

The Supreme Court of Montana
Office of the Court Administrator

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TO: Pretrial Pilot Project Stakeholders
FROM: Beth McLaughlin, Court Administrator
RE: Pretrial Project Update

As we pass the second year of full implementation of the Public Safety Assessment and our most recent Statewide Advisory Committee meeting, I wanted to share an update about the program and the Committee's goal over the next year.

As a reminder, the program is funded on a one-time-only basis through June 2021 and includes essentially two components. The first is the Arnold Foundation's pretrial risk assessment (PSA), which is conducted centrally for detained defendants within 24 hours (or 48 hours on weekends) of the arrest. Counties using the PSA include Lewis and Clark, Yellowstone, Butte Silver Bow, Missoula, Lake, Flathead, and Cascade.

The second component involves funding for the five original pilot counties to develop and implement pretrial supervision programs locally. Programs are given wide latitude to ensure the pretrial program meets the need of a local community. The five original pilot counties have developed a variety of creative methods for managing released defendants.

Gathering and reporting data about the use of the PSA and pretrial services has been challenging. The Advisory Committee made a clear decision in the first year to deploy as much funding as possible to our county partners for services, which means the data reporting system is not as robust as it could be had we allocated more funding to it rather than services. However, we are getting closer to having data albeit with some "noise." Attached you will find two documents summarizing the data collection process and outlining data collected on closed cases as of June 2020 (i.e. those cases in which a final court disposition has been entered).

Generally, the Advisory Committee was pleased with the number defendants released pretrial. However, the Committee members want to continue moving in the direction of releasing more defendants pretrial especially if a defendant is in detention with a low bond. The Committee was very impressed with several county-specific orders issued during the COVID-19 pandemic to prevent pretrial incarceration.

The Advisory Committee has asked the working committee to look at several of these orders and make recommendations about whether something similar can be adopted on a statewide basis. (As a reminder, the working committee is comprised of two members from each county from a variety of disciplines.) They will start looking at this possibility at a phone meeting on September 8th. We expect this will involve a robust discussion before a recommendation goes back to the Advisory Committee and eventually the Supreme Court.

Thanks to all of you again for your efforts with this project especially considering the major public health issue everyone is managing. I appreciate your open communication and suggestions.

Pretrial Diversion Program Project Overview

June 2020

- ❑ The program, required by the 2017 Legislature, established the use of an evidence-based detention risk assessment and recommendations for managing defendants who are released awaiting trial. The program was funded again on an OTO basis by the 2019 Legislature.
- ❑ **The project goals continue to be maximizing public safety, maximizing court appearances, and maximizing the appropriate use of release and detention.**
- ❑ The evidence-based risk assessment in use is the Arnold Foundation's **Public Safety Assessment**, which was adapted for Montana. The PSA is a tool to analyze each defendant's current and prior criminal conduct and previous failure to appear in court. The research-based factors, including a focus on violent offenses, provides a judge with information about whether a defendant can be successful in the community.
- ❑ Montana components of the PSA, such as the violence list, were developed by a Montana working group comprised of county attorneys, public defenders, law enforcement, judges, and others. A Montana Decision-Making Framework guides – but does not dictate – release conditions. The working group continues to meet and tweak the Montana product.
- ❑ The program budget is \$750,000 a year. Seventy-five percent of the budget is allocated to the five pilot counties. The remaining budget covers the cost of the PSA processors, a part-time program director, and the case management system used to process and report the PSAs.
- ❑ The five original pilot counties are Lewis and Clark, Butte Silver Bow, Lake, Missoula, and Yellowstone County. Flathead and Cascade counties have also started using the PSAs in the last year.
- ❑ Counties involved in the project receive funding to assist defendants awaiting trial to remain law-abiding, at work, and participating in necessary support services. Judges have the tools necessary to release defendants while maximizing public safety and ensuring defendants appear in court.
- ❑ Tools include court reminders, check-ins, electronic monitoring, drug testing and limited use of money bond depending on what is required for each defendant.

Pretrial Diversion Program Data Overview June 2020

- Data is collected using the AutoMon case management system. The data still contains "noise" and will continue to need refinement. (*Please note that percentages were rounded and may not add to 100%.*)
- The attached report captured all cases with a final disposition between 1/1/2019 and 12/31/2019. During that time-period, 2,869 PSA-related cases were disposed.
- About 80% or 2,289 defendants were released pre-trial from detention. Of those, about 60% were released on their own recognizance. The other 40% had some form of cash bail required for release.
- Of the defendants not released pre-trial, 19% were a level 1 on the PSA, 32% were a level 2 and 49% were a level 3.
- For defendants released pre-trial, 88% reported to their court appearances. (***Please note this reflects cases in which a warrant was issued for the failure to appear.*) In the closed cases, 82% of the defendants remained law-abiding, 15% had a new misdemeanor, and 9% had a new felony. Of the new charges, 2% were violent offenses under the violence list.
- County-level data will be provided to each county for local analysis.
- The OCA processed 5,036 additional PSAs in this time period but only 4,330 went forward on active cases. The other cases were not counted because the charges were dropped or the case involved a party already under supervision.
- The OCA does not maintain or collect county jail data. Thus, it is difficult to assess the impact on overall jail populations, which include not only pre-trial defendants but people convicted who are awaiting a Department of Corrections' placement, serving a misdemeanor sentencing, or awaiting the outcome of a probation violation. Several detention facilities also house federal inmates.
- The OCA will continue to refine the data collection and reporting with our partner counties.

**Montana Judicial Branch
Pretrial Performance Measurement Summary
Cases with PSA disposed between January 1, 2019 and December 31, 2019**

	Statewide	Butte Silver Bow	Missoula	Lewis and Clark	Lake	Yellowstone
% released pretrial	80%	90% (769)	87% (241)	84% (623)	70% (115)	64% (542)
% of those released who were released OR	60%	54%	69%	70%	50%	53%
% remaining in jail designated as a PSA level 3	49%	44%	46%	39%	30%	57%
% released who did not have pretrial FTA warrant	88%	95%	89%	89%	94%	73%
% with a new offense while on pretrial	18%	6%	14%	22%	10%	27%
% with a new felony offense while on pretrial	9% (197)	4% (30)	8% (22)	9% (68)	4% (7)	13% (70)
% with a new violent offense (m/f) while on pretrial	2% (55)	1% (10)	3% (7)	1% (8)	1% (2)	5% (28)

Data is still in draft form and may be modified as refined centrally and by counties. Numbers are rounded.