

Criminal Justice Issues and Prisoners' Rights

<https://www.acluohio.org/en/news/rethinking-concept-failure-appear>

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Historically, a judge set bail based on a single consideration: whether a person would reappear in court to answer for the alleged crime. It wasn't until later in the 20th century that nationwide reforms allowed judges to consider public safety as a reason to deny bail. Today, when determining bail judges will ask themselves two questions, (1) Is this person a public safety risk? And; (2) Will this person reappear for trial? Although there is a lot to say about the first question, for the purposes of this blog post, we are going to focus on the second.

Bond is usually set during a person's first appearance before a judge. During this time the judge will consider a defendant's prior criminal history. This will include prior arrests, prior charges, and prior convictions. Generally a person's criminal history will note whether he or she failed to appear in a previous case, but won't include the reasons why. In most instances, a judge will take a few minutes to evaluate the information and will not stop to inquire further.

Why does someone fail to appear to court?

There are many reasons a person might fail to appear, most of which are completely unrelated to avoiding prosecution.

A person might miss a court date because she had to get her children to school, or her car broke down, or she missed the bus. Perhaps they have an hourly job with an inflexible work schedule. These types of tough situations result in defendants not showing up for court, and are also situations that low-income people experience more regularly. This leads to a disproportionate and unjust number of low-income people receiving more stringent conditions to bail and higher money bonds.

Last minute calamities aside, there are plenty of other reasons a person might not show up to court. For instance, they may simply forget! In most cases, defendants are provided with their next court date at their bail hearing, when released from jail, or when they were ticketed by the officer. This can be an extremely stressful and confusing time for a person to be called upon to process and record important information. **In fact, in that moment most people are likely focusing on coming up with bail money and finding a ride home from jail rather than what's scheduled for days or weeks in the future. And if you're a low-income person, you might have other things to worry about like childcare, employment, housing, and healthcare.** This, in addition to the fact that most defendants don't receive important reminders about their scheduled court dates, leads to many missed appearances. Take a moment to ask yourself how many vet or dentist appointments you would miss if you didn't get a text, email, phone call or postcard in the mail reminding you of the date and time?

Furthermore, the reality for most people is that pretrial hearings can be numerous and time consuming. A person can wait hours for their case to be called only to have the prosecution or defense attorney request more time to discuss plea deals or plan for trial. If a person has to get to work on a day they have court, then he or she is placed in a tough position of having to decide whether to appear in court or potentially be fired. Wealthier defendants who can set their own work schedules or who have salaried positions with access to paid or unpaid time off are more likely to decide to appear than those who can't afford to miss work.

The examples above are all rational, realistic, and harmless reasons that people don't come to court. Sadly however, judges almost never give them due consideration.

As bail reform continues and the criminal justice system is forced to reflect critically on how it operates and the injustices it creates, it's of utmost importance to redefine what it means to fail to appear.

Not every failed appearance is worthy of an arrest warrant being issued. Ignoring the realities of people's lives will cause more people and communities harm.

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