

## **Public Comments Regarding the Proposed Missoula County Jail Diversion Master Plan from the ACLU of Montana**

Submitted by email to: [jaildiversion@missoulacounty.us](mailto:jaildiversion@missoulacounty.us)

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The ACLU of Montana has reviewed the Missoula County Jail Diversion Master Plan and wishes to register the following public comments with you.

We commend Sheriff McDermott's initiative in commissioning this plan in May 2015. Likewise we appreciate the time, energy and attention to detail that Cynthia Wolken, the JDMP team, the Steering Committee, and the Advisory Board gave to this project. The result is a plan that addresses a problem that is extraordinarily complex. The suggested solutions will protect public safety, will save money for Missoula taxpayers and will make our criminal justice system more just for both the innocent and those who are found guilty. These are values that are often hard to reconcile and the drafters of the Plan are to be congratulated that they have accomplished this task so well.

### **Background**

The ACLU of Montana has a longstanding concern with overcrowding in our jails. The Master Plan references this disheartening problem. Most of us will agree that when 500,000 of our citizens nationwide who are awaiting trial and presumed

innocent are forced to remain in jail only because they do not have the resources to obtain a bond, that there is something deeply amiss in our criminal justice system. Add to this number those who have been convicted of non-violent offenses, who pose little danger to public safety and yet are sentenced to serve time in jail and one has to wonder if the enormous sums that the public spends to keep these people in jail is money well spent.

These observations highlight the different and important values that must be considered to effectively reform our jails and prisons. As a society we want a criminal justice system that provides justice for all, for the innocent as well as the guilty. We also want a system that protects the public from injury to our persons and property. Finally, we want a system that will not bankrupt the public treasury.

The recommendations contained within the Master Plan address these values and suggest reforms that will enhance all of them and while diminishing none.

### **Specific Public Comments**

There are so many components to the plan that we will not address all of them. Instead we limit our comments to the following, referenced by their recommendation numbers.

**3.0-3.4: Mentally Ill Offenders.** There is little penological justification for placing the mentally ill in jail for non-violent offenses that are committed as a result of their illness. The experience in other communities demonstrates that crisis intervention teams can reduce arrests and jail time for the mentally ill. As noted in the Plan, in order to be effective, CITs require active coordination with mental health care providers and access to facilities other than jail to house those who are in crisis. We strongly support recommendations 3.0-3.4 and urge the county to apply for HB 33 and HB 34 grant money to assist with the construction of secure crisis beds. We also encourage St. Patrick Hospital to contribute financially to this effort because the Hospital will recognize savings from uncompensated care in its emergency room.

**3.5: Offenders who are under the influence of drugs or alcohol.** Likewise, placing non-violent offenders in jail who are arrested while under the influence of drugs or alcohol is hard to justify. Instead, we need to increase the addiction and detox services that are available in the community. Of particular need are the social detox beds that this recommendation suggests. The creation of these beds will

result in better treatment for addicts and lower costs for uncompensated emergency room treatment.

**3.8 Co-Occurring and Veterans Courts.** We support the recommendation to fund these two courts and the work that they do.

**3.10- 3.12: CAC Counselors.** While recognizing the rapidly increasing cost of providing medical/mental health services at MCDF, the ACLU continues to be critical of the level of services that the facility provides. Recommendations 3.10-3.12 address this important deficiency and help provide the means to offset the costs. If MCDF becomes a CAC organization it could realize substantial cost savings that should be used to fund higher levels of medical care and provide for social workers and case managers to assist inmates as they prepare for reentry into society.

**3.14. Additional services for inmates.** We support the recommendation to solicit and facilitate additional programming for inmates.

**3.15. Native American religious accommodation.** We support the recommendation to allow for Native American religious ceremonies. The County can look to what the Department of Corrections allows, as a guide.

**4.1: Night Court.** We have concerns about this recommendation. As good as this idea may be in theory, we worry that it would add an additional burden to the Office of the Public Defender that is not sustainable. It is well known that public defenders are straining to meet their current responsibilities. Before any additional responsibilities are placed upon them very careful consideration needs to be given to the impact on existing obligations. We suggest that this recommendation be implemented only after consultation with and the concurrence of the local Office of the Public Defender.

**4.2 -4.5 Daytime only warrants, Warrants for non-violent offenses, Validated warrants, old warrants for petty offenses.** We support these recommendations.

**4.6- 4.7 Bond recommendations, priority for incarcerated defendants.** We support these recommendations.

**4.11-4.13: Pretrial Release and Supervision.** Defendants charged with non-violent offenses who are unable to quickly post bond should be given an opportunity to be released from jail pending trial based on an appropriate risk

assessment. The current plan is to use the PSA-Court assessment tool. Data about the use and effectiveness of the tool should be tracked on an ongoing basis, and its utility should be regularly monitored. Outcomes are uniformly and profoundly negative for the community and the defendant when a defendant has a lengthy incarceration before trial. Connections with family, friends and work are strained and often broken, making the reentry into our community vastly more difficult. With these facts in mind, we strongly support a prompt risk assessment to develop appropriate conditions of release. The indigence of a defendant should not be the reason for his or her incarceration until trial. Additionally, strictures on the release of the accused should be very narrowly tailored to ensure the individual's appearance for court proceedings, and not expanded to pretrial probation given the presumption of innocence.

**5.0- 5.2: Jail for Failing to Pay Fines or Driving with a Suspended License.**

Putting a person in jail because he/she has not paid a fine is counterproductive and expensive. So too is jailing a defendant for driving with a suspended license. As the Plan notes, "the cost of jailing this population [is] nearly twice the total value of the fine or fee owed." Moreover, the defendant's ability to work, and thereby pay any fine, is disrupted. There is no good outcome that results from this practice either for the community or the defendant. Other alternatives to jail must be found to provide accountability for the offender. And for the offender who has no ability to pay a fine or fee, those financial elements of a sentence should be waived. For these reasons, we strongly endorse recommendations 5.0- 5.2. We also urge that consideration be given to making all fines, fees, and restitution a civil matter, enforced solely through an administrative proceeding. The time has come for putting this issue squarely on the table of our policy making bodies.

**5.3- 5.10: Jail Diversion Options.** We support a work release option, a community service option at an increased rate of credit and an alternative jail option as realistic ways to reduce jail overcrowding while allowing defendants to pay fines and serve their sentences. Judges should assess the risks for each defendant and sentence the individual in a manner that is consistent with risk. Home arrest and electronic monitoring should be considered and those options should be available to low income offenders as well as to those able to pay the costs. Even if the county pays associated costs it will save money when compared to jail costs.

**Separation of Powers.** It has been suggested that the Plan improperly invades the province of the judicial branch and thereby violates the principle of the separation of powers. We do not agree with this contention. The Plan does not call into

question the power of a judge to fashion a sentence within the limits provided by law or ordinance. The lawmaking branches of government always have the power to set limits on the sentence that may be imposed for any criminal act. It is therefore entirely appropriate for this Plan to make recommendations for legislative action that address the length of imprisonment and the fine that may be imposed on conviction of a criminal offense. Similarly, it is appropriate to ask the city council to reconsider the penalties that arise from the violation of a city ordinance. This is the proper role of the lawmaking bodies and does not constitute an infringement upon the role of the judiciary.