

Montana Pretrial Decision-Making Framework (DMF)

Revised October 2018

Decision 1: The Judicial Officer Decides Pretrial Release or Temporary Detention During the Initial Appearance Hearing

During the initial appearance hearing, the judicial officer (Justice of the Peace, Municipal Court Judge, City Court Judge, District Court Judge) decides whether the defendant's charges meet criteria for a capital offense.

- If no, then the judicial officer orders the defendant to be released with applicable conditions. Go to Decision 2.
- If yes, then the judicial officer orders the defendant to remain in pretrial detention on a no bond hold until a proof is evident or the presumption great hearing occurs in court. Go to Decision 3.

Decision 2: The Judicial Officer Decides Pretrial Release Conditions

1. The judicial officer sets least restrictive release conditions consistent with the matrix below.¹ The judicial officer has the discretion to deviate from the matrix's presumptive release conditions because of circumstances pertaining to the defendant and/or the case. These circumstances may, but not necessarily do, include:
 - The defendant's charges are very serious or violent in nature; or
 - The defendant's Public Safety Assessment (PSA) violence flag is scored as Yes.

When these circumstances are present, the judicial officer has the discretion additionally to impose a reasonable secured financial condition.

When the defendant's charges are a second or subsequent Driving Under the Influence (DUI), the judicial officer has the discretion to order additional release conditions (e.g., Substance Testing, Other Case-Specific Conditions).

When the defendant's charges are Partner or Family Member Assault (PFMA, or § 45-5-206) or Strangulation of Partner or Family Member (§ 45-5-215), the presumptive release conditions automatically default to at least Active Pretrial Monitoring Level 2.² Additional release conditions (e.g., No Contact Orders, Other Case-Specific Conditions) may also be ordered.

¹ These presumptive release conditions are based on how the Montana Pretrial Advisory Committee members have presumptively allocated pretrial monitoring resources to a defendant who has a given score combination on the Public Safety Assessment and/or other circumstances pertaining to the defendant and/or the criminal case.

² If the PSA scores are associated with presumptive release conditions of Pretrial Monitoring Level 1, Passive, the default release conditions listed in the PSA Report are automatically adjusted upwards to Active Pretrial Monitoring, Level 2. If the PSA scores are associated with Active Pretrial Monitoring, Levels 2 or 3, the presumptive release conditions remain the same.

Matrix of Presumptive Pretrial Release Conditions

		PSA's New Criminal Activity Scaled Score					
PSA's Failure to Appear Scaled Score	1	2	3	4	5	6	
1	Pretrial Monitoring Level 1, Passive	Pretrial Monitoring Level 1, Passive					
2	Pretrial Monitoring Level 1, Passive	Pretrial Monitoring Level 1, Passive	Pretrial Monitoring Level 1, Passive	Pretrial Monitoring Level 2, Active	Pretrial Monitoring Level 2, Active		
3		Pretrial Monitoring Level 1, Passive	Pretrial Monitoring Level 1, Passive	Pretrial Monitoring Level 2, Active	Pretrial Monitoring Level 2, Active	Pretrial Monitoring Level 3, Active	
4		Pretrial Monitoring Level 1, Passive	Pretrial Monitoring Level 1, Passive	Pretrial Monitoring Level 2, Active	Pretrial Monitoring Level 2, Active	Pretrial Monitoring Level 3, Active	
5		Pretrial Monitoring Level 2, Active	Pretrial Monitoring Level 2, Active	Pretrial Monitoring Level 2, Active	Pretrial Monitoring Level 3, Active	Pretrial Monitoring Level 3, Active	
6				Pretrial Monitoring Level 3, Active	Pretrial Monitoring Level 3, Active	Pretrial Monitoring Level 3, Active	

The table below summarizes specific presumptive release activities and conditions for the various pretrial monitoring levels.

Specific Presumptive Release Activities and Conditions for the Various Pretrial Monitoring Levels

Presumptive Release Activities and Conditions	Monitoring Level 1, Passive	Monitoring Level 2, Active	Monitoring Level 3, Active
Minimal Conditions	Yes	Yes	Yes
Court Reminders	Yes	Yes	Yes
Criminal History Checks Once per Month	Yes	Yes	Yes
Check-In Once per Month		Yes	
Check-In Twice per Month			Yes
No Contact Orders		If Court Ordered	If Court Ordered
Substance Testing		If Court Ordered	If Court Ordered
Electronic Monitoring		If Court Ordered	If Court Ordered
Secured financial conditions		If Court Ordered	Presumptive unless a minor offense
Other Case-Specific Conditions		If Court Ordered	If Court Ordered

- Minimal Conditions = The defendant shall appear in court for all hearings and abide by all laws.
- Court Reminders = The defendant shall read or listen to all court date reminders and reply if requested.
- Criminal History Checks = The defendant’s criminal history will be checked for new criminal charges at least once per month.
- Check-In = The defendant will check-in with a pretrial case manager at least once or twice per month. Check-ins may occur, at the discretion of the case manager, in-person or be done through telephone or videoconference.
- No Contact Orders, Substance Testing, Electronic Monitoring, and Other Case-Specific Conditions = If one or more of these conditions are court ordered, the defendant will comply, and the case manager will monitor the defendant’s compliance.

2. After release conditions are set, the defendant may or may not be physically released from custody on the current case. If the defendant does not have a warrant or hold from another case, then the defendant is physically released. If the defendant does have a warrant or hold, then an authorized person notifies the other court of jurisdiction or designee (e.g., local jail) of the defendant's authorized release on the current case and potential need for transport to that court or jurisdiction.

Decision 3: The Judicial Officer Decides Pretrial Release or Enduring Detention During a Proof is Evident or the Presumption Great Hearing

During the proof is evident or the presumption great hearing, the judicial officer decides whether the defendant will be released or detained prior to trial.

- If detention, then the defendant is ordered detained (i.e., denied release or denied bail) until case disposition or until circumstances change (e.g., charges are dropped, not filed, or lowered such that the charges are no longer capital offenses; a judicial officer finds that the defendant's pretrial risk has sufficiently lowered or could be reasonably managed if the defendant were released). The framework process ends.
- If release, then the judicial officer orders the defendant to be released with applicable conditions. Go to Decision 2.