

APPR ADVANCING PRETRIAL
POLICY & RESEARCH

Legal and Evidence-Based Pretrial Practices in Montana

DATE: October 2025

PRESENTER: Michael R. Jones

INFO: Montana Pretrial Stakeholders

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Pretrial Goals



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3 Goals of Pretrial Decision Making

3 M's

To simultaneously:

- 1) Maximize court appearance
- 2) Maximize public safety and law-abiding behavior
- 3) Maximize pretrial release/liberty
(Minimize costly detention)



MT's Results on the 3 Ms

Outcome	Success Rate
1) Court Appearance	76%
2) Law-Abiding	68%
Non-violent	88%
3) Pretrial Release	71%

July 1, 2024, to June 30, 2025

Butte, Lake, Lewis & Clark, Missoula, Yellowstone

For the pretrial phase.....

- **Pretrial detention for more than 1 day causes harm to short-and long-term law-abiding behavior and public safety**
- **Less is more**
- **Pretrial services is not probation**

Pretrial Assessment Tools and Risk

Purpose of pretrial assessment

- Why do we do pretrial assessment?

To Predict

- Helps identify who is likely to succeed or fail on pretrial release
- Why predict? Provides an opportunity to intervene and assist before failure occurs

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Actuarial pretrial assessment tools

- Various actuarial tools exist in the U.S.
 - Pretrial: PSA, VPRAI-R, ORAS-PAT, CPAT-R, PTRR
 - Many non-pretrial industries
- Uses research-based factors to predict the likelihood of pretrial success
- Does not rely on gut feelings or subjective interpretation (highly variable)
- Pretrial assessment results, along with other information, can help inform pretrial decisions

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What do pretrial assessment tools measure?

- **They answer two important questions:**
 1. **Risk of what?**
(What is the person at risk of?)
 2. **How much risk?**
(What is the amount of risk?)
- We must always keep both in mind

1. Risk of What

• Different types of pretrial failure

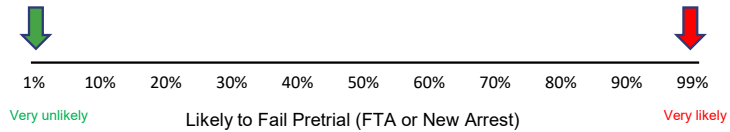
1. Failure to appear
2. Flight
3. New arrest for any offense
4. New arrest for a specific offense (e.g., violent)
5. Technical violation

Actuarial pretrial assessments only measure:

- (1) Failure to appear & (3) New arrest for any offense
- (4) New arrest for violent offense (if using the PSA)

2. How Much Risk?

- Risk is not an either-or proposition
- Risk exists on a continuum or scale



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Montana Pretrial Assessment Report

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Assessment Report: Top

Montana Pretrial Public Safety Assessment	
Prepared by	
Court Administrator's Office	
Name:	Test, Test Yellowstone
DOB:	7/4/1974
Arrest Information:	
Arrest Date:	1/28/2021
Charge(s):	
45-5-206(1)(a)[1st] PFMA – 1st Offense	
45-5-401 F Robbery	
45-5-213 Assault with Weapon	

Assessment Report: Bottom

Assessment Results: (Completed: 3/30/2021)		
Score for Failure to Appear	Score for New Criminal Activity	Flag for New Violent Criminal Activity
FTA 6	NCA 6	Yes
Assessment Information:		
1. Age at Current Arrest	23 or older	
2. Current Violent Offense	Yes	
2a. Current Violent Offense & 20 Years Old or Younger	No	
3. Pending Charge at the Time of the Arrest	Yes	
4. Prior Misdemeanor Conviction	Yes	
5. Prior Felony Conviction	Yes	
5a. Prior Conviction	Yes	
6. Prior Violent Conviction	2	
7. Prior Failure to Appear in Past 2 Years	2 or more	
8. Prior Failure to Appear Older Than 2 Years	Yes	
9. Prior Sentence to Incarceration	Yes	
Presumptive Release Conditions:		
Pretrial Monitoring Level 3, Active		
Notes:		
FTA 6 = 65% Likely to Appear		
NCA 6 = 65% Likely Arrest-Free		
Yes NVCA Flag = 90% Likely Violent Arrest-Free		

Assessment Report: Bottom

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Presumptive Release Conditions:

Pretrial Monitoring Level 3, Active

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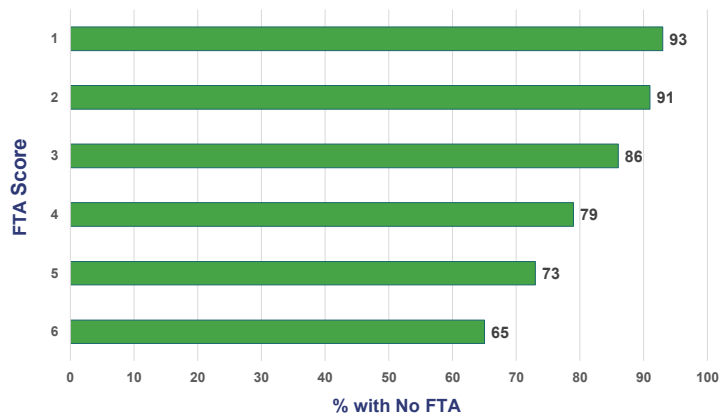
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Public Safety Assessment (PSA)

PSA Factors and Pretrial Outcomes

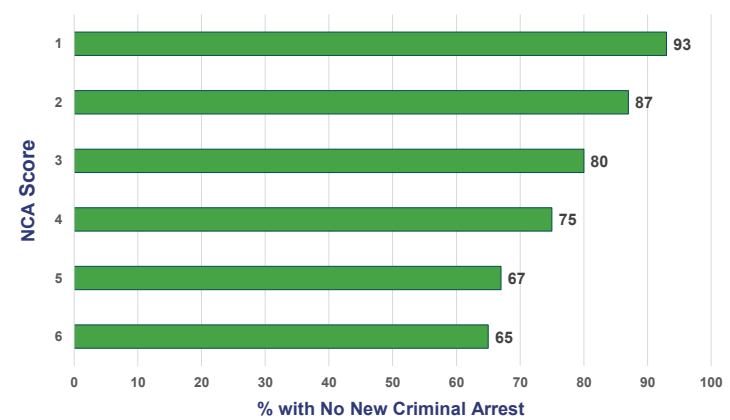
PSA FACTORS AND PRETRIAL OUTCOMES			
PSA FACTOR	FTA	NCA	NVCA
1. Age at current arrest		✓	
2. Current violent offense			✓
2A. Current violent offense and 20 years old or younger			✓
3. Pending charge at the time of the arrest	✓	✓	✓
4. Prior misdemeanor conviction		✓	
5. Prior felony conviction		✓	
5A. Prior conviction (misdemeanor or felony)	✓		✓
6. Prior violent conviction		✓	✓
7. Prior failure to appear in the past 2 years	✓	✓	
8. Prior failure to appear older than 2 years	✓		
9. Prior sentence to incarceration		✓	

MT Appearance Rates



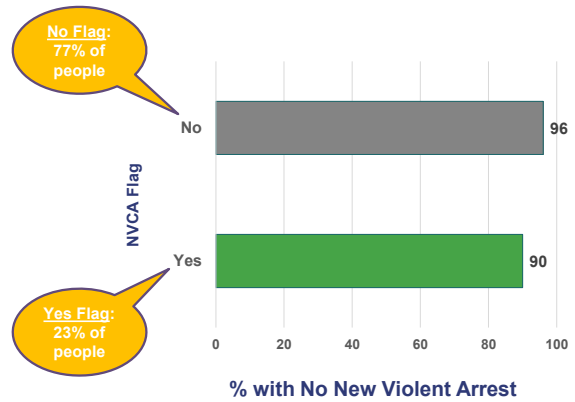
Five Counties, 3 years from Sept 1, 2018, to Aug 31, 2021

MT Arrest-Free Rates



Five Counties, 3 years from Sept 1, 2018, to Aug 31, 2021

MT Violent Arrest-Free Rates



Five Counties, 3 years from Sept 1, 2018, to Aug 31, 2021

Success is the Norm

People on pretrial release succeed in the vast majority of cases – approx. 80%

People are very unlikely to be arrested for a new violent offense while on pretrial release

Effective Pretrial Release Conditions

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How to Evaluate a Release Condition



- How does it hold up to the 3 M's?
 1. To what extent does the condition/intervention help to maximize court appearance?
 2. To what extent does the condition/intervention help to maximize law-abiding behavior/public safety?
 3. To what extent does the condition/intervention help to maximize pretrial release/liberty (by not leading to detention)?

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Summary of Research Findings

Condition/ Intervention	Research shows effective for maximizing appearance?	Research shows effective for maximizing arrest-free?	Research shows effective for maximizing release/liberty?
Court date notifications	✓	?	✓
Pretrial services/ check-ins	✓*	—	✓
Drug & alcohol testing	—	—	●*
Electronic location monitoring	—	—	●*
Secured financial conditions	—	N/A*	—*

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Federal Court: Secured Financial

- Are financial conditions of release effective at promoting court appearance?
- Are financial conditions of release effective at promoting law-abiding behavior/public safety?

“The reliable, credible evidence in the record from other jurisdictions shows that release on secured financial conditions **does not assure better rates of appearance or of law-abiding behavior before trial.**”

O'Donnell v. Harris County, 251 F. Supp. 3d 1052 (S.D. Tex. 2017)

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Reader-Friendly Resources

- Research Summaries:
 - Court Date Notification Systems
 - Financial Conditions of Release
 - Pretrial Monitoring/Supervision
 - Pretrial Drug Testing
 - Pretrial Location Monitoring
 - Pretrial Detention
 - Pretrial Assessment Tools
- Go to: <https://advancingpretrial.org/appr/appr-resources/pretrial-research-summaries/>



Connecting PSA Scores to Release Conditions Decisions

Pretrial Release Guide

- We use the PSA to **assess** people
- We use the Pretrial Release Guide/Matrix to **assist** people
- Matrix matches PSA scores to default pretrial release conditions
- Enables us to concentrate our limited resources on the people who need the most assistance to appear in court and remain law-abiding

Presumptive Release Level

Does not 'recommend' release or detention.

PSA's Failure to Appear (FTA) Scaled Score (with likelihood not to have an FTA warrant)	PSA's New Criminal Arrest (NCA) Scaled Score (with likelihood not to be arrested)					
	1 MT: 93% Likely to Appear Nat: 93% Likely to Appear	2 MT: 87% Likely to Appear Nat: 85% Likely to Appear	3 MT: 80% Likely to Appear Nat: 78% Likely to Appear	4 MT: 75% Likely to Appear Nat: 68% Likely to Appear	5 MT: 67% Likely to Appear Nat: 55% Likely to Appear	6 MT: 65% Likely to Appear Nat: 47% Likely to Appear
1 MT: 93% Likely to Appear Nat: 89% Likely to Appear	Release Level 1	Release Level 1				
2 MT: 91% Likely to Appear Nat: 85% Likely to Appear	Release Level 1	Release Level 1	Release Level 1	Release Level 2	Release Level 2	
3 MT: 86% Likely to Appear Nat: 81% Likely to Appear		Release Level 1	Release Level 1	Release Level 2	Release Level 2	Release Level 3
4 MT: 79% Likely to Appear Nat: 73% Likely to Appear		Release Level 1	Release Level 1	Release Level 2	Release Level 2	Release Level 3
5 MT: 73% Likely to Appear Nat: 69% Likely to Appear		Release Level 2	Release Level 2	Release Level 2	Release Level 3	Release Level 3
6 MT: 65% Likely to Appear Nat: 65% Likely to Appear				Release Level 3	Release Level 3	Release Level 3

Note: Montana rates are from cases closed during the 3-year period from September 1, 2018, to August 31, 2021. National data are from the jurisdictions that originally contributed data to develop and validate the PSA.

Presumptive Release Conditions

Release Activities and Conditions	Release Level 1	Release Level 2	Release Level 3
Basic Required Conditions	Yes	Yes	Yes
Court Reminders	Yes	Yes	Yes
Check-In At Least Once per Month		Yes	
Check-In At Least Twice per Month			Yes
Secured Financial Conditions			If Court Ordered (unless a minor offense)
Other Case-Specific Conditions		If Court Ordered	If Court Ordered

- Basic Required Conditions: The defendant shall appear in court for all hearings, abide by all laws, maintain contact with their attorney, and not leave the state without prior permission from the court.
- Court Reminders: The defendant shall read or listen to all court date reminders and reply if requested.
- 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 through telephone or videoconference.
- Other Case-Specific Conditions: May include No Contact Orders, Substance Testing, Electronic Monitoring, Criminal History Checks (upon court request), and any other case-by-case release condition.

Meaningful First Appearances

Try it out.....

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WHAT IS A Meaningful First Appearance?

A first appearance hearing¹ is the first time a person appears before a judge after being arrested. Decisions made here influence how the person's case will progress, starting with whether to release them pending the resolution of the case or to hold them until a later detention hearing. The person's liberty, community safety and well-being, fairness, and the efficiency of court and jail resources are at stake. These hearings must meet constitutional requirements and other fundamental legal principles and should adhere to best practices established by leading national groups, such as the ABA, NAC, and NASDA.

Meaningful and effective first appearance hearings have the following features:

Timeliness

- The person is seen within 24 hours—48 hours at most—of arrest.

Advice

- The person is advised of their rights and informed of the charges they are facing.

Representation

- The person is represented by defense counsel to advocate for and protect their rights.

Individualization

- If release conditions are set, they are individualized to the person.

Least Restrictive Conditions

- Release conditions are the minimum needed to reasonably assure the person appears law-abiding and appears in court.
- Release conditions should never result in the person's detention.

Presumption of Release

- The person is released unless:
 - they are eligible for detention, and
 - the prosecution requests a detention hearing, and
 - the judge finds that such a hearing is necessary.

Transparency

- The judge makes all findings and decisions on the record.

First appearance may also be called initial appearance, arraignment, detention, detention hearing, or something else depending on the jurisdiction.

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CHECKLIST FOR A Meaningful First Appearance

A first appearance hearing¹ is the first time a person appears before a judge after being arrested. Decisions made here influence how the person's case will progress, starting with whether to release them pending the resolution of the case or to hold them until a later detention hearing. The person's liberty, community safety and well-being, fairness, and the efficiency of court and jail resources are at stake. These hearings must meet constitutional requirements and other fundamental legal principles and should adhere to best practices established by leading national groups, such as the ABA, NAC, and NASDA.

Key stakeholders can take the following actions to ensure a meaningful first appearance hearing:

Before the hearing...

Pretrial Services

- Prepares a report that has information relevant to the judge's decision, including:
 - Changes
 - Arrest details
 - Assessment scores and associated release conditions
- Submit the report to the judge, prosecutor, and defense attorney.

Defense Counsel

- Reviews the pretrial assessment report.
- Meets with the person who was arrested to gather information relevant to pretrial release.

Prosecutor

- Discusses charges to the charges and, if any, what charges to file.
- Discusses what level of release, if required, is necessary to ensure the person appears in court.
- Reviews the pretrial assessment report.

Judge

- Reviews the pretrial assessment report.

During the hearing...

Defense Counsel

- Zealously represents their client and the client's best interests.
- Requests individualized, least-restrictive conditions of release.

Prosecutor

- Seeks justice and represents the State.
- Requests individualized, least-restrictive conditions of release, or requests a detention hearing if legal thresholds are met.

Judge

- Advises the person of their rights and charges.
- Makes a determination on probable cause, if retained and one has not yet been made.
- Orders release on non-monetary, individualized, non-restrictive conditions, or orders certify restrictive conditions, if eligible and all legal requirements are met, unless the person held pending a separate detention hearing.
- Makes findings of fact and legal determinations on the record.
- Refers the person to other programs or services, such as, but not limited to, mental health, substance use, and other offender services, if needed.

First appearance may also be called initial appearance, arraignment, detention, detention hearing, or something else depending on the jurisdiction.

Contact

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