

Missoula County Attorney's Office

Annual Report for 2021

Greetings from the Missoula County Attorney's Office. 2021 was another eventful year as we continue our efforts to bring dangerous offenders to justice while providing sensible alternatives to low risk offenders like our award-winning Calibrate, an innovative prosecution-led diversion program, criminal mediation, and our successful treatment courts.

I am honored to serve on the National District Attorneys Executive Board of Directors and Chair the national Well-being Task Force for prosecutors, exchanging tools and solutions for emerging challenges in criminal justice.

Crime data suggests a marked increase in violent crime since the pandemic—particularly in interpersonal crimes—and we are slowly catching up on the COVID-induced trial backlog.

In the Civil Division, our in-house litigation unit has been busy and successful this year. The child dependent/neglect and involuntary commitment numbers are holding steady.

We continue making progress toward our long-term goals of working cooperatively together with our criminal justice and community partners; promoting transparency; and emphasizing human dignity toward all participants in the criminal justice process—victims, defendants, witnesses, and our staff.



Stay safe,

Kirsten H. Pabst

Missoula County Attorney

Calibrate program receives national accolades

The Missoula County Attorney's office is proud to host and facilitate the Calibrate, Montana's first prosecution-led pretrial diversion program, in operation since 2019. The program identifies lower-risk individuals early in the criminal justice process and provides opportunities to address the root causes of what brought them to the attention of law enforcement. Each participant who successfully completes an individualized case plan avoids a criminal conviction and the associated collateral consequences. Victims play a large role in who is accepted into Calibrate.



The National Association of Counties (NACo)

recently honored the Missoula office with a **National Achievement Award** during the summer of 2021. This prestigious award recognizes the Calibrate Program for its innovative approach to criminal justice.

In the last 12 months, 32 people entered the Calibrate Program with a 91 percent success rate.

Participants paid over \$25,000 in restitution, which was forwarded directly to the victims, and collectively completed 140 hours of community service work at sites such as *Habitat for Humanity*, *Secret Seconds* and *A Carousel for Missoula*. Significantly, during 2021 the total number of days participants were enrolled in Calibrate Pretrial Diversion, rather than being in jail, on pretrial supervision or on probation, was 10,982.

Many who engage in the Calibrate Pretrial Diversion Program have expressed their gratitude. One participant recently called the program a "life saver" for her. She was able to avoid a theft conviction while making restitution payments to compensate her victim. She remains gainfully employed while on diversion and continues to engage in beneficial therapy.

In December, the U.S. Department of Justice awarded the Missoula County Attorney's Office

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a \$600,000 grant to expand its Prosecution-led Pretrial Diversion program. Calibrate Coordinator, Ray Reiser said, "This grant will provide us with a powerful funding resource to address the growing challenges of hard drugs like methamphetamine and heroin. We are looking forward to implementing new and creative approaches to dealing with drug use via pretrial diversion, with a focus on treatment."

Criminal Division

The criminal division of the County Attorney's Office prosecutes all felonies committed in the City and County and all misdemeanor offenses outside of the city limits. The division consists of two units including the Special Victims' Unit (SVU), which prosecutes cases involving domestic violence, child abuse and sexual crimes and the General Crimes Unit ("Gens") which prosecutes major crimes, juveniles, drug offenses and justice court misdemeanors.



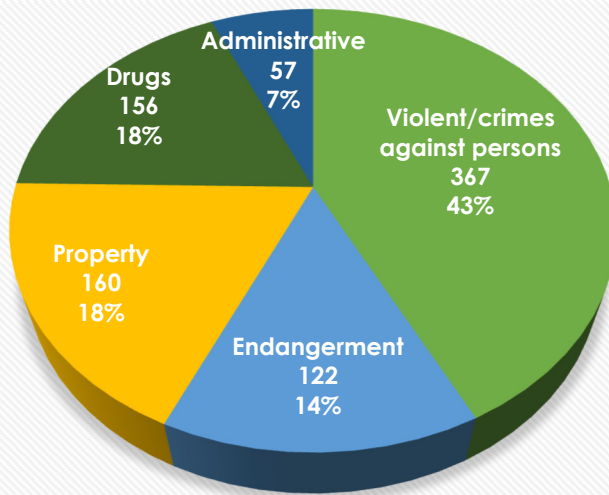
Most of our cases involved crimes against persons/crimes of violence (43%), followed by property crimes (18%), drug crimes (18%), endangerment crimes (14%), and administrative crimes (7%). Most violent crimes are committed against a partner or family member, as indicated below.

The total numbers, shown in the chart below, appear somewhat steady, but do not accurately reflect the growing backlog of uncharged cases and cases awaiting trial, which increased significantly since the beginning of the pandemic. Additionally, we've seen a shift toward more violent offenses. For example, in 2017, 20% of our cases were violent crimes. By 2020 that percentage had climbed to 27% and in 2021, 43% of our cases fell into the violent crime/crimes against persons category.

Crime type	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Felonies	662	609	653	662	671	736	764	747	739	723
Misdemeanors*				7519	7708	7569	7637	6202	4521	5824
Juveniles**				58	50	104	86	77	58	60
Diversion									41	32
Total Criminal cases				8239	8429	8409	8487	7026	5318	6639

Source: Justware Case Management, 2021; Full Court Enterprise, Missoula County Justice Court. *Misdemeanors--note that the calculation for misdemeanors has changed resulting in a higher but more representative snapshot and now includes all misdemeanors filed into Justice Court, including traffic tickets, regardless of whether a new prosecution case is opened in our office. **Juveniles formally charged by the County Attorney's Office weren't tracked until 2015.

Criminal complaints filed by type



■ Violent/crimes against persons
 ■ Endangerment
■ Property
 ■ Drugs
■ Administrative

Case type categories*:

Violent/Crimes Against Persons include interpersonal violence, non-family violence, homicide, stalking, violation of protective orders, child abuse, kidnapping, robbery, sexual assault, sexual intercourse without consent, sexual abuse of children, possession of child pornography, animal abuse and privacy in communications.

Endangerment Crimes include DUIs-4th or subsequent, criminal endangerment, child endangerment, endangering the welfare of a child, reckless driving, negligent and vehicular homicide/assault and arson.

Property Crimes include theft, burglary, embezzlement, elder exploitation, forgery, trespass and criminal mischief.

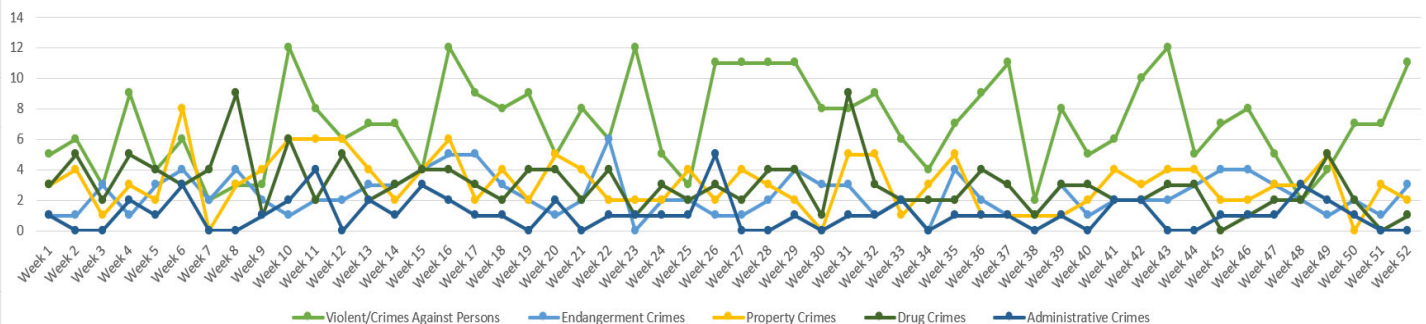
Drug Crimes include possession, distribution, production, fraudulently obtaining dangerous drugs and possession of property subject to forfeiture.

Administrative Crimes include custodial/parenting interference, obstructing justice/peace officer, failure to register as sexual or violent offender, tampering with evidence, destruction of a communication device, resisting arrest, escape, bail jumping, disorderly conduct and various weapons violations.

* Crime Types for purposes of this chart do not include traffic tickets

Source: Justware Case Management, 2021

Crime classifications by date



[Homicides and violent crimes increased throughout Montana during the pandemic.](#) Missoula crime numbers are consistent with and reflect the state and national surge in violence crime over the past two years. We handled 10 homicide cases in 2020, compared to just 5 in 2019 and 4 in 2018.

In addition to a major uptick in drug-related violent crime and unlawful possession and use of firearms, the dangerous drug fentanyl has become a major issue in Missoula in 2021, claiming several lives due to overdose hospitalizations and deaths.

DUI Fatalities

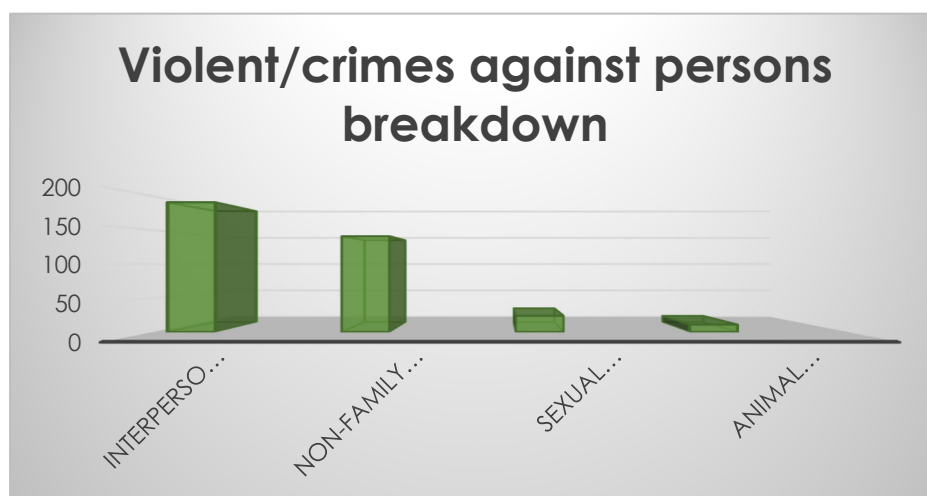
DUI—Drug and alcohol-related vehicular deaths in the Missoula district remain a challenge. In 2020, there were 213 deaths on highways across Montana, compared to 182 in 2018. In Missoula County, there were 24 deaths, consistent over the past three years. Statewide, 45% of all crash-deaths were alcohol related and 36% were drug related, some were both. Missoula DUI deaths, on average, significantly outnumber homicides in our jurisdiction every year. Fatality crash information for 2020.



Domestic Violence

The number of new interpersonal violence cases—domestic violence and child abuse—constitutes the majority of crimes against persons. In the Crimes Against Persons category, we charged 191 such cases; 141 non-family violent cases; 24 involving allegations of sexual assault—adult and child; 11 animal cruelty cases.

As noted above, domestic violence is increasing in number and severity. Strangulation cases and domestic homicides are increasing in frequency. These cases consume significant



resources and pose an enormous challenge for law enforcement. Local officials, under the leadership of Missoula Police Detective Nate Griesse, are developing the Missoula Countywide Strangulation Protocol to help curb the incidents and reduce risk to victims. Detective Griesse attended the Advanced Course on Strangulation Prevention, recently joined the Training Institute on Strangulation Prevention as a faculty member for national

training and serves on their legal advisory committee. The new protocol will embody a community-wide victim-centered response to domestic violence as best-practice to prevent domestic homicides.

The Missoula County Attorney's Office proudly sponsors the **Annual Domestic Violence Awards**, honoring excellence in those who respond to interpersonal violence and build better systems. Cindy Weese, Executive Director of the YWCA, was awarded the Judy Wang Lifetime Achievement Award. The red silhouettes in the background symbolize the Silent Witnesses--women who have lost their lives to domestic violence in our community.



Cindy Weese receives the Judy Wang Lifetime Achievement Award

Recipients honored:

Missoula City Peace Officer of the Year – Ben Graupmann
Missoula County Sheriff's Dept. Peace Officer of the Year – Zachary Sargent
Volunteer of the Year – Kate Bernot - YWCA
Prosecutor of the Year – Brian Lowney with MCAO
Educator of the Year – Elizabeth Hubble with U of M
Social Worker of the Year – Lisa Tipps
Victim Liaison of the Year – Connie McDonald with DOC
Human Services Counselor of the Year – Tawnya Cazier
Healthcare Worker of the Year -- Monica Brooke, First Step Resources
Judy Wang Lifetime Achievement Award, Cindy Weese



Case Updates



Johnathan Bertsch, received four consecutive life sentences, without the possibility of parole, for shooting four people, killing two and permanently injuring two, including Trooper Wade Palmer.



Terrance Roberts was convicted at trial for attempting to kidnap a 16 year-old victim at Brennan's Wave. Prosecutors Mac Bloom and Brittany Williams presented the case to the jury. Roberts was sentenced to fifteen years in the Montana State Prison.



Zakai Houk was convicted of deliberate homicide for shooting a man in the head over a marijuana transaction. Following a lengthy contested sentencing hearing, the court imposed a life sentence.



Darnell Revis was sentenced to 70 years in prison with 20 suspended after being convicted of killing her uncle with a baseball bat.

Nancy Wright, who stabbed and killed her neighbor as he slept, was committed to the state hospital for 20 years after a court found her guilty but mentally ill.

Esperanza Trevino was charged with careless driving resulting in death, after hitting a motorcyclist while looking at her cellphone. Prosecutor Brandon Zeak described the creative sentence in the case. "It was a long process, but the Defendant accepted responsibility. She was required to draft a letter to the family of the deceased on how the crash impacted her life and the lives of the family. She created a video to present to students taking the Alive at 25 and Traffic Education programs about the fatal consequences of distracted driving. The

"The victim's family was thrilled with the result and, after a very emotional sentencing, all thanked me for all my hard work and let me know that I helped them get closure and justice. That was an awesome feeling, and a huge reminder of why I do this."

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Charles Covey, aka Jesse Nitsy, is facing a deliberate homicide charge for allegedly pushing a man out of his wheelchair and killing him with a blunt instrument. Lead Attorney Brian Lowney is prosecuting the case. Trial has not yet been set.

Christopher Newrider, faces deliberate homicide charges for allegedly shooting and killing Sundance Hernandez in a parking lot of an apartment complex. Jury trial is set for March 30, 2022.

Angela Tess Fallan, is charged with deliberate homicide for allegedly shooting and killing her ex husband while children were present in the house. Trial by jury is scheduled to begin June 13, 2022.

Staryal Johnston is facing deliberate homicide charges for allegedly killing his wife by strangulation. He was arrested after an 11-year-old child called 911 to seek help for her mother that was being abused. Trial has not yet been scheduled.

Leannah Gardipee is in custody awaiting trial for allegedly killing her two small children. Trial has not yet been set.

Colton Merritt is also in custody awaiting trial for allegedly killing his father with a firearm. Trial is set to commence in early April.

Civil Division

The Civil Division of the County Attorney's Office includes our Civil Litigation Unit, Child Protection Unit and Involuntary Commitment Unit.



Civil Litigation Unit

The primary role of the civil litigation division is to advise the Missoula County Board of County Commissioners, county departments, and local boards, and to defend lawsuits filed against Missoula County. Civil attorneys provide legal analysis and assistance to the Commissioners and to over twenty county departments and public boards. One of our attorneys is assigned to almost every county department, division, and citizen board that serves under the Commissioners' oversight, from the County Elections Administrator to the Zoning Board of Adjustment. The relationships our attorneys foster throughout the county help ensure best professional practices. Our attorneys also provide legal representation to entities pursuant to state law, such as the Missoula City-County Board of Health, Missoula Conservation District, and rural fire districts.

Our in-house defense model saves significant government resources by defending most claims against the county rather than paying outside counsel defense fees. In 2021, our civil deputies had an active caseload of over twenty civil lawsuits that they defended, in addition to their other duties, successfully resolving several suits in the last year.

Missoula County continues to grow and so did our Civil Litigation Unit in 2021 when we added a fourth attorney in September. The division also moved its offices in September to an off-site location to accommodate the growth and make room for an expanding staff in the County Attorney's Office.

Child Protection Unit

In 2021, Missoula County Attorney's Office Child Protection Unit filed or received a total of 93 new child protection cases. The primary causes of abuse and neglect of children in our



community continue to be the result of parental substance abuse, specifically methamphetamine use but we are also seeing increasing cases involving fentanyl and heroin use, exposure of children to dangerous drugs and/or the exposure of children to intimate partner violence. The majority of our child protection cases involve parental substance use resulting in the physical neglect of children, along with co-occurring intimate partner violence. We have also seen an increase in physical neglect resulting from some parents' significant mental health instability, often with co-occurring substance use.

Child Protection	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Cases filed by year	110	133	130	173	191	195	118	109	94	93

Source: Justware Case Management, 2012-2021

Involuntary Commitment Unit

In 2021 we filed fewer petitions and committed fewer people to the Montana State Hospital than in 2020. We also had more successful diversions to local facilities for short-term treatment. The number of contested hearings was only slightly smaller than last year. The number of repeat respondents with multiple petitions remained steady during the pandemic.

Our community partners--Providence Center/NBMI and the Western Montana Mental Health Center's crisis houses--again proved to be invaluable, often taking difficult cases both for emergency detention and for diversions, preventing otherwise inevitable commitments to the state hospital.

This year we contracted with United Minds Mental Health Providers to provide evaluations and expert witness testimony when formal proceedings are necessary. They are outstanding evaluators and expert witnesses and consider the dignity and due process rights of respondents in all aspects of their work. They are familiar with the local partners, processes, systems, and resources which makes the day-of-hearing process smoother for respondents, the court, our office and the public defender.

Involuntary Commitments	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Cases filed by year	111*	115*	231	257	246	240	300	270	284	267

Source: Justware Case Management, 2012-2021