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MISSOULA
PRE-RELEASE
CENTER

Board of County Commissioners
199 East Pine
Missoula, MT 59802

COMMUNITY
SERVICE
PROGRAM

Mayor Jon Engen
200 Ryman
Missoula, MT 59802

June 20, 2016

Dear Commissioners and Mayor,

MISDEMEANOR
SUPERVISION
PROGRAM

The following are my comments regarding the Missoula City-County Diversion Master Plan. I have listed the recommendations made that impact the programs MCS currently provides for the County and the City along with some information pertaining to those programs.

PRETRIAL
SUPERVISION
PROGRAM

4.2 Municipal and Justice Court judges should specify that nonviolent ordinance and misdemeanor warrants be executed only during regular court hours. When MPD brings a defendant to Municipal Court during the day, the court should make sure the individual is not taken to jail before seeing a judge.

SOBRIETY AND
ACCOUNTABILITY
PROGRAM

4.3 The City police should not execute warrants after hours solely for nonviolent ordinance or misdemeanor violations.

ALTERNATIVE
JAIL
PROGRAM

MCS does not believe it is realistic to specify that warrants for nonviolent or misdemeanor violations only be executed during regular court hours. Generally, officers are not out searching for someone simply to serve a warrant. They do not have the time to do so. Warrants “pop” up in other situations. For instance, someone is speeding and is pulled over. In running the information the officer discovers that the individual has a warrant for another crime, violation, contempt of court, probation violation, etc. In order to have public safety, MCS needs to hold people accountable. The violation may be serious – such as having absconded supervision. No matter what time of the day or night, that warrant authorizing the arrest should be implemented.

ENHANCED
SUPERVISION
PROGRAM

PRETRIAL PROGRAM (page 78 to 85)

The alleged crime for a pretrial defendant does not necessarily correlate with the level of risk of the defendant. This seems to have gotten lost in the discussion about the

pretrial program. In the Master Plan it is noted that a percentage of defendants in the pretrial program are charged with an alleged nonviolent offense. It is also noted that the program should only be for high risk defendants. The implication is that inappropriate individuals are being referred, screened and placed in the program. A good pretrial assessment tool weighs a Defendant's prior criminal history, history under supervision, social factors, and various criminogenic factors. Just because someone's current alleged offense is "non-violent" does not mean he/she does not have a violent history or poor history of performance on prior community supervision. These are factors that should be weighed for community safety in the risk assessment tool. MCS provided all the statistical information requested that we were capable of. We were not asked for the history of the defendants who failed their supervision under the pretrial program, only what their alleged crime was that brought them into our program. These may all have been individuals who would have scored as high risk on an evidence based risk assessment tool. The mere fact that the Court wanted them to be screened for the program indicates that they were viewed as high risk by the court.

The screening tool adopted for the Pretrial Supervision Program was developed in 1998 with input from various areas of the criminal justice system including the Chief Criminal County attorney, Chief Public Defender, Chief of Police, Sherriff, Justice of the Peace and District court judges. It was designed to determine a person's risk for flight if released from the detention center as well as the risk to harm themselves or others if released. Naturally having a place to live is one area that factors into risk for flight. It was developed with the guidance of the Pretrial Services Resource Center.

No one asked us for a copy of the tool in the course of our discussion on this project. MCS would have gladly given a copy to the committee. Those referred to the program are viewed as higher risk by the courts based on the alleged crime they may have committed or their history in the criminal justice system.

Our officers verify the information given to us by the defendant. We do not rely on a self report by the defendant as there are defendants who will lie. It is for this reason that it takes some time to complete the screening and make a recommendation to the court.

Our screening tool was evaluated after being in use for a three year period (approximately 2001). At that time, it was found to be doing what it was designed to do: determine the appropriateness for pretrial supervision based on the level of risk for public safety and subsequent compliance to the court order when released. It was reviewed again in 2012 but only for those cases who had allegedly committed domestic abuse. The small sample studied reduced the likelihood of finding a statistically significant relationship. It was recommended, however, that MCS seek grant support for evaluation research on pretrial risk assessment tools and adopt a validated, evidence-based pretrial risk assessment. MCS discussed this with U of M Criminologist Jim Burfeind but at that time, there was not the availability of staff to conduct such a project. MCS does agree it is time to review and research what other evidence based tools are available and would be the best fit for our community and criminal justice system.

4.11 If an individual is charged with a nonviolent crime and is unable to post bond within 12 hours, the County should have trained staff administer the PSA-Court assessment. The assessment and recommendations for conditions of release should be made available to the judge at the defendant's initial appearance.

Please note MCS attempted to get a copy of the Public Safety Assessment (PSA-Court) that is discussed on page 83 of the master plan but as of the writing of this letter has been unable to do so. As noted above, there are a number of pretrial risk tools that are evidence based. MCS supports trying to obtain grant funding to determine which would fit our community and/or working with the Pretrial Services Resource Center to redevelop our own local assessment tool that can be tested in the future to insure that it is evidence based. Development of a local tool should include representatives of the local criminal justice system.

4.12 The County and City should provide funding for judges to draw from to pay for pre-trial services for indigent offenders. Funding should follow the individual and enable judges to order alcohol monitoring or drug testing.

As was recently discussed with you, MCS does waive fees for indigent offenders who are placed in the Pretrial Supervision Program and the Probation program and for whom we can verify that the individual is truly indigent.

Recommendation 4.13 in pre-trial supervision program contracts, the County should either pay per person per day, or have a minimum number of supervisees per officer, to increase capacity. The County should require annual or twice-yearly reports on costs and failure rates etc. and require policies on evidence-based incentives and sanctions. The County should also consider a target success rate, working with a vendor for a compliance plan. The County should structure the contract to ensure pre-trial supervision programs offer required classes on site and include them in the supervision fee.

MCS has not restricted the number of individuals who will be supervised under the pretrial program for the last two years. MCS does keep a close eye on this, however, as we do not want to have one officer unable to monitor defendants closely because of a high caseload. The majority of our pretrial cases are under some form of electronic monitoring whether it is GPS or an alcohol monitoring unit. Both are labor intensive. Additionally, our officers conduct the initial screening of the defendants for the court. To increase capacity in the program without risking public safety requires either additional officers for supervision of more defendants or for the screening of defendants.

MCS is willing to provide yearly reports to the County upon receiving advance notice at the beginning of the year exactly what the County would like MCS to keep data on. MCS will do its best to insure that we have a data base capable of tracking the requested information.

The role of a pretrial officer is to monitor a client's adherence to the court ordered conditions of their pretrial release and to report compliance or non-compliance to the Courts. The Court is

responsible for giving sanctions for noncompliance. MCS is not responsible for sanctioning a defendant for failure to follow the conditions of his/her release – only for reporting that non-compliance to the court. MCS is willing implement an incentive program if the Judges are agreeable to such a measure.

Finally, MCS does not provide “classes” to pretrial defendants and is not sure what the report is referring to. Treatment or programs that are mandated by the Court as a part of pretrial release are provided in the community at various social service agencies. MCS Pretrial Officers assist defendants in accessing these. Our role, however, is to insure that the defendant is following his mandated court conditions and reporting compliance/non-compliance to the Court. If there are “classes” or services the County wants MCS to provide as a part of our pretrial program, there needs to be further discussion on what these are and would entail, the cost of such “classes”, and the Court needs to be in agreement that these “classes” are part of the defendants release on pretrial supervision.

COMMUNITY SERVICE PROGRAM (page 94-95)

5.1 Justice and municipal Courts should increase credit for Community Service to \$15.00 per hour to incentivize participation.

This is an area for the Judges to decide as they are the entities that order someone to the Community Service Program and the number of hours that are to be fulfilled. MCS does not object to this recommendation.

A side note, participants in the Community Service Program pay \$1.25 per hour – not \$1.50 as the reports indicate. This may have been an error on my part when I gave information on the program.

ALTERNATIVE JAIL PROGRAM (pages 95-96)

5.6 The City and the County should provide a payment source for judges to sentence indigent offenders to Alternative Jail rather than the jail. It is less expensive and a more appropriate setting for first-time nonviolent offenders.

MCS and the County are in the process of renewing and updating our agreement for this service. MCS started this program to assist the County in addressing jail crowding in 2005 and looks forward to continuing this service.

MISDEMEANOR PROBATION PROGRAM (pages 96 to 99)

The role of a probation officer is to monitor a client’s adherence to the court ordered conditions of sentencing and to report compliance or non-compliance to the Courts. The Court is responsible for giving sanctions for noncompliance. MCS does not have a written policy on sanctions as our role is to report non-compliance to the court, every case is different and one size does not fit all, and different

courts have different requirements of our officers as to their expectation on reporting. Please note that the State of Montana Department of Corrections also does not have a written policy on sanctions.

Page 96 reads "There is no screening tool for judges to draw from when deciding if misdemeanor probation constitutes an appropriate placement. Absent, such a tool, stakeholders have expressed ongoing concern, as early as the Borg Report, about what they perceive as burdensome and unnecessary conditions placed by the MCS Misdemeanor Supervision Program on offenders, including costly treatment programs and classes, in addition to the program's relatively high failure rate."

MCS does not make recommendations to the court as to who should be placed on probation. There is no presentence investigation on misdemeanor convictions. Note that the State DOC does have a presentence process where upon conviction of a felony, the Judge may order that a presentence investigative report be completed to include a recommendation for sentencing. The report is ordered to assist the Court in determining how to sentence the offender and what conditions the court may want to place on the offender as a part of his/her probation. MCS does not know if someone will be placed on misdemeanor probation until after the Court has ordered it and we have no input into the sentencing conditions. Our officers do make recommendations to the court if someone is non-compliant in following their conditions of probation. Note these are only recommendations and the Judge has the final say on what if any action, including new treatment requirements will be taken.

On page 97, some statistics are given that are incorrect. The following is what was provided to the author and is what the correct information is.

MISDEMEANOR SUPERVISION PROGRAM – County

# of Probation Cases at the beginning of the year – County	146
# of new cases court ordered during the year – County	119
# of cases under supervision at Year's end – County	136
# of clients released from supervision during the year	129
• # Successfully completed probation – County	92 (71.3%)
• # of unsuccessful cases – County	37 (28.7%)

ADP: 144.19

MISDEMEANOR SUPERVISION – CITY

# of Probation cases at the beginning of the year – Municipal	187
# of new cases court ordered During the year – Municipal Court	157
# of cases under supervision at year’s end – Municipal	180
# of clients released from supervision during the year	164
• # successfully completed probation –City	110 (67.1%)
• # of unsuccessful cases – Municipal Court	54 (32.9%)

ADP: 190.03

These stats demonstrate that the completion rates for offenders placed in the program are high for this population and the overall failure rate is low.

MCS agrees that it would be beneficial to track re-offense rates among participants released from the program. Without a statewide database, however, this is relatively impossible to do. Though we can, and are willing to work with Detention Center staff to determine who reoffends in our community, without a state wide database, we can not determine who reoffends in other communities in Montana or outside the state.

As already noted MCS does not have a policy for sanctioning non-compliance to a court order nor does the Department of Corrections for parole and probation cases. DOC does have an Intensive Supervision Program (ISP) that has a phase system that outlines minimal consequences for minor violations and incentives for making it through time periods without problems. It is only used for a small group of clientele who are viewed as needing closer supervision than the majority of parole and probation cases. MCS is open to developing a similar supervision level structure if the courts want and agree to this. It may be more realistic to have this be court ordered for a segment of the population as it is our experience that every judge has their own thought about what and how they want violations to be reported. When Margaret Borg’s report was being completed, we had many of our judges (and still do) who wanted all drug and alcohol use by an offender reported to them. Please note that reported does not necessarily mean the offender will be arrested and/or revoked. The Court wants to be made aware of the violation so the Court can determine what sanction or action should be taken. MCS Officers do make recommendations based on our history with the offender/defendant but the Court makes the final decision as to what will occur.

Please note that MCS was asked to provide all our policies. We responded that we would not do so as we consider them to be proprietary and there is a competitor currently attempting to undermine our programs. We did state that we would be more than happy to sit down and discuss any and all information the committee was interested in. We received a response indicating that the committee understood our rationale.

5.7 Arrestees should be screened for risk level in order to determine conditions of release. Judges should also use the risk assessment to tailor sentencing options to the individual's level of risk. Misdemeanor probation should be used only with high-risk offenders.

This is decision for the Judges to make.

5.8 For low and moderate risk nonviolent offenders, judges should consider electronic monitoring and home arrest.

MCS currently provides this option to the courts as a part of probation sentencing conditions as well as for defendants placed in the pretrial supervision program. MCS is willing to discuss expanding this service for others who the court does not necessarily feel needs to be in either of these two programs if financially feasible.

5.9 The City and County should require contracted vendors to make available policies on sanctions and incentives. The City and County should require an annual report detailing the per-person per-day cost of probation, and work with the jail to adopt and monitor recidivism outcomes. Contracts should also be explicit in the classes that may be required by participants and to the greatest extent possible, be included in the contracted cost and be made available on evenings and weekends.

MCS is willing to provide an annual report that details the per-person per-day cost of probation. For the 2014-2015 Fiscal Year:

County Probation Program: \$4.38/client/day (based on 144.19 ADP for that year)

Note the County funds 4 FTEs – 3 Officers and 1 Administrative Aid

City Probation Program: \$2.59/client day (based on 190.03 ADP for that year)

Note the City funds 3 FTEs – 3 officers

If combined, this computes to \$3.36 per client per day

MCS does not provide “classes” to offenders as a part of our probation or pretrial supervision. Offenders/clients attend court ordered treatment, classes, etc. in the community. And as previously noted under the pretrial section of these documents, MCS is not sure what the definition of “classes” is as used in the Master Plan. The role of our supervision officers is to insure that offenders are following the court ordered mandates, including the treatment/classes that are ordered. Our officers assist

clients in being referred to the appropriate agency(s) based on the court order or on client needs. The vast majority of our clients are referred to Turning Point for addiction treatment, which has a sliding fee scale, the WMMHC for mental health treatment, who also has a sliding fee scale. Note that it is generally up to the client where he/she receives service unless it is a particular program they have been court ordered to.

Further discussion needs to take place if the County wishes MCS to provide internal treatment groups or life skills classes.

I apologize for the length of this response. However, the Master Plan is a very important document and one that could change the scope of our local criminal justice system for years to come. Furthermore, any decisions that are made will impact public safety. I appreciate the work that has been done on this to date and look forward to more discussion.

MCS' mission is "to provide residential and non-resident community –based correctional programs that enhance public safety by providing guidance, treatment, and supervision in order to promote accountability and responsibility of individuals who have become involved in the criminal justice system." We look forward to the implementation of ideas that will support our mission. We value the support we have received from the County and the City and look forward to our continued coordination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sue L. Wilkins", with a long horizontal flourish extending to the right.

Sue L. Wilkins, Executive Director
Missoula Correctional Services

cc. MCS Board of Directors