

Pretrial Compliance and Noncompliance

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INFO: Texas Association of Pretrial Services Conference

APPR ADVANCING PRETRIAL POLICY & RESEARCH

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Advancing Pretrial Justice

Fair, just, effective pretrial practices, every day,
nationwide.

Highlights



Story

Addressing Unmet Needs

In St. Louis, Missouri, supportive
pretrial services address...

LEARN MORE >



Story

The Positive Impact of Public Defense...

A RAND Corporation study found
representation at first appea...

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APPR Roadmap for Pretrial Advancement

A roadmap for improving pretrial
systems, enhancing communit...

DOWNLOAD 

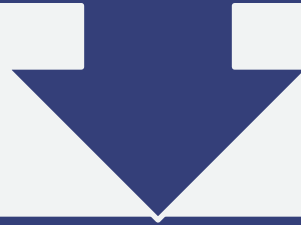


Objectives

Discuss	APPR's Approach to Pretrial Justice
Understand	Understand the value of developing protocols for responding to compliance and Noncompliance
Become	Become familiar with best practices for responding to compliance and Noncompliance
Learn	Learn steps to develop response protocols for your jurisdiction

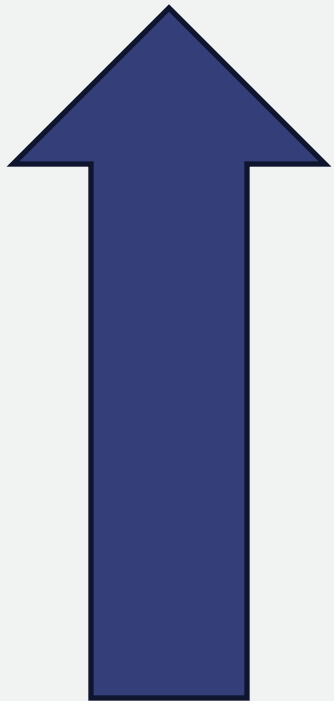
Quote

“The sole meaning of life is to serve humanity.”

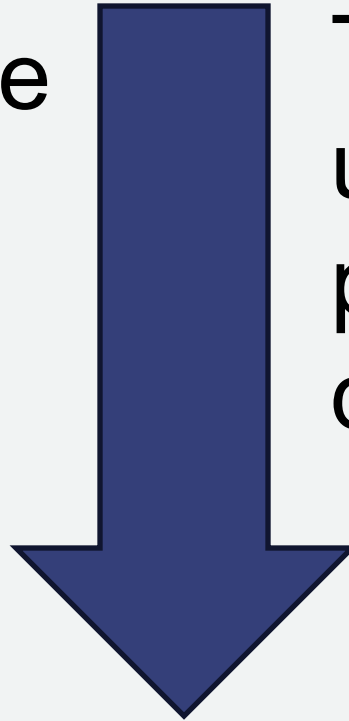


— Leo Tolstoy

Session Goal



To increase
human
dignity.



To decrease
unnecessary
pretrial
detention.

APPR's Approach to Pretrial Justice

Dr. Kelvin L. Banks

What is Pretrial Supervision?

Using the
least restrictive interventions needed
to promote court appearance and
community safety



Promoting **Success** rather than Managing Failure

APPR Approach

1



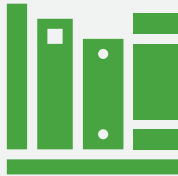
Law

2



Data

3



Best
Practices

4



Research

5



Equity

6



Supportive
Services

Setting Release Conditions

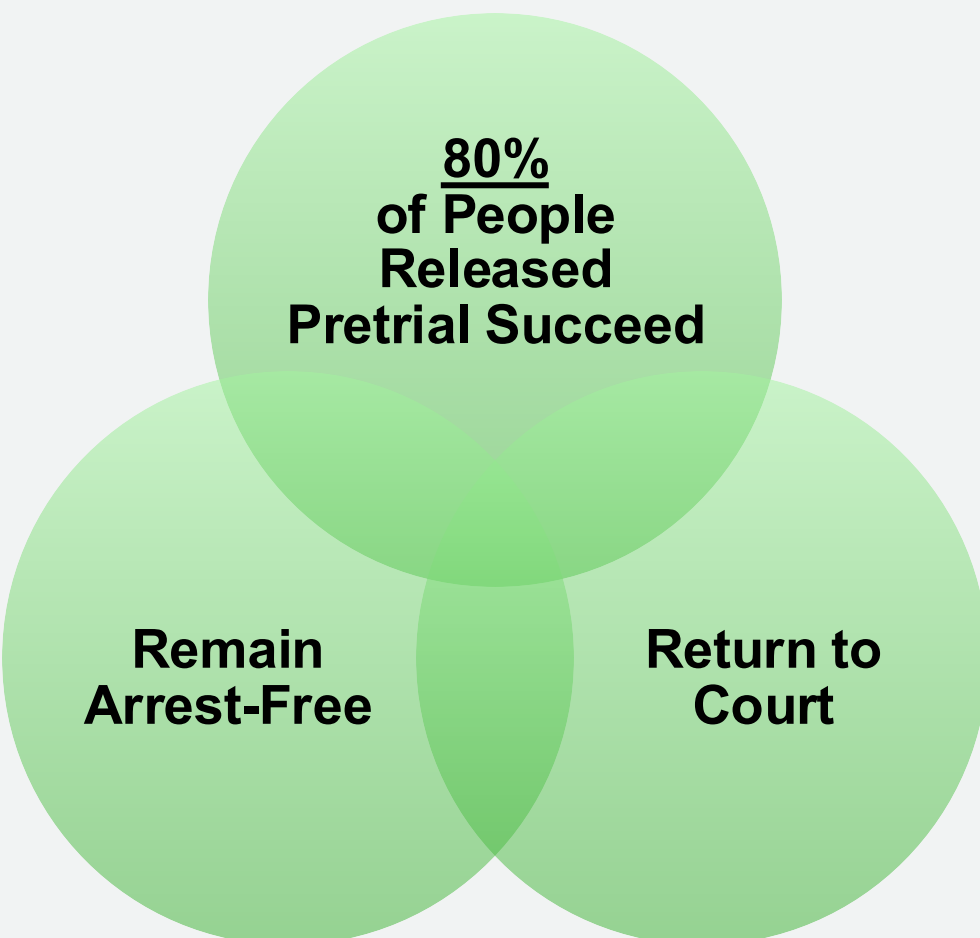
If any conditions are imposed, they must be the **least restrictive necessary** to provide reasonable assurance of court appearance and public safety.

U.S. v. Salerno, 281 U.S. 739 (1987)

Conditions must be **individualized**

Stack v. Boyle, 342 U.S. 1 (1951)

Data: National Studies



**80%
of People
Released
Pretrial Succeed**

**Remain
Arrest-Free**

**Return to
Court**

**Most People
Succeed!**

Data: Local Questions on Appearance Rates

What is the Overall Appearance Rate?

When are People Missing Court?

Why are People Missing Court?

What Types of Cases?

What are the Demographics of the People Missing Court?

How is Noncompliance for Court Appearance Addressed?

Data: Local Questions on Arrest-Free Rates

What is the Overall Arrest-Free Rate?



What Types of Cases for Existing and New Arrest?



What are the Demographics of the People being Rearrested?



How is Noncompliance for New Arrest Addressed ?

Best Practices



Effective monitoring
strategies promote pretrial
success

Best Practices: Promoting Success

Provide Court Reminders

**Respond to Compliance
and Noncompliance**

Make the Contact Count

**Match Supervision to the
Likelihood of Success**

Best Practices: Procedural Justice



Research: Strategies for Success

Empirical research helps us understand **what works** to achieve court appearance and no new arrest.



Research: Risk Principle

The risk principle tells us that we should provide **fewer pretrial resources or none** to those who are assessed as more likely to succeed—and provide **more resources** to people who are less likely to succeed.

Summary of Research Findings

Condition/ Intervention	Research shows effective for maximizing appearance?	Research shows effective for maximizing arrest-free?	Research shows effective for maximizing release/liberty?
Court date notifications	✓	?	✓
Pretrial supervision/ check-ins	✓*	—	✓
Drug & alcohol testing	—	—	✓*
Electronic location monitoring	—	—	✓*
Secured financial conditions	—	N/A*	—*

Discussion Question?

- Does your system provide court date notifications?
- If so, what type (i.e., email, text message, phone calls)?



Research: Court Date Notifications

Condition/ Intervention	Research shows effective for maximizing appearance?	Research shows effective for maximizing arrest-free?	Research shows effective for maximizing release/liberty?
Court date notifications	✓	?	✓

- Effective for lots of people (charges, assessment scores)
- Minimally restrictive/intrusive
- Low cost, high yield

Discussion Question?

- Does your system provide pretrial supervision for all release types?
- Do you require people to appear in person or virtually for office visits?



Research: Supervision/Check-ins

Condition/ Intervention	Research shows effective for maximizing appearance?	Research shows effective for maximizing arrest-free?	Research shows effective for maximizing release/liberty?
Pretrial supervision/ Check-ins	✓ *	—	✓

- * Is more effective for higher assessment-scoring people
- Somewhat restrictive
- Very different from probation supervision

Discussion Question?

- Does every person released pretrial receive a drug test?



Research: Drug & Alcohol Testing

Condition/ Intervention	Research shows effective for maximizing appearance?	Research shows effective for maximizing arrest-free?	Research shows effective for maximizing release/liberty?
Drug & alcohol testing	—	—	✓ *




- Expensive for people and/or system
- Very restrictive/intrusive
- * High rate of technical violations

Discussion Question?

- Is your jurisdiction experiencing an increase in the use of Electronic Monitoring?
- Do you have a policy for compliance and noncompliance?
- Is your jurisdiction's use of EM sustainable?



Research: Electronic Location Monitoring

Condition/ Intervention	Research shows effective for maximizing appearance?	Research shows effective for maximizing arrest-free?	Research shows effective for maximizing release/liberty?
Electronic location monitoring			 *



- Expensive for people and/or system
- Very restrictive/intrusive
- * High rate of technical violations

Discussion Question?

- In practice, are financial conditions of release being used to improve court appearance and reduce no new arrest?



Research: Secured Financial

Condition/ Intervention	Research shows effective for maximizing appearance?	Research shows effective for maximizing arrest-free?	Research shows effective for maximizing release/liberty?
Secured financial		N/A *	 *

- * \$ cannot be or is not forfeited in most states
- Very restrictive/intrusive
- * Expensive for people, the system, and the community at large.

Research Summaries on Conditions of Release



Court Date Notifications Systems



Pretrial Monitoring



Pretrial Drug Testing



Electronic Monitoring



Financial Conditions

[Pretrial Research Summaries | Advancing Pretrial Policy & Research \(APPR\)](#)

More Research is Needed

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.

Advancing Equity in Pretrial Systems



Goals

Understand
Experiences in Systems

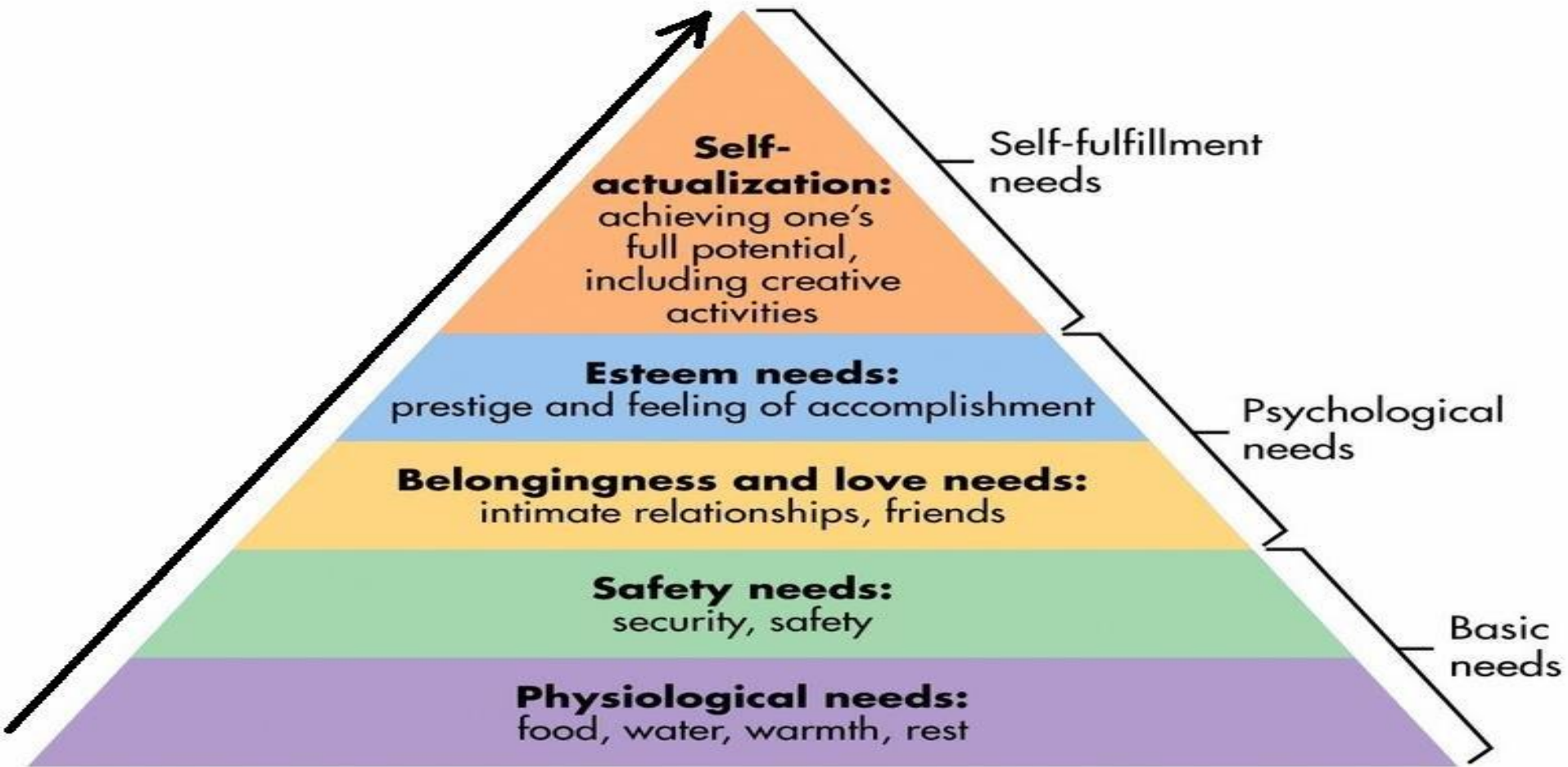
Improve Outcomes

Make Changes

Supportive Services

- Services provided to help clients enhance their way of living and achieve self-sufficiency
- Address individualized needs
- Are not court ordered
 - Cannot be violated
- Should be coordinated by the primary supervising agency (i.e., Pretrial Services)

Individualized Needs: Maslow's Hierarchy



Common Supportive Services

Housing

Substance Use

Mental Health

Childcare

**Court
Reminders**

Parenting

Food

Employment

Education

Transportation

Potential Supportive Services Collaborators

- Adult basic education programs and general equivalency diploma (GED) programs
- Alternative education programs
- Childcare services
- Evening adult education programs
- Family services
- Health and disability organizations
- Homeless shelters
- Housing authorities
- Literacy program
- Mental health agencies
- Self-help meeting
- Shelters for survivors of domestic violence
- Social service organizations
- Substance use treatment agencies
- Transportation agencies
- Workforce Development Centers

The Value of Responding to Compliance and Noncompliance

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Foundational Principles

Release Decision

- Least Restrictive
- Individualized



Supervision – Responding to Compliance and Noncompliance

- Least Restrictive
- Individualized



Supervision Goals

- Court Appearance
- No New Arrest

Why is this Important?



Can prevent unnecessary detention of more people pretrial



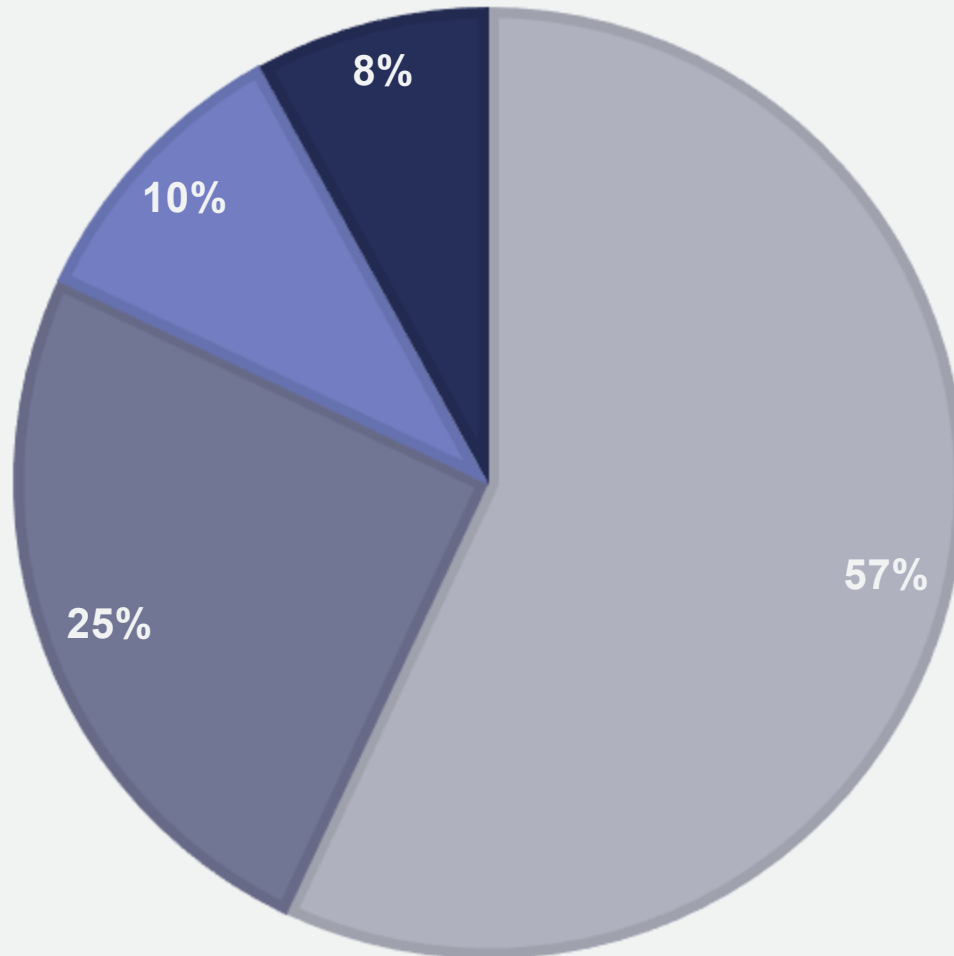
Can empower pretrial services to make service referrals or take other actions more directly connected to helping the person succeed



Allows agencies to promote success and not simply manage failure

Case in Point: Unnamed County, USA 2017

■ Contact Issues ■ EM Violation ■ Positive Drug Screen ■ Other



Case in Point: Unintended Consequences

- Average length of stay for a person violated for Noncompliance = 43 days
- Daily cost to detain = \$128
- **Cost of response to Noncompliance = \$5,504 per person**



Best Practices

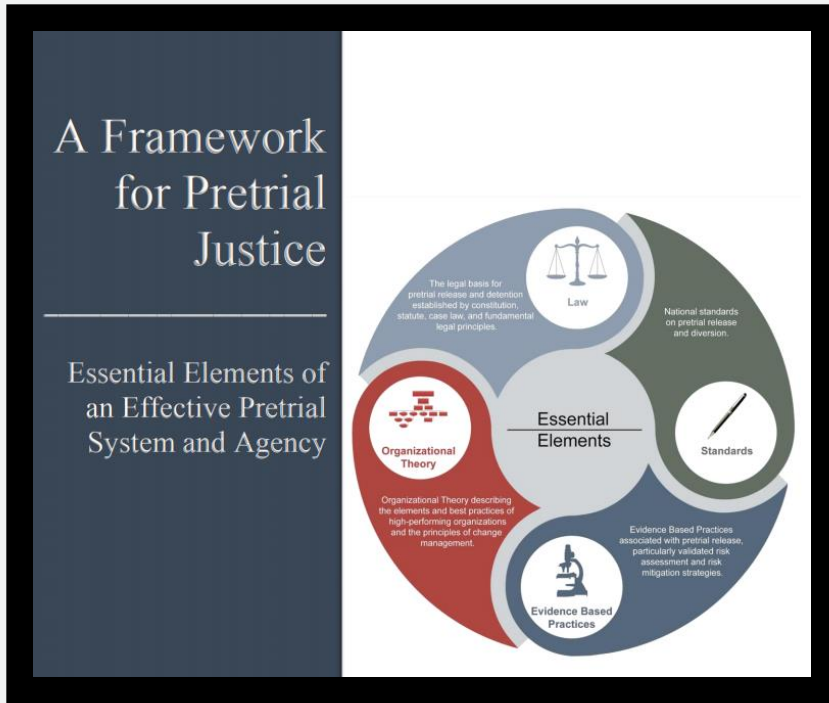
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Best Practices

- Implementing a clear, consistent, and **equitable** policy for responding to behavior while on pretrial release can prevent unnecessary pretrial detention and empower pretrial services to make service referrals.



Best Practices

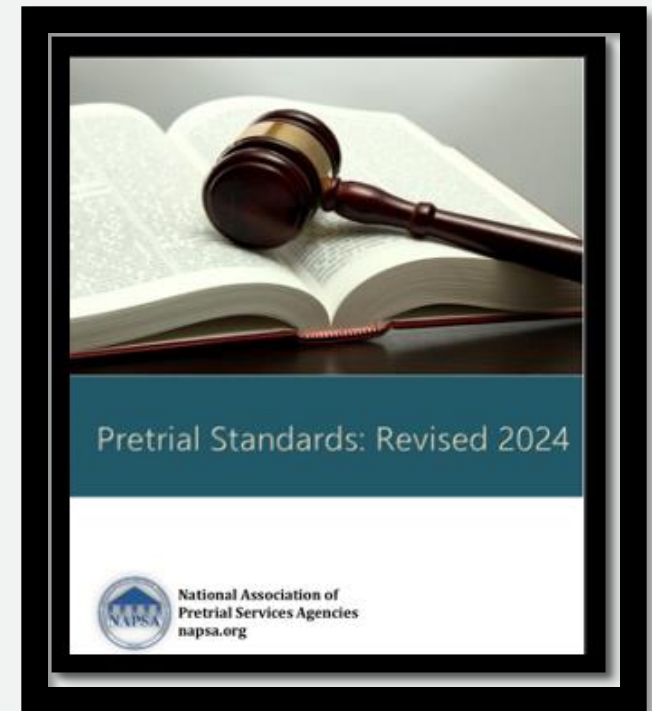


- **Certainty**—the person knows the supervision program’s response scheme beforehand
- **Swiftness**—responses are prompt and timely to the person’s behavior
- **Proportionality**—responses are appropriate to the person’s behavior
- **Fairness**—persons perceive the response as fair and just compared to the behavior
- **Individualization**—responses must consider the person’s likelihood of future noncompliance or pretrial failure

Best Practices

“Pretrial services agencies should verify and, when appropriate, respond to a defendant’s conduct on court-ordered supervision. The agency’s response procedures should include **administrative options the agency may apply without requesting court action**. These should be developed with the court’s approval and shared with prosecutors, defense attorneys, and defendants.”

- *NAPSA Standard 4.6*



Best Practices



Developing Protocols

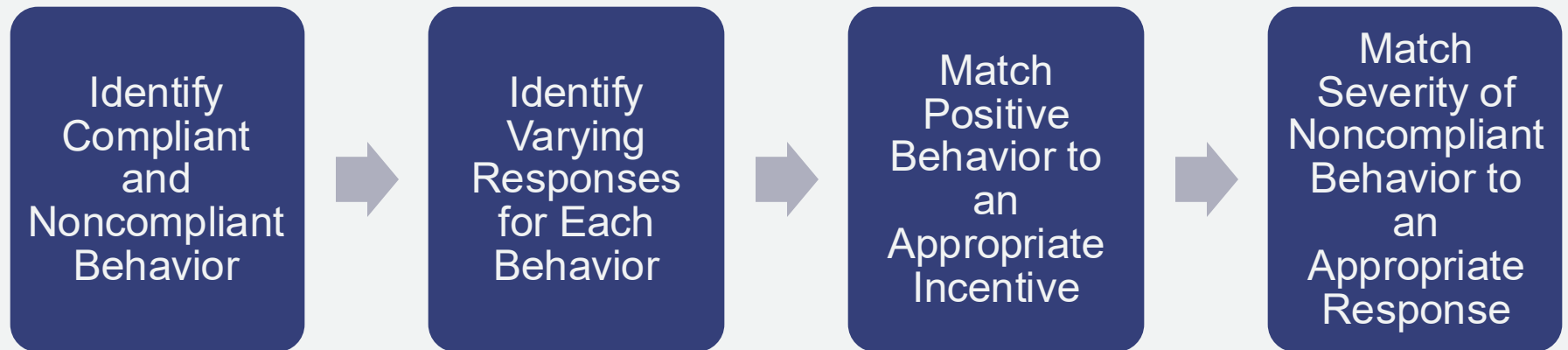
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Discussion Question

- Does your system currently have policies, protocols, and practices for responding to compliance and noncompliance?
- If so, please share



Developing a Process



Compliant Behavior Examples

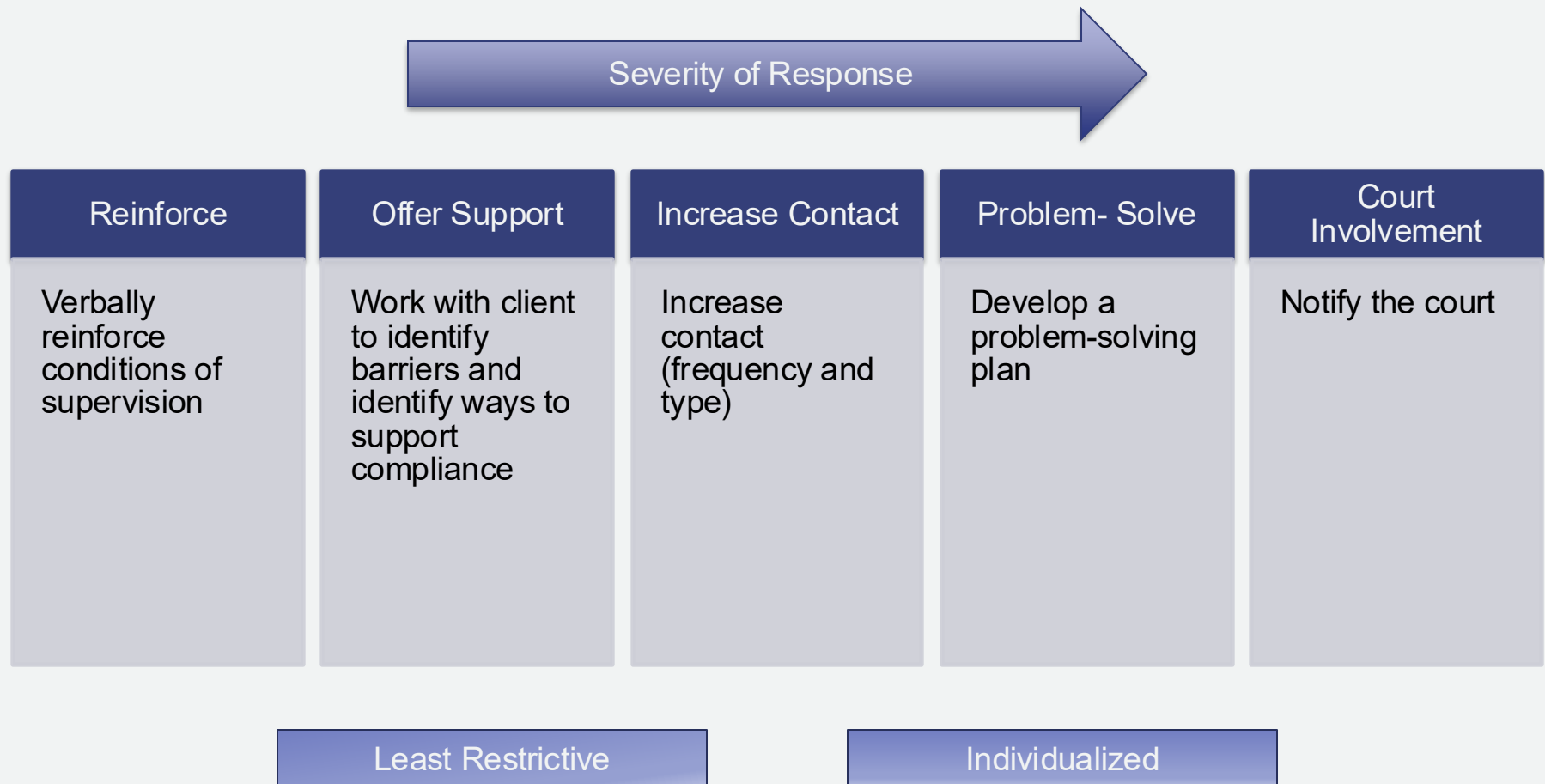
- No positive drug tests
- Maintain compliance with all conditions for 90 days
- On time for appointments
- No electronic monitoring violations
- No new arrest in 60 days
- Appearing at all court dates

Response to Compliance Examples

- Verbal praise
- Reduce supervision
 - Generally, after a period of 60-90 days when compliant with all pretrial conditions
- Ask the court to remove supervision
- Convert in-person appointment to a phone appointment
- Reduce or stop drug testing



Response to Noncompliance Examples



Developing Protocols – Collaborative Approach

- Identify stakeholders
- Share and discuss best practices
- Share and discuss data (if available)
- Identify appropriate responses for each supervision condition and level of Noncompliance
- Develop communication plan



Monitor and Provide Feedback

01

Ensure consistency in application

02

Create opportunities for feedback

03

Measure pretrial outcomes

- Court appearance
- New criminal arrest

04

Commit to ongoing review and evaluation

Closing Thoughts & Key Takeaways

Dr. Kelvin L. Banks



Key Takeaways: Responses to Compliance and Noncompliance

Grounded in Procedural Justice



Reduce or Eliminate Unnecessary Pretrial Detention



Continuous Review Practices to Ensure Alignment with Best Practices

Success Starts With You!



Thank you for your time!

Don't forget to register with APPR to receive advance notice of trainings and new resources!

Join the APPR Community to connect with pretrial practitioners from around the country!





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