

**IMPROVING COURT APPEARANCE RATES IN MAINE: A PROPOSAL FOR A COURT
NOTIFICATION SYSTEM IN MAINE STATE COURTS**

ACLU OF MAINE

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Maine has an opportunity to save valuable resources by increasing the likelihood that people show up for their court dates. This memorandum discusses an evidence-based approach for dramatically reducing Maine's Failure-To-Appear (FTA) rates.

INTRODUCTION

Every time someone fails to show up for their court date, it wastes valuable court, jail, and law enforcement resources. Courts around the country have found that court notification systems substantially reduce Failure-to-Appear (FTA) rates, saving money and preventing major disruptions in peoples' lives. The problem is a significant one: more than 20 percent of all pretrial detainees in Maine are in jail because of FTA and no other crime, and Maine jails spend \$1.8 million annually housing pretrial detainees charged with FTA. Issuing warrants and scheduling hearings for FTA is also a substantial drain on court and clerk time. FTA can be devastating for defendants too, who risk losing their jobs, their homes, and even custody of their children as a result of pretrial incarceration. Studies show that most people who miss court do so because of forgetfulness, work obligations, illness, or other logistical obstacles.

Research has consistently proven that the most effective way to reduce the FTA rate is through phone-based court notification programs, which remind defendants of the date, time, and location of their court date. These are similar to the text reminders that many of us currently receive about upcoming doctor or dentist appointments. Such

programs are often successful at reducing FTA rates by more than 50 percent. We estimate that adopting a court notification program in Maine would likely eliminate nearly 20,000 warrants for FTA every year and 4,500 jail bookings, saving the state \$1.5 million: \$900,000 from jails, \$300,000 from the court, and \$300,000 from law enforcement agencies. This would ease overcrowding in jails without sacrificing public safety considerations; lighten the court’s workload; free judges to interpret the law rather than track down missing defendants; and allow law enforcement officers to concentrate on meaningful threats to public safety. Programs like the one we are proposing cost approximately \$250,000 a year to set-up and operate, and pay for themselves in the first two months.

THE PROBLEM OF FAILURE TO APPEAR

I. Failure To Appear in Maine.

FTA is one of the leading reasons why people are incarcerated in Maine.¹ A 2015 study conducted by the Maine Judicial Branch found that 38 percent of all pretrial detainees were booked into jail for FTA.² More than one in five pretrial detainees was incarcerated for FTA and no other crime.³ That means that more than 9,000 individuals are held in Maine jails every year for no other reason than missing their court date.

As described in further detail below, FTA carries a high cost for courts, jails, and police. It can also have devastating consequences for individual criminal defendants. The current solution—of arresting and incarcerating people for FTA—does not solve either of these problems.

¹ We requested a breakdown of every Maine jail booking by offense from every Maine jail for 2017. In each of the six counties whose full data we have received, FTA was one of the top three reasons for which people were booked into jail in 2017.

² Sorrells, Daniel. 2015. *A Limited Study of Pretrial Inmates in Five Maine Jails*. Maine Judicial Branch Administrative Office of the Courts – Process Improvement Unit (published as

³ *Id.*

A. The High Cost of FTA to Courts, Jails, and Police.

The cost of policing and punishing FTA is a significant drain on public resources, costing Maine taxpayers approximately \$3 million annually and undermining the efficacy of our criminal justice system. The 2015 report written by Maine's Intergovernmental Pretrial Justice Reform Task Force notes that the court issued 25,777 new warrants in 2014 just for FTA for unpaid fines. We estimate that total FTA warrants that year neared 40,000.⁴ The Task Force report emphasizes that "[t]he issuance of these warrants and the scheduling of §1304 hearings consume large amounts of clerk and court time. It is also very expensive for law enforcement and the jails to process the 12,000+ persons arrested each year on unpaid fine warrants."⁵

One study from Oregon found that, "at a minimum, costs are incurred when judges, prosecutors, defense and support staff must re-process a missed hearing. Costs associated with FTA increase when new warrants are produced and reconciled. Jail booking and holding resulting from FTA incur additional costs."⁶ A report from Colorado on the advantages of court notifications explains:

From the time a particular defendant fails to appear for court, the burden from the FTA begins to drain the public resources at multiple points in the system. Any persons associated with the case during the life of an FTA warrant, including judges, clerks, police officers, attorneys, and jail staff find that their workload increases significantly. Moreover, the tangible and intangible costs of FTA warrants extend to victims, witnesses, and even to the defendants themselves. Finally, FTA warrants undermine the integrity of the justice system; each warrant erodes

⁴ See Appendix for calculation.

⁵ Mullen, Robert E. 2015. *Report of the Intergovernmental Pretrial Justice Reform Task Force*: 4, 9. http://www.courts.maine.gov/reports_pubs/reports/pdf/PTJRTF_report.pdf (last viewed October 15, 2018).

⁶ O'Keefe, Matt. 2007. Court Appearance Notification System: 2007 Analysis Highlights. <https://multco.us/file/26891/download> (last viewed October 15, 2018)

the respect that is deserved of a separate and independent judiciary.⁷

Court time is a scarce resource that should not be wasted. Judges as well as court staff could better use their scarce time on more weighty matters than absent defendants. Police should be able to focus on protecting our community from genuine threats to public safety, not tracking down FTA defendants. Jail staff is already overburdened with high numbers of inmates with mental health and substance use issues. They should not have to take time away from managing high needs and potentially dangerous inmates in order to book FTA defendants.

B. The Damaging Consequences of FTA for Defendants.

Even a single FTA can have a devastating effect on a defendant's future—something we suspect that most defendants do not appreciate. FTA leads to higher cash bail amounts, which leads to more pretrial detention, and even short periods of pretrial detention can be highly disruptive to defendants' lives. In our research on the consequences of pretrial detention in Maine, we have documented stories of workers who lost their jobs, parents who lost custody of their children, and families who missed rent or mortgage payments and risked losing their homes. People with substance use disorder and other serious medical conditions experienced disruptions to their treatment programs, jeopardizing health and sobriety. Pretrial detention also pressures defendants to plead guilty, even when they have available defenses and believe themselves to be not guilty, because it is the fastest way for them to get out of jail.⁸

⁷ Jefferson County Criminal Justice Planning. 2006. Jefferson County, Colorado, Court Date Notification Program Six Month Program Summary.

<https://university.pretrial.org/viewdocument/court-date-notificat> (last viewed October 15, 2018)

⁸ Alexander, Michelle, 2012, "Go to Trial: Crash the Justice System," New York Times, March 10, 2012, <https://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html> (last viewed October 15, 2018); Dobbie, Will, Jacob Goldin, and Crystal S. Yang. *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*. National Bureau of Economic Research; Heaton, Paul, Sandra Mayson, and Megan Stevenson. 2017. *The Downstream Consequences of Pretrial Detention*. Stanford Law Review 69:3; Justice Policy Institute. 2012. *Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail*.

Defendants who decline to take a plea deal can end up spending more time in jail waiting for their court date than they would if they were convicted. Not only is their detention costly to jails and the court, but it threatens the integrity of our judicial system.

Research shows that pretrial detention makes defendants more likely to plead guilty,⁹ more likely to be arrested again in the future,¹⁰ and less likely to get a job.¹¹ One study of 420,000 criminal defendants found that people held in jail pretrial are 25 percent more likely to plead guilty than those who are released, and that they are 35 percent more likely to be rearrested again in the future.¹² Another study of over 150,000 defendants found that even a couple of days of pretrial detention make a defendant more likely to be rearrested.¹³ Low-risk defendants jailed pretrial are more likely to accept unfavorable plea deals, and as a result they are four times as likely to be given a sentence of imprisonment than defendants released pretrial.¹⁴ Research has shown that jurors tend to view defendants in jail uniforms and shackles as guilty, regardless of the merits of the case.¹⁵ Defendants held in jail pretrial are 25 percent less likely to be employed even four years later, leading researchers to conclude that considering “administrative jail expenses, costs of apprehending defendants, costs of future crime, and economic impacts on defendants,” the cost of pretrial detention is between \$55,143 and \$99,124 per defendant.¹⁶

One of the primary factors that bail commissioners and judges consider when setting bail is the defendant’s likelihood of appearing for trial; a history of FTA marks a defendant as higher risk, which usually means a higher cash bail. FTA is thus disproportionately responsible for keeping defendants in jail pretrial. Furthermore, “one

⁹ Dobbie et al., 2017.

¹⁰ Dobbie et al., 2017; Lowenkamp, Christopher T., Marie VanNostrand, and Alexander Holsinger. 2013. *The Hidden Costs of Pretrial Detention*. The Laura and John Arnold Foundation.

¹¹ Dobbie et al., 2017.

¹² Ibid.

¹³ Lowenkamp et al., 2013.

¹⁴ Vera Institute of Justice. 2015. *Incarceration’s Front Door: The Misuse of Jails in America*.

¹⁵ Ibid.

¹⁶ Dobbie et al., 2017.

of the factors considered by the courts in determining conditions of release is a defendant's past history of failing to appear."¹⁷ A history of FTA leads to more strict conditions of release, which often lead to re-arrest and additional criminal charges. In five of the six Maine counties whose jail data we've analyzed, Violations of Conditions of Release (VCR) is another one of the top three offenses for which people are booked into jail.¹⁸ The high incidence of VCR in Maine attests to the indirect ways in which FTA contributes to pretrial incarceration.

FTA is more common for defendants charged with misdemeanors rather than felonies – both because the latter are more likely to have lawyers, who help make sure they show up at court, and because they are more likely to be held in jail before trial – which means that FTA is a central route through which people facing minor charges become increasingly entangled in the criminal justice system.¹⁹ Research shows that FTA is correlated with longer periods of detention in jail both pretrial and post-conviction.²⁰ FTA leads to “incarceration on minor offenses for the non-compliant defendant and longer jail stays for those defendants in connection with the present offense or future offenses.”²¹ FTA rates are higher among blacks and Hispanics, which researchers attribute to lower levels of trust and confidence in the courts; FTA thus also represents a site in which racial inequities in the criminal justice system are exacerbated.²²

¹⁷ White, Wendy F. 2006. *Court Hearing Call Notification Project*. Criminal Justice Coordinating Council and Flagstaff Justice Court, Coconino County, AZ.

<https://university.pretrial.org/viewdocument/court-hearing-notifi> (last viewed October 15, 2018)

¹⁸ In the sixth county (Piscataquis), VCR is the fifth most common reason defendants are booked into jail, very close behind domestic violence assault and operating after suspension.

¹⁹ Bornstein, Brian H., Alan J. Tomkins, Elizabeth M. Neeley, Mitchel N. Herian, and Joseph A. Hamm. 2013. *Reducing Courts' Failure-To-Appear Rate by Written Reminders*. Psychology, Policy, and Law 19(1):70-80; Rosenbaum, David I., Nicole Hutsell, Alan J. Tomkins, Brian H. Bornstein, Mitchel N. Herian, and Elizabeth M. Neeley. 2012. Court Date Reminder Postcards. *Judicature* 95(4):177-187.

²⁰ Crozier, Tricia L. 2000. *The Court Hearing Reminder Project: "If You Call Them, They Will Come."* King County, WA: Institute for Court Management Court Executive Development Program; VanNostrand, Marie, Kenneth J. Rose, and Kimberly Weibrecht. 2011. *State of the Science of Pretrial Release Recommendations and Supervision*. Pretrial Justice Institute. <https://ncsc.contentdm.oclc.org/digital/api/collection/ctadmin/id/437/download> (last viewed October 15, 2018).

²¹ White 2006.

²² Rosenbaum et al. 2012.

1. Mainers affected by FTA.

During our observation of arraignments in Androscoggin, Cumberland, Penobscot, Somerset, and York counties, we saw firsthand how FTA charges can lead to devastating consequences for defendants.

The story of Donna, who was arraigned in Bangor in June 2018, is illustrative of how FTA charges lead to higher cash bail amounts, which can pressure defendants to plead guilty to get out of jail.

Donna had been given a summons, and she called the court on Tuesday to confirm her court date, which she thought was later that week. But when she called, the court clerk told her that her arraignment had been scheduled for the previous day, and a warrant had been issued for her arrest for FTA. Donna immediately drove to the police station to turn herself in. When she got there, she was arrested. She was arraigned the next day, and she pleaded not guilty. The judge set her bail at \$650 cash because he judged her to be at a higher risk to not appear based on her FTA earlier in the week. Donna has disabilities and lives on Social Security. \$650 is far beyond her means. She was worried that if she were held in jail until her court date she would fall behind on her bills and lose her apartment, and she was especially concerned that there was no one available to take care of her dog. Donna was visibly upset, and ultimately changed her plea to “no contest” so that she could get out of jail that day, even though she wanted to plead not guilty. As the judge explained to her, Donna not only has a fine to pay now, but she will also have a criminal record. The FTA on her record means that if she is ever arrested again she will face a higher bail. Donna’s unintentional FTA meant that her summons for a minor Class E misdemeanor suddenly spiraled into an overnight in jail, a high cash bail, the threat of several more weeks of jail time, and ultimately a guilty plea, a fine, and a criminal record.

The story of Tyler, from Portland, is also telling. Tyler was given a summons last spring for stealing a sweatshirt from Renys. As he explained, “I stole a sweatshirt because I was cold, I was cold because I was homeless, and I was homeless because of

drug addiction.” However, Tyler missed his initial hearing at court. He simply forgot the date. He was unemployed, living in a shelter, and struggling with heroin addiction. He didn’t have any structures of support to help him keep track of his court date and make sure he showed up. As a result, a warrant was issued for his arrest for FTA, and he was arrested in June. The bail commissioner initially set his bail at \$750, which a judge lowered to \$500. But as far as Tyler was concerned, \$500 might as well have been \$500,000, because he had no savings. He’s not alone either – four in ten American adults report that they would not be able to cover an emergency expense of \$400.²³ But the judge would not let Tyler go without cash bail because of his FTA.

Even though the sweatshirt was only worth \$54.99, Tyler was charged with a felony because he had prior thefts – both of food – on his record. The prosecutor offered Tyler a plea deal: if he pleaded guilty to the felony, he would serve 60 days in jail.

Tyler was reluctant to take the plea deal because he did not want to have a felony on his record. He knew that if he were a convicted felon it would be harder to find stable, well-paying work. But, he wanted to get out of jail as soon as possible to see his four-month-old daughter and because he had been offered a long-awaited spot in rehab. He knew he would likely spend more time in jail waiting for his trial than he would serve if he simply pleaded guilty. Ultimately, he pleaded guilty to the felony charge.

For Tyler, missing his initial arraignment and being charged with FTA led to a higher bail, which kept him incarcerated pretrial. That incarceration, which kept him from his daughter and from rehab, is what pressured him to plead guilty. The county jail will ultimately have spent more than \$6,000 to incarcerate Tyler for stealing a sweatshirt worth \$54.99.

This is not how our criminal justice system is supposed to work – separating a father from his daughter, preventing a man struggling with addiction from getting

²³ Board of Governors of the Federal Reserve System. 2018. Report on the Economic Well-Being of U.S. Households in 2017. <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf> (last viewed October 15, 2018)

treatment, making it harder for him to get out of poverty and be self-sufficient, and all at great expense to the state.

2. Incarceration Does Not Solve FTA.

Locking people up for FTA provides no benefit to society or the people being locked up. FTA is not a dangerous crime, and locking people up for FTA does not keep our streets safer. In fact, it can have the opposite effect, since it contributes to overcrowding in jails, which puts correctional officers and inmates in danger.

Incarcerating people for FTA does not make them more likely to show up for court because most of the time people miss their court dates unintentionally. There is no deterrence effect. Research shows that the primary reasons why defendants miss court are because they, “forget, lose the citation and do not know whom to contact to find out when to appear,...do not understand the seriousness of missing court, have transportation difficulties, language barriers, are scheduled to work [or] have childcare responsibilities.”²⁴ Poor people and people affected by homelessness, substance use, and mental illness are all overrepresented in the criminal justice system, and these are all populations for whom keeping track of a court date, securing transportation, and eliminating other barriers to court appearance are especially difficult. A study in Milwaukee found that the most common reasons defendants cited for FTA were: illness, being in jail, forgetting, and not knowing their court date.²⁵ Punitive approaches to FTA are largely ineffective because they do not address the actual barriers that prevent defendants from coming to court.²⁶ Research shows that the only effective way to meaningfully reduce FTA is through court date reminders.

²⁴ Rosenbaum et al. 2012.

²⁵ Mahoney, Barry, Bruce D. Beaudin, John A. Carver III, Daniel B. Ryan, and Richard B. Hoffman. 2001. *Pretrial Services Programs: Responsibilities and Potential*. National Institute of Justice.

²⁶ Cooke, Brice, Binta Zahra Diop, Alissa Fishbane, Jonathan Hayes, Aurelie Ouss, and Anuj Shah. 2018. *Using Behavioral Science to Improve Criminal Justice Outcomes: Preventing Failures to Appear in Court*. University of Chicago Crime Lab and ideas42.

II. Court Notification Programs: The Effective, Evidence-Based Answer to FTA.

The most successful and cost-effective way to reduce FTA is through court notification programs. These are either phone calls or text messages to defendants reminding them when and where they need to go to court. Inspired by the automated appointment reminders that doctors and dentists have used since the 1990s, courts across the country have implemented reminder systems with great success. Research shows that court notification programs often reduce FTA rates by as much as 50 percent, and can even achieve FTA rates as low as 4 percent.

Some people may worry that court date reminders discourage defendants from developing a sense of personal responsibility. But many of us have come to rely on electronic reminders from our dentists and doctors without sacrificing personal responsibility. It benefits everyone when we are healthy, just as it benefits everyone when defendants come to court, and reminders make it more likely that we will show up for these important appointments. Donna demonstrated a sense of personal responsibility when she called the court to confirm her court date, but she still would have benefitted from a reminder. Court date reminders simply help ensure that the court process can function smoothly and efficiently, and that justice can be accomplished without unnecessary administrative setbacks.

This section begins by reviewing several successful court notification programs from other states. It then details a proposed court notification system for Maine—drawing from the lessons learned from the successful model programs. Finally, it closes by considering access-to-justice concerns that are familiar to Maine’s courts—including how the program can work for poor or homeless defendants, or for those with limited English proficiency.

A. Successful Model Programs.

Several states – including Arizona, Colorado, Louisiana, Missouri, New York, Ohio, Oregon, Pennsylvania, and Washington – have created court notification programs that work, are cost-effective, and do not undermine the other goals of the criminal justice system. These are proven successful models from which we can learn a lot. While the specific elements of each program differ slightly, there are some general features they all share. All of the programs consist of phone calls or text messages to defendants in the week before their court date. Some programs use automated calls and text messages, while others have an actual person who calls defendants. Some programs call the defendant once (with multiple attempts if they do not answer), while others send multiple messages in the week before the court date. All of the programs offer messages in both English and Spanish.

Every published study of these court notification programs reports success in reducing FTA. Most of these programs reduced the FTA rate by more than 50 percent within the first six months.

These court notification programs also consistently lead to major financial savings. The court notification program in Coconino County, Arizona (population 135,000), produced \$90,000 in increased revenue to the court and \$60,000 to the jails in its first year of operation. In Multnomah County, Oregon, a county twice the size of Cumberland County, Maine, the court notification initiative was estimated to have saved \$500,000 in its first year, in which it was used with only a limited pool of defendants. The program was expanded to include more defendants, and by the third year it saved the county approximately \$1.6 million. When expanded to all defendants in the county, it is estimated that the program will save \$6.4 million in staff time each year.

Court notification programs are not just for big cities or wealthy suburbs. They work extremely well in places like Maine. For example, the court notification program in Coconino County, Arizona – whose population is smaller than those of Cumberland, Penobscot, or York counties, and which contains significant rural and poor areas –

consists of a single personal call to defendants the week before their court date. It managed to reduce the FTA rate by 52 percent in just three months.²⁷ Yamhill County, Oregon – which has very similar demographics to Androscoggin, Kennebec, and Penobscot counties – uses automated messages to remind defendants six and one day(s) before their court date. Their FTA rate is now 4 percent.²⁸

B. A Court Notification Program for Maine.

Drawing on best practices from other states, we propose the following court notification program for Maine.

The program would combine text message reminders with a personal call to the defendant. The personal call would be made to the defendant in the week before their court date. The caller would remind the defendant of the time, date, and location of their court date, as well as answer any questions the defendant might have. If the caller was unable to reach the defendant, they would leave a message asking the defendant to call back. They would make two more attempts to reach the defendant throughout the week.

Automated text message reminders would be sent to defendants seven, three, and one day(s) before their court dates. The first message would remind the defendant of the date and time of their court date, as well as the potential consequences of failing to appear. The second reminder would include the time, date, and location of the court date, as well as prompt the defendant to determine what time they need to leave the house in order to arrive at court on time and to consider any other arrangements they need to make, such as with their employer or regarding childcare. The final message would remind the defendant of the time of their court date, and underscore the consequences of failing to appear.

²⁷ White 2006; VanNostrand et al. 2011.

²⁸ It is impossible to measure the reduction in FTA in Yamhill County because the court did not have a reliable calculation of the FTA rate before the court notification program. However, the 4 percent FTA rate that the county has now achieved is exceptionally low. Many jurisdictions without court notification programs have FTA rates between 25 and 35 percent.

As phone calls and text messages are cheap (a New York City court reminder program spent only \$0.0075 per text message),²⁹ the primary cost of this program would be the salaries of administrators, responsible for coordinating with court clerks to organize the requisite information, compiling call lists, calling defendants, and updating records.

Judging by the results of similar programs elsewhere, this program could reduce Maine's FTA rate by at least 50 percent, thus potentially reducing the jail population by 10 percent while also saving valuable court resources.³⁰ As a result, Maine would avoid over 4,500 jail bookings and 20,000 warrants annually. We estimate that this program would cost approximately \$250,000 per year and produce savings of \$1.5 million – including \$300,000 to the court – for a net financial gain to the state of \$1.25 million.

1. Combining Personal Calls and Text Messages.

a. Personal Calls.

Most court notification programs use phone calls to reach defendants. Sometimes an actual person calls, and sometimes it is an automated recording. Both methods have proven successful in reducing FTA rates by over 50 percent.

The personal call system is a particularly good model for Maine because it has the added benefit of giving defendants an opportunity to ask questions and seek clarification from the caller. While an automated call helps reduce FTA due to confusion or forgetfulness about the time and date of a court hearing, a personal call can also help eliminate FTA due to confusion about the court process, ignorance about the consequences of failing to appear, or even uncertainty about cancellations due to weather. The caller can also remind the defendant to consider transportation options

²⁹ Cooke et al. 2018.

³⁰ The 2015 study of five Maine jails conducted by the Maine Judicial Branch found that 22 percent of pretrial jail inmates are detained because of Failure to Appear and no other offense (Sorrells 2015). Reducing the FTA rate by 50 percent could potentially eliminate half of FTA jail detentions, thus reducing the jail population by more than 10 percent.

and childcare needs. Especially in smaller Maine communities, where outsiders may be regarded with suspicion, a direct phone call from a local resident who understands local conditions and local needs will help reduce the inherent distrust that defendants may have towards the court.

b. Automated Calls.

Automated call systems can also be effective. Automated call systems rely on synchronization with an electronic court filing system. Tyler Technologies, the software company that produces the electronic filing system that Maine is in the process of adopting, offers Incode Notifications, an automated call technology integrated with its court filing program. Using Incode Notifications, the city of Belton, Missouri (approximately the size of Auburn, Biddeford, or South Portland), was able to reduce warrants by 30 percent, reduce courtroom traffic by 23 percent, and reduce the FTA rate by 8 percent within the first 60 days. Incode Notifications may be a good option for Maine, especially given that all of the information needed to make the call is already in the system, and the court only has to choose the content of the message and the timing.

c. Text Messages.

Although personal calls are very effective in reducing FTA rates, people increasingly choose not to answer calls from phone numbers that they do not know. People may also miss phone calls because they are working, driving, or otherwise engaged. Text messages allow the court to catch those defendants unreachable by phone. The other benefit of text messages is that defendants have a written record they can refer back to.

Text messages should be treated as a supplement to the personal phone call, rather than a replacement. Courts have not been using text messages as long as phone calls, so there are fewer studies proving their efficacy. Text messages also do not give

defendants an opportunity to ask questions and clarify information the way personal calls do. While younger defendants may feel more comfortable with text messages than with phone calls, older people may use landlines rather than cell phones, or may not feel comfortable with text messaging technology.

The specific content of the three text messages (outlined above) is taken from a highly successful New York City court notification program. The messages were crafted using a behavioral science approach that identified key psychological and contextual factors that contribute to FTA and addressed those factors through an emphasis on plan-making and consequences, as well as basic logistical information and a positive tone.³¹

There are many different vendors that offer text message reminder programs. The most user-friendly, affordable option may be the Legal Design Lab at Stanford University. The Legal Design Lab recently created an open source court notification system, and they are actively seeking counties in which to pilot it. Because they are committed to providing open source solutions, the only costs to using their text message system are the phone company charges.

d. Drawbacks of a Combined Call/Text Program.

The potential drawback of combining phone calls and text reminders is that it will be impossible to disaggregate their effects on reduced FTA rates. However, the direct benefits to courts, jails, and defendants of a combined call-text program far outweigh the more abstract advantages of measuring the effects of calls and texts separately.

2. Potential Savings of a Court Notification Program in Maine.

We estimate that the proposed court notification program could reduce Maine's FTA rate by 50 percent, avoiding 4,500 jail bookings, eliminating 20,000 warrants, and saving nearly \$1.5 million annually: \$900,000 from jails, \$300,000 from the court, and

³¹ Cooke et al. 2018.

\$300,000 from law enforcement agencies.³² These figures are likely an underestimation, because they do not take into account the increased revenue from more people paying fines,³³ nor the effect on reduced detention length for people convicted of FTA and other crimes. Depending on the exact configuration of the program, it would likely cost under \$250,000 to operate annually.³⁴ The overall savings would thus be \$1.25 million a year.

3. A Statewide Solution.

The problem of FTA is widespread across the state, affecting northern and southern, urban and rural, and wealthy and poor communities alike. A statewide solution is necessary to make a meaningful impact on FTA. And, a statewide court notification program is also most cost-effective, because after initial set-up costs, the additional expense of expanding the program to include more counties and more defendants is minimal. Furthermore, inconsistent practices between counties could lead to greater confusion among defendants.

4. Alternative: Three County Pilot Program.

If the Judicial Branch prefers a smaller scale pilot project in order to work out logistics, demonstrate efficacy, and improve any weaknesses in the program design, we would recommend a three-county pilot program. Piloting this program in three counties, rather than only one, offers a valuable opportunity for comparison. The disparate experiences of the three counties would allow the court to identify whether any obstacles in the implementation of the program were inherent to its design or whether they originated in specific counties' practices. Furthermore, it would prove the efficacy

³² See Appendix for calculations.

³³ Courts have found that reducing FTA produces increased revenue from fines. With court notifications, many more defendants show up to pay their fines.

³⁴ See Appendix for calculations.

of the program in counties that differ by population demographics, size, rural or urban composition, and transportation infrastructure.

C. Equal Access To Justice Considerations.

1. Defendants with Limited English Proficiency.

In order not to exacerbate racial and national origin inequities within the criminal justice system, it is important to consider how a court notification program would reach defendants whose English proficiency is limited. One benefit of text messages as a supplement to personal calls is that even if the court fails to identify a defendant's preferred language, the information in a text message can be more directly and easily entered into a free online or mobile phone-based translating program by the defendant.

In most states that use automated or personal calls, those calls are offered in English and Spanish. However, linguistic diversity in Maine is more complicated, as Spanish is not the most common non-English language spoken, and languages differ significantly between cities and counties. One strategy for accommodating linguistic needs is for police to note a defendant's preferred language in their file along with their phone number, so that calls may be made using a translator or, in the case of an automated call, a translated message. If the program administrator finds that a defendant does not understand English, she might try to determine their preferred language and call back with a translator. Any additional translation costs would be less than what the court currently spends on hiring translators for defendants who fail to appear. In counties where linguistic diversity is more circumscribed, a multilingual caller might be the best option. For example, Androscoggin might benefit from a caller fluent in English and Somali, or English, Somali, and French. Text messages could also be sent in a defendant's preferred language once that language is identified by the police or the court notification program administrator.

2. Defendants Without Phones.

Although the vast majority of people in Maine have phones, it is the poorest, most marginalized members of society that do not have access to phones, and a notification program dependent on phones risks exacerbating socioeconomic inequities in the criminal justice system.

One solution is for police to ascertain whether defendants either do not have a phone or have a phone whose service is periodically cut off, and to get from them a back-up number to which notifications might be sent. Many defendants that do not own a phone do have friends or family members who would be willing to take a message for them and who could convey that message to them. Tyler, for example, is in touch with his mother regularly, and messages can reliably be relayed to him through her. Other defendants may have social workers or therapists with whom they have weekly contact who would be willing to fill that role. Studies show that court reminder calls are successful at reducing FTA even when the caller does not reach the defendant directly but leaves a message with a third party or on an answering machine. In areas with significant homeless populations, the court administrator could work out a system with the shelters, allowing defendants to use the shelter number as their contact number.

CONCLUSION

Every day, 25 people in Maine are incarcerated for FTA and no other reason. These are not hardened criminals trying to evade justice; they are mostly busy, overburdened parents and workers who – in the many weeks between their summons and their court date – simply forget. The costs of pretrial detention are high, both to our jails and our communities, as we separate parents from children and take workers away from their jobs. But FTA is not an intractable, unsolvable problem. There are excellent, proven models from around the country of court notification programs that reduce FTA rates by at least 50 percent. The cost of these programs is minimal, and they produce

enormous savings for the courts, jails, and police. Reducing FTA through a court notification program is a rare opportunity to simultaneously reduce the jail population, streamline court processes, support law enforcement, enhance the integrity of the judicial system, and fortify our fundamental constitutional rights, all without jeopardizing the goals of justice and public safety.

APPENDIX

I. Annual Cost to Maine Jails of FTA³⁵

We calculated that there are approximately 9,000 defendants detained in Maine jails every year for FTA and no other crime. We estimate that their detention costs Maine sheriffs' departments approximately \$1.7 million annually.³⁶

This is a conservative estimate in several ways: we rounded down the daily cost of incarcerating a person in jail in Maine to \$100, although some sheriffs cite higher figures;³⁷ we calculated costs based on defendants charged with FTA only, excluding the effect of FTA on length of detention for defendants charged with other offenses as well; we did not attempt to calculate the costs associated with VCR that might be indirectly attributable to FTA; and we used 2014 and 2015 data, as those were the most complete data sets to which we had access, even though the percentage of jail inmates that are pretrial has been rising and is likely higher today than in the years for which we have data.³⁸

Calculation 1: Average³⁹ length of pretrial jail detention for FTA

	Number of defendants detained for FTA in five county sample ⁴⁰	Each FTA category as percentage of total FTA defendants	Average length of jail stay (days) ⁴¹
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³⁵ Unless otherwise indicated, "Failure-to-Appear" and "FTA" in the following calculations refer to Failure-to-Appear only, not those cases in which defendants are charged with Failure-to-Appear as well as another offense.

³⁶ Our estimate is a rough approximation using only the limited data available publicly.

³⁷ Mullen 2015, 2. While the methods of calculating the cost per inmate per day of incarceration are themselves the subject of some debate, for the purposes of this report we have adopted the figure cited by Maine's Intergovernmental Pretrial Justice Reform Task Force.

³⁸ Mullen 2015, Appendix H.

³⁹ Unless otherwise indicated, "average" in the following calculations indicates mean.

⁴⁰ "Five county sample" refers to the pretrial inmate populations of Androscoggin, Aroostook, Kennebec, Penobscot and Two Bridges jails in April 2015, which was the sample population analyzed in the 2015 Maine Judicial Branch report commissioned by the Intergovernmental

FTA for fines	221	65	1.3
FTA (misc.)	91	27	9.6
FTA for restitution	27	8	2.9

$$[(\text{Average length of stay}_{\text{FTA for fines}} \times \text{Percentage of total FTA defendants}_{\text{FTA for fines}}) + (\text{Average length of stay}_{\text{FTA misc.}} \times \text{Percentage of total FTA defendants}_{\text{FTA misc.}}) + (\text{Average length of stay}_{\text{FTA for restitution}} \times \text{Percentage of total FTA defendants}_{\text{FTA for restitution}})] \div$$

Number of FTA categories = Average length of stay for FTA_{all categories}

$$(1.3 \times .65) + (9.6 \times .27) + (2.9 \times .8) = 5.75 \div 3 = 1.9 \text{ days}$$

The average length of stay for defendants charged with Failure-to-Appear and no other crime is 1.9 days.

Calculation 2: Number of individuals booked into Maine jails each year for FTA only

The Maine Department of Corrections aggregates and publishes only very limited data from county jails. They do not publish the number of individuals booked into Maine jails every year, nor a disaggregation by offense. However, we were able to identify the following: the daily population count from every Maine jail from December 14, 2014,⁴² the percentage of each jail's population that was pretrial from July to December 2014,⁴³ the number of individuals detained pretrial in the five county sample,⁴⁴ and the percentage of the five county sample defendants charged with FTA and no other

Pretrial Justice Reform Task Force (Sorrells 2015), which constitutes the most extensive and reliable recent published study of Maine's pretrial jail population.

⁴¹ Sorrells 2015.

⁴² State of Maine Department of Corrections. 2014. County Jail Bed Space Snapshot. <https://www.maine.gov/corrections/BOC/refs/E%204%20County%20Population%20Snapshot%20-%20Dec%2015%2014.pdf> (last viewed October 15, 2018).

⁴³ Mullens 2015, Appendix H.

⁴⁴ Sorrells 2015.

offense.⁴⁵

Step 1:

Daily pretrial population of county jail⁴⁶ = Daily population of county jail x
percentage of county jail that is pretrial

County jail	Daily population ⁴⁷	Percentage of jail population that is pretrial ⁴⁸	Daily pretrial population
Androscoggin	168	82	138
Aroostook	87	76	66
Cumberland	414	62	257
Franklin	4	77	3
Hancock	51	70	36
Kennebec	185	77	143
Knox	77	55	42
Oxford	10	80	8
Penobscot	165	67	111
Piscataquis	39	56	22
Reentry Center	23	0	0
Somerset	158	69	109
Two Bridges	182	70	127
Waldo	0	60	0
Washington	41	58	24
York	240	74	178

Step 2:

Percentage of total Maine pretrial jail population held in county jail = Daily
pretrial population_{county jail} ÷ Daily pretrial population_{Total for all Maine jails} x 100

⁴⁵ *Id.*

⁴⁶ Calculations assume that the percentage of each jail's population that is pretrial remains fairly consistent.

⁴⁷ State of Maine Department of Corrections 2014.

⁴⁸ Mullen 2015, Appendix H.

County jail	Daily pretrial population of county jail	Percentage of total Maine pretrial population held in county jail
Androscoggin	138	11
Aroostook	66	5
Cumberland	257	20
Franklin	3	.2
Hancock	36	3
Kennebec	143	11
Knox	42	3
Oxford	8	.6
Penobscot	111	9
Piscataquis	22	2
Reentry Center	0	0
Somerset	109	9
Two Bridges	127	10
Waldo	0	0
Washington	24	2
York	178	14
Total	1264	

Step 3:

According to the 2015 Maine Judicial Branch report, “A Limited Study of Pretrial Inmates in Five Maine County Jails,” the total number of pretrial inmates in the five-county sample in April 2015 was 1,556. In order to determine the annual pretrial population of those five counties, we multiplied the monthly population by 12.⁴⁹

$$\text{Pretrial population of five county sample}_{1 \text{ year}} = \text{Pretrial population of five-county sample}_{1 \text{ month}} \times 12$$

⁴⁹ This calculation assumes that the pretrial population stays relatively steady from month to month. This calculation also assumes that all pretrial inmates are held for less than one month. Given that only a relatively small minority of pretrial defendants are held for multiple months (Sorrells 2015), the inevitable inflation of pretrial population numbers produced by this calculation should be more than nullified by the efforts we have employed to mitigate any over-counting (delineated above).

$$1,556 \times 12 = 18,672$$

There were 18,672 pretrial inmates in the five-county sample in 2015.

Step 4:

Percentage of all Maine pretrial inmates _{five county sample} = Percentage of all Maine pretrial inmates _{Androscoggin} + Percentage of all Maine pretrial inmates _{Aroostook} + Percentage of all Maine pretrial inmates _{Kennebec} + Percentage of all Maine pretrial inmates _{Penobscot} + Percentage of all Maine pretrial inmates _{Two Bridges}

$$11 + 5 + 11 + 9 + 10 = 46$$

46% of Maine's pretrial jail population is held in the five-county sample.

Step 5:

Annual number of pretrial inmates _{Maine} = Annual number of pretrial inmates _{five county sample} ÷ Percentage of Maine pretrial jail population represented by five county sample

$$18,672 \div .46 = 40,591$$

There were 40,591 pretrial defendants incarcerated in Maine jails in 2015.

Step 6:

Annual number of defendants in Maine incarcerated pretrial for FTA only =

Annual number of pretrial inmates in Maine x Percentage of pretrial inmates that are charged with FTA only⁵⁰

$$40,591 \times .22^{51} = 8,930$$

8,930 people in Maine are held in jail pretrial each year for FTA only.

Calculation 3: Annual costs of incarcerating defendants charged with FTA only

Annual cost of incarcerating inmates charged with FTA only = Number of inmates charged with FTA only x Average length of jail stay for inmates charged with FTA only x Daily cost of incarceration

Number of inmates charged with FTA only = 8,930

Average length of stay for inmates charged with FTA only = 1.9 days

Daily cost of incarceration = \$100⁵²

$$8,930 \times 1.9 \times 100 = \$1,696,700$$

The annual cost to Maine jails of incarcerating defendants charged only with FTA is \$1,696,700.

Calculation 4: Annual costs of booking defendants charged with FTA only into jail

Average time to book a defendant charged with FTA into jail = 30 minutes⁵³

⁵⁰ This calculation assumes that the percentage of all pretrial defendants in Maine charged with FTA only reflects that of pretrial defendants charged with FTA only in the five-county sample.

⁵¹ Sorrells 2015.

⁵² Mullen 2015, 2.

Median hourly wage of correctional officers and jailers in Maine = \$18.35⁵⁴

Annual cost of booking defendants charged with FTA only = Median hourly wage of correctional officer ÷ Minutes in an hour x Minutes of correctional officer time required for each FTA booking x Number of annual jail bookings for Failure to Appear only

$$18.35 \div 60 \times 30 \times 8,930 = \$81,933$$

The annual cost of booking into jail defendants charged with FTA only is \$81,933.

Calculation 5: Annual cost to Maine jails of defendants charged with FTA only

Annual cost to Maine jails of defendants charged with FTA only = Annual cost of incarcerating defendants charged with FTA only + Annual cost of booking defendants charged with FTA only

$$\$1,696,700 + \$81,933 = \$1,778,633$$

The total annual cost to Maine jails of defendants charged with FTA only is \$1,778,633.

⁵³ In order to accurately capture the precise cost of every FTA, researchers in Nebraska timed each step in the process, from issuing the initial arrest warrant through holding the defendant in jail (Rosenbaum et al., 2012). Booking a defendant into jail involves changing the defendant into the jail uniform, logging personal items, fingerprinting, taking a mug shot, and completing paperwork, including medical history. According to the Nebraska data, booking a defendant charged with FTA into jail takes an average of 30 minutes. Our calculation assumes that booking a defendant into jail in Maine takes a similar amount of time.

⁵⁴ Bureau of Labor Statistics, United States Department of Labor. 2018. Occupational Employment Statistics: May 2017 State Occupational Employment and Wage Estimates Maine. https://www.bls.gov/oes/current/oes_me.htm#23-0000 (last viewed October 15, 2018).

II. Annual Cost to Maine Courts of FTA

Calculation 1: Number of warrants for FTA issued by Maine courts each year

While the court does not publish data about the number of warrants issued, the 2015 “Report on the Intergovernmental Pretrial Justice Reform Task Force” notes that in 2014, 25,777 warrants were issued for Failure to Appear for Failure to Pay Fines.⁵⁵ Based on jail data contained within the same report, we can estimate the percentage of all FTA warrants represented by FTA for Failure to Pay Fines, from which we can calculate the total number of FTA warrants issued in 2014.⁵⁶

	Number of defendants detained for FTA in five county sample	Each FTA category as percentage of total FTA defendants
FTA for fines	221	65
FTA (misc.)	91	27
FTA for restitution	27	8

FTA for Failure to Pay Fines as percentage of total FTA defendants = 65

Annual number of warrants for FTA_{all categories} = Annual number of warrants for FTA_{Failure to Pay Fines} ÷ Percentage of all FTA warrants represented by Failure to Pay Fines

$$25,777 \div .65 = 39,657.$$

The total number of warrants issued by Maine courts for FTA each year = 39,657.

Calculation 2: The annual cost to the court of processing FTA warrants

⁵⁵ Mullen 2015, 19.

⁵⁶ This calculation assumes that the relative percentages of defendants in Maine jails detained for FTA for fines, FTA for restitution, and FTA for all other are reflective of the relative percentages of warrants issued.

According to the aforementioned Nebraska data, it takes the court 32.5 minutes to issue a bench warrant for FTA, including the time for establishing the defendant's absence, the time for issuing the warrant, and the time for updating the defendant's file.⁵⁷ Using annual salaries for judges and court clerks, researchers in Nebraska calculated the labor costs of that 32.5 minutes as \$15.49. The following calculations assume that issuing an FTA bench warrant takes a similar amount of time in Maine as Nebraska. We use the Nebraska labor cost figure here, as we were unable to disaggregate judge and clerk labor time based on the Nebraska data, and average judge and clerk salaries do not differ greatly between Maine and Nebraska.

Annual cost to the court of FTA = Cost per FTA x Number of FTA warrants per year

$$\$15.49 \times 39,657 = \$614,287$$

The annual cost of FTA to Maine courts is \$614,287.⁵⁸

III. Annual Costs to Maine Law Enforcement Agencies of Failure-to-Appear

Calculation 1: Annual cost to law enforcement of arresting FTA only defendants

Police and sheriff patrol officer hourly wage in Maine = \$23.23⁵⁹

Average time for FTA warrant arrest = 42.5 minutes⁶⁰

⁵⁷ Rosenbaum et al., 2012.

⁵⁸ This is a conservative estimate, as it does not fully account for the clerk time spent sending follow up letters to absent defendants, sending notices to the DMV, and other corollaries of FTA.

⁵⁹ Bureau of Labor Statistics, 2018.

⁶⁰ Rosenbaum et al., 2012.

Annual cost of FTA only arrests = Patrol officer hourly wage ÷ Minutes in an hour
x Minutes per FTA only arrest x Number of FTA only arrests per year

$$23.23 \div 60 \times 42.5 \times 8,930 = \$146,939$$

The annual cost to law enforcement of arresting defendants charged only with FTA is \$146,939.

Calculation 2: Annual cost to law enforcement of processing incoming FTA warrants

Annual cost of processing incoming FTA arrest warrants = Patrol officer hourly wage ÷ Minutes in an hour x Minutes required to process each warrant x Number of warrants issued per year

$$23.23 \div 60 \times 22.5^{61} \times 39,657 = \$345,462$$

The annual cost to law enforcement of processing incoming warrants for FTA is \$345,462.

Calculation 3: Annual cost to law enforcement of deactivating FTA warrants after arrest

Step 1:

Percentage of all pretrial inmates booked for FTA = Percentage of all pretrial inmates_{FTA for unpaid fines} + Percentage of all pretrial inmates_{FTA misc.} + Percentage of all pretrial inmates_{FTA for unpaid restitution}

⁶¹ Rosenbaum et al. (2012) calculated the time required to process an incoming warrant as 15 to 30 minutes. This calculation uses an average of those figures.

$$23^{62} + 11^{63} + 4^{64} = 38$$

38 percent of all pretrial inmates in Maine are booked for FTA.

Step 2:

Number of FTA jail bookings in Maine per year = Annual number of pretrial inmates in Maine jails x Percentage of pretrial inmates charged with FTA

$$40,591 \times .38 = 15,425$$

There are 15,425 inmates booked into Maine jails for FTA each year.

Step 3:

Annual cost of deactivating FTA arrest warrants = Patrol officer hourly wage in Maine ÷ Minutes in an hour x Minutes required to deactivate each FTA warrant x Number of arrests for FTA

$$23.23 \div 60 \times 12.5^{65} \times 15,425 = \$74,651$$

The annual cost to law enforcement officers of deactivating arrest warrants for FTA is \$74,651.

Calculation 4: Total annual cost of FTA to Maine law enforcement agencies

⁶² Sorrells 2015, 3.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Rosenbaum et al. (2012) report that the time required to deactivate a warrant is 10 to 15 minutes. This calculation uses an average.

Cost of arresting FTA only defendants + Cost of processing incoming FTA warrants + Cost of deactivating warrants after FTA arrests

$$\$146,939 + \$345,462 + \$74,651 = \$567,052$$

The total annual cost of FTA to Maine law enforcement is \$567,052.

IV. Total annual cost of FTA in Maine

Calculation 1: Total annual cost of FTA in Maine

Total cost of FTA = Cost of FTA to Maine jails + Cost of FTA to Maine courts + Cost of FTA to Maine law enforcement

$$\$1,778,633 + \$614,287 + \$567,052 = \$2,959,972$$

The total annual cost of FTA in Maine is \$2,959,972.

V. Annual Savings of Proposed Court Notification Program

Based on the successes of similar initiatives in other states, we estimate that the proposed court notification program will cut Maine's FTA rate in half, reducing associated costs by half as well. The court notification program should thus save the state approximately \$1.5 million annually.

For several reasons enumerated above, this calculation likely substantially underestimates the potential savings of the proposed court notification program as it

likely underestimates the annual costs of FTA. For comparison, the court notification program in Multnomah County, Oregon – whose population is just over half that of the state of Maine – saved over \$1.55 million when used with only some defendants. It is expected to save \$6.4 million per year when expanded to all defendants.

VI. Annual Cost of Proposed Court Notification Program

The cost of a court notification program in Maine depends on its specific features, such as whether it includes phone calls as well as text messages, and whether phone calls are personal or automated.

We have estimated the approximate cost of the proposed court notification program for Maine based on the costs of similar programs in Multnomah County, Oregon and Jefferson County, Colorado. In Multnomah County, the court notification program initially cost \$40,000, and it produced savings of \$500,000. Two years later the program was expanded. It cost \$56,000, and produced \$1.55 million in savings. It is estimated that when expanded to all defendants, the program will save \$6.4 million. In order to estimate the cost of a court notification program in Multnomah County for all defendants, we calculated that the additional program administration costs (beyond the initial \$40,000) for every \$1 million dollars in savings is \$16,000. Therefore, given that a court notification program for all defendants is expected to save \$6.4 million, we can estimate that the cost of such a program would be approximately \$134,000. The population of Multnomah County is 735,000 while that of Maine is 1.34 million, which means that a similar program in Maine would cost approximately \$244,000.

We checked this calculation against the administrative requirements of the court notification program in Jefferson County, Colorado. Jefferson County has a population of 500,000 people, and the primary costs of the court notification program are the salaries of two full-time administrators. Maine's population is 2.7 times that of Jefferson County, which means it would require 5.5 administrators. The annual mean wage of court clerks

in Maine is \$36,777, which means that the salary costs of administrators would total \$202,273.

We have rounded our calculation up to \$250,000 in order to include the costs of text messages and phone calls and any additional set-up costs.