

ENDING THE CRIMINALIZATION OF FAILURE-TO-APPEAR

An Organizers' Guide to Demanding Court Changes in the Time of COVID-19

We are living in an unprecedented time where the COVID-19 pandemic, followed by an international uprising for Black liberation and against policing, have opened the possibilities for shrinking the criminal punishment system. Previously unthinkable adjustments have quickly become reality in all sectors of society.

Some of the changes made during the pandemic have been disastrous, and even deadly, for incarcerated people. Releases of people from jails and prisons — COVID-19 incubators and epicenters of the virus — have been negligible. People who remain jailed pretrial on felony charges face seemingly indefinite detention, as [grand jury trials continue to be put on hold](#), and [the right to speedy trial has disappeared](#). Incarcerated people whose hearings are still being held are only able to attend their own hearing — if at all — via video call, and without direct access to their attorney during the hearing.

Other changes have been surprisingly hopeful. Under pressure from ongoing protests, several cities are considering defunding their police departments and reshifting resources to invest in affordable housing, jobs, and health care. Even before that, due to the COVID-19 pandemic, the criminal legal system was declining to arrest people for missing court dates (also known as failure-to-appear, or FTA).

As a network of community bail funds, we have seen how FTA charges and punishments wreak havoc on the lives of the most criminalized and vulnerable. FTA, while a technicality, is a widespread and common mechanism used by the punishment system — and as such, it is a force multiplier for criminalization. Abolishing FTAs and the penalties imposed for FTAs can be an important step toward decarceration and abolition.

Before COVID-19 became a global pandemic, missing a court date, a check-in with parole or probation, a day of community service, or a court-mandated treatment program could and frequently did result in people being jailed. The past few months, however, have demonstrated that in-person attendance at court dates, supervision check-ins, or programs — all of which we will refer to as “appointments with the criminal legal system” — are not as essential as the punishments for missing them previously made them seem.

During the early days of the pandemic, [most states suspended or reduced in-person courtroom proceedings](#), either moving them online via video or [postponing them to future dates](#). In addition, small changes to punishment practices for non-appearance emerged in multiple places. [More than fifty probation and parole chiefs called for](#) states and counties to “suspend or severely limit” jailing people for supervision violations, [among other changes](#). In California, [emergency regulations](#) have allowed for court appearances to be conducted via phone or video, or the attorney could attend in the place of the person being prosecuted.

With these modifications, we see that canceling or rescheduling an appointment with the criminal legal system is not only possible; in fact, entire systems can be set up to facilitate it in a few short weeks. All of this reveals that the criminalization of failing-to-appear has always been arbitrary and merely punitive.

Now, as many states reopen, and in-person court dates and appointments resume, criminalization of past failures-to-appear is also ramping back up. This is happening even while COVID-19 remains a deadly threat, and while communities are still reeling from this and previous crises.

As abolitionist organizers, we have an opportunity to ensure that any changes to shrink the criminal punishment system made during this COVID-19 moment and national uprising remain. If appointments with the criminal legal system could be rescheduled or missed without punishments during COVID-19's initial peak, those adaptations can and should be maintained into the indefinite future. This document focuses on failures-to-appear and how not punishing FTA — whether for court dates, probation/ or parole appointments, or court-mandated programs — is a change we can and should fight to win.



WHY WE MUST ELIMINATE FAILURE-TO-APPEAR

Having to attend multiple and frequent appointments with the criminal legal system — whether court dates, supervision check-ins, and/or court-mandated programs — can severely disrupt people’s lives.

The criminal court process can drag cases out for a very long time, especially when someone is released pretrial and they have less incentive to accept a guilty plea offer. Likewise, for people on probation or parole, or for people attending a court-mandated program, requirements for attending appointments typically last for months, if not years. Court appearances are also often day-long ordeals that require someone to wait for several hours before their case is called.

To make these appointments, people must often miss work, which can lead to lost wages and unemployment. Many people being prosecuted are prevented from taking care of their children, elders, or other vulnerable family members who are at home. Some do not have the ability to pay for transportation to repeatedly return to court.

Court appointments are inherently disruptive. If people are required to attend court appointments, they should have agency over scheduling and should be given support for attending. Missing court appointments should not be met with criminalization and punishment.

Failures-to-appear often lead to warrants, which in turn can lead to an endless spiral of pretrial incarceration or supervision.

In most places across the country, missing a court date or other type of appointment with the criminal legal system means that a warrant could be issued for one’s arrest. In addition, criminal records of past failures-to-appear can prevent people from moving forward, compounding the damage already done by criminalization.

Courts around the country consistently focus on FTAs in people’s records as ways to justify increased pretrial conditions and pretrial incarceration. Therefore, if someone has a failure-to-appear on their record, they are more likely to have a money bail set, be given some kind of pretrial supervision condition, or be jailed outright. If you are in a jurisdiction that uses a risk assessment tool (RAT) to make pretrial release decisions, most pretrial RATs calculate a “risk” score that is heavily weighted using past court appearance records. Past failures-to-appear are counted as a penalty, and there is no adjustment or consideration for context, including whether the FTA was attached to a case that was dismissed, or whether that person eventually returned to court.

Because ramifications of missing a single court date can have far-reaching and lasting consequences, abolishing FTAs and their penalties can be an important step towards decarceration and abolition.

DEMANDS TO END THE CRIMINALIZATION AND PUNISHMENT OF FAILURE-TO-APPEAR

TO POLICE

- ▷ **Do not arrest** people for failure-to-appear warrants.

TO PROSECUTORS

- ▷ **Do not prosecute** people arrested for failure-to-appear warrants.
- ▷ **Be ready** to proceed with trial on dates set for trial. Institute a practice where if the prosecutor is not ready for trial, the person being prosecuted should be excused from their court appearances, and informed of the change in advance.
- ▷ **Agree to waive** the requirement of accused people's presence at status dates.
- ▷ **Withdraw** existing charges filed for missed court dates or other appointments.

TO PAROLE & PROBATION AGENCIES

- ▷ **Cease** violating people for parole or probation conditions, including for missing appointments.
- ▷ **Allow** people to reschedule in-person appointments, and create telephonic or virtual/online options.
- ▷ **Require** fewer appointments, especially in-person ones.

TO PRETRIAL SERVICES

- ▷ **Cease** violating people for missing appointments.
- ▷ **Allow** people to reschedule in-person appointments, and create telephonic or virtual/online options.
- ▷ **Require** fewer appointments, especially in-person ones.

DEMANDS TO END THE CRIMINALIZATION AND PUNISHMENT OF FAILURE-TO-APPEAR

TO JUDGES & COURTS

- ▷ **Cease** issuing warrants for failure-to-appear for all court appointments (court dates, treatment programs, probation/parole/supervision appointments), for failure to pay fees/ fines, and for technical parole or probation violations.
- ▷ **Administratively vacate** all outstanding arrest warrants for failure-to-appear for all court appointments (court dates, treatment programs, probation/parole/supervision appointments), for failure to pay fees/fines, and for technical parole or probation violations.
- ▷ **Waive** all failures-to-appear that were issued when courts were closed, or in limited use, during the COVID-19 pandemic. Communication during the pandemic was such that most people were not given enough notice or information about how to attend court dates or other appointments with the court.
- ▷ **Stop considering** past failures-to-appear when making pretrial release decisions.
- ▷ **Release** people from pretrial, probation, and parole supervision requirements. This could include removing requirements that people check in with officers, submit to drug testing, or meet other conditions. Things that are genuinely supportive, such as court date reminders, should be voluntary.
- ▷ **Do not jail** people for missed court dates, programs, probation violations, or failure to pay fees/ fines.
- ▷ **Adopt** policies that prevent failure to follow a court-mandated program from resulting in jail time.
- ▷ **Amend or vacate** orders imposed by other courts, such as warrants, to minimize the need to go from one court to the other to deal with multiple cases.
- ▷ **Allow** people who are being prosecuted to reschedule their court dates through phone, text, email, in-person request, and mail.
- ▷ **Remove** the blanket requirement for in-person appearance at court dates, and allow people who are being prosecuted to designate their attorneys to stand in their place during court hearings (as many civil courts already do).