

Pretrial Monitoring

The two main pretrial outcomes that jurisdictions seek—and the only two outcomes that can legally be considered when deciding whether to detain or release a person pretrial—are to maximize court appearance and maximize community well-being and safety (i.e., minimize the likelihood of a person’s rearrest). This summary examines the current base of knowledge regarding the effectiveness of pretrial monitoring in achieving these positive outcomes.

Many jurisdictions across the country utilize pretrial monitoring—often referred to as pretrial supervision—to increase the likelihood that people will appear for court and abide by the law during the pretrial period. According to a 2019 survey of pretrial practices nationwide, 17 out of every 20 jurisdictions have some mechanism in place to monitor people in the community while their case is pending.¹

Pretrial monitoring typically involves some form of recurring contact between pretrial services staff and a person in the community, but it can differ broadly in terms of who is responsible for overseeing operations (e.g., probation, sheriff, other county or state department, nonprofit, for-profit agency), monitoring method (e.g., face to face, telephone, mail-in), frequency (e.g., weekly, biweekly, monthly), and location of in-person monitoring (e.g., courtroom, pretrial services office, home of person being monitored).

Strategies to enforce compliance with court-ordered release conditions also vary (e.g., criminal record checks, court date notifications, location monitoring, drug testing, rewarding people for adherence to pretrial conditions)² as do responses to infractions (technical violations and law violations). As well, some pretrial services agencies practice differential monitoring—adjusting the frequency and type of monitoring depending on pretrial assessment results or the specific population.

Pretrial monitoring typically involves a pretrial services staff member maintaining periodic contact with a person in the community to support the person’s compliance with court-ordered conditions of release.

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This summary reviews key findings from recent research on the impact of pretrial monitoring on pretrial court appearance and arrest-free rates. The lack of consistency in monitoring practices stands as a significant obstacle to evaluating the practices' impact and replicating those that are the most effective at improving the likelihood of people appearing in court and remaining arrest-free during the pretrial period. A lack of rigorous research is another barrier to determining the effectiveness of pretrial monitoring.³ When the rigorous research is considered (i.e., studies that use adequate sample sizes for making statistical comparisons and methods that help rule out alternative explanations of findings), whether pretrial monitoring is effective depends on which pretrial outcome is being examined.

Key Finding #1: Pretrial Monitoring Can Improve Court Appearance

The most consistent finding among the reviewed studies is that, compared to no pretrial monitoring, pretrial monitoring can be effective at improving court appearance (see Key Finding #3 for additional information). Pretrial monitoring has been demonstrated to increase appearance rates by as little as 2% and as much as 24%.

Among studies comparing monitoring and no monitoring, the degree to which monitoring improves the appearance rate appears to coincide with the appearance rate of the comparison group (i.e., those who were not monitored). That is, when the appearance rate of people not being monitored is relatively lower (i.e., they have more failures to appear), the benefit of pretrial monitoring is larger; when the appearance rate of people not being monitored is relatively higher (i.e., they already appear at higher rates), the benefit of pretrial monitoring is limited.⁴ For example, Barno et al. found that people not being monitored in Orange County, California, appeared at a rate of 54%, while people being monitored appeared at a rate of 67%. That is an improvement of approximately 24%, or 13 percentage points.⁵ By comparison, Danner et al. found in their analysis of over 3,900 people in Virginia that those who were unmonitored already appeared at the very high rate of 96%. When people who were released were monitored, the appearance rate increased to 98%, representing a relatively low improvement of only 2% (2 percentage points).⁶ Other research shows improvements in appearance rates somewhere between the results of these two studies.

Compared to no pretrial monitoring, pretrial monitoring can be effective at improving court appearance.

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Key Finding #2: Pretrial Monitoring Does Not Appear to Reduce Pretrial Arrests

Multiple studies to date indicate that pretrial monitoring does not improve law-abiding behavior (as measured by fewer new arrests) during pretrial release. These studies demonstrate that—in general—people who are monitored are arrested for new criminal offenses at statistically similar rates as people who are not monitored.⁷

For example, Lowenkamp and VanNostrand studied over 3,900 people released pretrial in Colorado and Virginia and found that, after matching them on important characteristics (i.e., state, gender, race, age, likelihood of success as determined by a statistically validated assessment, amount of time on release), the arrest-free rate for people who were monitored and for those who were unmonitored was the same: approximately 76%.⁸ Similarly, Goldkamp and White examined a sample of 3,200 people released in Philadelphia and found that, after controlling for key conditions such as severity of charge and likelihood of pretrial success, people who were monitored and people who were unmonitored both remained arrest-free 87% of the time.⁹

Several gaps in the literature are worth noting. In Lowenkamp and VanNostrand's study, for example, the authors reported that localities that contributed data to the study did not specify the components of pretrial monitoring.¹⁰ Studies also have yet to consider how law enforcement practices influence pretrial arrest outcomes. Additionally, no studies to date have investigated the impact of pretrial monitoring on arrests for certain categories of offenses, such as violent offenses.

While some studies indicate that monitoring can improve court appearance for certain pretrial populations, all studies to date with adequate statistical power have shown that pretrial monitoring does not—in and of itself—decrease new arrests among people who are released. However, further research is needed to address gaps in the literature.

Key Finding #3: Pretrial Monitoring Works Best with People Assessed as Least Likely to Succeed

In the Lowenkamp and VanNostrand study described earlier,¹¹ pretrial monitoring was found to have no impact on either of the studied pretrial outcomes for those who were assessed as being most likely to succeed pretrial.¹² In other words, these people, when compared to their matched

counterparts, were no more or less likely to fail to appear or be arrested. The study did find, however, that pretrial monitoring had an impact on appearance rates for people assessed as being less likely to succeed pretrial. Specifically, among the people who were assessed as being the least likely to succeed pretrial, the appearance rate for those who were monitored was 90% compared to 80% for those who were unmonitored, representing an improvement of 13%, or 10 percentage points. When comparing rates of pretrial arrest, monitoring had no impact.

Another study, examining over 550,000 people on pretrial release in 93 of the 94 federal judicial districts, found that, on average, people who were assessed as being statistically most likely to succeed pretrial¹³ were actually 1%–2% more likely to fail if they received pretrial monitoring.¹⁴ That is, pretrial monitoring seems to have had a detrimental effect on these people's pretrial outcomes. Conversely, pretrial monitoring had the most benefit for those who were assessed as being statistically less likely to succeed pretrial; these people were more likely to succeed pretrial if they received pretrial monitoring.¹⁵ The authors found these results consistent with the “risk principle” for effective intervention: resources should be prioritized for people who are assessed as being less likely to succeed pretrial.¹⁶

In addition, one study to date has examined the effects of differential monitoring on pretrial outcomes specifically.¹⁷ The concept of differential monitoring is consistent with the risk principle in that it entails delivering more intensive monitoring to people who are assessed as being statistically less likely to succeed, and delivering less intensive or no monitoring to people who are more likely to succeed. Intensity is most often determined by the method (e.g., face to face, telephone, mail-in) and frequency (e.g., weekly, biweekly, once per month) of contact between pretrial services and the person being monitored. The study, conducted in Philadelphia, randomly assigned people who were classified as “lower risk” to weekly telephone reporting with or without a reminder phone call the night before the scheduled court date, and people who were classified as “higher risk” to twice-weekly telephone reporting with or without in-person meetings before the scheduled court date. Comparing these two groups of people, the study found that the intensity of monitoring did not have a statistically significant impact on people's likelihood to appear in court (77.8% vs. 76.6%) or remain arrest-free (87.1% vs. 87.3%). The authors, however, cited methodological and implementation challenges that were indicative of early and evolving implementation efforts rather than longstanding and experienced practice, which may have impacted these findings.¹⁸

Studies demonstrate that pretrial monitoring can improve pretrial outcomes for people whom statistically validated assessment tools indicate are less likely to succeed pretrial.

Key Finding #4: There Is a Lack of Research on Common Pretrial Monitoring Conditions and Practices

The most notable gap in the pretrial monitoring literature is the absence of empirical evaluations regarding the effectiveness of common pretrial release conditions and practices on a person’s likelihood of appearing in court or remaining arrest-free pretrial. Unevaluated conditions include, among others, no contact orders, curfews, and driving interlock devices. Additionally, how pretrial services agencies respond to people’s compliance and noncompliance (or “technical violations”) with court-ordered conditions has not, to our knowledge, been studied in terms of impact on court appearance and pretrial arrest.

Many common pretrial release conditions and practices—including no contact orders, curfews, driving interlock devices, and pretrial services’ responses to compliance and noncompliance with court-ordered conditions—lack empirical grounding.

Best Practice Recommendations

Professional practice standards are consistent with the findings of the research literature, emphasizing the importance of monitoring people pretrial within certain parameters.

1. American Bar Association (ABA)

Standard 10-1.10 in *ABA Standards for Criminal Justice: Pretrial Release* explains the role of a pretrial services agency and states: “Pretrial services should...monitor, supervise, and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis. The pretrial services agency should:... (e) monitor the compliance of released defendants with the requirements of assigned release conditions...; (f) promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial...and recommend appropriate modifications of release conditions according to approved court policy...; (j) assist persons released prior to trial in securing any necessary employment, medical, drug, mental or other health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release; and (k) remind persons released before trial of their court dates and assist them in attending court.”¹⁹

2. The National Association of Pretrial Services Agencies (NAPSA)

Standards on Pretrial Release provides multiple practice standards for pretrial services agencies, including (but not limited to) the following:

- Standard 2.9: “Pretrial supervision should be individualized to a defendant’s assessed risk level and risk factors and based on the least restrictive conditions necessary to reasonably assure the defendant’s future court appearance and arrest-free behavior” (p. 35).
- Standard 3.5(b): “The prosecutor, defense or the pretrial services agency may request a hearing to consider changes to a defendant’s release or detention status, including reduction of supervision for positive behavior or to address an alleged violation of conditions of release, willful failure to appear in court or an arrest on a new offense” (p. 55).
- Standard 4.1(b): “A pretrial services agency should adopt the following core functions to support its purposes:...(iii) use a defendant’s background interview and investigation, criminal history, risk assessment results, and other information to... supervise and monitor defendants released pretrial; (iv) monitor and supervise released defendants, in accordance with court-imposed conditions...; (v) notify the Court, prosecution, and defense of a defendant’s compliance with release conditions and recommend appropriate changes to pretrial release status and conditions” (p. 59).²⁰

3. National Institute of Corrections (NIC)

A Framework for Pretrial Justice cites pretrial monitoring as an essential element of an effective pretrial services agency, and cautions against blanket or “one-size-fits-all” approaches; recognizes that release conditions need to be individualized for each person; and acknowledges that responses to violations of court-ordered conditions must adhere to due process considerations.²¹

Endnotes

1. Pretrial Justice Institute. (2019). *Scan of pretrial practices 2019*. <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=24bb2bc4-84ed-7324-929c-d0637db43c9a&forceDialog=0>.
2. For more information, see the research summaries on pretrial drug testing and pretrial location monitoring available at <https://advancingpretrial.org/resource/pretrial-research-summaries/>.
3. For example, many studies are unpublished (thus have not gone through peer review), and they fail to clearly articulate the methodology that was used, report basic data (e.g., sample characteristics), or use sample sizes that are adequate for making statistical comparisons. Many studies also do not rule out alternative explanations of findings (i.e., by controlling for demographics, pretrial assessment scores, time on pretrial release, etc.). See: Bechtel, K., Holsinger, A. M., Lowenkamp, C. T., & Warren, M. J. (2016). A meta-analytic review of pretrial research: Risk assessment, bond type, and interventions. *American Journal of Criminal Justice*, 42(2), 443–467. <https://doi.org/10.2139/ssrn.2741635>.
4. Austin, J., Krisberg, B., & Litsky, P. (1985). The effectiveness of supervised pretrial release. *Crime & Delinquency*, 31(4), 519–537. <https://doi.org/10.1177/0011128785031004004>; Barno, M., Nevárez Martínez, D., & Williams, K. R. (2020). Exploring alternatives to cash bail: An evaluation of Orange County's Pretrial Assessment and Release Supervision (PARS) program. *American Journal of Criminal Justice*, 45(3), 363–378. <https://doi.org/10.1007/s12103-019-09506-3>; Bechtel et al., 2016; Danner, M. J. E., VanNostrand, M., & Spruance, L. M. (2015). *Risk-based pretrial release recommendation and supervision guidelines: Exploring the effect on officer recommendations, judicial decision-making, and pretrial outcome*. <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/risk-based-pretrial-release-recommendation-and-supervision-guidelines.pdf>; Goldkamp, J. S., & White, M. D. (2006). Restoring accountability in pretrial release: The Philadelphia pretrial release supervision experiments. *Journal of Experimental Criminology*, 2(2), 143–181. https://www.researchgate.net/publication/225135854_Restoring_Accountability_in_Pretrial_Release_The_Philadelphia_Pretrial_Release_Supervision_Experiments; Lowenkamp, C. T., & VanNostrand, M. (2013). *Exploring the impact of supervision on pretrial outcomes*. Laura and John Arnold Foundation. https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_Supervision_FNL.pdf.
5. Barno et al., 2020.
6. Danner et al., 2015.
7. Austin et al., 1985; Bechtel et al., 2016; Danner et al., 2015; Goldkamp & White, 2006; Lowenkamp & VanNostrand, 2013.
8. Lowenkamp & VanNostrand, 2013.
9. Goldkamp & White, 2006.
10. Lowenkamp & VanNostrand, 2013.
11. Lowenkamp & VanNostrand, 2013.
12. It should be noted that the study found a significant difference in pretrial outcomes for people assessed as most likely to appear for court and remain arrest-free. However, the sample size was too small (3 people who were monitored vs. 15 people who were not monitored) for a valid statistical comparison, and there were no statistically significant differences for those who scored in the lower to mid range on the actuarial assessment tool that was used in the study.
13. According to the statistically validated assessment used in the study, these people have a high likelihood of (a) appearing in court, (b) remaining on (i.e., not absconding from) pretrial monitoring, and/or (c) remaining revocation-free because of a new arrest.
14. In this study, pretrial monitoring also included multiple programs and interventions, such as substance abuse testing and treatment, location monitoring, housing and shelter, mental health treatment, etc.
15. VanNostrand, M., & Keebler, G. (2009). Pretrial risk assessment in the federal court. *Federal Probation*, 73(2). https://www.uscourts.gov/sites/default/files/73_2_1_0.pdf.
16. See also: Lowenkamp, C. T., Latessa, E. J., & Holsinger, A. M. (2006). The risk principle in action: What have we learned from 13,676 offenders and 97 correctional programs? *Crime & Delinquency*, 52(1), 77–93. <https://pdfs.semanticscholar.org/15f3/fda89fde2433d6167a21da29babcc3f4d679.pdf>.
17. Goldkamp & White, 2006.
18. Methodological and implementation challenges included: (a) inadequate differentiation between people at “lower risk” and “higher risk,” as this labelling was based on presumptive recommendations for bail commissioners making pretrial release decisions (as opposed to a statistically validated pretrial assessment); (b) selection bias (i.e., people ordered to pretrial monitoring were potentially different—“lower risk”—than people not ordered to monitoring; and (c) difficulty with and lack of fidelity in staff operating computerized telephone call-in systems, conducting in-person telephone contacts, locating and visiting places of residence, and so on.
19. American Bar Association. (2007). *ABA standards for criminal justice: Pretrial release* (3rd ed.). https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk/.
20. National Association of Pretrial Services Agencies. (2020). *Standards on pretrial release: Revised 2020*. <https://drive.google.com/file/d/1edS2bltwfNROieGeu1A6qKluTfzqop92/view>.
21. Pilnik, L., Hankey, B., Simoni, E., Kennedy, S., Moore, L. J., & Sawyer, J. (2017). *A framework for pretrial justice: Essential elements of an effective pretrial system and agency* (NIC Accession No. 032831). National Institute of Corrections. <https://info.nicic.gov/nicrp/system/files/032831.pdf>.