

# Missoula County Pretrial Services

## An Assessment of Pretrial Services

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Authored by: Tara Boh Blair

## Disclaimer

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The resource person who provided the virtual technical assistance did so through a cooperative agreement, at the request of Missoula County, Montana, and through the coordination of the National Institute of Corrections. The direct virtual assistance and the subsequent report are intended to assist the county in addressing some of the issues outlined in the original request and in efforts to enhance the effectiveness of Pretrial Services.

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# Missoula County Pretrial Services

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## An Assessment of Pretrial Services

### Introduction

Historically, criminal justice reform and policy have focused primarily on the “back-end” of the system such as sentencing, prison reform and probation. Over the past decade, through justice reinvestment initiatives, several states have reformed their systems and successfully lowered prison populations. Until recently, within the past six years, the “front-end” of the criminal justice system was overlooked, while pretrial incarceration soared. In addition to county jail costs, there have been dozens of federal lawsuits filed challenging the use of money bond, specifically money bail schedules, that advocates for reform claim discriminate against the poor and violate the 14<sup>th</sup> amendment of the United States Constitution. This has led to a national bail reform movement in which several states and numerous local jurisdictions have initiated some form of change whether by legislation, court rule or litigation. As a result, more and more jurisdictions are expanding or developing Pretrial Services Agencies or departments within existing county agencies such as probation and community corrections. Following this trend, in 2018 the Supreme Court of Montana, with grant assistance from Arnold Ventures and Justice Systems Partners began a pilot program to implement the Public Safety Assessment (PSA). The PSA is a pretrial risk assessment that measures the risk of failure to appear in court (FTA), pretrial new criminal activity (NCA) and pretrial new violent criminal activity (NVCA). The Montana State Legislature codified the pilot program by passing SB59 in 2017. Missoula County was one of five sites chosen to participate in the pilot program.<sup>1</sup> The grant was expanded in 2021 for two additional years.

In February 2021 Missoula County reached out to the National Institute of Corrections for technical assistance to review the current pretrial practices and perform an assessment of the contracted pretrial supervision agency, Missoula Correctional Services. The project began in April 2021. The purpose of the technical assistance is to provide an objective overview of the program design and determine if the program meets national standards and best practices as defined in

the National Institute of Corrections “A Framework for Pretrial Justice” publication.<sup>2</sup> The methods used for this technical assistance consisted of preliminary research, numerous virtual meetings and follow up conversations for clarification and report writing.

Virtual meetings were held with the major stakeholders involved in the pretrial stage of the justice system. A presentation of the preliminary findings to the members of the PSA Advisory Committee was conducted on June 29, 2021. The PSA Advisory Committee is an ad hoc committee of the Missoula County Criminal Justice Coordination Council (CJCC). A list of attendees can be found in Appendix A.

## The Pretrial Process in Missoula County

There are three courts that operate within Missoula County; Municipal Court, Justice Court and District Court. Municipal Court hears misdemeanor and traffic cases for crimes that occur within the city of Missoula (the only incorporated community within the county). Justice Court hears misdemeanor and traffic cases for crimes that occur outside the city of Missoula but within the county as well as the initial appearance for all felony cases regardless of where the crime was allegedly committed. District Court hears all felony cases post initial appearance. Missoula Correctional Services does not have a contract with the Municipal Court for pretrial supervision/monitoring services and the PSA pilot program does not assess defendants with cases from this court, therefore the pretrial process being evaluated in this report is limited to Justice and District Court pretrial practices.<sup>3</sup>

When a defendant is charged with a crime by law enforcement, the officer, for the most part, has the discretion to issue a citation to appear in court or place the defendant under arrest and transport him or her to the county jail. Defendants that are cited to court are not screened for the PSA, nor are they subjected to any conditions other than court appearance. Defendants who are arrested (probable cause arrest or on a warrant) are taken to the county jail where they are booked. Jail staff send all charging documents to the PSA Coordinator/Processors based in Helena. The PSA Coordinator/Processors review the charging documents to determine if the PSA is appropriate. The PSA is only completed on defendants who have bailable offenses. Individuals with probation or parole detainers or other post-disposition matters are not assessed. For bail eligible defendants, a full criminal history investigation is completed by searching local, state and

national databases. The PSA is then scored based on the charging documents and the criminal history. A PSA report is generated along with a recommendation for release conditions and submitted electronically to the court administrator. The court administrator ensures that the report is provided to the initial appearance judge, the prosecutor and the public defender or private defense counsel. Initial appearances are held Monday through Friday at 2:30pm. At initial appearance, the judge informs the defendant of his or her rights and addresses bail. The judge can release the defendant on recognizance with no conditions, release the defendant on recognizance with conditions, release the defendant to Missoula Correctional Services for pretrial supervision or set a monetary bond with or without conditions.<sup>4</sup> The judge may also order an additional screening and recommendation be completed by Missoula Correctional Services. Prior to screening a defendant, MCS consults with the defendant's defense attorney. Defense counsel is permitted to observe the screening if he or she chooses to be present. The turnaround time for the additional screening is typically one to two weeks.

For felony cases, Justice Court only has jurisdiction over the initial appearance. District Court arraignments are held no more than two weeks from initial appearance. If a financial condition of release is required at initial appearance in Justice Court and the defendant is unable to meet said condition the district court judge will address bail and any conditions of release at arraignment. If the defendant continues to be detained after arraignment the district court judge will address bail at every subsequent hearing through disposition of the case. At arraignment, the district court judge also reviews conditions ordered by the lower court for defendants who were released. District court judges have full discretion to modify conditions of release ordered by the initial appearance judge.

The original PSA report is provided to the district court judge as well as any additional screenings and recommendations by Missoula Correctional Services. It is important to note that according to MCS, orders for additional screening have decreased substantially since the inception of the PSA pilot program. Between January and June 2019 (6 months) MCS completed 45 screenings. In FY 19/20 (12 months) MCS completed 27 screenings. It is also important to note that the screenings from March 2020 to June 2020 of FY 19/20 were significantly lower due to

the decrease in arrests during the pandemic. The same is true for the first six months of 2021. MCS only screened four defendants between January and June 2021.<sup>5</sup>

If a defendant is ordered to MCS for supervision/monitoring a pretrial officer meets with the defendant and completes an interview and a screening questionnaire. The questionnaire allows for scoring of the nationally known Ohio Risk Assessment System-Pretrial Tool (ORAS-PAT). The ORAS-PAT provides a risk level and assists in identifying the needs of the defendant. The assessment questions outside of the ORAS-PAT that are used by MCS were developed internally and have not been statistically validated. MCS monitors compliance with conditions ordered by the court such as reporting by phone or in person, drug/alcohol testing, alcohol monitoring devices or GPS monitoring devices. MCS assigns a pretrial officer to each courtroom to provide updates to the court on compliance or non-compliance with conditions of release throughout the pretrial phase of the case.

## PSA Pilot Program Design and Functions

The PSA pilot project began in 2018 in five Montana counties; Lewis and Clark, Missoula, Lake, Butte-Silver Bow and Yellowstone. With grant funding from Arnold Ventures and technical assistance from Justice System Partners the Office of the Court Administrator hired four employees to complete the PSA on all bail eligible defendants arrested in the five pilot counties. The criminal history investigation and scoring of the PSA is completed prior to initial appearance and the report including recommendations for conditions of release is provided to the court administrator, judge, prosecutor and the public defender. Under the pilot program, each jurisdiction developed a Release Conditions Matrix. The Matrix was designed locally with input from the advisory committee. The advisory committee consists of criminal justice stakeholders involved in the state level pilot program and is not a function of each individual jurisdiction. The recommendations for release are just that, a recommendation. The Judge retains full discretion and is not required to follow the recommendation from the PSA.

In addition to providing the PSA report to the court at initial appearance, the grant requires data on pretrial outcomes to be collected so that research can be conducted, and the assessment tool can be validated using Montana data. The Office of the Court Administrator staff are limited to these two functions and they do not provide any pretrial supervision or monitoring.

Pretrial supervision and monitoring in Missoula is performed by Missoula Correctional Services, a non-profit corporation under contract with the county.

## Missoula Correctional Services Program Design and Functions

Missoula Correctional Services (MCS) is a non-profit organization that is under contract with Missoula County to provide services to the criminal justice system. MCS operates various programs; Misdemeanor Probation, Community Service, Sobriety and Accountability, Enhanced Supervision, Alternative Jail, Prerelease (residential program for state felony offenders) and Pretrial Supervision and Monitoring. Since this report is focused solely on pretrial services the design and functions of the other six programs was not evaluated.

Missoula Correctional Services began operating a Pretrial Supervision Program in 1998. The program was originally designed to provide screening and supervision/monitoring only by order of the court. The program was not designed to be a full-service pretrial services agency. Full service pretrial services agencies screen all newly arrested defendants for assessment, conduct a thorough criminal history investigation and make recommendations for release prior to initial appearances. High functioning agencies also provide additional screenings, continual reviews of defendants in custody as well as reviewing conditions for those released. These same agencies supervise and/or monitor compliance with conditions of release and track performance and outcome measures. See Appendix B for examples of pretrial services agencies that meet these criteria.

When a defendant is ordered to MCS for supervision he or she is required to pay a supervision fee, as well as additional fees for monitoring units and drug/alcohol testing. Defendants can request a fee waiver if he or she is unable to afford the fees. According to the MCS FY 19/20 annual report, twenty-one (21) defendants requested and were approved for a fee waiver. These waivers totaled \$21,635 (an average of \$1,034.24 per defendant). In the same year MCS collected \$44,171 in fees. Table 1 shows the FY 19/20 MCS fee schedule.



**Table 1**

Pretrial Supervision	\$25.00 per month
Testing (B.A.'s, U.A.'s, EtG's)	\$25.00 per month
Active GPS Tracking	\$10.00 per day
Soberlink Visual Breath Testing	\$10.00 per day
Home Arrest Monitoring	\$5.00 per day
TAD (Transdermal Alcohol Detector)	\$10.00 per day

Missoula Correctional Services has been the exclusive contractor to provide pretrial supervision and monitoring services in the county. Historically, the county did not issue an RFP for services since MCS was the only vendor available to provide pretrial services. However, in 2018 the Board of County Commissioners decided that an RFP should be issued to ensure transparency and accountability for taxpayers' funds. Missoula Correctional Services submitted a proposal including a three-year budget and was awarded the contract. Under the latest contract, MSC is required to submit an annual report each September.

### Summary of the PSA Advisory Committee Meeting

On June 29, 2021 members of the PSA Advisory Committee met and received a preliminary overview of the report. All stakeholders expressed considerable interest in, and support for, the development of evidence based pretrial practices in Missoula County. Some examples of evidenced based practices discussed were the use of the PSA, least restrictive conditions of release, providing differential supervision and sending court reminders via text messaging. Much discussion centered around the overuse of ankle monitors and drug/alcohol testing in Missoula County. The stakeholders acknowledged that the Missoula County criminal justice system must reinforce the use of nonfinancial pretrial release of low and moderate risk defendants by encouraging the greater use of nonfinancial alternatives and least restrictive conditions of release.

In addition to the conversation on the effects of restrictive conditions of release and supervision fees, there were a lot of process related questions about the logistics of how the

program will function, what data will be collected and how the data will be analyzed. This led to a well-received brain storming session with a high level of stakeholder participation. Overall, the meeting received positive feedback and proved beneficial for moving the project forward.

## Essential Elements of a High Functioning Pretrial Agency

The National Institute of Corrections published a document, “A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency”, that identifies eight (8) elements of an effective pretrial system. One of the elements is that systems must have a dedicated pretrial services agency. Ideally, the pretrial services agency should be a standalone organization. The National Association of Pretrial Services Agencies (NAPSA) recently published “Standards on Pretrial Release: Revised 2020”, in which the goals of bail are defined as maximizing release, court appearance and public safety. Standard 2.7 calls for all jurisdictions to establish a dedicated pretrial services agency. Standard 4.1 defines the purpose, management and function of a pretrial services agency.

The National Institute of Corrections provides direction to jurisdictions that incorporate pretrial functions under a “parent” organization or department such as probation, community corrections or court services. Pretrial services agencies within a “parent” organization or department should have:

- “a clearly-defined, pretrial service related function as its purpose;
- staff assigned only to pretrial-related work with pretrial defendants; and
- management that can make independent decisions on budget, staffing and policy.”<sup>6</sup>

Other organizations, such as the Bail Project, a non-profit advocacy organization that operates a national bail fund in over 30 jurisdictions throughout the United States, take a firmer stance on pretrial functions.

“Second, if jurisdictions opt to have government agencies coordinate supportive services, they should not house services within probation departments or other law-enforcement agencies. The sole functions of pretrial services should be to facilitate return to court and respond to the underlying needs that an accused person may have. People are far less likely to have honest conversations about issues in their lives such as drug addiction,

mental health, and anger management if these conversations are with someone they associate with law enforcement. In addition, pretrial services personnel serve people who are presumed innocent, many of whom will never be convicted. It is unrealistic to expect law enforcement agencies, who are used to working within the legal parameters applicable to people convicted of crimes, to respect the expanded rights of legally innocent people. Similarly, for-profit businesses should play no role in the provision of pretrial services, as this creates perverse monetary incentives that inevitably lead to abuse.”<sup>7</sup>

Pretrial services agencies provide objective information to the court to assist in the pretrial release decision and offer an array of services to support the criminal justice system. The fundamental role of a pretrial officer is to complete a review of all newly arrested defendants, including a thorough criminal history analysis, conduct a risk assessment using an objective, statistically validated tool, make a recommendation for release or detention to the court and provide monitoring and supervision services. Other duties may include indigence screening for determining a defendant’s eligibility for a public defender, mental health and substance abuse screening to develop supervision strategies and screening for specialty courts and diversion programs.<sup>8</sup> Pretrial Services programs also conduct jail population reviews to identify defendants held after initial appearance who could be safely released into the community as well as failure to appear (FTA) interventions to locate defendants who missed a court appearance and facilitate his or her return. Lastly, to measure effectiveness and usefulness to the overall system, pretrial services programs develop performance and outcome measures such as no new arrest and court appearance rates.

In evaluating Missoula County Pretrial Services, the six (6) elements of a high functioning pretrial services agency will be used as a basis for the evaluation and a guide for making recommendations:

### **1. Operationalized Mission**

Missoula Correctional Services has an overall organization mission statement as well as a separate mission for the pretrial supervision program, however, the mission statement is not consistent with current practices. Prior to the PSA pilot program MSC was the only agency that

provided information to the court to make release decisions. The mission statement should be updated to reflect what MSC's purpose is and how the agency serves the criminal justice system.

The Pretrial Supervision Program Mission is:

*"The mission of the Pretrial Supervision Program is to provide information to the Courts that assist the Courts in making a release decision of an incarcerated defendant and to monitor those defendants that are released for compliance to their conditions of release" <sup>9</sup>*

## 2. Universal Screening

Pretrial services agencies should screen all newly arrested defendants prior to initial appearance in order to provide objective information to the court for an informed release decision. The screening, at minimum, should consist of a full criminal history investigation utilizing local, state and national databases and the application of a validated risk assessment. National standards and best practices also call for an interview with the defendant to obtain contact information as well as additional objective information to assist the court in making a release decision. Furthermore, if information is obtained from the defendant that could affect pretrial supervision such as housing status or employment, that information should be verified independently. The interview must be voluntary and there must be a confidentiality rule governing any information obtained from the defendant. See Appendix C for an example of a confidentiality rule.

As mentioned earlier in this report, the pretrial process in Missoula County involves two different entities; the PSA screeners with the Office of the Court Administrator under the Supreme Court and Missoula Correctional Services. The PSA screeners are meeting the universal screening standard of conducting a full criminal history using local, state and national databases and applying a validated risk assessment, the PSA. MCS is conducting an interview with the defendant, however, the interview is not conducted until after the release decision is made, and is only completed on defendants ordered by the court to MCS for supervision.

### 3. Validated Pretrial Risk Assessments

Pretrial risk assessments provide objective, impartial information to the court regarding release recommendations. Actuarial pretrial risk assessments predict the probability of risk to the community by measuring criminal activity while on pretrial release and the risk of failing to appear in court. Risk assessments should equally classify defendants regardless of race, gender, ethnicity or financial status and the factors utilized in the instrument should be consistent with applicable state statutes. The purpose and intent of pretrial risk assessment does not extend to the period exceeding case disposition, nor should the assessment be used to determine financial bail amounts or detention.<sup>10</sup>

The PSA coordinator/processors are meeting this standard by utilizing the nationally known Public Safety Assessment (PSA). Missoula Correctional Services uses a combination of an internally developed assessment/screening guide that has not been validated and the nationally known Ohio Risk Assessment System-Pretrial Tool (ORAS-PAT). The ORAS-PAT was developed and validated by Dr. Latessa with the University of Cincinnati Center for Criminal Justice Research in 2011. The tool is used statewide in Ohio as well as in various jurisdictions throughout the country. MCS contracted with Dr. Ed Latessa to provide training to all staff in April 2019 and again in February 2021. The staff members who have been trained through the University of Cincinnati score the ORAS-PAT and provide the assessment score along with the internal scoring guide in a report to the court.

### 4. Sequential Bail Review

In a high functioning, full service pretrial program, continuous reviews of the pretrial jail population should be conducted to identify defendants who can safely be released into the community with minimal risk pending trial, specifically defendants held on a cash bond. For defendants with a “holder” (probation/parole detainer, immigration hold, etc.), pretrial services staff should investigate the nature of the hold and determine if the defendant can be released; or assist in expediting the process by which the holder can be resolved. For released defendants, pretrial services should develop a process to regularly review conditions of release. Modifications should be made based on defendant success or non-compliance.

Missoula County does not have any formal policies or procedures in place for continuous review of the pretrial jail population to identify defendants whose circumstances have changed. In practice, bail and bail conditions for incarcerated defendants are reviewed at every court appearance. MCS does not have any formal or informal process to review or modify conditions of release for defendants on pretrial supervision or monitoring. Conditions of bail for released defendants are not reviewed or modified unless there is a non-compliance issue and a violation is filed with the court. Modifications are reactive (when non-compliance occurs) versus proactive (preventing non-compliance by adjusting conditions to support success).

## 5. Risk-Based Supervision

The sole purpose of pretrial supervision is to ensure court appearance and minimize the risk to public safety. Pretrial supervision should never be punitive or viewed as holding the accused accountable. Supervision levels should follow the “risk principle”; low risk defendants should not be subjected to the same conditions as high risk defendants. Pretrial supervision should be individualized and the least restrictive conditions to ensure court appearance and public safety must be the norm. The Center for Effective Public Policy’s Advancing Pretrial Policy and Research (APPR) project recently published a series of research summaries related to pretrial supervision/monitoring practices.<sup>11</sup> They found that pretrial drug testing and/or EM/GPS monitoring did not improve outcomes such as court appearance and re-arrests and could lead to worse outcomes for defendants who were assessed as “more likely to succeed”, i.e. low risk. Furthermore, restrictive conditions such as drug testing and ankle monitors lead to an increase in technical violations and are costly to both the defendants and the supervision/monitoring agency.

Missoula Correctional Services supervises defendants ordered by the court. If a defendant has court ordered conditions in addition to pretrial supervision, the program will monitor compliance with said conditions. MCS does not have the discretion or authority to set conditions. When a defendant is ordered to MCS for supervision an officer will meet with the defendant and complete a questionnaire and assessment, however, the results of the assessment do not determine the level of supervision or conditions. The court orders the conditions and the level of

supervision, including frequency of contact. Based on conversations with MCS, most defendants on pretrial supervision are ordered by the court to drug test and/or wear a monitoring device (Soberlink, TAD, GPS or Home Arrest). The frequency of testing is determined by the judge or in some cases the supervising officer. MCS completes monthly and annual reports as required by the contract with the County. The reports document general information such as how many defendants are on active supervision, how many defendants were referred to the program, the number of urine samples collected, etc. The reports do not breakdown how many defendants are ordered to drug test or how many defendants are required to wear a monitoring device<sup>12</sup>, therefore it cannot be determined with the information provided whether supervision is individualized, or risk based. Anecdotally, based on conversations with MCS as well as other stakeholders it appears defendants are ordered to MCS for the purpose of drug testing and/or monitoring devices. A single day snapshot of the pretrial supervision caseload on July 22, 2021 showed that 72% of the 244 defendants on active pretrial supervision with MCS were ordered to wear a monitoring device or submit to random drug/alcohol testing.

According to data from June 2021, the most recent monthly report provided, there were 250 defendants on supervision at the start of the month and 38 new defendants ordered to the program. PSA scores for six of these defendants were not provided to MCS. Nine defendants were assessed as Level 3 Active, 12 were assessed as Level 2 Active and 11 were assessed as Level 1 Passive. Without data on what specific conditions were placed on each defendant by PSA score, it cannot be determined if supervision levels are appropriate. When looking at the drug testing data provided for February 2021 through June 2021, there were 1,612 urine samples collected, of which 70% tested negative. Without knowing how many of the approximate 250 defendants on supervision were ordered to drug test it cannot be determined if drug testing is over utilized as a condition or if certain defendants are drug tested at a high frequency each month. Regardless, if 70% of the samples are negative for all substances, it calls into question the purpose and effectiveness of drug testing many of the defendants ordered to do so. <sup>13</sup>

When looking at the overall success rate for FY 19/20, MCS reported that 64% of defendants completed supervision successfully and 36% of defendants had their release revoked by the court. The success rate for the partial FY 18/19 (January 2019 to June 2019) was 70% and

the revocation rate was 30%. Additional data was provided for the 37 defendants revoked for the partial FY 18/19:

- Sixteen (43.24%) failed to report for supervision and subsequently failed to appear before the court
- Eight (21.62%) were revoked due to use of alcohol, intoxicants or drugs
- Six (16.22%) were revoked due to being charged with a new crime
- Five (13.57%) were revoked due to electronic monitoring violations
- One defendant was revoked for not attending court ordered treatment

In addition to risk-based supervision, a best practice as defined in national standards and the essential elements, is making referrals and/or offering intervention services to address a defendant needs related to substance use disorder, mental health treatment, vocational services or housing. Service referrals and care coordination should be offered voluntarily and should not be a condition of a defendant's liberty. In the past, MCS spent more time with the defendants and made referrals for services and assisted defendants with housing, job searches, etc. In conversations with MCS, the reason they can no longer provide the level of service they would like is due to the increasing number of defendants ordered to electronic monitoring and the amount of time staff spend attending court. MCS does continue to provide resource information to defendants who are in need and will make referrals at the request of the defendant.

## **6. Performance and Measurement and Feedback**

In 2010, the National Institute of Corrections (NIC) Pretrial Executive Network identified the need for consistent data to track pretrial outcomes and agency performance across jurisdictions. The network commissioned a working group to develop suggested outcome and performance measures and mission critical data.<sup>14</sup> In 2021, the National Institute of Corrections (NIC) Pretrial Executive Network updated the suggested outcome and performance measures and mission critical data to reflect changes in the pretrial services field.<sup>15</sup>



It is critical that pretrial programs develop performance and outcome measures to evaluate effectiveness. One of the biggest challenges criminal justice systems throughout the country face is the lack of data, or the lack of centralized data. Although ahead of most jurisdictions, Missoula County is not immune to this challenge. In Missoula County, pretrial data is collected by various agencies and or county departments that all use different data systems. There is not a centralized location for pretrial data. For example, three of the most important outcome measures for evaluating a pretrial system or validating a risk assessment are the release, appearance and public safety rates.

In Missoula County, release data is collected by the jail booking system and by the three courts independently. The jail release data includes all releases (Municipal, Justice and District Courts) and includes all release types including probation, sentence serve outs, transfers to other agencies as well as pretrial release information by type of release; recognizance, pretrial supervision and money bond posted. However, the release rate for each court is not readily available and requires manual review. The court docket systems have data on bail decisions, but a release rate cannot be easily calculated since the court system also has case data on defendants who were cited or summoned to court.

Obtaining appearance rate data is also challenging. The PSA pilot program requires data to be collected on court appearances for defendants screened and assessed, however the data is reported by a sample of defendants and not on all defendants released from jail. MCS does not have access to the court database to track defendants who fail to appear. MCS staff are assigned to courtrooms to manually document when a defendant under their supervision fails to appear in court. This is extremely time consuming and not an effective utilization of resources.

### **Suggested performance and outcome measures from Measuring what Matters. 2<sup>nd</sup> Edition:**

#### **Outcome Measures**

**Release Rate:** the percentage of defendants who secure release pending case disposition.

**Appearance Rate:** The percentage of released defendants who make all scheduled court appearances pending case disposition.

**Public Safety Rate:** The percentage of released defendants who are not charged with a new criminal offense pending case disposition.

**Success Rate:** The percentage of released defendants who appear for all scheduled court appearances and are not charged with a new criminal offense pending case disposition.

### **Performance Measures**

**Universal Screening:** The percentage of defendant's eligible by statute and screened for release by the agency.

**Recommendation Rate:** The percentage of the pretrial services agency's bail recommendations that match its risk assessment results.

**Response to Defendant Conduct Rate:** The percentage of time the agency responds to defendant conduct regarding court-ordered release conditions.

**Pretrial Intervention Rate:** The percentage of outstanding bench warrants or capiases the agency resolves.

**Supervision Success Rate:** The percentage of released defendants who are compliant at case disposition with court-ordered conditions.

**Concurrence Rate:** The percentage of defendants whose court-ordered bail corresponds with their assessed risk level.

## **Recommendations**

### **1. A further evaluation of the pretrial system as a whole**

The pretrial process, from beginning to end,<sup>16</sup> in Missoula County should be further evaluated to ensure that national standards are met, specifically in the areas related to defendant interviews, sequential bail reviews, least restrictive conditions of release and differential supervision. The PSA pilot program is efficiently providing important information to the court at

initial appearance, however, there is no additional information obtained from the defendant to assist the judicial officer in making an informed decision on bail.

It is further recommended that the county partner with the local university or other research professionals to conduct empirical research on the effectiveness of pretrial release conditions such as alcohol/drug testing and ankle monitors. In addition to research on conditions, the county may want to conduct focus groups or a survey of defendants who have been ordered to MCS for monitoring and supervision.

Lastly, it is recommended that the MCS screening process be evaluated to determine why the turnaround time is one to two weeks. Pretrial programs such as Allegheny County, PA, Oakland County, MI, the state of New Jersey and the Commonwealth of Kentucky screen and prepare reports on all defendants within 4-48 hours of arrest.

## **2. Effective utilization of Resources**

Missoula Correctional Services utilizes a total of five staff to operate the pretrial supervision program, four officers and one supervisor. Staff are assigned to courtrooms to attend District Court on a regular basis. One of the purposes of attending court is to document when a defendant on supervision fails to appear in court. This duty is time intensive and takes away from monitoring and supervising defendants. It is recommended that MCS be granted access to the court database to track failure to appears. Furthermore, it is recommended that instead of in person court attendance, MCS staff provide supervision reports to the court, prosecutor and defense. By spending less time in the courtroom, staff can spend more time monitoring defendants, thus providing support and service referrals to assist defendants in being successful.

The supervision caseload at MCS is very low compared to other pretrial programs throughout the country. See Table 2. However, given the high percentage of the MCS caseload on monitoring devices, equal comparisons cannot be made to other jurisdictions. Monitoring defendants with GPS and other devices is labor intensive. Staff spend a lot of time reacting to alerts (some of which are false). If ankle monitors were reserved for higher risk, higher charge defendants in which no other conditions of release are sufficient to assure court appearance, staff could be reduced or, staff resources could be reallocated to provide meaningful supervision

and treatment/support referrals. The latest trend in pretrial services is moving towards a recovery model system of care rather than a compliance-based program which results in technical violations and bail revocations. By identifying defendants with substance use disorder and providing support and treatment options, defendants have a better chance of being successful not only during the pretrial phase, but long term.

**Table 2**

<b>Jurisdiction</b>	<b>Avg. Supervision Caseload</b>	<b>FTE assigned to supervision</b>	<b>Ratio</b>
Alleghany Co, PA	3,000	7	1:428.57
9 <sup>th</sup> Circuit Hardin Co, KY	301	2.5	1:120.40
Bernalillo Co, NM	445	5	1:89.00
Missoula Co, MT <sup>17</sup>	150.95	4	1:37.74

### **3. Stakeholder and Pretrial Officer training**

Missoula Correctional Services sends pretrial officers to the state Probation Academy for both initial training and continuing education. This training is geared more towards law enforcement and corrections. Although some general topics such as motivational interviewing, diversity and mental health supervision are important for a pretrial officer to learn, others are not helpful or relevant (probation and parole overview, firearms training, drug identification, defense tactics, etc.). It is recommended that MCS pursue pretrial specific training through the National Association of Pretrial Services Agencies (NAPSA) and the National Institute of Corrections (NIC). Both NAPSA and NIC offer an array of trainings through conferences, online webinar libraries and e-courses. From a system approach, many stakeholders, including MCS and the community would benefit from education about pretrial national standards, risk assessment, best practices and evidence-based treatment approaches to substance abuse disorder.

#### **4. Identifying key data elements**

A common theme throughout the country is the lack of accessible criminal justice data to support policy decisions. Often, data is collected independently across various agencies with no capacity to link the systems together. It is recommended that the CJCC collectively, using the NIC Measuring What Matters publication as a guide, determine what data elements should be collected, how the data will be collected and who will collect the data.

#### **5. Eliminate supervision fees**

The practice of charging supervision fees for defendant monitoring undercuts the fairness and equality of justice. Too often, a defendant is given a non-financial bail and released from custody only to be hit with mandatory fees which must be paid to pretrial services. It's no secret that America's pretrial population is overrepresented with those living in or near poverty. Financial terms of pretrial release such as supervision fees can negatively impact indigent defendants, often forcing an individual to choose between buying groceries or paying supervision fees. If supervision fees remain in Missoula County, it is recommended that the MCS replace the waiver request policy with a sliding fee schedule based on the ability to pay. The ability to pay inquiry should be part of the intake process and questionnaire for all defendants ordered to supervision.

## Appendix A

Tanya Campbell, Missoula County Crime Victim Advocate Division Manager

Jenny Daniel, Missoula County Community Justice Department Justice Initiatives Manager

Shantelle Gaynor, Missoula County Community Justice Department Director

Leslie Halligan, District Court Judge

Landee Holloway, Missoula County Justice of the Peace

Koan Mercer, Office of the Public Defender, Managing Attorney

Kirsten Pabst, Missoula County Attorney

Kim White, Missoula County Sheriff's Department Reentry Coordinator

## Appendix B

Allegheny County Pretrial Services 55<sup>th</sup> Judicial District of Pennsylvania

[Pretrial Services | Home \(alleghenycourts.us\)](https://alleghenycourts.us)

Pretrial Services Agency for the District of Columbia

[Pretrial Services Agency \(psa.gov\)](https://psa.gov)

Kentucky Pretrial Services

[Pretrial Services - Kentucky Court of Justice \(kycourts.gov\)](https://kycourts.gov)

Maine Pretrial Services

[Maine Pretrial Service](https://mainepretrial.com)

Oakland County Michigan Pretrial Services

[Pretrial Services | Programs \(oakgov.com\)](https://oakgov.com)

Multnomah County Pretrial Services Program

[Pretrial Services Program \(PSP\) | Multnomah County \(multco.us\)](https://multco.us)

Mesa County Colorado Pretrial Services

[Pretrial Services - Mesa County, Colorado](https://mesacountyco.gov)

Harris County Texas Pretrial Services

[Harris County Pretrial Services \(harriscountytexas.gov\)](https://harriscountytexas.gov)

Washoe County Nevada Pretrial Services

[Pretrial Services - Washoecourts.com/Pretrial Services](https://washoecourts.com/Pretrial%20Services)

## Appendix C

### Kentucky Rules of Criminal Procedure (RCr) Rule 4.08

#### RCr 4.08 Confidentiality of pre-trial services agency records

Information supplied by a defendant to a representative of the pre-trial services agency during the defendant's initial interview or subsequent contacts, or information obtained by the pre-trial services agency as a result of the interview or subsequent contacts, shall be deemed confidential and shall not be subject to subpoena or to disclosure without the written consent of the defendant except in the following circumstances:

- (a) information relevant to the imposition of conditions of release shall be presented to the court on a standardized form when the court is considering what conditions of release to impose;
- (b) information furnished by the defendant to the pre-trial services agency and recorded on a completed interview form shall be furnished to law enforcement officials upon request if the defendant fails to appear in court when required;
- (c) information concerning compliance with any conditions of release imposed by the court shall be furnished to the court upon its request for consideration of modification of conditions of release or of sentencing or of probation;
- (d) information relevant to sentencing or probation shall be furnished to the court upon its request for consideration in imposing sentence or probation;
- (e) at its discretion, the court may permit the probation officer, for the purpose of preparing the pre-sentence investigation report, and the defense attorney to inspect the completed interview form;
- (f) any person conducting an evaluation of the pre-trial release program may have access to all completed interview forms upon order of the Supreme Court;
- (g) all information obtained from the defendant and all information provided to the court shall be provided to the defendant's attorney;
- (h) information relating to a defendant's status as a military veteran may be shared with the Department of Veterans Affairs in order to facilitate the provision of services available to the defendant.

At the beginning of the initial interview with a representative of the pretrial services agency, the defendant shall be advised of the above uses of information supplied by the defendant or obtained as a result of information supplied by the defendant.

- (i) the risk assessment questions, level and score may be electronically accessed by the prosecutor and counsel for the defendant.

#### **Credits**

HISTORY: Amended by Order 2016-06, eff. 1-1-17; prior amendments eff. 1-1-13 (Order 2012-10), 1-1-03 (Order 2002-1), eff. 3-1-99 (Order 98-3), 1-1-85 (Order 84-2), 11-1-78, 1-1-78, 6-19-76; adopted eff. 1-1-63

Rules Crim. Proc., Rule 4.08, KY ST RCRP Rule 4.08

Current with amendments received through June 1, 2021.



## End Notes

<sup>1</sup> Lewis and Clark, Lake, Butte-Silver Bow and Yellowstone counties were the other four pilot sites. Flathead County was added in 2021 with no additional funding.

<sup>2</sup> National Institute of Corrections, (2017) *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*. NIC Accession Number 032831. Washington, D.C. U.S. Department of Justice. Available at <http://nicic.gov/library/032831>

<sup>3</sup> It is recommended that a further review of pretrial practices in the Municipal court be conducted to ensure that defendants with cases in this court have the same opportunities for pretrial release as defendants with cases in the other courts. Furthermore, the Municipal Court should be provided with a pretrial report and risk assessment to assist with making an informed release decision.

<sup>4</sup> There are certain alcohol offenses that statutorily require conditions of release such as alcohol monitoring

<sup>5</sup> Based on email correspondence with MCS, they are reporting that in August 2021 they have noticed an increase in screenings.

<sup>6</sup> National Institute of Corrections, (2017) p. 31 *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*. NIC Accession Number 032831. Washington, D.C. U.S. Department of Justice. Available at <http://nicic.gov/library/032831>

<sup>7</sup> The Bail Project, (2020) p. 22 *After Cash Bail: A Framework for Reimagining Pretrial Justice*. The Bail Project. Available at <http://bailproject.org/after-cash-bail>

<sup>8</sup> The Missoula County Attorney's Office implemented a diversion program in 2019 based on national standards and best practices. MCS does not provide any screening or other services to this program. The County Attorney's office employs a diversion coordinator that oversees the program.

<sup>9</sup> Missoula Correctional Services Standard Operating Procedures Section 12

<sup>10</sup> For more information about risk assessments in general, See Latessa, Edward J. and Lovins, Brian(2010) *The Role of Offender Risk Assessment: A Policy Maker Guide*, Victims & Offenders, 5: 3, 203 — 219, available at <http://faculty.uml.edu/chigginsobrien/44.327/TOPICS/The%20Role%20of%20Offender%20Risk%20Assessment%20PDF.pdf>; The Pew Center on the States, September 2010, *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders*, available at [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2011/Pew\\_Risk\\_Assessment\\_brief.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2011/Pew_Risk_Assessment_brief.pdf);

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Mamalian, C. A. (2011). *State of the Science of Pretrial Risk Assessment*. Washington, DC: Pretrial Justice Institute, available at [https://www.bja.gov/publications/pji\\_pretrialriskassessment.pdf](https://www.bja.gov/publications/pji_pretrialriskassessment.pdf); and Lowencamp, C. and E. Latessa, *Understanding the Risk Principal: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, Washington DC: National Institute of Corrections, 2004, available at <http://www.yourhonor.com/dwi/sentencing/RiskPrinciple.pdf>

<sup>11</sup> <https://advancingpretrial.org/appr/appr-resources/pretrial-research-summaries/>

<sup>12</sup> The annual reports nor the monthly reports include any data on the number of defendants with a monitoring device. The annual report lists the costs of monitoring equipment and the amount of fees collected from the defendants but it does not contain any data on how many defendants were required to wear a monitoring device or any data on technical violations.

<sup>13</sup> According to the FY 19/20 report of the 2,771 urine samples collected 70% were negative for all substances

<sup>14</sup> National Institute of Corrections. (2011). *Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field*. NIC Accession Number 025172. Washington, D.C.: U.S. Department of Justice. Available at <http://nicic.gov/library/025172>.

<sup>15</sup> National Institute of Corrections. (2021). *Measuring what Matters: Outcome and Performance Measures for the Pretrial Services Field*. 2<sup>nd</sup> Edition. NIC Accession Number 033331. Washington, D.C.: U.S. Department of Justice. Available at <http://nicic.gov>.

<sup>16</sup> It is recommended that the NIC essential elements of an effective pretrial system be used as a guide when further evaluating pretrial justice in Missoula County.

<sup>17</sup> MCS Pretrial program Annual Report July 2019 through June 2020