures a bed and amenities, but prevents hypothermia and frostbite during the winter months.

Similarly, Jamel also describes the costs of going to court,

“I WAS CHARGED WITH A STUPID NON-VIOLENT MISDEMEANOR. MY ATTORNEY BEGGED TO RESCHEDULE MY DATES DUE TO MY HOME/FAMILY RESPONSIBILITIES. NOPE. MY WIFE JUST HAD EYE SURGERY AND COULDN'T CARE FOR HERSELF, AND OUR SON HAS AUTISM. I HAD TO CARE FOR MY FAMILY. I AM THE BREADWINNER. THAT MISDEMEANOR CHARGE WASN'T IMPORTANT ENOUGH AND THE JUDGE WASN'T WORKING WITH ME. IT WASN'T IMPORTANT ENOUGH FOR ME TO TURN MYSELF IN – I STAYED OUT TO MAKE MONEY FOR MY FAMILY.”

Jamel's language of “stupid non-violent misdemeanor” or “wasn't important enough” is the closet narrative, of the 50 narratives, to the concept of defiant willful non-appearance. However, to describe Jamel's story as willful non-appearance would ignore the context he provides about his attorney begging the judge to reschedule and his initial willingness to attend court given accommodation. The judges' inflexibility, according to Jamel, forced him to prioritize his duties as a caregiver to his partner and neurodivergent son over that of attending court.

In Jamel's case, his defiance and dereliction to the court is in direct response to his experience with the court unwillingly offering him accommodation. As the most explicitly willful narrative collected, it directly challenges the notion that individuals are evading justice without context.

ONLY ONE NARRATIVE, OF 50 NARRATIVES, NEARS THE CONCEPT OF WILLFUL NON-APPEARANCE.

INDIVIDUALS DO NOT MAKE ATTENDANCE-RELATED DECISIONS IN A VACUUM – THEY DO SO IN CONTEXT TO THEIR LIFE AND IMMEDIATE NEEDS.

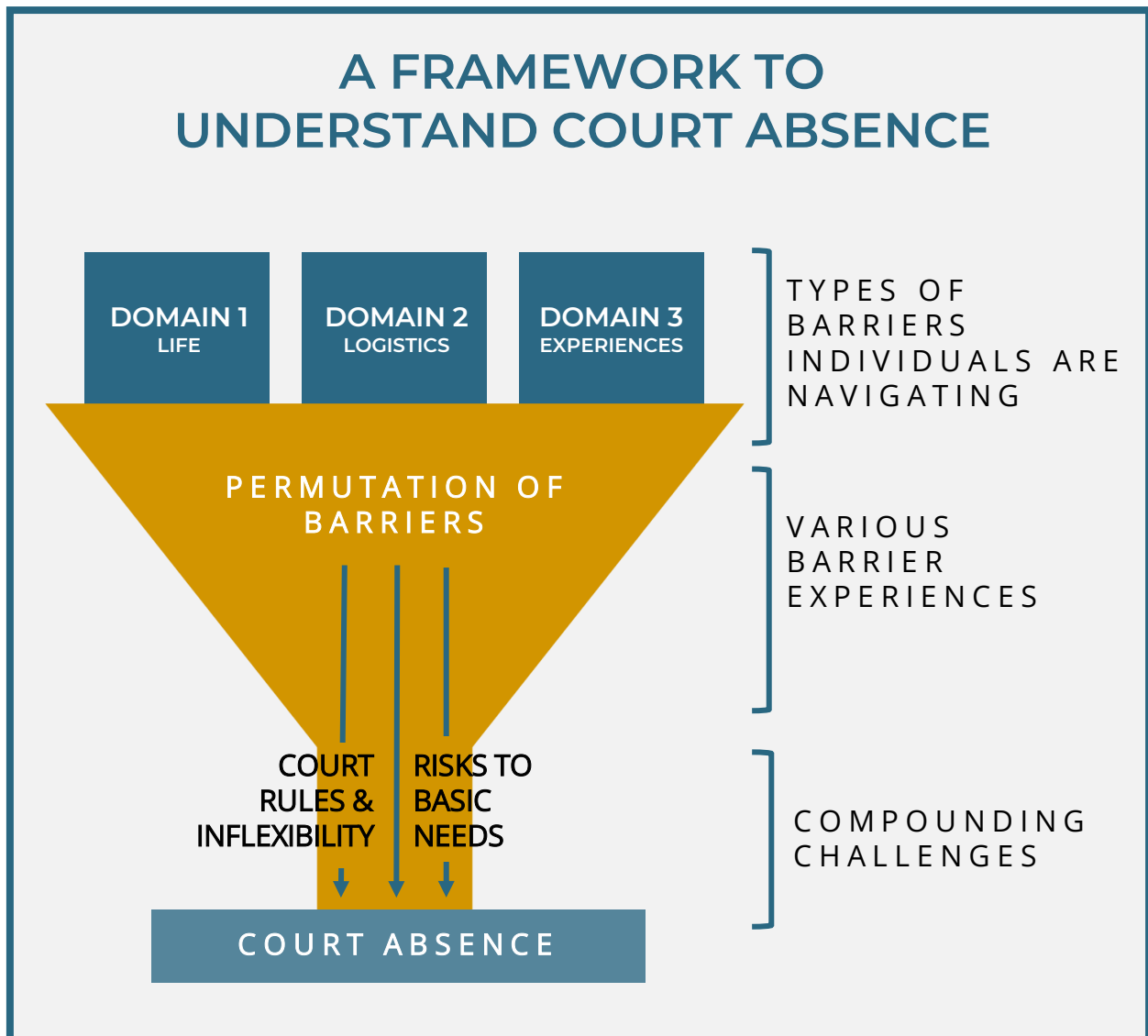
FINDINGS, PART 2

NAVIGATING DYNAMIC EXPERIENCES
OVER TIME

NAVIGATING DYNAMIC EXPERIENCES

We offer an organizing framework to understand why individuals do not attend court as scheduled and suggest there are three main barrier domains: (1) life responsibilities and challenges; (2) logistical and technical issues, and; (3) past experiences and emotional reactions. Participants also discuss court inflexibility and the need to prioritize basic needs over court obligations as compounding challenges to get to court as scheduled.

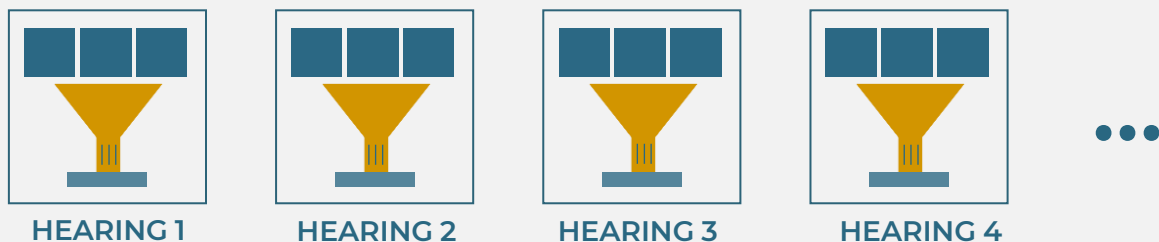
However, the framework offered describes what individuals must navigate *for a single court hearing*.



For many individuals, case processing may require several court hearings. Therefore, individuals must continuously navigate this framework for each court hearing, as shown in *Figure 2*.

INDIVIDUALS MUST CONTINUOUSLY NAVIGATE THE FRAMEWORK FOR EACH HEARING IN THEIR CASE

FIGURE 2 NAVIGATING THE FRAMEWORK ACROSS ONE CASE



Individuals can return to jail for missing one court hearing and this court hearing does not need to be an important hearing for the individual's case. Individuals can return to jail for missing hearings that do not even require their appearance, like a status hearing.

Maria describes how she navigates her case overtime,

"I HAVE A NUMBER OF FTAS. MOST RECENT, MY PHONE LITERALLY CRACKED IN HALF SO I COULDN'T LOG ON TO ZOOM COURT - A TECHNICAL ERROR PREVENTED ME FROM ATTENDING COURT. FOR MY OTHER FTAS, IT WAS USUALLY A TRANSPORTATION ISSUE, OR SOMETIMES I FORGET ABOUT COURT. I AM ALSO HOMELESS AND I'M DEALING WITH A LOT OF THINGS THAT TAKE PRIORITY OVER COURT APPEARANCES. COURT WAS LESS A PRIORITY FOR ME THIS LAST TIME."

Maria's narrative crystalizes the consistent, persistent, and dynamic nature barriers can have on court appearances over time. 12% of participants discuss missing multiple court hearings, like Maria, and cite both consistent and situational barriers. For Maria, each court appearance presents ongoing or new challenges. While Maria may consistently experience barriers to getting to the court, the varying reasons across court hearings presents an interesting challenge to pretrial tools which treat "failure to appear" as static events.

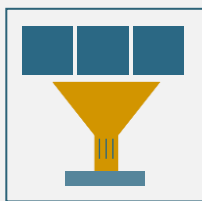
12%

OF PARTICIPANTS
REPORT MULTIPLE
RECORDED COURT
ABSENCES IN A SINGLE
CASE OR ACROSS
CASES.

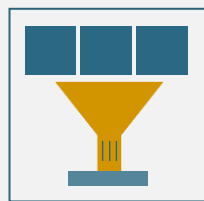
Importantly, many individuals must navigate multiple court cases at one time. This means when local court practices do not process the cases together, individuals must navigate many more hearings, as shown in *Figure 3*.

FIGURE 3 NAVIGATING THE FRAMEWORK ACROSS CASES

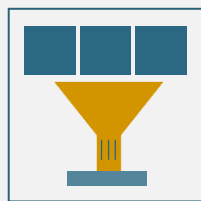
CASE 1



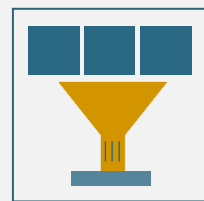
HEARING 1



HEARING 2



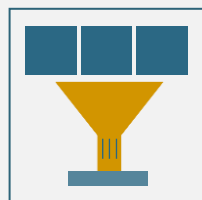
HEARING 3



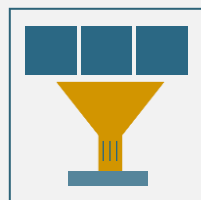
HEARING 4



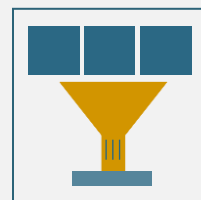
CASE 2



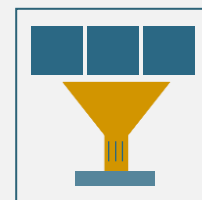
HEARING 1



HEARING 2



HEARING 3



HEARING 4

The number of hearings individuals must attend contributes to ongoing court absences, especially when individuals have more than one ongoing case. While individuals may attend many hearings, even one missed court hearing can result in a bench warrant and return to jail. This means that the *rate of attendance* in a single case or across cases may not be as relevant for judges as the current absence. There is a need to create a court culture which contextualizes absence with rate of attendance while critically considering the hearings which require an individual's attendance.

FINDINGS, PART 3

PERCEPTIONS OF COURT REMINDERS AND
VIRTUAL COURT

HELPING PEOPLE GET TO COURT

PERCEPTIONS OF COURT NOTIFICATION SYSTEMS

In September 2019, the Lake County Public Defender’s office implemented an opt-in automated court reminder system (Uptrust) for all individuals represented by the public defender’s office. The text-based alerts included information about a resident’s court date, time, and location of the courthouse. In August 2021, the Lake County pretrial services implemented a similar opt-in court reminder system through Automan (AIMS) for all individuals on pretrial supervision. Residents who opt-in receive their first notification seven days prior to court, their second notification two days before court, and their last notification the day before court.

Researchers asked participants if they were aware of either the Public Defender’s or the Pretrial Services’ reminder system. Nearly the entire sample – 90% or 45 people – said they were not aware of this service; however, it is possible the court issued their warrants prior to implementing the service.

90%
OF PARTICIPANTS SAID
THEY WERE **UNAWARE**
OF A NOTIFICATION
SERVICE

Unfortunately, the current data cannot tease this ordering. Participant Jarrid explains he learned about the service from another person *while in custody* for his bench warrant,

“I JUST LEARNED ABOUT [THE REMINDER SYSTEM] FROM THE OTHER INMATE IN MY CELL.”

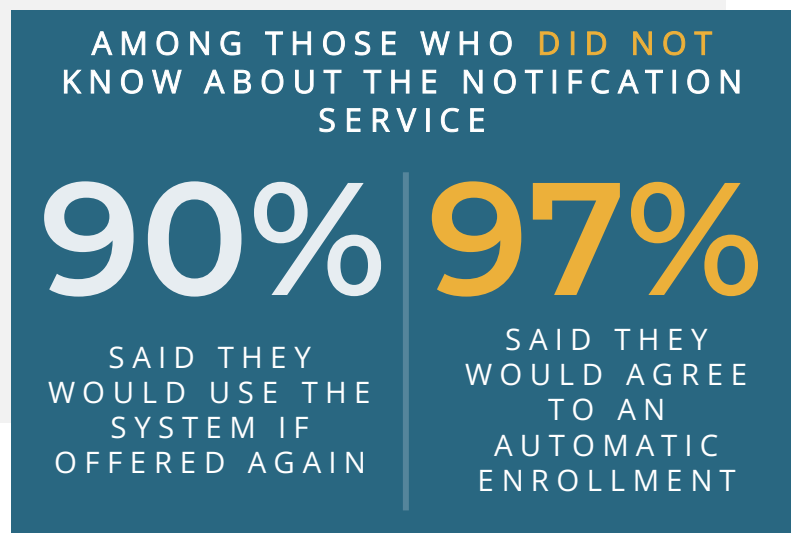
Kristin, another participant unaware of the service, reported she felt the service might be helpful. However, she describes experiencing homelessness, making it harder to receive calls, texts, or email reminders,

“I HAVEN’T HAD A PHONE IN TWO YEARS. I’M HOMELESS AND NEED MONEY FOR THAT.”

Importantly, most people – 90% – reported they would take advantage of a reminder system. One participant, Mikhail, who did not know about the service proposes,

“MAYBE THE JAIL OR PRETRIAL SERVICES COULD LET US KNOW ABOUT IT? IT WOULD BE HELPFUL IF THERE WAS MORE ADVERTISING ABOUT IT. OR, MAYBE INCLUDE A FLYER IN COURT DOCUMENTS?”

Among the individuals who agreed they would like to participate in a reminder system, all but one stated they would be comfortable with an automatic enrollment into the system.



IMPROVING COURT NOTIFICATION SYSTEMS

There was overwhelming positive receptivity to the court notification system. To encourage enrollment, the court could provide individuals with multiple opportunities to enroll. This could include public defenders, judges, and court administrators discussing the service at each court hearing and providing instructions on enrollment. Increasing enrollment should also include using various forms of communication, including verbally by court actors, written in court paperwork, and perhaps via advertisement flyers. Displaying flyers in public spaces like community providers might also encourage enrollment. Lastly, albeit costly, the court could implement a rental phone program for individuals who cannot afford phones to receive notification during their case.

PERCEPTIONS OF VIRTUAL COURT HEARINGS

Like other jurisdictions around the country, Lake County started using virtual court when they could no longer host in-person hearings during the COVID-19 pandemic. Practitioners and researchers view virtual court as a practical solution to making the court more accessible, especially for individuals with transportation barriers.

62%

OF PARTICIPANTS SAID
THEY **PREFERRED**
ZOOM COURT

Many participants, 62%, prefer virtual court. One participant, Thad, who previously used Zoom to attend a hearing said,

“ZOOM COURT IS GOOD BECAUSE I DON'T HAVE TO PHYSICALLY BE AT COURT. I DON'T HAVE TO TRY TO MAKE IT THERE. IT'S EASIER.”

For others, virtual court allows individuals greater emotional safety and comfort navigating the court process. Lina offers,

“IT'S MUCH EASIER AND LESS THREATENING. THE REGULAR COURTROOM CAN BE INTIMIDATING.”

REASONS PEOPLE PREFER VIRTUAL COURT

- Don't have reliable transportation
- Don't have the ability to leave work
- Family or childcare responsibilities
- Live far away or in another state
- In-person court is overwhelming

Nearly all participants who cited transportation as the reason they missed court reported liking the virtual court option. Additionally, participants who reported they live further away from the court, do not have the ability to leave work, or have other family or childcare responsibilities that make it difficult to get to court as scheduled reported preference for virtual court.

While many people expressed preference for virtual hearings, it is important to recognize that it may not be the best option for everyone and offers several limitations. Over a quarter of people, 26%, said they prefer in-person court over virtual court. Participants who preferred in-person court described the ability to meet with their attorney privately, more actively participate and have their voice heard in the hearing, and observe important non-verbal cues from the judge.

Participant Deiondre said,

“WHEN YOU’RE IN PERSON, YOU GET TO SEE A PERSON’S FACIAL EXPRESSIONS AND THERE IS A BETTER UNDERSTANDING OF WHAT IS BEING SAID.”

26%

OF PARTICIPANTS SAID THEY **PREFERRED** COURT IN-PERSON

Some participants felt in-person attendance allowed them to show the judge their support system, potentially signaling their ability to complete court obligations or humanize them.

Teneshia offers this preference,

“IN A PHYSICAL COURTROOM, THE JUDGE CAN SEE YOU HAVE GOOD SUPPORT IF FAMILY AND FRIENDS ARE PRESENT. IN ZOOM COURT, IT’S JUST YOUR FACE. THE JUDGE CAN’T SEE YOUR SUPPORT GROUPS.”

REASONS PEOPLE PREFER IN-PERSON COURT

- Easier to read non-verbal communication
- Easier to communicate with the judge
- More engagement/time with judge
- Do not understand the Zoom technology
- Logistically easier to report to Pretrial Services after hearing
- Easier to access Public Defender
- Can show reverence and respect to the court
- Judge can see support networks
- Judge sees you as a full person

Participants also describe the ability to talk with their attorney or understand the judge more easily in person, but overall, many of those who preferred in-person did not cite ease or convenience. Rather, they felt appearing in person gave them the opportunity to show respect to the court (e.g., by dressing well, talking respectfully during their hearing, etc). Participants explained they felt judges appreciated their attendance *more* when they appeared in-person and this in-person attendance gave them more favor with the judge. We did not interview judges to understand their perception of virtual and in-person court options, a significant limitation of this research. However, if judges do prefer in-person attendance, this might mean that they unknowingly make potentially different and disparate decisions for individuals who attend virtually.

Five participants, or 10%, said they like the idea of having both virtual and in-person options. Participant Kwame contextualizes when he prefers one format over the other,

“I PREFER IN-PERSON ONLY WHEN DEALING WITH ONE COURT CASE. BUT, IF I HAVE TWO COURT CASES – ESPECIALLY IF THEY ARE IN DIFFERENT COUNTIES – VIRTUAL COMES IN HANDY BECAUSE YOU DON’T HAVE TO DEAL WITH TRANSPORTING TO BOTH COUNTIES.”

Kwame’s quote reinforces how often individuals may navigate multiple co-occurring cases and offers a new layer of navigating competing cases across counties.

IMPROVING ATTENDANCE VIA VIRTUAL HEARINGS

Kwame’s commentary speaks to the need for choice and the court to allow individuals to decide which option is best for them. However, participants’ perceptions suggest an implicit pressure to attend court in-person, even when they prefer or could logistically attend virtually. Further, this pressure may cause individuals to risk their attendance altogether to appear in-person. This means offering choices to individuals in this type of court culture may undermine the choice altogether.

Therefore, expanding or sustaining a virtual court option to improve court attendance must come with a critical reflection about the implicit messages judges and court actors send to individuals navigating the system. The court will need to examine the courtroom culture that makes people feel as though they must be physically present to receive attention, care, and seen.

RECOMMENDATIONS

The page features a decorative background consisting of several overlapping, semi-transparent geometric shapes in shades of orange and yellow. These shapes are positioned primarily in the lower half of the page, creating a modern, abstract design.

POLICY & PRACTICE RECOMMENDATIONS

REFRAME “FAILURE TO APPEAR”

People are *trying* to get to court. Individuals described navigating multiple obligations, competing demands, and barriers too challenging to overcome. Some individuals described the need to prioritize basic needs, like food and shelter, over their court obligations. For many participants, they do not have the resource or support necessary to prioritize their court obligation. In this way, their “failure to appear” is a greater reflection of the cumulative disadvantage they must navigate than a true measure of their behavior.



Recommendation: Recognize the language “Failure to Appear” is inaccurate in both language and measure. Consider reframing discussions about “getting to court as scheduled” or individuals receiving a “recorded court absence.”

OFFERING GRACE & FLEXIBILITY

The rigidity of court rules about tardiness and day-of-attendance penalize individuals who are willing to get to court but lack the resources to do so. In some cases, the perceived rules related to lateness encourage individuals to reluctantly choose not to come to court.



Recommendation: Courts could prioritize an individual’s schedule or, at least, offer more flexibility when scheduling court hearings. The court could also set up a grace period for tardiness by moving individuals to the end of the docket to give them more time to arrive. The court could create an overflow docket or “make up” docket at the end of the week for individuals who were unable to attend earlier in the week.

INTERMEDIARY STEPS BEFORE WARRANTS

Bench warrants punish the most under resourced and under supported individuals navigating the court system. Further, the threat of going to jail for missing court is built from the premise individuals *can* get to court and choose not to go. However, participant narratives suggest they do not have the material resources to get to court. Therefore, the threat of a bench warrant and returning to jail is not a compelling mechanism to help them get to court. Individuals who continuously miss court require material changes to their available resources. Improving court appearances and case processing will require the court to respond to this group with alternatives to warrants.



Recommendation: Courts should consider an intermediary step before issuing a bench warrant. This could include strategies that do not prompt an arrest, but encourage reattendance, such as: relying on the notification system, or issuing cite-in-lieu or summons.

RECONSIDER THE ROLE OF PRETRIAL SUPERVISION

When judges agree to release an individual from jail, they sometimes assign them to pretrial supervision – the agency responsible for monitoring released individuals. The court may require individuals to call their pretrial supervision officer or meet with their officer in person. These added requirements create additional stress and burdens on an already taxed population. Courts are more likely to assign individuals to pretrial supervision when they are most likely to miss court. This means the most under resourced population is the most likely to experience the added conditions. Further, if an individual is non-compliant with their pretrial supervision conditions (contact requirements), the court may issue a bench warrant and they will return to jail. Effectively then, individuals with the greatest risk of returning to jail for missing their court appearance are then assigned additional conditions that create more opportunities for non-compliance and returning to jail.



Recommendation: Courts must reconsider the goal and role of pretrial supervision and reimagine its function closer to peer navigators rather than a compliance and monitoring service. The court should reconsider the need to report missed pretrial appointments to the court or responding to missed appointments with a warrant.

CHALLENGE IN-PERSON NORMS

In-person hearings offer many benefits to individuals, such as the ability to meet privately with their attorney or ability to read non-verbal communication. Virtual court also offers different but equally important benefits to individuals, like the ability to attend court without transportation or taking time from work. However, participants not only believe there is judicial preference for in-person hearings but perceive judges as more lenient to individuals who appear in person. This implicit pressure to attend in-person may disservice individuals who would most benefit from a virtual hearing.



Recommendation: The court should reevaluate existing court culture prioritizing in-person hearings and propose alternative options which encourage flexibility. The court should also identify the hearings well suited for a virtual platform and communicate with individuals navigating the system when the court believes virtual is appropriate and when the court prefers in-person.

CONSIDER THE NECESSITY OF ATTENDANCE

For many individuals, navigating their case involves several court hearings. These hearings include hearings that do not require their presence or incorporate their participation. Therefore, participants use their limited resources to attend court hearings that do not substantively need them there. Importantly, each time they attend court, they are not connected or immersed in activities providing them support. When individuals miss court as scheduled, they can return to jail. In fact, the court issues bench warrants on status check hearings or other procedural hearings where the individual's presence is not statutorily or legally required.



Recommendation: The court should minimize the number of required hearings an individual must attend and/or the Public Defender could consider a global waiver of appearance process for select hearings.

CONSIDERING THE NECESSITY OF ATTENDANCE

First Appearance

Attendance Required, consider if in-person is necessary

Arraignment (if different than first appearance)

Attendance Required, consider if in-person is necessary

Status Hearings for Discovery, Case, Pleas

Attendance Not Required

Defense Motions to Suppress

Attendance Not Required

Motion to Suppress Hearing

Attendance May Be Required

Plea Hearing

Attendance Required, communicate importance of in-person

Trial

Attendance Required, communicate importance of in-person

Sentencing

Attendance Required, communicate importance of in-person

THERE IS A NEED TO NOT ONLY REFRAME "FAILURE TO APPEAR" BUT TO CRITICALLY CONSIDER HOW WE'VE ALLOWED MISUNDERSTANDING ABOUT THE METRIC TO GUIDE PRACTICE AND PERPETUATE ISSUES FOR INDIVIDUALS.

RECONSIDER THE GOAL OF THE COURT

The ability to attend court even once speaks to the resilience and resourcefulness of participants. Effectively, the court is asking an already taxed and emotionally drained population to navigate, without financial or emotional assistance, another large, taxing, and emotionally draining system. The consequence for navigating the criminal legal system incorrectly is returning to jail – an accelerant to continued and chronic disadvantage.

The warrant process and the possibility of returning to jail is not a compelling means of securing court appearance for participants, especially when day-to-day priorities take precedence for an already taxed population. This is not a call to punish them differently or punish fewer people by only issuing warrants for “willfully nonattendance” (which this study does not find evidence). Instead, we must critically challenge the need to punish individuals for missing court at all, especially when they are so clearly experiencing cumulative disadvantage and navigating poverty.

This creates a critical need to reconsider the *goal of the court*: to enforce attendance or help people responsibly resolve their case.

For individuals who continuously struggle to get court as schedule, the court must reimagine the process and what it looks like for individuals to responsibly resolve their case.



Recommendation: Courts should reimagine the process for individuals who repeatedly miss court as scheduled. This might include creating satellite courts in neighborhoods or shelters, creating a mobile court process, developing court transportations services or vouchers for individuals.

BROADER MEASUREMENT & DATA RECOMMENDATIONS

CREATE TWO MEASURES OF ABSENCE

For some participants, their bench warrant and return to jail resulted from missing a Pretrial Services appointment, rather than missing a court hearing. However, missing either appointment – pretrial or a hearing – meets the definition of “failure to appear.” This operationalization creates conceptual challenges because it assumes the two types of appointments operate equally. Moreover, pretrial tools using administrative “failure to appear” data to predict future missed court hearings are potentially mixing absence from two different types of appointments. There is currently no evidence to suggest individuals who miss pretrial service appointments are equally likely to miss court hearings, and actuarial tools cannot currently tease out how the different absences influence outcomes.



Recommendation: Practitioners and researchers must create two measures of absence (1) recorded court absence and (2) recorded pretrial absence. From these separate and discrete metrics, researchers must evaluate the similarities or differences of these absences and evaluate if they both equally predict future court absence.

EXPAND THE PREDICTORS OF ABSENCE

The stories of some participants suggest that previous missed court appearances both predict and *cause* future court appearances. This suggests that recorded court absences may not operate as completely independent events and potentially act as a confounding variable to itself.



Recommendation: Practitioners and researchers must critically evaluate the outcome “failure to appear” in pretrial assessment tools and consider the utility of other independent variables that do not present confounding concerns.

ENHANCING EQUITY

Participant narratives reveal that when people miss court it is rarely – almost never – “willful” or an attempt to evade justice. Instead, people are simply navigating a multitude of challenges, responsibilities, and logistics when trying to get to court. For many study participants, they reported barely managing or surviving. When individuals miss court, receive a bench warrant, and return to jail, this jail stay can have cascading impacts on the individual.

The court’s reliance on bench warrants and returning individuals to jail nearly guarantees ongoing absence while disenfranchising an already taxed and under-resourced population.

Enhancing equity in the pretrial process will require the court to reimagine the process for the population of people who continuously miss court. Reimagining the process will require the court to depersonalize absence, provide grace and flexibility, and reconsider the role of pretrial monitoring in the process. Importantly, enhancing equity will require the court to critically challenge the need to punish individuals at all who are navigating poverty while also navigating their court case.

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