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**Office of the Court Administrator**

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# Administration, Scoring and Reporting Manual

# Montana Public Safety Assessment (PSA)

# **Administration, Scoring and Reporting Manual for the Montana Public Safety Assessment (PSA)**

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## Introduction

It is the **mission** of the pretrial pilot project to demonstrate to the Montana Legislature, Montana's criminal justice system, defendants, and the citizens of Montana the value of a pretrial program. The Public Safety Assessment (PSA) was selected to serve as the foundation of the project in the effort to systematically and consistently assess issues related to release and detention decisions of defendants. The PSA is an evidence based pretrial risk assessment instrument selected by Montana's Supreme Court for use in Montana. The PSA is designed to improve the pretrial assessment processes piloted in Yellowstone, Missoula, Lewis and Clark, Silver Bow and Lake Counties. Flathead and Cascade Counties participated in the project and utilized the PSA but received no state resources for case management or the supervision of defendants. Flathead and Cascade Counties no longer participate in the pilot program.

This manual was developed by the Office of the Court Administrator's Pretrial Implementation Team, the Montana Pretrial Working Committee with support from the Justice System Partners/Arnold Ventures. It is the goal of this manual and the Montana Judicial Branch to provide information and direction to counties participating in the pretrial pilot project. This manual is designed to guide the efforts of the Office of the Court Administrator and the pilot/participating counties to enable a reasonable and safe alternative to detention for defendants awaiting a trial or other court action. The PSA along with this manual is intended to support the efforts to ensure court orders are enforced, the community is protected, and services are provided to the defendant.

### Purpose of Montana's Pretrial Project

1. Assist the court in making prompt, fair, and effective release/detention decisions. (Maximize Public Safety)
2. Provide notifications and monitoring to minimize the risk of the defendant's non-appearance at court proceedings (Maximize Court Appearances)
3. Aid defendants in achieving success by maintaining a crime free lifestyle while waiting for future court appearances by assisting with treatment/support services. (Maximize the appropriate use of release, release conditions, detention, and public resources)

The Montana pretrial project was granted technical support by the Laura and John Arnold Foundation with direct assistance by Justice System Partners. In partnership with leading criminal justice researchers, the Laura and John Arnold Foundation (LJAF) developed the Public Safety Assessment (PSA) to help judges gauge the risk that a defendant poses. This pretrial risk assessment tool uses evidence-based, neutral information to predict the likelihood that an individual will commit a new crime if released before trial, and to predict the likelihood that the defendant will fail to return for a future court hearing. In addition, it flags those defendants who present an elevated risk of committing a violent crime.

#### Facts about the Public Safety Assessment (PSA)

- The PSA was created using the largest, most diverse set of pretrial records ever assembled 1.5 million cases from approximately 300 jurisdictions across the United States. Researchers analyzed the data and isolated factors that most often exist for defendants who commit a new crime, commit a violent crime, or fail to return to court if released before trial.
- Data has been collected from 300 different cities, counties, and 7 state court systems (Colorado, Connecticut, Florida, Maine, Ohio, Virginia, and Kentucky) and the District of Columbia
- Data was collected from Federal Pretrial services in all 50 states
- No face-to-face interview with defendant is required
- Assessment consists of 9 risk factors that will accurately determine a defendant's likelihood to: commit a new offense, appear at future court proceedings, and flag violent offense while on pretrial release status
- Assessment information is similar to what is collected during a defendant's initial booking
- Assessment administrator must be accurate in reading and interpreting the CJIN/NCIC and the Montana Court Data system
- The PSA is objective. It does not consider subjective factors such as: race, gender, income, religion, education, home address and family
- PSA promotes consistent application of release conditions using a decision-making framework, DMF, developed by each state/jurisdiction
- The PSA minimizes dual system errors (releasing high risk and detaining low risk defendants)
- LJAF and justice system partners have influenced the field of pretrial services and assessments with the PSA
- Neutral factors can help judges gauge the risk that a defendant poses, they do not impede a judge's discretion or authority in any way. ***The decision about whether to release or detain***

*a defendant always rests with the judge regardless of the scores produced by the risk assessment*

Post-conviction related studies have shown

- Treatment resources targeted toward low-risk offenders produce little if any positive effect
- Criminal history risk factors, those obtained without an interview, are the strongest predictors of FTA and NCA (new research)
- Pretrial risk assessments that contain only non-interview dependent risk factors are equally predictive as those that include interview –dependent risk factors.
- Research shows the criminal history/system involvement factors are usually the stronger predictors

## **Glossary of Terms**

AutoMon – Management information system, selected by Montana to aid in notification and tracking of defendants involved in the pretrial project. The system is available to the pilot/participating counties for the management of pretrial cases.

Court – District court or court of limited jurisdiction.

Defendant – A person who has been arrested for a felony or misdemeanor offense and has been charged with the offense in a pretrial pilot/participating county.

FTA- Failure to Appear. An FTA occurs when a defendant chooses not to attend a scheduled court proceeding. The inaction of the defendant leads to the issuance of a warrant by the presiding judge.

Participating County- A Montana County that has entered into an agreement with the Office of the Court Administrator to utilize the PSA and the services provided by the OCA's processing staff. Participating counties are not part of the original pilot project and receive no state funds for case management and defendant supervision.

Performance Measurement Report (PMR) - The formal report adopted and approved by the Office of the Court Administrator to measure the outcomes of defendants participating in the pretrial project.

Pilot County – One of the five counties selected to pilot the pretrial project. The five counties include: Yellowstone, Missoula, Lewis and Clark, Silver Bow and Lake.

Pretrial Case Manager – The individual assigned by a pilot county and given the authority to aid a defendant during pretrial release.

PSA (Public Safety Assessment) – Instrument approved by the Judicial Branch to be utilized in determining the suitability for pretrial release in all pretrial pilot counties.

Pretrial Services – Programs designed to assist defendants during pretrial release.

Processor – The person or persons hired by the office of the Court Administrator to assess defendants, via a PSA, who are referred by a pilot/participating detention facility staff prior to an initial court appearance.

Program Success – A successful defendant of the pretrial project will be one who: makes all court scheduled court appearances, complies with all requirements imposed during the pretrial release program and abides by all local, state, and federal laws during the pretrial release period.

Quashed- When a decision is made by the court that a warrant issued on a defendant is no longer valid or acted upon.

Risk – Measurable factors that correlate to a pretrial defendant’s probability of committing a new crime or failing to appear while on pretrial release.

Supervision – A way to monitor the activities and behavior of a person who is released to the community by the court.

Supervision Plan – The signed agreement that details the requirements of the defendant for release.

Target Population – All defendants who allegedly committed an offense in one of the pilot/participating counties and who are pending judicial action within the next 12 months. Targeted defendants must be eligible for bail under Montana Code Annotated 46-9-401 and 46-9-301.

Warrant - A document issued by a judge to arrest an individual for failure to follow direction and/or conditions established by the court while the individual’s court action is pending.



## **County Notification Process**

The success of Montana’s pretrial project hinges on open and on-going communication between each pilot/participating county. There are two documents adopted and approved by the OCA and representatives of each county.

1. **Interagency Agreement (IA)** The county commissioners and the Supreme Court Administrator sign off on this agreement at the inception of the project in each county. The IA contains specific language to ensure that the OCA is notified of actions related to defendants in the county, Specifically, the IA indicates the following are required “duties and responsibilities” of the county:

Ensure that a method of defendant notification for all court appearances is developed and maintained as part of the pretrial program.

Enter arrest, detention and release data on all individuals arrested in a in a pilot/participating county for an offense into the AutoMon information system.

2. **Work-flow Document.** As part of each pilot/participating county stakeholder meetings, orientation meetings a draft work-flow document is presented to stakeholders. Each individual document is developed jointly between representatives from the county and the OCA. The document portrays a step-by-step procedure that is activated upon the arrest and booking of a defendant. The procedure outlined in the work-flow document includes initial notification to the OCA processors that a defendant was arrested and booked and a PSA needs to be prepared.

Attached is a sample of the “work-flow” document that indicates the county’s required notification procedures. The participating county is required to complete steps 1-3, 6-9 and step 11 of the “workflow” document.

**SAMPLE**  
**Defendant Public Safety Assessment (PSA) Work Flow**  
Yellowstone County Pretrial Pilot Program

OCA Processor – staff in the Office of the Court Administrator that will receive, process, and return the PSA to the county for the Judicial Officer’s review prior to a first hearing.

Pretrial Case Manager – staff that will coordinate the county’s pretrial program and ensure pretrial supervision, data entry and reporting, and communication with stakeholders.

**Process:**

1. ARREST: Arrest made and Law Enforcement Officer determines that defendant needs to be held in Yellowstone County Detention Facility [YCDF].
2. BOOKING: Detention staff processes defendant and ensures that defendant is appropriate for detention.
3. BOOKING SHEET TO HELENA: Within two hours of defendant’s detention, Detention staff scans and emails the booking sheet containing the defendant’s name, current law violation, date of birth, and social security number to the OCA’s Processor. The email address that the document will be sent to is: [judpretrial@mt.gov](mailto:judpretrial@mt.gov)
4. PSA 1<sup>st</sup> STEP: OCA Processor receives information from the YCDF and gathers information from the Full Court Repository, CJIN, and CJIS information systems to complete the Public Safety Assessment (PSA).
5. PSA 2<sup>nd</sup> STEP: OCA Processor completes the PSA and the results will be entered into the AutoMon system at least two hours prior to initial appearances in Billings Municipal Court, Laurel City Court, and Yellowstone County Justice Court (and appearances in Yellowstone County District Court, when appropriate).
6. PSA 3<sup>rd</sup> STEP: The Judicial Officer (*judge or judge’s staff*) retrieves the PSA file from AutoMon to review and/or print the results prior to the initial appearance. Approved staff in the County Attorney’s Office and the Office of the Public Defender (or the defendant’s private attorney) also have access to and can retrieve the PSA file

from AutoMon to review assessment results prior to the initial appearance.

7. JUDGE'S REVIEW: The Judicial Officer reviews: the scored PSA, the Matrix of Presumptive Pretrial Conditions, and the Presumptive Release Activities and Conditions, related to the individual defendant. The Judicial Officer utilizes the aforementioned documents as part of his/her decision to detain or release the defendant. The Judicial Officer has the discretion to deviate from the Matrix's presumptive release conditions. If the Judicial Officer deviates from the Matrix, s/he documents the reason for that decision.
8. INFO ENTERED INTO AUTOMON: Pretrial staff (either City or County, as appropriate) [or outside contractor] enter the results of hearings into AutoMon, including the conditions and requirements of the release decision(s) as well as any Failures to Appear. Entries must include designation of the next scheduled court appearance(s) and court reminder(s) must be set for notification via AutoMon.
9. PRETRIAL SUPERVISION: Pretrial staff [or outside contractor] records and maintains activities related to the conditions of pretrial release into the AutoMon system. If the defendant is released, the Pretrial Case Manager will develop an appropriate case management plan and enter the plan into AutoMon.
10. OCA VALIDATION: The OCA Processor validates the AutoMon entry to ensure the defendant is entered appropriately into the system. The OCA Processor will run a CJIN check every 30 days for offenders under pretrial supervision [i.e., *Passive* or *Active*] and will notify the Pretrial Case Manager if new charges are noted.
11. PRETRIAL VIOLATIONS: If a defendant violates the terms of his/her pretrial supervision, the Pretrial Case Manager will document the violation(s) in AutoMon and assess the level of notification to the Court system as appropriate. *[See Following Page]*
12. OCA REPORTING: The OCA Processor will monitor defendants for new bookings and will enter those into AutoMon.

13. PRETRIAL SUPERVISION ENDS: At the point that the defendant's case is no longer in pretrial status, the Pretrial Case Manager enters the final disposition of the case into AutoMon.

**Pretrial Supervision Violation Notification**

Minor Violation: Pretrial Case Manager Review

- Failure to complete Check-In 1 time to Pretrial Case Manager (or monitoring provider, if applicable) [*applies to Monitoring Levels 2 & 3, Active, only*]
- Failure to report for UA/BA testing [*applies to Monitoring Levels 2 & 3, Active, only*]

Moderate Violation: Reported to County Attorney and Defense Attorney

- Failure to complete Check-In 2+ times to Pretrial Case Manager (or monitoring provider, if applicable) [*applies to Monitoring Levels 2 & 3, Active, only*]
- Failure to comply with GPS or alcohol/drug monitoring [*applies to Monitoring Levels 2 & 3, Active, only*]
- Failure to report to Court as scheduled
- Use of alcohol or drugs, first-time

Serious Violation: Reported to Judicial Officer, County Attorney, & Defense Attorney

- Use of alcohol or drugs 2+ times
- Arrest for new crime
- Absconds

## Scoring the PSA

### Risk Factors

The table below outlines the nine factors and illustrates which factors are related to each of the pretrial outcomes – that is, which factors are used to predict NCA, NVCA, and FTA.

Table 1. Relationship Between Risk Factors and Pretrial Outcomes

Risk Factor	FTA	NCA	NVCA
1. Age at current arrest		X	
2. Current violent offense			X
Current violence offense and 20 years old or younger			X
3. Pending charge at the time of the offense	X	X	X
4. Prior misdemeanor conviction		X	
5. Prior felony conviction		X	
Prior conviction (misdemeanor or felony)	X		X
6. Prior violent conviction		X	X
7. Prior failure to appear in the past two years	X	X	
8. Prior failure to appear older than two years	X		
9. Prior sentence to incarceration		X	

Note: Boxes where an “X” occurs indicate that the presence of a risk factor increases the likelihood of that outcome for a given defendant. The PSA relies solely on the above nine variables. It does not rely on factors such as race, ethnicity, or geography.

## **Montana Public Safety Assessment Risk Factor Definitions**

The Public Safety Assessment (PSA) is a pretrial risk assessment that uses nine risk factors to assess the risk of new criminal activity (NCA), including new violent criminal activity (NVCA), and failure to appear (FTA) pending case disposition. The assessment is intended to be used to assess the risk of NCA, NVCA, and FTA for defendants who have been arrested in the community and are pending the disposition of their cases. The PSA is not intended to be used for defendants who are charged with an offense while already incarcerated (e.g., an inmate assaults a corrections officer or another inmate).

All pretrial risk factors are answered based on the defendant's adult criminal history. Juvenile records are not considered when completing the assessment. In addition, all criminal history and failure to appear related factors include only criminal charges that carry a potential penalty of incarceration (jail or prison) and traffic charges such as DUIs and Fleeing From or Eluding a Peace Officer. Charges that carry a potential penalty of incarceration (jail or prison) are those for which the statute allows for a sentence of incarceration upon conviction.

### **RISK FACTORS**

#### **1. AGE AT CURRENT ARREST**

Document the defendant's age in years at the time of the current arrest. If there was not an arrest or the arrest date is unknown, use the defendant's age at the time the PSA was completed. Based on the defendant's age at current arrest, answer whether the defendant is 20 or younger, 21 or 22, or 23 or older.

#### **2. CURRENT VIOLENT OFFENSE**

Generally, offenses are considered violent when a person causes or attempts to cause physical injury to another person. The most common violent offenses include the following: Murder, Homicide, Manslaughter, Kidnapping, Abduction, Robbery, Carjacking, Assault involving physical injury including Domestic Assault (misdemeanor or felony), and person to person related Sex Offenses (e.g., Rape, Sexual Assault/Battery, Indecent Liberties with Child, Forcible Sodomy). A charge of attempt (e.g. attempted murder, attempted rape), being an accessory before the fact, solicitation, and conspiracy to commit any of these offenses is considered a violent offense. Threats, harassment, and alike are not considered violent offenses. See the following chart for applicable Montana criminal code offenses that are considered violent for the purpose of the risk assessment. If any of the current offenses are violent, answer yes to the risk factor.

#### **2a. CURRENT VIOLENT OFFENSES & 20 YEARS OLD OR YOUNGER**

If one or more of the current offenses is violent as defined in risk factor 2 above AND the defendant was 20 or younger at the time of the arrest defined in risk factor 1 above, answer yes to this risk factor.

### 3. PENDING CHARGE AT THE TIME OF THE OFFENSE

Pending means any charge that has a future pre-disposition related court date or has not been disposed of due to the defendant's failure to appear, or that is in some form of deferred status (e.g., deferred prosecution, diversion, first offender, withheld finding, held in abeyance). Charges include any criminal offense that carries a potential penalty of incarceration (jail or prison) and traffic charges such as DUIs and Fleeing From or Eluding a Peace Officer. The pending charge must have been pending at the time of the alleged offense for the current case, which is an indication that the defendant was on some form of pretrial release when the current offense allegedly occurred. If the current arrest is for a failure to appear for a pre-disposition related court appearance, the underlying charge for the failure to appear is counted as a pending charge. If the defendant had a pending criminal charge that carried a potential penalty of incarceration (jail or prison) or traffic charges such as DUIs and Fleeing From or Eluding a Peace Officer at the time the current offense allegedly occurred, answer yes to this risk factor. (Check NCIC information for pending/outstanding charges. In addition, review Montana's Full Court system. It may be necessary to call the local court for additional information.)

### 4. PRIOR MISDEMEANOR CONVICTION

A misdemeanor includes any criminal offense defined by statute as a misdemeanor that carries a potential penalty of incarceration (jail or prison) and traffic charges such as DUIs and Fleeing From or Eluding a Peace Officer.. A conviction includes any guilty plea or finding of guilt. A charge that is in some form of deferred status (e.g., deferred prosecution, diversion, first offender, withheld finding, held in abeyance) is not considered a conviction. If the defendant has pled guilty or been found guilty as an adult of one or more criminal misdemeanor offenses that carries a potential penalty of incarceration or traffic charges such as DUIs and Fleeing From or Eluding a Peace Officer, answer yes to this risk factor. **Note: Processors should know that dismissed deferred prosecution cases should not be counted.**

### 5. PRIOR FELONY CONVICTION

A felony includes any criminal or traffic offense defined by statute as a felony. A conviction includes any guilty plea or finding of guilt. A charge that is in some form of deferred status (e.g., deferred prosecution, diversion, first offender, withheld finding, held in abeyance) is not considered a conviction. If the defendant has pled guilty or been found guilty as an adult of one or more criminal or traffic felony offenses, answer yes to this risk factor.

#### 5a. PRIOR CONVICTION

If the defendant has a prior misdemeanor conviction as defined in risk factor 4 above or the defendant has a prior felony conviction defined in risk factor 5 above, answer yes to this risk factor.

## 6. PRIOR VIOLENT CONVICTION

Generally, offenses are considered violent when a person abuses or attempts to cause physical injury to another person. The most common violent offenses include the following: Murder, Homicide, Manslaughter, Kidnapping, Abduction, Robbery, Carjacking, Assault involving physical injury including Domestic Assault (misdemeanor or felony), and person to person related Sex Offenses (e.g., Rape, Sexual Assault/Battery, Indecent Liberties with Child, Forcible Sodomy). A charge of attempt (e.g. attempted murder, attempted rape), being an accessory before the fact, solicitation, and conspiracy to commit any of these offenses is considered a violent offense. Threats, harassment, and alike are not considered violent offenses. See the chart on page 16 for applicable Montana criminal code offenses that are considered violent for the purpose of the risk assessment.

Examine the defendant's adult criminal history and determine the total number of violent charges that resulted in a conviction. A conviction includes any guilty plea or finding of guilt. **A charge that is in some form of deferred status (e.g., deferred prosecution, diversion, first offender, withheld finding, held in abeyance) is not considered a conviction.** Based on the total number of violent convictions, answer whether the defendant had none, 1, 2, or 3 or more prior violent convictions. **Note: Processor needs to stop counting after 3 convictions.**

## 7. PRIOR PRETRIAL FAILURE TO APPEAR IN PAST 2 YEARS

A failure to appear includes any pre-disposition court appearance for which the defendant failed to appear and a bench warrant or capias for arrest was issued. The court appearance must be for a pending (pre-disposition) criminal offense that carries a potential penalty of incarceration (jail or prison) and traffic charges such as DUIs and Fleeing From or Eluding a Peace Officer. Post-disposition court appearances such as hearings for non-payment/failure to pay, violations of supervision and violations of other court ordered obligations are not counted. **Note, a failure to appear for a single court appearance is counted once regardless of the number of charges or warrants issued related to the single court appearance.**

A failure to appear is not counted if there is confirmation that the defendant was in custody (jail or prison) when the failure to appear occurred. Examine the defendant's adult criminal history and determine the total number of times in the past two years the defendant failed to appear in court for a pre-disposition related court appearance and a warrant for arrest was issued. The two-year time frame includes the two-year period prior to the date of the current arrest. If there was not an arrest or the arrest date is unknown, the two-year time frame includes the two-year period prior to the PSA completion date. Based on the total number of prior failures to appear in the past two years, answer whether the defendant had none, 1, or 2 or more prior failures to appear.

## 8. PRIOR FAILURE TO APPEAR OLDER THAN 2 YEARS



A failure to appear includes any pre-disposition court appearance for which the defendant failed to appear and a bench warrant or capias for arrest was issued. The court appearance must be for a pending (pre-disposition) criminal offense that carries a potential penalty of incarceration (jail or prison) and traffic charges such as DUIs and Fleeing From or Eluding a Peace Officer. Post-disposition court appearances such as hearings for non-payment/failure to pay, violations of supervision and violations of other court ordered obligations are not counted. A failure to appear for a single court appearance is counted to once regardless of the number of charges or warrants issued related to the single court appearance.

A failure to appear is not counted if there is confirmation that the defendant was in custody (jail or prison) when the failure to appear occurred. Examine the defendant's adult criminal history and determine if the defendant failed to appear for court for a pre-disposition related court appearance and a warrant for arrest was issued more than two years from the time of the current arrest. If there was not an arrest or the arrest date is unknown, use the PSA completion date to determine if the failure to appear for court occurred more than two years from the time of the PSA completion date. If the defendant failed to appear for court and a warrant was issued for arrest more than two years from the time of arrest or PSA completion date, answer yes to this risk factor.

## 9. PRIOR SENTENCE TO INCARCERATION

A sentence to incarceration includes any sentence to jail or prison of 14 days or more, imposed by a judge at the time of sentencing or re-sentencing (e.g., supervision violation hearing, revocation of suspended sentence). A sentence of 14 days or more is included only if it is imposed as a single sentence and not a combination of multiple lesser sentences. Incarceration in lieu of payment of fines or costs, suspended sentences, and sanctions imposed by non-judges (e.g., probation officers) are not considered sentences to incarceration. If the defendant previously received a sentence of incarceration to jail or prison of 14 days or more as a single sentence imposed by a judge, answer yes to this risk factor.

### **Montana's determination of a Violent Crime**

A significant portion of the scoring of the PSA is determining if the defendant has been convicted of a violent crime in the past or is currently charged with a violent crime. Risk factor # 2 and # 6 of the PSA is determined by reviewing the following list of agreed upon offenses that have been deemed to be violent. The following list of Montana Codes meet the definition of a violent crime; **“A person to person offense that causes or attempts to cause physical injury.”**

Table 2. Montana Criminal Code Offenses determined to be Violent

<b>Statute</b>	<b>Description</b>
45-5-102	Deliberate Homicide
45-5-103	Mitigated Deliberate Homicide
45-5-106	Vehicular Homicide While Under the Influence
45-5-201	Assault
45-5-202	Aggravated Assault
45-5-204 (1) (a)	Mistreating Prisoners
45-5-206	Partner or Family Member Assault - Penalty
45-5-210	Assault on Peace Officer or Judicial Officer
45-5-211	Assault Upon Sports Official
45-5-212	Assault on Minor
45-5-213	Assault with Weapon
45-5-214	Assault with Bodily Fluid
45-5-215	Strangulation of Partner or Family Member
45-5-220	Stalking - Exemption - Penalty
45-5-221 (1) (a)	Malicious Intimidation or harassment Relating to Civil or Human Rights - Penalty
45-5-301	Unlawful Restraint
45-5-302	Kidnapping
45-5-303	Aggravated Kidnapping
45-5-401 (1) (a)	Robbery
45-5-502	Sexual Assault
45-5-503	Sexual Intercourse Without Consent
45-5-507	Incest
45-5-601 (3)	Prostitution
45-5-602 (3)	Promoting Prostitution
45-5-603	Aggravated Promotion of Prostitution
45-5-625	Sexual Abuse of Children
45-5-627	Ritual Abuse of Minor - Exceptions - Penalty
45-5-702	Trafficking of persons
45-5-703	Involuntary servitude
45-5-704	Sexual Servitude
45-5-705	Patronizing victim of sexual servitude
45-6-103	Arson
45-6-204 (2) (b) (ii)	Burglary
45-6-601 (3)	Promotion of Prostitution of a child 12 years of age or younger by a client 18 years of age or older

45-7-301	Resisting Arrest
45-8-103	Riot
45-8-303	Possession or Use of Machine Gun in Connection with a Crime
45-8-304	Possession or Use of Machine Gun for offensive purposes
45-8-333	Reckless or Malicious Use of Explosives
45-8-403 (2)	Use of Threats to Coerce Gang Membership - Use of Violence to Coerce Gang Membership
52-3-825 (2) (a)	Elder Abuse or Abuse of a Person with a Developmental Disability

## **Communicating with and providing PSA Information to Detaining County**

For Montana’s pretrial project to meet the expectations it is critical that the Office of the Court Administrator support each county’s efforts in a variety of ways. The sharing of information and overall communication is of the utmost importance to demonstrate that pretrial is of value to the future of the criminal justice system in Montana. Two documents outline how the OCA formally supports the efforts of each pilot/participating county and promotes communication between the county and OCA, the documents are:

1. Inter-Agency agreement (IA) The Supreme Court Administrator and county commissioners for each county sign off on an agreement at the inception of the project. The IA contains specific language that addresses a variety of administrative functions and support the OCA is to provide the county. The IA indicates that the OCA will provide:

State Funding as allocated by the Montana Legislature in an amount tied to county population and crime statistics. (Pilot Counties Only)

Training

Technical Assistance

Support via an advisory council appointed by the Montana Supreme Court Chief Justice

2. Work-flow document. As part of each county’s stakeholders meeting and orientation meeting a draft work-flow document is presented to stakeholders. Each document is developed jointly between the county representatives and the OCA. The document details a step-by-step procedure that is activated upon the

arrest and booking of a defendant. The procedure outlined in the work-flow document includes the steps the OCA processors take in response to receiving a booking slip from a participating county to **complete** a Public Safety Assessment (PSA) on a defendant. It is noted that the final procedure in completing the PSA process calls for the OCA processor to submit a “Report to the Court” and enter the results of the PSA into the AutoMon system.

Attached is a sample of the **“work-flow” document** and the **“Report to the Court”** that illustrate the OCA processor’s efforts in completing a Public Safety Assessment (PSA) on a defendant. The OCA processor is required to complete steps 4, 5 and 10 of the “workflow” document.

**SAMPLE**  
**Defendant Public Safety Assessment (PSA) Work Flow**  
**Yellowstone County Pretrial Pilot Program**

OCA Processor – staff in the Office of the Court Administrator that will receive, process, and return the PSA to the county for the Judicial Officer’s review prior to a first hearing.

Pretrial Case Manager – staff that will coordinate the county’s pretrial program and ensure pretrial supervision, data entry and reporting, and communication with stakeholders.

Process:

14. ARREST: Arrest made and Law Enforcement Officer determines that defendant needs to be held in Yellowstone County Detention Facility [YCDF].
15. BOOKING: Detention staff processes defendant and ensures that defendant is appropriate for detention.
16. BOOKING SHEET TO HELENA: Within two hours of defendant’s detention, Detention staff scans and emails the booking sheet containing the defendant’s name, current law violation, date of birth, and social security number to the OCA’s Processor. The email address that the document will be sent to is: [judpretrial@mt.gov](mailto:judpretrial@mt.gov)
17. PSA 1<sup>st</sup> STEP: OCA Processor receives information from the YCDF and gathers information from the Full Court Repository, CJIN, and CJIS information systems to complete the Public Safety Assessment (PSA).
18. PSA 2<sup>nd</sup> STEP: OCA Processor completes the PSA and the results will be entered into the AutoMon system at least two hours prior to initial appearances in Billings Municipal Court, Laurel City Court, and Yellowstone County Justice Court (and appearances in Yellowstone County District Court, when appropriate).
19. PSA 3<sup>rd</sup> STEP: The Judicial Officer (*judge or judge’s staff*) retrieves the PSA file from AutoMon to review and/or print the results prior to the initial appearance. Approved staff in the County Attorney’s Office and the Office of the Public Defender (or the defendant’s private attorney) also have access to and can retrieve the PSA file

from AutoMon to review assessment results prior to the initial appearance.

20. JUDGE'S REVIEW: The Judicial Officer reviews: the scored PSA, the Matrix of Presumptive Pretrial Conditions, and the Presumptive Release Activities and Conditions, related to the individual defendant. The Judicial Officer utilizes the aforementioned documents as part of his/her decision to detain or release the defendant. The Judicial Officer has the discretion to deviate from the Matrix's presumptive release conditions. If the Judicial Officer deviates from the Matrix, s/he documents the reason for that decision.
21. INFO ENTERED INTO AUTOMON: Pretrial staff (either City or County, as appropriate) [or outside contractor] enter the results of hearings into AutoMon, including the conditions and requirements of the release decision(s) as well as any Failures to Appear. Entries must include designation of the next scheduled court appearance(s) and court reminder(s) must be set for notification via AutoMon.
22. PRETRIAL SUPERVISION: Pretrial staff [or outside contractor] records and maintains activities related to the conditions of pretrial release into the AutoMon system. If the defendant is released, the Pretrial Case Manager will develop an appropriate case management plan and enter the plan into AutoMon.
23. OCA VALIDATION: The OCA Processor validates the AutoMon entry to ensure the defendant is entered appropriately into the system. The OCA Processor will run a CJIN check every 30 days for offenders under pretrial supervision [i.e., *Passive* or *Active*] and will notify the Pretrial Case Manager if new charges are noted.
24. PRETRIAL VIOLATIONS: If a defendant violates the terms of his/her pretrial supervision, the Pretrial Case Manager will document the violation(s) in AutoMon and assess the level of notification to the Court system as appropriate. *[See Following Page]*
25. OCA REPORTING: The OCA Processor will monitor defendants for new bookings and will enter those into AutoMon.

26. PRETRIAL SUPERVISION ENDS: At the point that the defendant's case is no longer in pretrial status, the Pretrial Case Manager enters the final disposition of the case into AutoMon.

**Pretrial Supervision Violation Notification**

Minor Violation: Pretrial Case Manager Review

- Failure to complete Check-In 1 time to Pretrial Case Manager (or monitoring provider, if applicable) [*applies to Monitoring Levels 2 & 3, Active, only*]
- Failure to report for UA/BA testing [*applies to Monitoring Levels 2 & 3, Active, only*]

Moderate Violation: Reported to County Attorney and Defense Attorney

- Failure to complete Check-In 2+ times to Pretrial Case Manager (or monitoring provider, if applicable) [*applies to Monitoring Levels 2 & 3, Active, only*]
- Failure to comply with GPS or alcohol/drug monitoring [*applies to Monitoring Levels 2 & 3, Active, only*]
- Failure to report to Court as scheduled
- Use of alcohol or drugs, first-time

Serious Violation: Reported to Judicial Officer, County Attorney, & Defense Attorney

- Use of alcohol or drugs 2+ times
- Arrest for new crime
- Absconds



Montana Pretrial Public Safety Assessment

Prepared by

Court Administrator's Office



Name: Full Name

DOB: |



Arrest Information:

Arrest Date: 11/19/2020

Charge(s):

61-8-465 [1st] Aggravated Driving Under The Influence - 1st Offense  
61-8-401(1)(a) [1st] Driving Under The Influence Of Alcohol - 1st Offense

Assessment Results: *(Completed: 11/20/2020)*

Score for Failure to Appear	Score for New Criminal Activity	Flag for New Violent Criminal Activity
FTA 2	NCA 2	No

Assessment Information:

- |   |             |
|---|-------------|
| 1. Age at Current Arrest                              | 23 or older |
| 2. Current Violent Offense                            | No          |
| 2a. Current Violent Offense & 20 Years Old or Younger | No          |
| 3. Pending Charge at the Time of the Arrest           | No          |
| 4. Prior Misdemeanor Conviction                       | Yes         |
| 5. Prior Felony Conviction                            | No          |
| 5a. Prior Conviction                                  | Yes         |
| 6. Prior Violent Conviction                           | 0           |
| 7. Prior Failure to Appear in Past 2 Years            | 0           |
| 8. Prior Failure to Appear Older Than 2 Years         | No          |
| 9. Prior Sentence to Incarceration                    | No          |

Presumptive Release Conditions:

Pretrial Monitoring Level 1, Passive

Notes:

## Reporting Outcomes of Pretrial Defendants

### Measurement of Success

It is invaluable to measure outcomes of the project as the success of the project must be reported to the Montana Legislature, the appointed Advisory Council, along with key stakeholders and citizens across the state. The measurement has impact on the future of the pretrial project. After a great deal of effort by the Arnold Foundation consultants, the appointed working and advisory board members, representatives from the participating/pilot counties and the OCA, an agreed upon set of project outcome measures were adopted. The outcomes are compiled in a report called the **Performance Management Report (PMR)**.

As agreed, by the appointed advisory council, there are two primary pretrial outcome measures for defendants released pending case disposition to determine success and failure. The two primary types of pretrial failure include failure to appear and new criminal activity. In addition, whether the new criminal activity is violent is also measured. Generally, defendants who do not experience either type of pretrial failure are considered successful. Descriptions of the primary types of pretrial failure are provided below.

#### 1. FAILURE TO APPEAR (FTA)

Failure to appear is defined as any missed court appearance while on release pending case disposition for the current case and a bench warrant or capias for arrest was issued. A failure to appear is not counted if there is confirmation that the defendant was in custody (jail or prison) when the failure to appear occurred.

#### 2. NEW CRIMINAL ACTIVITY (NCA)

New criminal activity is defined as an arrest for a criminal offense that carries a potential penalty of incarceration (jail or prison) and traffic charges such as DUIs and Fleeing From or Eluding a Peace Officer that allegedly occurred while on release pending disposition for the current case.

## 2a. NEW VIOLENT CRIMINAL ACTIVITY (NVCA)

New violent criminal activity is defined as an arrest for a violent offense that allegedly occurred while on release pending case disposition for the current case. Generally, offenses are considered violent when a person causes or attempts to cause physical injury to another person. The most common violent offenses include: Murder, Homicide, Manslaughter, Kidnapping, Abduction, Robbery, Carjacking, Assault involving physical injury including Domestic Assault (misdemeanor or felony), and person to person related Sex Offenses (.g., Rape, Sexual Assault/Battery, Indecent Liberties with Child, Forcible Sodomy). A charge of attempt (e.g. attempted murder, attempted rape), being an accessory before the fact, solicitation, and conspiracy to commit any of these offenses is considered a violent offense.

Success of the overall project is calculated after reviewing and compiling data entered into the AutoMon system by each pilot/participating county. The data entered into AutoMon focuses on twenty-two data points entered on every defendant subjected to a PSA. The data reflects the outcome of defendants whose case has been closed by the case manager of the pilot/participating county. The PMR is designed to provide data regarding:

1. Jail Release Measurements
2. Jail Detention Measurements
3. Pretrial Release Outcome Measures

The attached outline of the Performance Measurement Report (PMR) illustrates the three measurement categories.

**MONTANA JUDICIAL BRANCH  
PRETRIAL PROGRAM  
Performance Measures Report**

<b>County</b>	<b>All</b>	<b>Start Date</b>	<b>End Date</b>
<b><u>Assessment Volume</u></b>			
	1) Number of Public Safety Assessments (PSAs) completed		0
	<i>Criteria: # of PSAs completed-Open or closed cases</i>		
<b><u>Defendants' Case Closures</u></b>			
	2) Number of court cases closed for which a PSA was done		0
	<i>Criteria: Counting cases that have a disposition date within reporting period AND had a PSA completed. Case driven, not person driven</i>		
<b><u>Jail Release Measures</u></b>			
	3) Number of these closed cases for which the defendant was released pretrial from jail		0
	<i>Criteria: Closed cases within reporting period that had a PSA completed with a release date</i>		
	Number of closed cases for which released defendants were:		
	4. Charged with a violent offense		0
	<i>Criteria: Closed cases within the reporting period that had a PSA completed with a release date AND a charge with the violent flag.</i>		
	5. Assessed as having the violence flag		0
	<i>Criteria: Closed cases within the reporting period that had a PSA completed with a release date AND PSA scored the New Violent Criminal Activity equals YES.</i>		
	6. Released on recognizance		0
	<i>Criteria: Closed cases within the reporting period that had a PSA completed with a release date, with a release decision, bond imposed checked and bond type = Personal Recognizance</i>		
	7. Released after paying money bail		0
	<i>Criteria: Closed cases within the reporting period that had a PSA completed with a release date, with a release decision, bond imposed checked and bond type = Cash and/or Surety</i>		
	8. Recommendation from the PSA to Pretrial Release Level 1		0
	<i>Criteria: Closed cases within the reporting period that had a PSA completed with a release date, with a release decision of Release Level 1 (Passive Monitoring)</i>		

9. Recommendation from the PSA to Pretrial Release Level 2 (Active Monitoring) 0

**Criteria: Closed cases within the reporting period that had a PSA completed with a release date, with a release decision of Release Level 2 (Active Monitoring)**

10. Recommendation from the PSA to Pretrial Release Level 3 (Active Monitoring) 0

**Criteria: Closed cases within the reporting period that had a PSA completed with a release date, with a release decision of Release Level 3 (Active Monitoring)**

**Jail Detention Measures**

11) Number of these closed cases for which the defendant was detained (not released) pretrial from jail 0

**Criteria: Closed cases within the reporting period that had a PSA completed without a release date entered.**

Number of closed cases for which detained defendants:

12. Were charged with a violent offense 0

**Criteria: Closed cases within the reporting period that had a PSA completed without a release date AND a charge with the violent flag.**

13. Were assessed as having the violence flag 0

**Criteria: Closed cases within the reporting period that had a PSA completed without a release date AND PSA scored the New Violent Criminal Activity equals YES.**

14. Were ordered to pay money bail 0

**Criteria: Closed cases within the reporting period that had a PSA completed without a release date, with a release decision, bond imposed checked and bond type = Cash**

15. Would have been on Pretrial Release Level 1 0

**Criteria: Closed cases within the reporting period that had a PSA completed without a release date, with a PSA Recommendation of Release Level 1 (Passive Monitoring)**

16. Would have been on Pretrial Release Level 2 0

**Criteria: Closed cases within the reporting period that had a PSA completed without a release date, with a PSA Recommendation of Release Level 2 (Active Monitoring)**

17. Would have been on Pretrial Release Level 3 0

**Criteria: Closed cases within the reporting period that had a PSA completed without a release date, with a PSA Recommendation of Release Level 3 (Active Monitoring)**

**Pretrial Release Outcome Measures**

Number of closed cases for which released defendants:

18. Made all of their court appearances 0

**Criteria: Closed cases within the reporting period that had a PSA completed with a release date AND does not have any violations filed for any associated FTA's that resulted in a violation disposition of warrant. The client can have an FTA and a violation filed for the FTA. However, if the violation has a disposition of Warrant, the client is excluded from this list.**

19. Remained law-abiding (were not arrested for any new offense) 0

**Criteria: Closed cases within the reporting period that had a PSA completed with a release date AND does not have any new arrests entered in the infraction screen within the violations module.**

20. Had a new misdemeanor offense 0

**Criteria: Closed cases within the reporting period that had a PSA completed with a release date AND has a new arrest entered in the infraction screen, within the violations module with a charge class of misdemeanor.**

21. Had a new felony offense 0

**Criteria: Closed cases within the reporting period that had a PSA completed with a release date AND has a new arrest entered in the infraction screen, within the violations module with a charge class of felony.**

22. Had a new violent (misdemeanor or felony) offense 0

**Criteria: Closed cases within the reporting period that had a PSA completed with a release date AND has a new arrest entered in the infraction screen, within the violations module with a charge category of violent.**

Report Prepared by:

Date:

Last Updated: 11-12-2018

Client Name	Client ID #	Case Number
1) Number of Public Safety Assessments (PSAs) completed		
2) Number of court cases closed fro which a PSA was done		
3) Number of these closed cases for which the defendant was released pretrial from jail		
4) Number of closed cases for which released defendants were charged with a violent crime		
5) Number of closed cases for which released defendants were assessed as having the violence flag		
6) Number of closed cases for which released defendants were released on recognizance		
7) Number of closed cases for which released defendants were released after paying money bail		
8) Number of closed cases for which released defendants were ordered to Pretrial Release Level 1		
9) Number of closed cases for which released defendants were ordered to Pretrial Release Level 2		
10) Number of closed cases for which released defendants were ordered to Pretrial Release Level 3		
11) Number of these closed cases for which the defendant was detained (not released) pretrial from jail		
12) Number of closed cases for which detained defendants were charged with a violent crime		
13) Number of closed cases for which detained defendants were assessed as having the violence flag		
14) Number of closed cases for which detained defendants were ordered to pay money bail		
15) Number of closed cases for which detained defendants would have been on Pretrial Release Level 1		
16) Number of closed cases for which detained defendants would have been on Pretrial Release Level 2		
17) Number of closed cases for which detained defendants would have been on Pretrial Release Level 3		
18) Number of closed cases for which released defendants made all of their court appearances		
19) Number of closed cases for which released defendants remained law-abiding (were not arrested for any new offense)		
20) Number of closed cases for which released defendants had a new misdemeanor offense		
21) Number of closed cases for which released defendants had a new felony offense		
22) Number of closed cases for which released defendants had a new violent (misdemeanor or felony) offense		
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