

MISSOULA COUNTY JAIL DIVERSION MASTER PLAN

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This plan is dedicated to the memory of Dave Stenerson, who died in February. No one has been more committed to truth, justice, and equality. He continues to inspire by the life he led.

Steering Committee

The *JDMP* Steering Committee volunteered countless hours to guide this process and ensure it is rooted in community support and feasibility of implementation across systems. They include:

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Jail Diversion Advisory Board

The *JDMP* Jail Diversion Advisory Board brings together a broad group of stakeholders from across the criminal justice system. Their participation was critical in developing a plan that accounts for historical trends, while also acknowledging and addressing opportunities and challenges in our current criminal justice system. Their advocacy for systemic and institutional change will ensure that future generations have better outcomes. Advisory board members include:

The Honorable Marie Anderson
Missoula County Justice Court

Councilwoman Emily Bentley
Missoula City Council

Brenda Desmond
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Montana Legislature

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SECTION ONE: EXECUTIVE SUMMARY & PROCESS

This Missoula City ~ County Jail Diversion Master Plan represents Sheriff TJ McDermott's recommendations to the Missoula Board of County Commissioners and the Missoula City Council for adoption by those bodies and implementation by respective agencies and stakeholders.

Objectives & Summary

The JDMP proposes short and long-term policy and procedure changes to reduce the number of nonviolent arrestees and offenders in the Missoula County Detention Facility (MCDF). The target population for diversion includes individuals charged with nonviolent offenses who can be appropriately placed in environments that are less restrictive than jail. Sentencing options for nonviolent offenders are examined, as are diversionary policies, all of which must balance public safety, with the JDMP goal of reducing recidivism rates, while also saving City and County tax dollars.

Sentencing practices for nonviolent offenders are often disproportionately punitive for poor offenders and their families, creating a parallel system of justice.

Quite simply, there are too many low-risk, nonviolent offenders in the jail, especially pre-trial detainees. As discussed later in this plan, many recommendations in the 2009 Borg Report to reduce pre-trial jail population numbers were never implemented.

One Borg Report recommendation was to change pre-trial supervision screening mechanisms to allow a greater number of defendants to leave jail while awaiting trial. As of 2016, local pre-trial screening mechanisms are not reflective of best practices. The County, in conjunction with its courts, should uniformly adopt an evidence-based risk assessment for the purposes of setting bond and determining what – if any – release conditions should be imposed prior to trial. The City and County should fund a wider range of pre-trial monitoring options for low-income defendants, rather than solely pre-trial supervision. Diversionary courts should be funded to expand those dockets to capacity.

The County should also call upon diverse funding sources to ensure expansion of community-based behavioral services, including emergency detention beds and social detoxification services for low-income people. Culturally appropriate services for Native Americans should be woven throughout the City and County justice system. An acknowledgement of historical trauma should be accompanied by the provision of trauma-informed care.

Additionally, Missoula should support reforms at the state level to restore judicial discretion in sentencing for petty nonviolent offenses. Better data collection is necessary at nearly all points in the justice system, in addition to a better process for

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clearing warrant backlogs for traffic offenses. While many recommendations in this plan require some level of public investment, implementation of recommendations included here will reduce the County's risk of lawsuits stemming from overcrowding or inmates experiencing mental health or substance abuse crises in the jail. Implementation of alternatives to the status quo stand to be considerably less expensive than the cost of the alternative, notably expanding the jail by an additional unit, a project slated to cost \$5 million for construction and roughly \$2.5 million annually to staff and operate. If Missoula County does not implement significant diversionary efforts in the near future, MCDF will have to be expanded.

Background

Upon taking office in January 2015, Sheriff McDermott faced a scarcity of detainee beds, in addition to the potential liability associated with circumstances resulting from jail overcrowding, including violence between inmates and toward staff. The financial burden of housing overflow offenders in out-of-county detention centers and of transporting them to neighboring jails was mounting. Seeing such conditions weighing heavily on a routinely understaffed detention center team and draining County resources, he commissioned this master plan in May of 2015.

Even before taking the helm of the Missoula County Sheriff Office, McDermott through his 20-year law enforcement career had watched as new practices emerged for diverting certain nonviolent offenders from jail. He came to see that the nonviolent criminal behavior of mentally ill and addicted defendants are often best addressed in non-jail settings, leading to better outcomes for individuals and the community. Sentencing practices for nonviolent offenders are often disproportionately punitive for poor defendants and their families, creating a parallel system of justice. Sheriff McDermott is committed to finding solutions capable of stopping the cycle of incarceration for nonviolent individuals and to improving community safety.

Methodology

The JDMP target population includes individuals charged or sentenced in Missoula County for non-assaultive offenses, or those at risk of arrest for non-assaultive offenses. These types of offenses explored here primarily consist of property crimes, drug crimes, traffic offenses including DUIs, and crimes against public order. When classifying charged offenses, the JDMP Coordinator analyzed elements of relevant underlying statutes. Non-assaultive crimes are misdemeanors or felonies charged in Municipal Court, Justice Court, or District Court. For example, this analysis excludes misdemeanor partner or family member assault charges, but includes felony DUI. Further, while DUI charges are included, assaultive drunk driving charges such as negligent vehicular assault are excluded. If an individual is incarcerated with

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multiple charges in one or more courts, they are excluded if at least one of those charges is violent.¹

Program administrators provided most master plan data, which the JDMP Coordinator analyzed. Sources include City and County staff,² third party program employees, and state court administrators, among others. Where critical data is insufficient or entirely lacking, a recommendation is made to begin capturing data so outcomes may be measured and tracked in the future. Because the jail replaced its data system in 2014, the most complete information about local incarceration trends available is from Fiscal Year 2015, so this is often the baseline used. The plan examines trending data whenever possible.

The JDMP also draws from FullCourt, the data system serving Municipal and Justice courts. Administrators from both bodies were very knowledgeable, providing a significant amount of help to the project. Diversionary program specifics in particular, however, contain gaps, particularly in trending data. The JDMP Coordinator recommends that any private vendors working with the local justice system provide annual reports to the City or County detailing in-depth participant data.

Key stakeholder and public support was instrumental in constructing the JDMP. Ongoing support will be necessary for plan adoption and implementation. With this in mind, the team worked closely with the JDMP Steering Committee to help prioritize policy recommendations and direct the project. A larger group comprised of elected officials and justice system experts forms the Jail Diversion Advisory Board. The JDMP Coordinator held one-on-one interviews with more than 50 additional stakeholders, including City and County officials, mental health and other service providers, and justice system representatives, oftentimes communicating with stakeholders more than once. The Coordinator also interviewed four individuals with experience as justice-involved persons in the jail. The Project Intern interviewed jail staff and a portion of those comments are included in this plan. The JDMP Coordinator also communicated with those serving the Native American population, a group experiencing disproportionately high incarceration rates in Missoula and across the state.

¹ The list of included criminal offenses can be found [here](#).

² Detailed information about data sources can be found in the appendix section

SECTION TWO: INTRODUCTION & OVERVIEW

National Landscape

In recent years, bipartisan support has increasingly grown for significant criminal justice reforms at state and federal levels. Resolve to reverse existing criminal justice paradigms is fueled by recognition that harsh sentencing policies of the past have had more negative than positive outcomes on community safety and fiscal bottom lines. Adverse outcomes include particularly negative consequences on vulnerable populations, including racial minorities and those with mental illness or substance abuse issues. It is often repeated but important to note that the United States has the highest incarceration rate in the world, surpassing that of China, Russia, and Iran.³ With 358 of every 100,000 residents behind bars, Montana has a higher adult incarceration rate than Iran, Singapore, and Kyrgyzstan.⁴ According to U.S. Bureau of Justice Statistics, this country currently incarcerates 2.2 million people, 731,200 of whom are held in local jails.⁵ Of those in community detention, 500,000 are pre-trial detainees. On any given day, therefore, more than half a million people who have not been convicted of a crime are incarcerated in a county

On any given day, more than half a million people awaiting trial who have not been convicted of a crime are incarcerated in a county detention center.

detention center.

The federal sentencing reform movement, with support of both the executive and legislative branches, has largely been driven by increased longitudinal data collection, much of it demonstrating the failed impacts of mandatory minimum sentences for drug crimes. In the federal prison system, 50 percent of inmates were serving sentences for drug-related crime, while only 7 percent were violent offenders.⁶ In late 2015, following action by the U.S. Sentencing Commission, over 6,000 federal drug offenders were released early from prison, the largest such release in history.⁷ In December 2015, President Barack Obama commuted the sentences of 76 nonviolent drug offenders, many of whom had received life

³ Retrieved from www.prisonstudies.org/highest-to-lowest/prison_population_rate

⁴ (2015). [Montana Dept. of Corrections Biennial Report](#), A-3.

⁵ Retrieved from www.bjs.gov (U.S. Bureau of Justice Statistics)

⁶ Id.

⁷ An estimated 8,550 additional offenders could be eligible in 2016 for early release. See www.washingtonpost.com/world/national-security/justice-department-about-to-free-6000-prisoners-largest-one-time-release/2015/10/06/961f4c9a-6ba2-11e5-aa5b-f78a98956699_story.html

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sentences for their crimes.⁸ In October 2015, meanwhile, a bipartisan coalition of senators introduced the federal Sentencing Reform and Corrections Act,⁹ which at the time of this publication is still moving through the legislative process. The bill would revise mandatory minimums for low-level and nonviolent federal drug offenders.

State Landscape

Montana operates one prison for men and another for women, also contracting with a private company that oversees a third prison for males. Additionally, Montana has two regional prisons; six privately run pre-release centers,¹⁰ and several assessment and treatment facilities.

Facility	Population	Location
Montana State Prison	1,500 bed (male)	Deerlodge
Crossroads Correctional Facility	664 bed (male)	Shelby
Montana Women's Prison	194 bed (female)	Billings
Great Falls Regional Prison	152 bed	Great Falls
Glendive Regional Prison	141 bed	Glendive

Historical Context

State and local judicial sentences and legislative policies drive incarceration rates in the United States, thus state-level reforms have the most significant impact on the number of individuals behind bars. As with other states, Montana has cycled between eras of lengthening sentencing, with a focus on punishing individuals, and eras marked by sentencing reform, during which stakeholders examine criminality from a societal perspective. Factors driving both approaches include prison overcrowding, fiscal concerns, the use and availability of alternatives to incarceration, public safety, and national attitudes toward crime.

Montana has cycled between eras of lengthening sentencing, with a focus on punishing individuals, and eras marked by sentencing reform, during which stakeholders examine criminality from a societal perspective.

⁸ The White House, Office of the Press Secretary (Dec. 18, 2015). Retrieved from <https://www.whitehouse.gov/the-press-office/2015/12/18/president-obama-grants-commutations-and-pardons>

⁹ According to the U.S. Bureau of Justice Statistics, federal prisoners account for 9 percent of Americans behind bars. See www.judiciary.senate.gov

¹⁰ The pre-release centers are located in Missoula, Butte, Bozeman, Helena, Great Falls, and Billings. They have a total of 862 beds.

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In 1988, Montana Gov. Ted Schwinden created a 16-member Criminal Justice and Corrections Advisory Council. The Council made recommendations regarding alternative and intermediate probation and parole sanctions, good time credits (to reduce prison time for good behavior), and early discharge from supervision.¹¹ In 1990, Gov. Stan Stephens directed the Council to focus on Montana’s sentencing statutes and practices. This led to an increase in probation and parole officers, targeted case management at the state prison, the creation of a community corrections system with private prerelease centers, and a good time allowance for parolees to lessen their remaining supervision.¹²

In the mid-1990s, however, mounting concerns over national crime rates and high-profile media stories (most from outside Montana) prompted Gov. Marc Racicot created the Governor’s Advisory Council on Corrections and Community Justice Policy. The result was sentencing reform through a “truth in sentencing” policy that significantly lengthened sentences.¹³ Because of the increase in days spent in prison, the state expanded its prison capacity through regional correctional facilities.

In 1995, the Montana legislature took the initiative and created the first Sentencing Commission, tasked with proposing a simpler, more understandable sentencing system.¹⁴ It focused on collecting better data and creating a criminal justice database to inform future policy. The Commission made some recommendations to the legislature, but they did not gain traction, and no legislative reforms resulted from its work.

The PEW Study

In 2014, the Montana executive branch asked the Pew Charitable Trust (PEW) to conduct a study on statewide prison population drivers. PEW found the total population (probationers, prisoners, and parolees) had grown by 48 percent in

Between 1998 and 2013 in Montana, the number of low-risk offenders in prison increased by 133 percent, from 602 to 1,403.

fifteen years.¹⁵ The study found, “The prison population is largely comprised of individuals who are low-risk for reoffending: the number of low-risk offenders in prison has increased by 133 percent, from 602 in 1998 to 1,403 in 2013.”¹⁶ PEW found fault with alternative placements, most significantly prerelease centers, from

¹¹ See Criminal Justice and Corrections Advisory Council (Nov. 1988). Report to the Governor.

¹² Burkhardt, Julianne (Sept. 2, 2015). Montana Legislative Staff Presentation to the Montana Sentencing Commission. For the Correctional Standards and Oversight Committee, 2-4.

¹³ See Fox, Susan B. (May 1998). [Policies on Good Time and the Effects on Sentencing Practices: History and Survey Results.](#)

¹⁴ See House Bill No. 357 (Ch. 306, L. 1995).

¹⁵ Pew Charitable Trust (Nov. 2014). [Policy Options for Improving Public Safety, Holding Offenders Accountable, and Containing Corrections Costs in Montana.](#) Report to the Montana Governor’s Office and the Department of Corrections, 3.

¹⁶ Id.

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which there has been a 174 percent increase in revocations since 1998. A growing number of these are for technical violations rather than new crimes.¹⁷ In total, 89 percent of those returned to prison in Montana from community corrections programs in 2010 were for technical violations, rather than the commission of a new crime.¹⁸

PEW recommended better offender re-entry services to reduce recidivism. PEW also recommended the Montana Department of Corrections (DOC) assess its contracted vendors to ensure the use of evidence-based programming and for the collection of meaningful data on participant recidivism rates. It suggested hiring an outside party to evaluate community corrections programs around the state, underscoring the need to ensure sanctions are tailored to meet offender risk level and needs, and to ensure the proper use of incentives and sanctions.¹⁹ In 2013, 23 percent of Montana's prison population was comprised of drug offenders, and PEW recommended the state evaluate and consider changes in dealing with the addicted population:

"Montana could consider more widely adopting community-based prison alternatives for lower-level drug offenders. That approach could allow the state to safely reduce its prison population and target its correctional resource to greatest effect. For example, the state could institute presumptive probation for first and second-time offenders who do not have a prior violent, sex, or trafficking offense. Additionally, the state could create targeted punishments for higher-

Correctional systems are disproportionately filled with vulnerable populations – individuals with mental illness and who are chemically dependent, racial minorities, individuals who have experienced significant childhood trauma, and the very poor.

level possession and sales offenses. Montana's current drug offense statutes do not differentiate between offender conduct that is driven by addiction and conduct that is driven by financial gain."²⁰

Justice Reinvestment

As budget constraints collide with unsustainable prison population growth that is unsustainable for current facilities, both Republican and Democratic state administrations have taken on corrections reform. As in Montana, local jurisdictions

¹⁷ Id.

¹⁸ Id.

¹⁹ Id at 8.

²⁰ Id at 9.

The vast majority of offenders will return to the community. Without meaningful rehabilitation, treatment, and support services, they pose a much greater public safety risk.

around the country are straining under the pressure of inmates crowding county jails.

As at the federal level, the political and social climates of an increasing number of states support a shift from a punitive focus on individual accountability through increased

incarceration, to a more restorative approach that includes diversion and focused mental health and substance abuse treatment. This shift has come, in part, from the increasingly widespread application of data collection and analysis to the criminal justice system and criminogenic risk factors, and a focus on evidence-based policies that improve public safety outcomes. Correctional systems are disproportionately filled with vulnerable populations – those with mental illness and/or chemical dependency issues, racial minorities, those who have experienced significant childhood trauma, and the very poor.

Data shows that public safety is better served with provision of pre- and post-incarceration services, rather than none and harsh sentencing policies. Most offenders will ultimately return to the community. Without meaningful rehabilitation, treatment, and support services, they pose a much greater public safety risk. Several national policy organizations and foundations from across the ideological spectrum have focused recent efforts on criminal justice reform.²¹ This shift is accompanied by an increasing willingness to invest in community-based mental health and chemical dependency services to help break the cycle of incarceration for repeat offenders. As discussed by New York School of Law Fellow Anne Milgram, however, significant gaps remain in pretrial services across the nation:

“While debates about prison over-crowding, three strikes laws, and mandatory minimum sentences have captured public attention, the importance of what happens between arrest and sentencing has gone largely unnoticed . . . Technology could help us leverage data to identify offenders who will pose unacceptable risks to society if they are not behind bars and distinguish them from those defendants who will have lower recidivism rates if they are supervised in the community or given alternatives to incarceration before trial.”²²

Correctional system costs constitute one of the biggest budgetary items for the states, an expense carried by taxpayers. In the ongoing quest to balance good fiscal stewardship with public safety and accountability, a number of states have adopted

²¹ Foundations with major criminal justice initiatives include the Charles Koch Foundation, the John D. & Catherine T. MacArthur Foundation, the Laura & John Arnold Foundation, and the Open Society Foundations funded by philanthropist George Soros. Retrieved at

²² Milgram, Anne (VP for Criminal Justice Initiatives at the Laura & John Arnold Foundation & Senior Fellow at NYU School of Law) (June 20, 2012). [Moneyballing Criminal Justice](#). *The Atlantic Online*.

reforms emerging from a comprehensive, data-driven and evidence-based analysis of their criminal justice systems.²³ This movement is called Justice Reinvestment (JRI), which is defined as a “data-driven approach to corrections policy that seeks to cut spending and reinvest savings in practices that have been empirically shown to improve safety and hold offenders accountable.”²⁴

Funded by the United States Department of Justice (DOJ) Bureau of Justice Assistance and the Public Safety Performance Project of the PEW Center on the States, the Vera Institute of Justice and the Council on State Governments have undertaken JRI projects around the country. The projects collect and analyze data on factors that address costs and implement changes to achieve better outcomes, also measuring fiscal and public safety impacts of those changes.²⁵ The following include JRI outcomes:²⁶

- **Arkansas:**
 - Initiated in 2010 over concern with a prison population that had doubled in 20 years.
 - Passed legislation that requires the Department of Community Corrections to use evidence-based practices, establishes a performance incentive grant funding program, improves government efficiency and effectiveness through data collection and performance measurements, and modifies sentencing laws.

- **Delaware:**
 - Initiated in 2011, focused on studying both the pretrial detainee population as well as sentenced offenders.
 - Passed legislation to require implementation of an objective assessment instrument to gauge defendant risk of flight and re-arrest to help lower courts make informed decisions about conditions of pretrial release, support improved community supervision practices, and create incentives for individuals incarcerated under supervision to complete evidence-based programs designed to reduce recidivism.

- **Georgia:**
 - Began in 2011 over concern that length of incarceration for property crimes tripled.
 - Legislation passed to establish policies for drug and mental health diversion and to require corrections to use evidence-based practices

²³ In this context, data-driven means based on reliable data rather than personal experience, while evidence-based means objectively proven to improve an outcome.

²⁴ Retrieved at <http://www.vera.org/project/justice-reinvestment-initiative>

²⁵ Id.

²⁶ Arkansas, Delaware, and Georgia, received JRI through the Vera Institute of Justice, which also works in Kentucky, Louisiana, and South Carolina. The Justice Center at the Council of State Governments is currently working in Alabama, Hawaii, Idaho, Kansas, Nebraska, Pennsylvania, Rhode Island, and W. Virginia.

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including a risk-and-needs-assessment tool in supervision and treatment programs.

Similar in population and demographics to Montana, Idaho has benefited from JRI recommendations as well. Passed in 2014, Idaho's justice reinvestment reform legislation included provisions to strengthen community supervision practices and programs designed to reduce recidivism, and to tailor sanctions for supervision violations to an individual offender's risk and needs.²⁷

The Montana Sentencing Commission

In 2015, the Montana Legislature passed Senate Bill 224, creating the second Sentencing Commission in state history, and the first in 20 years.²⁸ The legislation was supported by the Montana Attorney General, DOC, County Attorneys Association, the American Civil Liberties Union (ACLU) of Montana, faith community leaders, and others.²⁹ It arose out of

Average state prison population growth between 2004 and 2013 was 6 percent nationally. In Montana, that number was 15 percent.

legislative concern with state prison population forecasts predicting the need for additional hard beds coinciding with decreasing statewide crime rates. Average state prison population growth between 2004 and 2013 was 6 percent. In Montana, that number was 15 percent.³⁰ Montana is projected to be at 110 percent of detention bed capacity by 2019.³¹ The corrections budget is funded from the state general fund, and corrections spending increased 39 percent between 2006 and 2014.³² Since 2010, the average length of time an offender serves before granted parole has increased 16 percent. Currently, 85 percent of prison intakes are for revocations from probation or parole.³³

²⁷ See Idaho Senate No. 1357.

²⁸ The Master Plan Coordinator sponsored this legislation.

²⁹ Full bill text can be found at http://leg.mt.gov/bills/2015/sb0299/SB0224_1.pdf

³⁰ Chung, K., Reynolds, C., Sisk, D., (Sept. 2, 2015). Montana Commission on Sentencing: Applying Justice Reinvestment. Council of State Governments Justice Center, 23.

³¹ Id at 28.

³² Id at 29.

³³ Id at 31-32.

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SB 224 also acknowledges corollary budget impacts of the growing corrections population on the Office of the Public Defender, state and local courts, and county jails. Through the Sentencing Commission, Montana received a \$700,000 grant for the Council of State Governments (CSG) to run its JRI program in Montana. All three branches of government and both political parties supported the JRI grant.³⁴ CSG will be taking a comprehensive approach to a data-driven analysis of the state justice system and making recommendations on policies intended to save money. Those savings will be invested in proven alternatives to longer prison terms. Positive impacts on county budgets should be significant. Once a county inmate is sentenced on a felony charge, he or she becomes an inmate of the DOC. Notably, Montana is the only state with a “DOC Commit,” meaning a judge can give the DOC discretion on where and for how long an inmate will be incarcerated. To make this determination, inmates are sent to an assessment facility before being placed. Backups at assessment centers and prison facilities in Montana are creating hardship for counties already struggling to house their own detainees. In Missoula, over 15 percent of jail bed capacity in FY 2015 was taken up by sentenced DOC offenders waiting for a place to move. Between 2013 and 2014, the number of offenders the DOC held in county jails increased 56 percent.³⁵

Between 2013 and 2014, the number of offenders held by the Montana DOC in county jails increased 56 percent.

The Montana Jail Crowding Report

Many recent criminal justice reforms have been of federal and state prison systems. More recently, attention has turned to local jail facilities, which house one-third of those incarcerated in the United States.³⁶ The vast majority of those held in county jails have not been convicted of a crime, implicating issues of constitutional rights, including the right to due process and the right to an attorney. Additionally, past correctional policies have focused resources and programming on prisons, leaving jail detainees without many services that could decrease their chances of becoming further involved in the justice system.

In Montana, while crime data at the county level (and prison data at the state level) is aggregated and accessible, county jail data is spotty, due largely to the use of different data systems and lack of consistency and completeness in the types of data

³⁴ See June 30, 2015, [Letter to Bureau of Justice Assistance and Pew Center on the States](#), signed by Governor Steve Bullock, Attorney General Tim Fox, Chief Justice Mike McGrath, Senate President Debby Barrett, Senate Minority Leader Jon Sesso, Speaker of the House Austin Knudsen, House Minority Leader Chuck Hunter, and Dept. of Corrections Director Mike Batista.

³⁵ Pew Charitable Trust (Nov. 2014). [Policy Options for Improving Public Safety, Holding Offenders Accountable, and Containing Corrections Costs in Montana](#). Report to the Montana Governor’s Office and the Department of Corrections, 3.

³⁶ See US DOJ’s Bureau of Justice Statistics, <http://www.bjs.gov/content/pub/pdf/cpus14.pdf>

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collected on detainees.³⁷ In 2005, in response to perceived jail overcrowding, the Montana Board of Crime Control (MBCC) contracted with consultants to conduct a three-day site tour of four Montana jails,³⁸ also conducting in-person and telephone interviews of stakeholders.³⁹ The 19-page Jail Crowding and Assessment Report resulted.⁴⁰ In it, there were three key findings:

- More data is needed to better inform an analysis of the crowding problem.
- Multiple conditions are contributing to the crowding problem:
 - Lack of an adequate public defender system⁴¹
 - Lack of focused use of pretrial release (and perhaps supervision and services)
 - Lack of reliance on risk/needs assessment instruments to guide sanctioning and programming
 - Lack of pre-sentence investigations for misdemeanors
 - Lack of sanctions between probation, jail, and prison; lack of community-based interventions to address substance abuse and mental health concerns
 - Lack of a comprehensive plan for statewide re-entry planning and services
- An increasingly strategic, cross-system collaborative approach to the problem is needed.⁴²

The consultants recommended:⁴³

- Creating a statewide offender management committee
- Collecting and analyzing offender profile data
- Conducting a resource analysis
- Developing a system flow chart
- Developing a policy and practice analysis
- Conducting cross-system training
- Conducting a gap analysis to identify key targets for change
- Piloting change strategies
- Developing a comprehensive strategic plan
- Building long term data and information system capacity

In the consultant interview with U.S. Federal Marshal Dwight MacKay, MacKay expressed concern about county jails' ability to house federal inmates, due in part

³⁷ The Montana Board of Crime Control is currently seeking technical assistance grants to assist counties with updating data collection systems to improve jail data.

³⁸ The consultants toured Yellowstone, Fergus, Chester, and Cascade County jails and met with the respective county sheriffs.

³⁹ Funded with a grant from the US DOJ's National Institute of Corrections.

⁴⁰ The full report can be retrieved at [www.mbcc.mt.gov/PlanProj/Projects/NIC TA %20Report.pdf](http://www.mbcc.mt.gov/PlanProj/Projects/NIC_TA_%20Report.pdf)

⁴¹ This report was released a year before Montana created a statewide public defender system.

⁴² Id at 3.

⁴³ Id at 3-4.

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from the “backing up” of state prisoners in county jails. He attributed the increase in federal inmates to “an increase in methamphetamine abuse, the Safe Streets Act,⁴⁴ and the increase in federal indictments.”⁴⁵ “Concern was also expressed by Marshal MacKay regarding Montana’s Native American population. He indicated that the tribes are under-resourced, witnessing increasing crime and substance abuse rates, and that Native Americans are overrepresented in local jails.”⁴⁶

While the report is insightful, as the consultants point out, it lacks substantiation in jail data and relies on problems and solutions as perceived by stakeholders. They acknowledge, “We were only able to interview a limited number of officials over the telephone in advance of our arrival and through the course of our three-day site visit. . . Given these limitations, it is possible we have yet to gain a complete grasp on the jail crowding problem.”⁴⁷ “Very little data is available at this time to inform a careful analysis of the local corrections systems. Our findings are based almost entirely on the information provided by Montana officials through verbal interviews. Much of the data provided was therefore anecdotal and, for this reason, has its limitations.”⁴⁸

Building upon the MBCC report, the agency made significant strides in collecting jail data in the following years. They created the Detention Data Information System (DDIS) - “the only statewide repository for jail-based offender booking information.”⁴⁹ In the most significant report of its kind, the DDIS in 2012 released aggregated data from 2010-2011.⁵⁰

The rate of incarceration of women in Montana jails in 2010 and 2011 was nearly double the national average, 24 percent versus 13 percent.

As of 2011, 50 out of the 56 Montana counties operated their own temporary holding facility, detention center, or jail.⁵¹ Missoula, Yellowstone, and Cascade counties have the largest detention centers. The report references national research on the challenges of rural jails, including higher suicide rates, less access to services, and difficulty with staff retention. Data gaps in the report should be noted. For example, nearly one-third of offenders lacked a racial categorization. At the time of the report, just under half of all jails were reporting data to the MBCC through the

⁴⁴ See the [Omnibus Crime Control and Safe Streets Act of 1968](#) (OCCSSA) (P.L. 90-351, 82 Stat 197). Seen as an overly harsh response to perceived growing national crime rates, the Safe Streets Act most notably created the federal Felon in Possession of a Gun crime, inserting the federal criminal justice system into previous state jurisdiction.

⁴⁵ Id at 6.

⁴⁶ Id.

⁴⁷ Id at 14.

⁴⁸ Id.

⁴⁹ [Detention Data Information System: 2010-2011 Report](#). Montana Board of Crime Control.

⁵⁰ The publication was grant-supported by the Office of Justice Programs, US Dept. of Justice.

⁵¹ Id at 8.

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DDIS, representing 61.63 percent of jail beds.⁵² Missoula County is among those reporting jail data.

Notable findings from DDIS report include the rate of incarceration of women in Montana jails, which was nearly double the national average (24percent versus 13 percent). Native Americans comprised 13 percent of the female jail population and 9 percent of the male population (although, as noted above, this data is unreliable given that one-third of inmates did not have a reported race). Roughly half of the jailed population was between the ages of 18 and 30, in keeping with national data indicating a marked decrease in criminality beyond the age of 40.

The top charges for men, in descending order, included:

- 1) Driving under the influence: 9.4 percent
- 2) Criminal contempt: 5.1 percent
- 3) Probation violation: 5 percent
- 4) Partner or family member assault: 3.7 percent
- 5) Driving while license is revoked: 3.6 percent
- 6) Disorderly conduct: 3.6 percent
- 7) Revocation of deferred or suspended sentence: 3.1 percent
- 8) Larceny/theft: 2.9 percent
- 9) Obstructing a peace officer: 2.6 percent

The ACLU Jail Report

In 2015, the ACLU of Montana released a comprehensive report on the state's county jails. It summarizes:

“Problematically, many county detention centers lack adequate funding and struggle to effectively manage the incarcerated. The impacts these often-deplorable conditions can have on individuals and society as a whole are extremely far-reaching. Neglect in county detention centers, coupled with a prevalence of mental illness, leads to a high rate of recidivism, which turns the justice system into a revolving door that is a blight on county, state, and federal budgets.”⁵³

The report is based on data collected during county jail tours, interviews with administrators and detainees, and a survey of jail inmates statewide. Trends identified include overuse of solitary confinement for individuals with mental illness, inadequate detention facility staffing levels, inadequate medical and mental

⁵² Id.

⁵³ (2015) [Locked in the Past: Montana's Jails in Crisis](#). The American Civil Liberties Union of Montana, 1.

health care, overcrowding, and unconstitutional prohibitions on visitation from minors and non-family members.⁵⁴

Counties expect detention centers to be psychiatric hospital, emergency room, and drug rehabilitation clinic all in one, but do not provide the resources to address any of these issues.

“Rather than re-evaluate the county detention system, reform the broken bond system, and consider addiction and mental health treatment and incarceration alternatives, counties throughout the state are building bigger detention centers . . . Many have drug or alcohol addiction issues, mental health issues, medical needs, or developmental disabilities. Counties expect detention centers to be psychiatric hospital, emergency room, and drug rehabilitation clinic all in one, but do not provide the resources to address any of these issues. The result is an inefficient and ineffective system that is unable to provide treatment and rehabilitation to stop people from repeatedly cycling through the criminal justice system. Addressing these issues in county detention centers and providing efficient and effective pre-trial alternatives to detention must become a high priority for counties across the state.”⁵⁵

The ACLU found approximately 1,000 county detention beds throughout Montana, with 300 designated for female prisoners. Accordingly, Missoula’s county jail beds account for 22.4 percent of the total number of jail beds in the state. Sheriffs and jail administrators reported:

- An estimate of over 90 percent of individuals have charges stemming from behavior related to substance abuse
- Increasing pre-trial detention days, due in part to over-burdened public defenders and slow court systems
- Lack of incarceration alternatives, and people incarcerated because they cannot post bond⁵⁶
- “Individuals experiencing detoxification or an acute medical or mental health condition should be in a hospital or in another in-patient setting rather than solitary confinement in a detention center.”⁵⁷

Missoula ranked near the bottom on reported prisoner safety, and worst in the state for medical care, with 83.3 percent prisoners reporting dissatisfaction (Lake County

⁵⁴ Id at 5.

⁵⁵ Id at 5-9.

⁵⁶ Id at 7.

⁵⁷ Id at 14.

was second with 58.3 percent dissatisfied. The statewide average was 43.1 percent). Missoula inmates also reported a 66.0 percent dissatisfaction with mental health care, compared to a 30.4 percent statewide average. However, it should be noted that this data was based upon three inmate responses to the ACLU survey.

County Jail Diversion Efforts Around Montana

To varying degrees, every urban county jail in Montana is facing population pressures. Such stressors are also increasingly affecting less populated counties as their detention centers absorb overflow. As discussed above, much of this pressure is from sentenced DOC inmates in county jails awaiting transfer to state placements, as state facilities also grapple with overcrowding.⁵⁸ It is important to note that county jail booking increases, though outpacing population growth, are not the result of correlative increases in crime.⁵⁹

Gallatin County offers the most comprehensive jail diversion programming of any county in Montana.

In response to population pressures, several communities have proposed jail bonds to expand facilities, with some counties hoping to finance large expansions with long-term contracts with the state for beds. Most jail bonds have failed to gain voter support, leading counties to explore alternatives.

Gallatin County offers the most comprehensive jail diversion programming of any county in Montana. After two failed attempts, Gallatin County voters in 2010 finally approved a \$32-million jail bond to construct a 182-inmate facility. The detention center has two caseworkers/counselors staffed by the Gallatin Mental Health Center. The county's Virgil Project, meanwhile, serves as a court-sanctioned mental health treatment alternative to jail.⁶⁰ Gallatin County also operates a "Fresh Start" program, which through grant funding supports a re-entry coordinator at the jail. Like Missoula, the Gallatin County Sheriff operates a work program. Gallatin County also offers a Crisis Intervention Team and utilizes three emergency detention beds at "Hope House" for those in mental health crisis. The jail has a dedicated Program Director who oversees 165 volunteers running 60 programs, including anger management, yoga, and academic tutoring.

In June of 2015, voters in Yellowstone County rejected a \$7 million jail levy slated to construct a 100-bed women's unit. In October of 2014, the jail reported being severely over-capacity with 501 inmates in a facility built for 286.⁶¹ After the levy

⁵⁸ It should be noted that when DOC inmates are housed in county jails, they may not be getting the services required by the DOC's own inmate policies.

⁵⁹ Yellowstone County is the exception. Much of the growth in their jail population is attributed to increased population and crime in eastern counties affected by the Bakken boom.

⁶⁰ Participants are required to attend therapy and follow a mental health plan, as a condition of sentencing. The program boasts a 10 percent recidivism rate, much lower than that of the general population.

⁶¹ See http://billingsgazette.com/news/local/yellowstone-county-jail-hits-inmates/article_6906f87c-9651-579f-88c6-b35890085777.html

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failed, Yellowstone County Commissioners allocated \$100,000 from the community's general fund to hire a trial assessment evaluator to recommend whether a detainee should be released pre-trial and what bond amount might be appropriate. The evaluator is using an evidence-based risk assessment tool. The general fund allocation also includes \$20,000 to assist indigent offenders with the cost of pre-trial monitoring.

In Lewis and Clark County, a 2014 bond measure to construct a new 244-bed facility failed with 65 percent of the voters rejecting the proposal. In response to overcrowding, the jail books and releases first-time, nonviolent misdemeanors (other than DUI) and has asked state probation and parole officers not to detain people on revocations on Fridays so as to leave room in the jail for weekend bookings. The County recently paid \$1.2 million to construct "Journey Home," a crisis mental health facility that includes two emergency detention beds.

Other counties have had similar challenges in addressing overcrowding:

- Flathead County in July 2015 announced that it entered into a preliminary agreement to turn a former Walmart into a jail. The county constructed its existing detention center in the mid-1980s to accommodate 63 inmates. In recent months, it has averaged 89 detainees. The \$2.8-million-dollar proposal to purchase the Evergreen Walmart, slated for funding with raised mills, later fell through. Also this past year, Flathead County closed its juvenile unit and repurposed it for adult detention. Juveniles from Flathead County are now housed in Missoula's juvenile detention unit.
- In Lake County, "Lake House" recently opened. It is an eight-bed mental health crisis stabilization facility operated by the Western Montana Mental Health Center. It constitutes a partnership between the state, the CSKT, and the local medical center.
- In 2014, voters in Roosevelt County approved a \$12 million bond to construct a new detention center to replace its 100-year-old facility. Liability concerns fueled bond passage, as the jail was not compliant with the Americans with Disabilities Act.
- In Dawson County, a \$4.5 million jail bond failed in 2014.
- Ravalli County opened "West House" in 2011, comprised of four emergency crisis mental health detention beds. Funding sources included the state and the Montana Mental Health Trust Fund.

The yearly bond obligation is \$1.25 million, which amounts to \$18.00 per year in property taxes on an average home value of \$250,000. The bond will be paid off in 2018.

Missoula County Detention Facility

Finances

In the years before the Missoula County Detention Facility (MCDF) on Mullan Road was constructed, inmates were housed in an 86-bed unit on the fourth floor of the

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county courthouse annex. To cope with overflow, the county had inmates sleeping on floors, transporting and housing them in other county facilities, at a per diem cost to Missoula County. Additionally, jail administration made agreements with Municipal and Justice Court judges to book and release inmates with bonds at or below a certain amount. The existing Mullan Road jail opened in 1999. A \$17.1 million general obligation bond, which passed in 1996 with 65.5 percent of the vote, financed jail construction.⁶² Currently, the yearly bond obligation is \$1.25 million, which amounts to \$18.00 per year in property taxes on an average home value at \$250,000. The bond will be paid off in 2018.

In 2008, a proposal to voters to support a \$16 million general obligation bond slated for construction of a \$23.5 million emergency operations building adjacent to the jail failed, with 51 percent opposing the measure.⁶³ While the county bond proposal would not have added jail beds, it would have “address(ed) space, technology, and communication issues for . . . the Sheriff’s Office” and included “an adjacent warehouse for storage of materials and equipment relating to law enforcement and for general maintenance functions and related improvements.”⁶⁴

Civil liability judgments are not uncommon for jails given the number of people booked with mental health and substance abuse issues into facilities unequipped to handle such conditions.

Since jail construction, the only significant jail facility upgrade came in 2013, when the county constructed two secure outdoor recreation facilities for juvenile and female detainees. The upgrade resulted from settlement of a federal class-action lawsuit filed by the ACLU of Montana on behalf of female inmates and those under the age of 18. The suit alleged that those detainees had less access to outdoor recreation and fresh air and sunlight than their male counterparts did.⁶⁵ The County spent \$250,000 renovating the units. Other recent significant liabilities included a \$565,500 jury award stemming from the 2009 death of a female inmate from alcohol withdrawal seizures.⁶⁶ Attorney costs on that case incurred an additional expense of \$255,039 for Missoula County. In 2011, meanwhile, the County paid \$286,294 resulting from a female inmate suicide. These types of judgments are not uncommon for jails given the number of people booked with mental health and substance abuse issues in a facility unequipped to handle the severity of these conditions. The cost of these human tragedies on inmates, family members, jail staff, and taxpayers must be considered when investing in diversionary programming.

⁶² County Bond Book 481, Page 0958.

⁶³ County Resolution 2008-100.

⁶⁴ Id.

⁶⁵ [Chief Goes Out, et al v. Missoula County, Cause No. CV 12-155-M-DWM](#).

⁶⁶ Wasson v. Missoula County, DV-11-622 (2014). A \$150,000 settlement was also reached with the jail’s contract medical provider at the time, Spectrum Medical Services.

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MCDF is a division of the Sheriff's Office. There are 115.5 full-time positions at the jail, including 84 adult detention officer positions supervised by a commander and an assistant commander. According to the Missoula County Human Resources Office, turnover at the jail is consistently high. The annual turnover rate is between 25 percent and 30 percent, with MCDF averaging five open positions at any given time. The cost to staff, operate, and maintain the facility is \$11.6 million for FY 2016.⁶⁷ According to the County Finance Department, the County general fund pays operations and maintenance expenses, which amounts to \$195.36 annually in property taxes on a home valued at \$250,000.

Courts have opined repeatedly on the constitutional obligation of jails to provide adequate medical, mental, and dental health services. Accordingly, MCDF contracts with the Partnership Health Center Dental Clinic to provide routine dental services in the jail at a yearly cost of between \$25,000 and \$30,000. Missoula County contracts with Correctional Health Providers (CHP), meanwhile, for medical services inside the jail at an annual rate of \$806,039. (Mental health services are discussed in more detail in Section IV). The jail is required to pay for outside inpatient or outpatient medical care, including acute psychiatric assessments, and dental and medical emergencies. Corresponding to a national trend, costs of providing outside healthcare for detainees in Missoula are fast outpacing inflation. Missoula jail administrators report such expenses have increased 22 percent since 2011, with a current total annual cost of \$108,969.45.

Turnover at the jail runs between 25 percent and 30 percent annually.

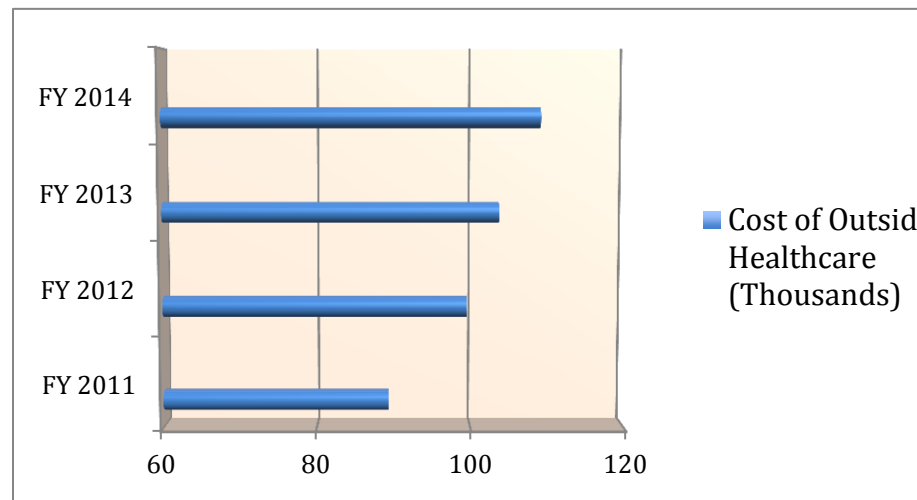


Chart 2.0 Cost of Outside Healthcare

Federal law prohibits incarcerated individuals from qualifying for Medicaid.⁶⁸ If an inmate otherwise satisfies Medicaid coverage criteria, however, inpatient medical treatments are covered if the individual is outside the facility for 24 hours or more. Montana's Medicaid waiver, granted on Nov. 2, 2015, made 70,000 childless adults

⁶⁷ [Missoula County Budget \(July 1, 2015-June 30, 2016\)](#), 332.

⁶⁸ 42 USC Section 1396(a)(27)(A).

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with incomes of up to 138 percent of the federal poverty level eligible for Medicaid. The expansion stands to ease existing medical care costs on the Missoula County jail budget.

At the current rate of population growth, Missoula County will need to construct an additional adult general population unit. A 60-bed unit would cost an estimated \$5,040,851.63 in 2016 dollars to construct and an additional \$2,365,200 per year to staff and operate. When the population increased to unsustainable levels in the past, administration first attempted to move the DOC-sentenced inmates, for whom the state is financially responsible. However, due to population growth, the county has had to move an increasing number of county inmates to facilities in other counties, at a per diem cost to Missoula County. This number has grown steadily, and while it does not currently represent a significant percentage of the total jail budget, it is a mounting concern, as it does not reflect the cost of staff time in transporting an inmate to and from the outside facility for court appearances, etc., in Missoula County.

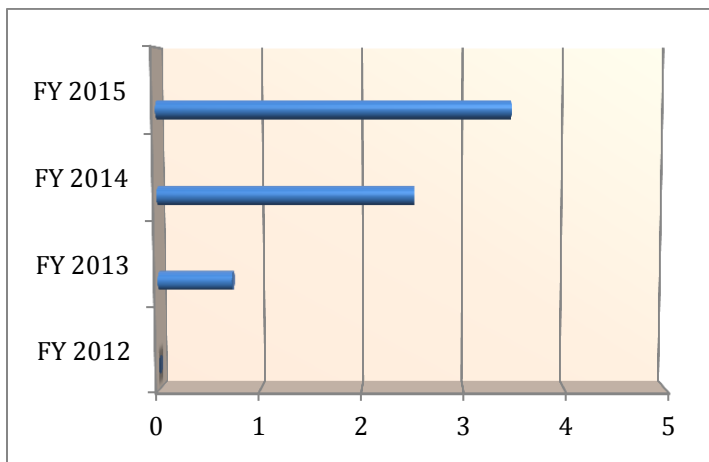


Chart 2.1 Out-of-County Placement Costs for Inmates

While no additional public safety-related county bond measures have been placed on the ballot since 2008, the City of Missoula proposed a public safety special district in 2011 to create a levy to fund capital and operational costs associated with the municipal police and fire departments. This effort failed after a legally sufficient number of property owners protested. While city residents fund the jail through their county taxes, the City of Missoula does not contribute financially to the cost of the detention center.⁶⁹

While city residents fund the jail through their county taxes, the City of Missoula does not contribute financially to the cost of the detention center.

⁶⁹ The exception is when an individual is charged solely with a municipal ordinance offense. The City would be responsible for the per diem cost of jailing the detainee and billed by the County. However,

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While nonviolent crime rates in Missoula County have remained steady, the size of the inmate population facing nonviolent charges has steadily risen. As demonstrated in Missoula, taxpayers are increasingly resistant to financing large public safety projects, especially in light of mounting citizen-funded expenses, such as bonds for schools, parks, and preservation of open space.

PERSONAL SNAPSHOT - Missoula County Detention Facility Shift Supervisor Craig Mueller

“Monday through Friday day shifts are absolutely crazy (at MCDF). I mean, it’s nonstop in booking. I guess the good thing is the shifts go quick. We have transports coming and going ... In the middle of it, on day shift, we’re cleaning up messes from night shift. And on the night, shift you’re cleaning up messes from day shift. So, it’s busy. Missoula County is absolutely busy.

Mueller says as a shift supervisor his biggest challenge is finding the right place to put inmates. Safety mandates that violent offenders are housed separately from the jail’s more vulnerable detainees. In an overfull Missoula County Detention Center, Mueller compares efforts finding beds for detainees to the art of rearranging a dishwasher to accommodate one last plate.

“It’s literally robbing Peter to pay Paul half the time,” he says. “Because I make beds in the back, I clean out booking, and they fill booking again.”

-Craig Mueller

Borg Report

In 2009, the Missoula Board of County Commissioners commissioned a report on jail crowding, the “Jail Over Crowding Study Final Report,” more commonly known as the Borg Report after its author, Margaret Borg.⁷⁰ Commissioners were concerned with increasing expenses for out-of-jail placements due to overcrowding. Borg noted:

“During FY 2005, the Missoula County Jail reached and then exceeded capacity. The excess population was controlled in two ways: first, the least serious offenders were released with judicial approval; second, Missoula County contracted with other Montana counties to house its inmates. When space was needed, people serving jail sentences were transferred from Missoula to complete their sentences in other

the vast majority of offenders in Municipal Court are held for a state misdemeanor or for failing to appear or to comply on an ordinance charge.

⁷⁰ Margaret L. Borg is an attorney and former Chief Missoula County Public Defender.

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jurisdictions. Those out of county placements cost Missoula County \$368,518.00 from July 1, 2004 to March 23, 2009.”⁷¹

Borg interviewed justice system stakeholders and analyzed the jail population for two days - November 18 and 19, 2008. The population studied included pre-trial detainees who were unable to afford bond, individuals sentenced to the jail on a misdemeanor offense, and those sentenced to the DOC for a felony offense. It also included detainees awaiting placement and those incarcerated for violations of probation or parole. Unlike this master plan’s population, Borg included for analysis inmates charged with nonviolent offenses as well as those charged with violent and sexual offenses.

The Borg Report states that between the time of her inquiry into jail overcrowding and the composition of the 2009 report, stakeholders implemented five of her recommendations. Changes included MCDF accepting checks written for higher amounts and credit cards for bail⁷² and receiving bail on behalf of Municipal Court. Administrators removed certain barriers for participation in the Jail Work Program,⁷³ and MCDF reviewed its implementation of the state mental health diversion law.⁷⁴ According to the report, the jail also increased the detail of its mental health screenings and conducted them sooner.⁷⁵ Borg states that the recommendation of hiring a mental health consultant was in the summer of 2009 under consideration by jail and County administration. The report focused heavily on diversion of the mentally ill and the increased need for in-jail and community-based services for this population.⁷⁶ Other recommendations made for Municipal Court included the use of alternative jail beds at Missoula Correctional Services’ (MCS) facility⁷⁷ and halting the jailing of those arrested after hours on low bond warrants.⁷⁸

The report cited as a problem numerous continuances for bond hearings and trial dates. Borg recommended that Missoula stakeholders follow the statutory scheme in setting bail amounts and conditions of release and that release conditions be set at the defendant’s initial court appearance.⁷⁹ The report also cautioned that

⁷¹ Borg, Margaret L. (2009). [Jail Over Crowding Study Final Report](#), 1.

⁷² However, the Justice Court still limits checks to \$2,000, and Municipal Court to \$250, rather than not accepting them prior. This is per inter-local agreement signed between the City and County.

⁷³ Participation increased after the jail began accepting checks for associated fees and offering more hours (the Jail Work Program Proposal had addressed many of the barriers in 2007).

⁷⁴ [MCA 53-21-1201](#).

⁷⁵ Previously, mental health screenings were conducted as part of medical screening, required within 14 days of an inmate’s booking. Jail staff reports that this was only recently done sooner, in July of 2015, when the Brief Jail Mental Health Screening was instituted and done separately and prior to the medical screening.

⁷⁶ Borg, Margaret L. (2009). [Jail Over Crowding Study Final Report](#), 29.

⁷⁷ The Municipal Court currently uses the MCS alternative jail beds. However, barriers still exist and are discussed in Section Five.

⁷⁸ Jail staff reports that they still receive after-hours bookings from City Police on low jail bonds, discussed further in Section Three.

⁷⁹ Borg, Margaret L. (2009). [Jail Over Crowding Study Final Report](#), 77.

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prosecution requests for bail amounts should be reasonable and objective and bail amounts not inflated to force screening for the pre-trial supervision program. Prosecutors and defense attorneys should discuss cases prior to bail appearances.⁸⁰ On the Misdemeanor Supervision Program operated by MCS:

“The JPs place some sentenced defendants under the supervision of the Misdemeanor Supervision Program. A number of issues with the program were identified. The “Zero Tolerance” philosophy of the program was the most often mentioned issue. Misdemeanor Supervision officers are seen as too rigid, strict, punitive, and quick to write probation violations. Program participation is perceived to be more difficult than that of felony probation. Program violations lead to recommendations for additional periods of probation and increase the chances of additional incarceration for infractions.”⁸¹

Borg made five recommendations for Justice Court. The first was to hold meaningful bail arguments. The second was to have Justice Court Misdemeanor Supervision revisit its policies and procedures to determine how to provide services to clients that reduce, not increase jail days. The report also advised Judge Karen Orzech to be sensitive to jail bed availability, and not run specialty courts that increase incarceration time.⁸²

Borg also recommended changes in the Missoula Correctional Services Pre-Trial Supervision Program, including an increase in staffing to four full-time employees to serve 72 daily participants. As of Fiscal Year 2015, staffing remained at three full-time employees, with a total average daily population of 37. The 2009 report advised further that MCS’ screening tool be modified to increase program participation.⁸³ It also recommended that MCS alternative jail beds be increasingly used for court-ordered sanctions, in lieu of incarceration at MCDF for technical violations.

The report provided numerous recommendations for the Missoula County Attorney’s office, such as to settle more cases, resolve discovery issues sooner, make plea offers earlier, and build better rapport with City and County law enforcement.⁸⁴ Similarly, there were twelve recommendations for the Missoula Office of the Public Defender, including moving people and cases through the system faster, resolving discovery issues sooner, and negotiating case resolutions earlier.⁸⁵ There is no indication that recommendations for comprehensive policy shifts were ever considered or adopted by the courts, prosecution, Office of the Public Defender, or

⁸⁰ Id at 95.

⁸¹ Id at 65.

⁸² Id at 65.

⁸³ Id at 130.

⁸⁴ Id at 205.

⁸⁵ Id at 243.

Missoula Correctional Services. Stakeholders note that, without a clear implementation plan, many of the recommendations never came to fruition.

The jail is not crowded because more people are being arrested; it is crowded because the average number of days an inmate spends in the jail has increased more than 50 percent since 2007.

Jail Population Overview

The jail has a total capacity of 370 adult inmates and 24 juveniles. The Montana DOC contracts with Missoula County for 146 beds, which are used for detainees in state custody.⁸⁶ These beds are located in the west wing of the jail, an area staffed by detention officers employed by Missoula County. The DOC employs additional administrative staff for these beds. This contract does not expire until September of 2029. On the county side of the jail, there is a 24-bed unit for juvenile detainees, leaving 224 beds available for county adult inmates.⁸⁷ The county side breaks down as follows:

- Unit 6: 24-bed juvenile unit
- Unit 2: 80 beds including:
 - 48 beds for women
 - 16 maximum security beds
 - 16 beds for special classification inmates (including sex offenders)

Of those with nonviolent charges, 13 percent were Native American men and 14 percent Native American women. Native Americans represent 2.9 percent of Missoula County residents.

⁸⁶ These DOC inmates are excluded from analysis as they are not county offenders. The Missoula Assessment and Sanction Center (MASC) is exclusively for male offenders. Offenders from around the state, sentenced to the DOC, are transported and housed at MASC for screening and assessment to determine appropriate placement. Inmates may still be sent to the Montana State Prison, but many are also placed in community corrections programs like boot camp, pre-release, treatment centers, or probation and parole. Inmates who violate parole may also be sent to MASC for a short sanction. See <http://www.co.missoula.mt.us/detention/>

⁸⁷ Depending on bed capacity, the jail also holds inmates for different law enforcement agencies, including the Montana Highway Patrol, University of Montana Police Dept., the US Marshals Service, the US Forrest Service, and the Montana Fish Wildlife & Parks Dept.

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➤ Unit 3: 144 beds for the general male population

MCDF operates a kitchen that serves approximately 1,100 meals a day. Contact and non-contact visiting areas for families, friends, and attorneys to meet with detainees are onsite.

Jail inmates also work for a minimal wage, performing duties such as cooking, cleaning, and laundry service.⁸⁸

In FY 2015, detention center staff booked 4,223 unique individuals 5,997 times into the jail. Eighty-three percent of detainees were there for nonviolent charges. Women comprised just more than 28 percent of the population facing nonviolent charges; 71.8 percent of defendants were men. Seventy-five percent of nonviolent offenders awaited trial, while 12 percent were sentenced to MCDF for less than one year or to the DOC and awaited placement in a state facility. Thirteen percent of those incarcerated for nonviolent offenses in 2015 were there for probation revocation; 38 percent were on misdemeanor probation; 62 percent were felons.

Thirteen percent of nonviolent defendants housed at MCDF in 2015 were Native American men; 14 percent were Native American women. Native Americans represent 2.9 percent of Missoula County residents.

Between 2007 and 2015, the total average daily number of inmates increased 31.4 percent. Total bookings decreased 8.8 percent during that time, but the average length of stay increased 53.8 percent. The jail is not crowded because more people are being arrested. It is crowded because the average number of days an inmate spends in the jail has increased more than 50 percent since 2007.

⁸⁸ <http://www.co.missoula.mt.us/detention/>

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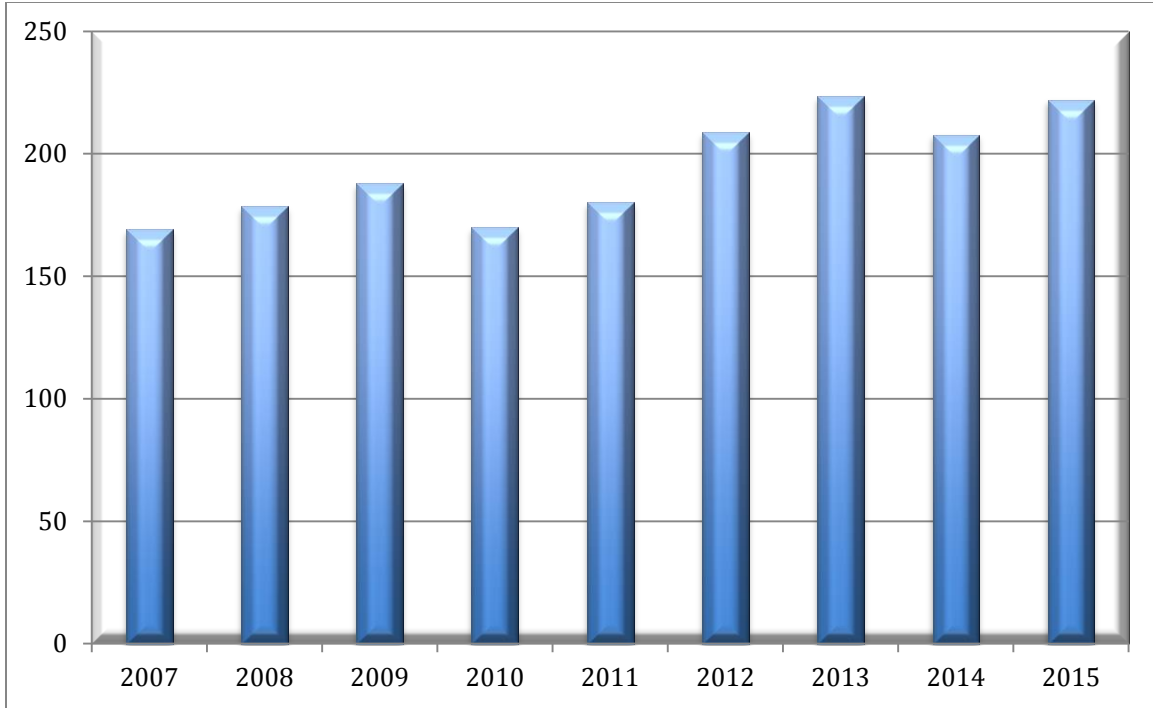


Chart 2.1: Average Daily Jail Population (Adult County Inmates with Nonviolent and Violent Charges)

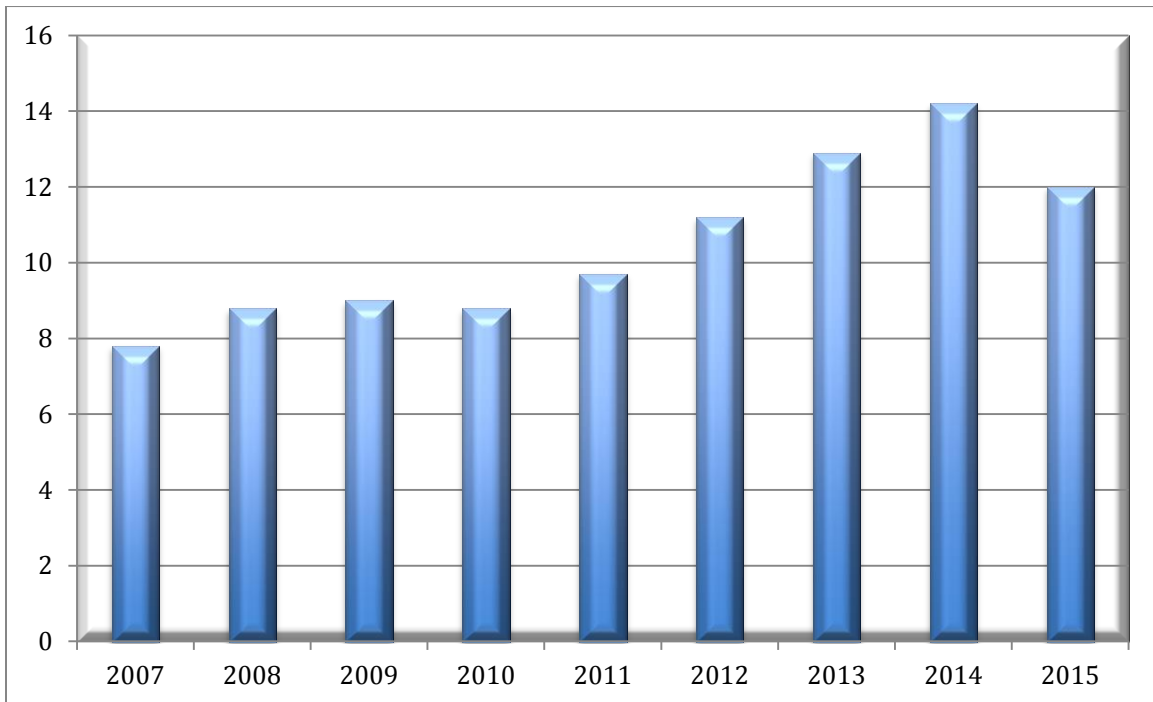


Chart 2.3: Average Length of Stay, Days (Adult County Inmates with Nonviolent and Violent Charges)

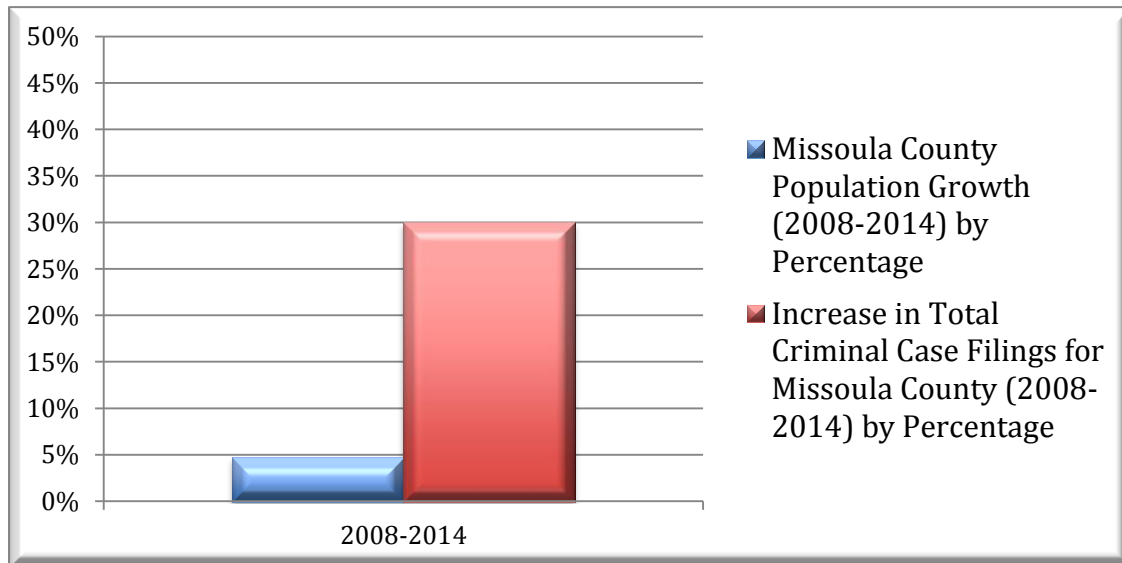
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Similarly, the number of individuals booked out of Municipal Court has risen only slightly, while total jail days have nearly doubled, with the average daily stay increasing 93%percent between 2011 and 2015, from 6.77 days to 13.07 days.

Missoula Courts, Caseloads, & Crime Rates

Missoula County is part of Montana’s Fourth Judicial District. It has two Justices of the Peace in Justice Court and four District Court Judges. These courts have jurisdiction over violations of state law, both felonies and misdemeanors. The City of Missoula has a Municipal Court with one elected judge. The Municipal Court has jurisdiction over arrests and citations made by the City of Missoula Police Department for municipal ordinance violations or state misdemeanors.

Missoula County courts have seen a disproportionate increase in the number of criminal cases filed between 2008 and 2014. While the population of the county grew by nearly 5 percent during that time, case filings grew 30 percent (from 833 to 1104).⁸⁹ According to Municipal Court staff, however, the total number of cases filed in Municipal Court dropped by nearly 30 percent between 2011 and 2014. Municipal DUI and traffic charges decreased, perhaps due to changes in staffing at the Missoula Police Department. The one exception is property crimes in Municipal Court, which increased substantially, from 1,063 cases in 2011 to 1,516 in 2014. These include petty theft and trespass charges, which can perhaps be attributed to frequently arrested indigent individuals in the urban core, and individuals with persistent substance abuse and mental health issues. A similar case categorization was unavailable from Justice Court.



⁸⁹ See [US Census Data for Missoula County](#) and [Missoula County District Court Statistics](#) compiled by the Montana Judicial Branch.

Chart 2.4: Comparison of Population Growth and Growth in District Court Criminal Case Filings in Missoula County (2008-2014)

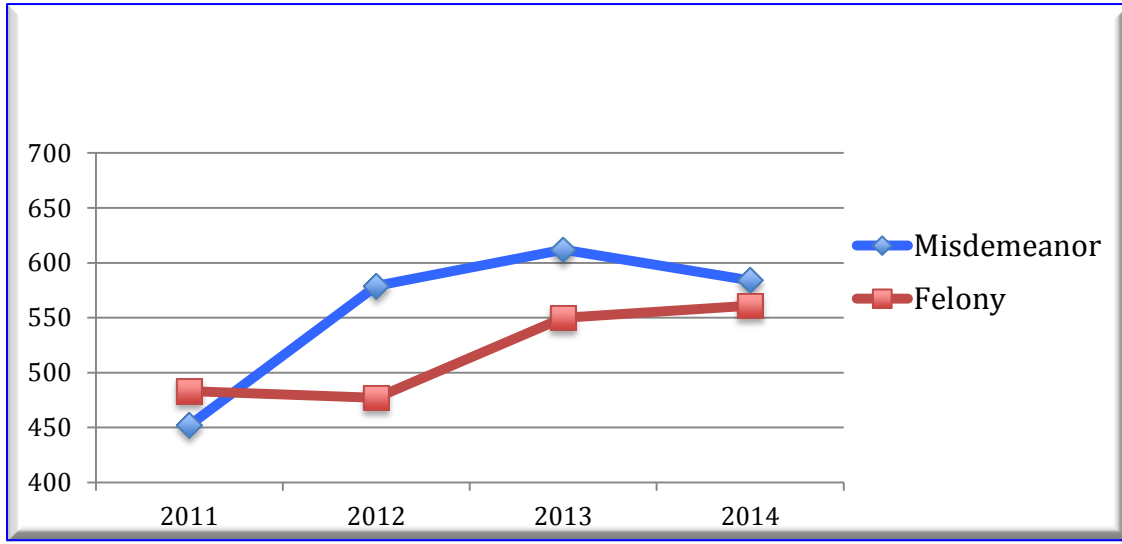


Chart 2.5: Total Misdemeanor and Felony Cases Filed in Missoula County District Court (2011-2014)

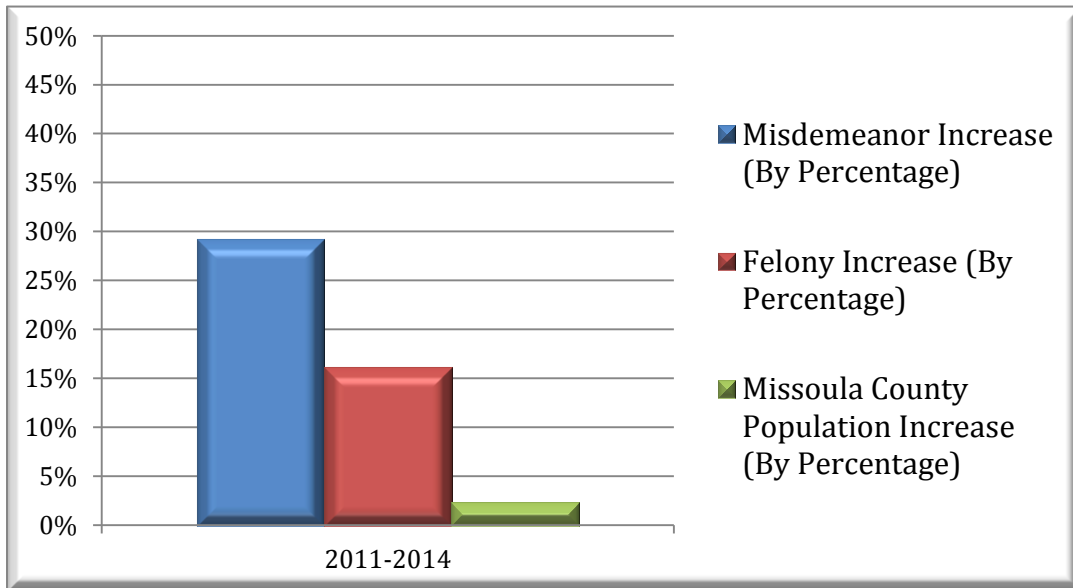


Chart 2.6: Percentage Increase in Growth of Misdemeanor and Felony Cases Filed between 2011-2014 in Missoula District Court, as Compared to County's Population Growth

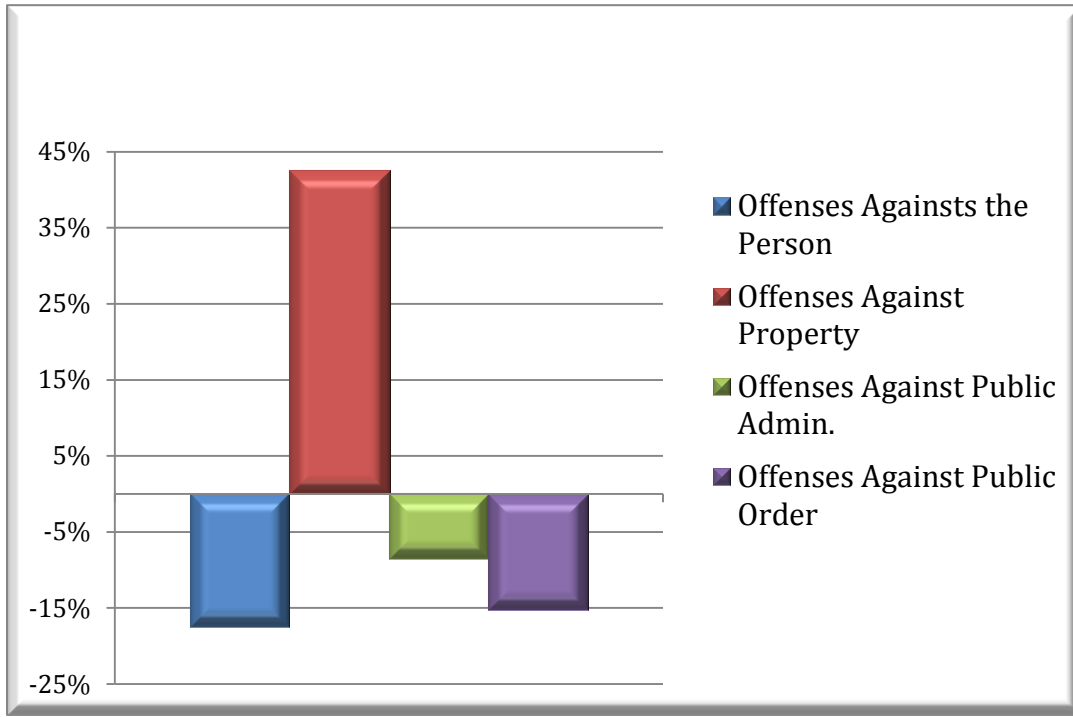


Chart 2.7: Percentage Change in Case Filings in Missoula Municipal Court, by Classification (2011-2014)

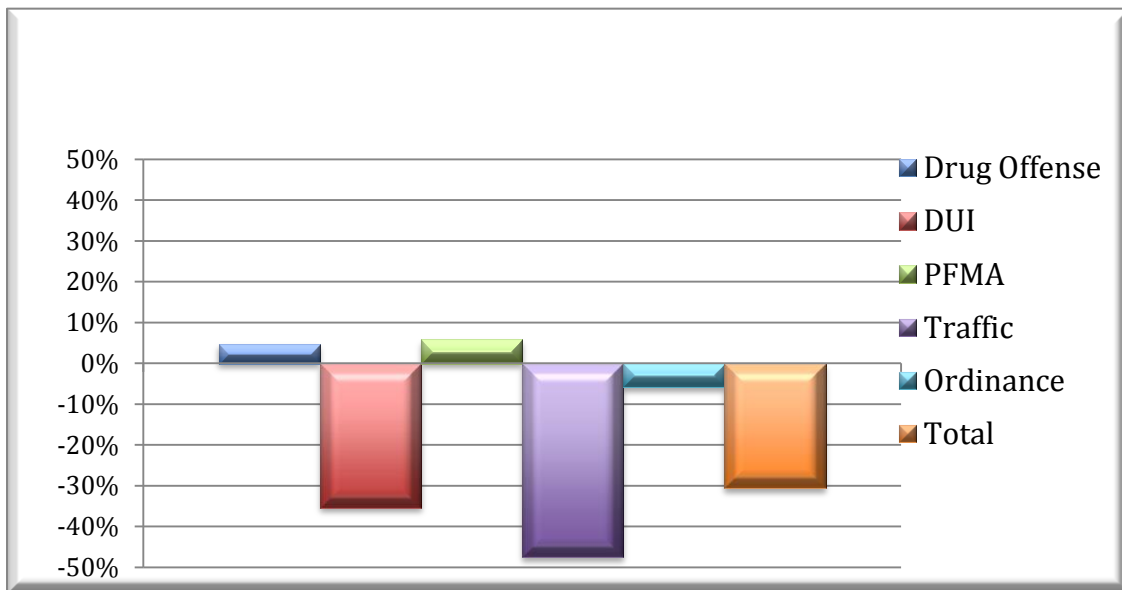


Chart 2.8: Percentage Growth in Municipal Court Case Filings, Most Common Charges (2011-2014)

SECTION THREE: BEHAVIORAL HEALTH

Coordinated by Missoula County Grants Administrator Erin Kautz, the Justice Alliance for Behavioral Health (JABH) brings together stakeholders to improve services and responses for those with mental health and addiction disorders. The JABH has made significant strides in improving communication between first responders and service providers, and in bringing in critical resources to Missoula County to expand capacity in this area. The Substance Abuse and Mental Health Services Administration (SAMHSA) Gather, Assess, Integrate, Network, and Stimulate (GAINS) Center funded a Sequential Intercept Mapping (SIM) Report for Missoula County. Released in the summer of 2015, the SIM Report identified many gaps in services and areas where increased resources should be invested, such as in secure detention beds, detox facilities, and supportive housing for those with addiction.⁹⁰ The report provides a comprehensive roadmap for improving outcomes for this population and this master plan supports its recommendations and the

Justice Alliance for Behavioral Health has made significant strides in improving communication between first responders and service providers, and in bringing in critical resources to Missoula County to expand capacity to treat mental health and addiction disorders.

work of the JABH.

Communities that successfully provide behavioral health services to the poor typically have strong partnerships with local hospitals that provide a significant amount of charity care to low-income addicted people. In Billings, the Billings Clinic has helped fund the Community Crisis Center (CCC) since 2006. The CCC is an outpatient crisis management program for those under the influence staffed 24 hours per day, seven days per week, with licensed health professionals.⁹¹ Neither St. Patrick Hospital nor Community Medical Center in Missoula currently provide similar funding. In June 2015, St. Patrick Hospital announced plans to build a new mental health center, adding 36 psychiatric inpatient beds to the current 30 beds, as well as expanding outpatient care.⁹² If Missoula County or City contribute to these much-needed psychiatric beds, there should be guaranteed bed space set-aside for beds reimbursed by Medicaid, to ensure availability for low-income or indigent people.

In recognition of the need for increased community-based mental health services to reduce uncompensated emergency room care, costly stays at the Montana State

⁹⁰ The SIM Report is on file with the Missoula County Grants Administrator.

⁹¹ See http://billingsgazette.com/news/local/crime-and-courts/downtown-seeing-results-with-serial-inebriate-initiative/article_4a7c669e-ff8a-5cb3-affb-7a29bf6a6d90.html

⁹² See http://missoulian.com/news/local/st-patrick-hospital-to-submit-plans-for-new-mental-health/article_4b1adf61-f63a-514a-bc5d-1166c1d9c3a8.html

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Hospital, and county jail expenses, the 2015 state legislature passed House Bill 33.⁹³ The legislation appropriated \$2 million to be administered as grants by the Department of Public Health & Human Services (DPHHS) to county programs. In 2015, Missoula County was awarded a grant to fund the following:

- Continued coordination of monthly JABH meetings
- Prepare a Preliminary Architectural Report for an emergency detention unit at existing Western Montana Mental Health Center (WMMHC) facilities
- (1) FTE Mental Health Therapist at the jail
- (1) 18-hour per week on-call Mental Health Professional for response at the jail
- (1) FTE Licensed Clinical Social Worker at St. Patrick Hospital in the Urgent Mental Health Clinic
- (1) 16-hour per week Mental Health Professional (MHP) at Partnership Health Center
- Crisis Intervention Team (CIT) training for the City Police Department and the Sheriff's Office

There are large gaps in behavioral health services in Missoula that lead to preventable arrests and jailing. These gaps are noticeable in comparison to other communities. Most notably, the Emergency Department at St. Patrick Hospital has turned away individuals brought there for evaluation and stabilization by City police officers.

In addition, House Bill 34 and House Bill 35 appropriated \$2.2 million from the state for voluntary short-term inpatient mental health treatment and for secure psychiatric detention beds.⁹⁴ Secure beds are for those experiencing a mental health crisis that makes them a danger to themselves or others and who need to be held involuntarily. The Americans with Disabilities Act requires that people with mental health disabilities be served in the least restrictive environment, and community-based voluntary and involuntary stabilization beds are the model for best practice.⁹⁵ The legislative and executive branches intend the funding packages to be an ongoing and stable source of funding, as they decrease costly use of the Montana State Hospital, the alternative when community resources are lacking.

⁹³ An [Act](#) expanding mental health crisis intervention and jail diversion services to areas of the state that lack services; Revising requirements of the Crisis Intervention and Jail Diversion Grant Program for Counties; Reducing local government entitlement share payments and certain calculations for the purpose of providing funding; Providing an appropriation; Amending Sections 15-1-121 and 53-21-1203 MCA; and Providing an Effective Date.

⁹⁴ See <http://leg.mt.gov/bills/2015/billpdf/HB0034.pdf> and <http://leg.mt.gov/bills/2015/billpdf/HB0035.pdf>

⁹⁵ [42 U.S. Code § 12101](#).

Missoula is often viewed as having a plethora of services for vulnerable populations. Large gaps in behavioral health services exist in the Garden City, however. Those gaps allow for preventable arrests and jailings and are especially noticeable when compared to other communities.

In 2013, Missoula County sent nearly double the number of individuals to the state hospital than Yellowstone County.

In 2013, Missoula County sent nearly double the number of individuals to the state hospital than Yellowstone County (123 vs. 63).⁹⁶ Billings has better outcomes in part because it has more community resources such as emergency detention beds and a drop-in center for those under the influence of drugs or alcohol. The Billings Clinic serves as a model community partner in addressing Yellowstone County's behavioral health needs, as does the Rimrock Foundation Addiction Treatment Center. In 2014, Rimrock with community partners launched the Motivated Addiction Alternative Program (MAAP).⁹⁷ Those charged with open container or alcohol-related trespass offenses are given a choice between citation and addiction counseling. On the fifth offense of any 30-day period, the presiding judge mandates either treatment or incarceration. If the offender selects treatment, defendants receive intensive counseling and peer-to-peer mentoring, in addition to help accessing social services.⁹⁸

Missoula currently does not have the necessary services in place to institute a program like MAAP. The Emergency Department at St. Patrick Hospital has turned away individuals for evaluation and stabilization by City police officers. City officers, jail staff, mentally ill people, and their families suffer from Missoula's dearth of services. Being mentally ill or having a mental health crisis is not illegal, but the failure to intervene appropriately and quickly connect the individual with services can lead to negative conduct. Additionally, individuals arrested for acting out during a crisis are often found not legally competent or fit to proceed, and these prosecutions can waste limited criminal justice resources better spent on treatment.

Crisis Intervention Training (CIT)

Crisis Intervention Training is a best-practice community response for someone in a mental health crisis. The model can only be effective if a community has appropriate resources for this population. CIT is an ongoing and dynamic process built upon relationships within systems.

⁹⁶ Montana DPHHS statistics.

⁹⁷ Partners include the Downtown Billings Alliance, the City of Billings, Billings Police Department, Rocky Mountain Tribal Leaders Council, Community Crisis Center, Billings City Attorney's Office, Billings Municipal Court, and the Billings Public Defender's Office.

⁹⁸ See http://billingsgazette.com/news/local/crime-and-courts/downtown-seeing-results-with-serial-inebriate-initiative/article_4a7c669e-ff8a-5cb3-affb-7a29bf6a6d90.html

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Montana has a statewide CIT Coordinator (currently Gallatin County Sergeant Jim Anderson) who works with cities and counties to develop local CIT training. The Montana model is based on the Memphis model, which has, as basic requirements:⁹⁹

- Motivated law enforcement officers who want to learn to manage mentally ill individuals
- Collaboration of all community resources and stakeholders, including the county attorney office, public defenders, and mental health providers
- A facility other than jail to take those in crisis
- Empathy must be developed on the side of both law enforcement and mental health providers for the role each professional plays

Since its full adoption in Memphis, the CIT program has drastically decreased arrests and jail days for the mentally ill. The program is responsible for declining involuntary commitments and time officers spend in emergency departments with the mentally ill.¹⁰⁰ It has also curbed officer injuries and SWAT call-outs.

Missoula recently had a 16-hour CIT “Refresher Course” completed by five MCDF officers and six from MPD (four MPD attendees were from patrol, while the other two are Missoula County Public School District resource officers). Funded by the Montana DPHHS through a National Association of State Mental Health Program Directors grant and HB 33 mental health diversion funds, the training included lessons on identifying signs and symptoms associated with mental illness, psychiatric medications, de-escalation skills, safe restraint techniques, and, most significantly, training on resources available for individuals in crisis.

Much like a CPR class, CIT training requires routine maintenance to keep pace with new and evolving community resources and to reinforce best practices.

Much like a CPR class, CIT training requires routine maintenance to keep pace with new and evolving community resources and to reinforce best practices. CIT-trained officers receive medallion pins to wear on law enforcement uniforms, which help to identify individuals with the special training. It is critical that the City and County educate patrol officers on CIT and instill a commitment to its mission. City patrollers respond to a disproportionately high number of dispatch calls involving someone in mental health crisis, particularly in the downtown area. The Missoula County Sheriff’s Office is statutorily required to transport individuals found to be at risk of harm to others or themselves to the Montana State Hospital, making CIT training of critical importance for departmental officers.

⁹⁹ (Nov. 4, 2015). Presentation by Montana CIT Coordinator Sergeant Jim Anderson. Missoula.

¹⁰⁰ Watson, Amy C., & Fulambarker, Anjali J. (2012). [The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners.](#)

Recommendation:

- 3.0 The City and County should prioritize and encourage CIT training for patrol officers. The City policymaking body should adopt a written CIT policy that includes ideal response from dispatch to disposition of a CIT call. The policy should allow for longer response times for patrol officers to CIT calls, and for more than one responding officer. Additionally, there should be enough CIT-trained officers so that there is at least one on every shift.
- 3.1 Once the CIT training has occurred, the jail should require a Mental Health Professional (MHP) evaluation for anyone presenting to the jail in a mental health crisis, as part of the medical check-off. The jail should not accept a sign-off from physicians from emergency departments, but from MHPs only.
- 3.2 Both the City and County should continue support for CIT coordinators within their agencies. Missoula CIT coordinators should remain engaged in statewide efforts for ongoing education, consistency in application of CIT programs statewide, and idea sharing for improvements to the program. Administrators should prioritize and support these efforts, compensating coordinators as they engage in continued learning programs.
- 3.3 CIT training should include and underscore resources for Native Americans in crisis.

Secure Emergency Detention Beds

Missoula County has the one of the highest admission rates from any county of mentally ill people to the Montana State Hospital. Primary reasons for the comparably high admission rate include a lack of secure emergency detention beds in Missoula and the fact that neighboring counties bring people in crisis to St. Patrick Hospital’s Emergency Department. Currently, the Western Montana Mental Health Center is conducting an analysis of how many secure crisis mental health beds should be located in Missoula. These beds are the most significant missing link in Missoula’s crisis mental health services and their impact and need cannot be understated.

Ideally, an individual would need a secure bed for only a few days to stabilize and then they would be moved to a voluntary bed, perhaps in the same small facility, ultimately transitioning to outpatient treatment. Clients would be referred to emergency detention by law enforcement or other first responders, as well as mental health providers and emergency department staff. Individuals on Social Security Disability Insurance or

These beds are the most significant missing link in Missoula’s crisis mental health services and their impact and need cannot be understated.

Social Security Insurance would be able to use those programs to fund their stays.¹⁰¹ Treating individuals in this setting is significantly less expensive than treating them in emergency departments, sending them to jail or the Montana State Hospital. The level of care emergency detention provides can prevent people in crisis from cycling through the criminal justice system as a danger to themselves or the community.

Recommendation:

- 3.4 The County should continue applying for HB 33 and HB 34 grant money to construct and operate secure crisis beds. The County should also work with WMMHC to ensure the beds are operationally solvent. These beds should reduce the number of people Missoula County sends to the state hospital; significantly, decrease strain on the St. Patrick Hospital Emergency Department, and reduce expenses associated with hospital uncompensated care. New secure beds will reduce the number of people booked into the jail in mental health crisis and generally improve outcomes for this population.

Addiction & Detox Services

Two other significant gaps in services in Missoula are the lack of social detox facilities or a drop-in center for those under the influence of alcohol or drugs. These services are necessary to provide a continuum of care, while preventing arrests and criminality stemming from addictions.

Missoula's community-based addiction services for low-income and indigent people are stretched far beyond their capacity.

Such resources are also capable of providing local treatment options without extensive waitlists that judges can use as conditions of release. Missoula's community-based addiction services for low-income and indigent people are stretched far beyond their capacity.

¹⁰¹ The payment source for secure beds varies, but it typically involves a combination of state and county funds, or a combination of county and insurance or Medicaid. The state's recent expansion of the Medicaid population will be a significant help. Additionally, under HB 34, a county is not responsible for unoccupied emergency detention beds, and is eligible for reimbursement from the state if the bed is unused for the day. This shifts the cost and risk of staffing and operating the emergency detention beds onto the state, and encourages more community facilities.

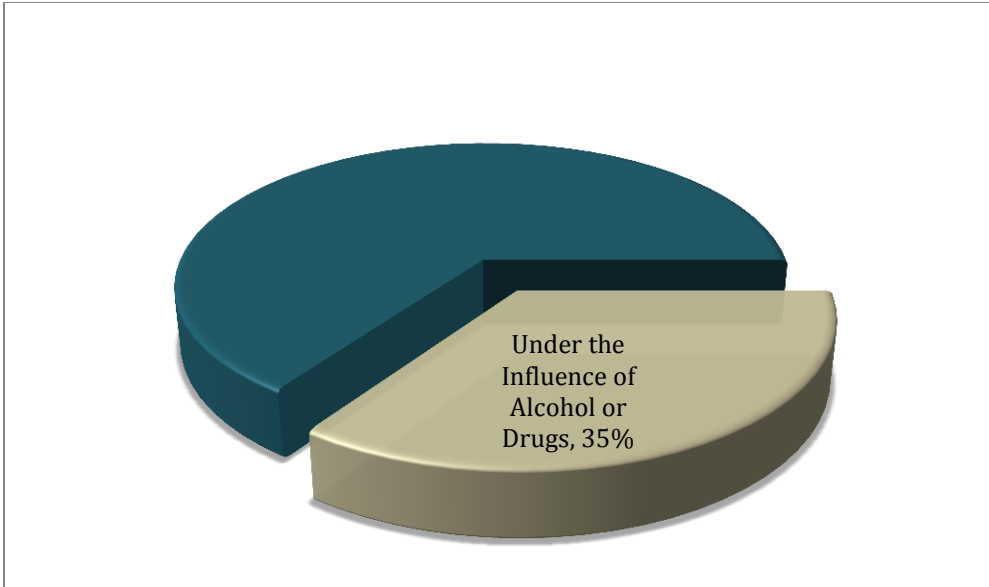


Chart 3.0: Percentage of Total Nonviolent Inmate Population Presenting at Booking As Under the Influence of Alcohol or Drugs (FY 2015)

The Western Montana Mental Health Center (WMMHC) provides alcohol detox as part of a long-term chemical dependency treatment plan. WMMHC’s Recovery Center Missoula offers 16 beds; 14 for inpatient addiction treatment and two for detox, which are reserved for those accepted into WMMHC’s long-term treatment programming. Length of Recovery Center stay varies by individual treatment needs.

As it stands, Recovery Center beds are not available for individuals without the ability to pay for services.¹⁰² Individuals who cannot afford inpatient treatment are referred to the Montana Chemical Dependency Center (MCDC) in Butte, which has multiple barriers to service, including long waitlists and stringent acceptance requirements.¹⁰³ Montana’s recent Medicaid expansion means the Recovery Center will be able to begin accepting indigent individuals. Building such capacity at the facility, however, will require a capital investment.

The next step on the continuum of care is Turning Point, the outpatient component of WMMHC’s addiction services. The program receives funding from the state, which flows through a federal block grant, to serve uninsured and underinsured people. Turning Point accepts individuals with private insurance or who are self-pay, but the majority of participants are uninsured. The waitlist for Turning Point averages 50 people and is at times months long. Prerequisite for Turning Point services is a chemical dependency evaluation. Resource constraints limit such evaluations to one

¹⁰² The only exceptions are those who are intra-venous drug users, pregnant women, and those with Hepatitis C or HIV. While WMMHC must prioritize this group, often lack of bed space means waitlists or that they will go to MCDC.

¹⁰³ Many people relapse on the road to recovery. Current MCDC policy de-prioritizes those who have been to the program previously.

morning per week on a first-come, first-served basis. The creation of additional evaluation slots is critical. Medicaid will reimburse for all Turning Point services;¹⁰⁴ therefore, Medicaid expansion will be a significant boost for expanding staffing and operations capacity. As with the Recovery Center, however, a capital investment into Turning Point infrastructure will be needed to expand capacity.

The biggest gap in addiction services in Missoula County is for community ambulatory detox – a short-term service commonly known as social detox. Prior to 2007, Missoula had four social detox beds at WMMHC’s Share House, and they were available to individuals regardless of ability to pay. In 2007, however, St. Patrick

An individual is often left on the streets, unable to access shelter due to his or her intoxicated state, with dire negative outcomes, particularly for women or other vulnerable populations.

Hospital withdrew its funding for Share House beds. The lack of social detox services in Missoula contributes substantially to the estimated \$4 million in uncompensated care costs St. Patrick’s subsidizes for the homeless annually.¹⁰⁵ Without a safe place to medically detox, individuals experiencing withdrawals are taken to St. Patrick’s Emergency Department or the jail, placing significant strain and liability on hospital staff and law enforcement. An even worse scenario plays out when individuals remain on the streets, unable to access shelter due to intoxication. Dire negative outcomes can arise in these instances, particularly for women or other vulnerable populations. Social detox provides a community benefit as it provides a safe place for people to experience withdrawal safely.

The funding to create and staff the beds will need to come from a community partnership, in recognition of the significant cost savings from diverting this population from emergency departments, emergency service call-outs, or the jail.

A community ambulatory detox is capable of assessing an individual’s condition and managing withdrawal symptoms. Staffing such a service would necessitate an on-call medical doctor, an on-call registered nurse, and on-site detox technicians. Such technicians are trained in motivational interviewing skills and capable of encouraging participants to continue counseling after detox. Technicians would make referrals to additional appropriate

treatment modalities. The detox would be two to three days, and admissions would be accepted 24 hours a day, seven days a week, depending on bed space. It is important to note that detox is not counseling for substance abuse or any co-occurring mental health issues, but rather the treatment and management of

¹⁰⁴ Prior to Medicaid expansion, primarily pregnant women and parents of young children qualified for Medicaid. Most of the population of uninsured at Turning Point are adult males, for whom Medicaid expansion will significantly help.

¹⁰⁵ Page 11, [Reaching Home: Missoula’s 10-Year Plan to End Homelessness](#)

detoxification symptoms under medical supervision. Addiction professionals believe Missoula could start with four to six beds at this time, with a possibility for expansion. These beds could potentially be located on the WMMHC campus. Constructing and staffing an ambulatory detox facility, however, is challenging, as Medicaid will not pay for social detox. Funding to create and staff the beds will need to come from a community partnership, in recognition of the significant cost savings from diverting this population from emergency departments, emergency service call-outs, or the jail. Such a facility would help address many problematic behaviors seen in Municipal Court and by City police and fire. Social detox primarily serves the homeless population - it is estimated that 10 percent of those who utilize the detox service will then go on to further treatment.¹⁰⁶

Recommendation:

- 3.5 The City and County, in partnership with St. Patrick Hospital and WMMHC, should draft a plan to build and staff four to six social detox beds to serve uninsured or underinsured. Estimated yearly costs to staff the facility would range between \$250,000 and \$300,000. Such an expenditure will be more than offset by the cost avoidance in uncompensated medical care.

Social Drop-in Center & Supportive Housing

The chronically inebriated homeless population is an ongoing source of tension between downtown business owners, law enforcement, public officials, service providers, and the public.

In 2011, in an effort to effectively address chronic homelessness in Missoula, the City developed “Reaching Home: Missoula’s 10-Year Plan to End Homelessness.”¹⁰⁷ It states, “On any given day, at least 200 people are homeless in Missoula. Some are vexingly visible, asleep on the sidewalk or the courthouse lawn.” Reaching Home Coordinator, Michael Moore, notes that the chronically inebriated comprise 10 percent of the

total transient population but use about 50 percent of the resources devoted to homelessness.¹⁰⁸ He notes that individual serial inebriates cost roughly \$30,000 annually in emergency responder, hospital, and law enforcement resources. According to the 10-year plan, Native Americans make up nearly 15 percent of Missoula’s total homeless. The chronically inebriated homeless population is an ongoing source of tension between downtown business owners, law enforcement, public officials, service providers, and the public. They often have co-occurring addiction and mental health needs and resist available services for a variety of

¹⁰⁶ See Zerger, Suzanne. (2002). [Substance Abuse Treatment: What Works for Homeless People? A Review of the Literature.](#)

¹⁰⁷ Retrieved at <http://www.ci.missoula.mt.us/DocumentCenter/View/21013>

¹⁰⁸ Moore, Michael (Sept. 9, 2015). Presentation to the Steering Committee.

reasons. They are often difficult to house, either temporarily or permanently, because many continue to use substances, most often alcohol.¹⁰⁹

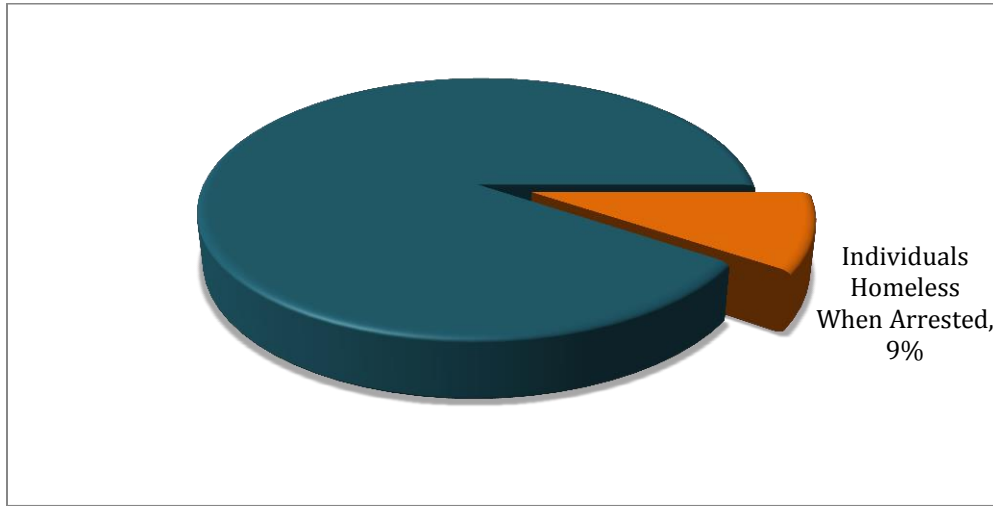


Chart 3.1: Percentage of Nonviolent Jail Population Reporting Homeless at Time of Booking (FY 2015)

In FY 2015, 9.4 percent of those arrested for nonviolent offenses (including nonviolent probation violations) reported being homeless. When factoring recidivism in, 7.8 percent of unique individuals arrested on nonviolent charges identified as homeless.

The jail draws from the statutory definition of homelessness used by the Montana Sexual and Violent Offender Registry, which defines it either as not having a place to reside, or as living in a homeless shelter. Like all booking data, inmates self-report housing status. The definition currently used by the jail underreports homelessness as it excludes those who, for example, have temporary shelter in a motel paid for by charity or public assistance, or those temporarily staying with friends or family. The JDMP Coordinator recommends the jail use the U.S. Department of Housing & Urban Development definition of homelessness, defined as:

- An individual who lacks a fixed, regular, and adequate nighttime residence
- An individual living in a car, park, abandoned building, bus or train station, airport, or camping grounds
- An individual living in a temporary living arrangement paid for by a government agency or charitable organization, including hotels and motels¹¹⁰

¹⁰⁹ Due to staffing and safety concerns, the Poverello Center does not serve people under the influence of alcohol or drugs.

¹¹⁰ [Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009](#) (P.L. 111-22, Section 1003).

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Additionally, it should be noted that, while someone may have housing when booked into the jail, a change in housing and financial situation during incarceration may mean the individual is homeless upon release. Re-entry services are necessary to ensure individuals are not released into homelessness, and a re-entry plan should take this risk into consideration.

The aforementioned group of about 20 frequently arrested individuals has significant contact with the City police, and will often have outstanding warrants for failing to appear or pay on ordinance violations such as those involving open container, public urination, and blocking an entrance. For many, if not all of this group, jail is not a deterrent to problematic behavior. Incarcerating this population creates significant risk and expense to the community as these men and women often have serious physical and mental health needs that are better addressed outside a detention center. Common physical health problems “include lung diseases and infection, foot conditions, musculoskeletal problems, tuberculosis and for homeless drug users, deep vein thrombosis, cellulitis, and both hepatitis B and C.”¹¹¹ Quite simply, there is nowhere for this population to go, creating particular danger in cold weather when remaining on the streets can be life threatening. Housing this population, and providing a social drop-in center near the urban core, will not entirely eliminate problematic behavior, but will certainly decrease it. Providing a place for this population to go will also curb law enforcement interactions, hospital visits, and ultimately, jail stays.¹¹²

The community is spending enough money in emergency services for this population to invest strategically in proactive services that will reduce the need for high-cost emergency responses.

In FY 2015, out of 5,257 total bookings at the jail, 1,880 of them presented to detention staff as under the influence of alcohol or drugs. Of the nonviolent target population, 34.8 percent appeared to be under the influence. Reaching Home focuses on a housing-first model, providing the chronically homeless with permanent, supportive housing. Reaching Home is tasked with creating a

plan for housing-resistant populations, in particular, supportive housing for the chemically dependent and mentally ill. The plan notes that St. Patrick Hospital wrote off \$4 million dollars in charity care in 2012 for those identified as homeless, Community Medical Center wrote off \$440,000, and Missoula Emergency Services wrote off \$168,000 for homeless care. The community is spending enough money in emergency services for this population to invest strategically in proactive services that will reduce the need for high-cost emergency responses. Moore notes that after

¹¹¹ Wright et al., (2004). Homelessness and Health: What can be done in general practice? Journal of the Royal Society of Medicine, 97, 170-73.

¹¹² See Culhane, D., Metraux, S., & Hadley, T. (2001). The New York Cost Study: The Impact of Supportive Housing on Homeless Mentally Ill Individuals. Center for Mental Health Policy and Services Research, University of Pennsylvania.

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Seattle constructed its supportive housing facility, the city experienced more than a 30 percent decline in police calls.¹¹³

Moore notes that most housing projects for chronically addicted people around the country are built using tax-credit financing, which requires a fifteen-year operational commitment. This is why counties and municipalities must contribute to the operational costs of these facilities, although residents are able to contribute to their housing costs with Social Security Disability income payments.

While supportive housing, which is also called “wet housing,” is intended to serve people under the influence of alcohol, residents report significant reductions in the amount of alcohol consumed once housed.¹¹⁴ Supportive services in such facilities help move residents toward sobriety, if that is their goal. Therefore, it might be problematic to co-locate a social drop-in center in the same building or facility as supportive housing, as it stands to discourage those seeking to limit or eliminate their alcohol use. Moore is tasked with determining how best to implement supportive housing in Missoula and identifying sources of capital and operational funding, the optimum number of units, possible siting, and other feasibilities. He is three years into the ten-year plan. He estimates Missoula needs 20 units of supportive housing at a total operational cost of roughly \$400,000 annually.

“People are asking me downtown ‘Where you been?’ I have no reason to go downtown no more. You know, I’m off the streets and I don’t even go downtown no more.”

- Michael Johnson, resident of the San Marco supportive housing unit in Deluth, Minnesota¹¹⁵

As noted, in addition to supportive housing, there is a dire need in Missoula for a social drop-in center. In 2008, the Poverello Center opened the Salcido Center as a safe drop-in place for those under the influence who were not accepted at the main facility. A few years later, due to funding and other challenges, the facility closed. Like supportive housing, the reinvestment benefits of a drop-in center are substantial, including reductions in emergency response, hospital, law enforcement, and jail costs, in addition to a decrease in violence or weather-related risks to the population. To be successful, a drop-in center should be located in or near the urban core and close to public transportation routes and other social service providers. The center should be open 24 hours a day, 7 days a week, and should offer supportive services such as counseling. The capital investment in construction or long-term leasing is the biggest barrier to constructing this type of housing, in

¹¹³ See also http://missoulain.com/news/local/missoula-leaders-explore-wet-housing-options-for-chronically-inebriated-homeless/article_3935d48e-b242-5136-9dbb-333798dbe259.html

¹¹⁴ Moore reports residents in the Seattle housing project used 50 percent less alcohol than when homeless.

¹¹⁵ See <http://www.mprnews.org/story/2007/06/27/sanmarco>

addition to ongoing operational costs. The City and County could potentially donate land or leverage other funding sources to drive the project.

Recommendation:

- 3.6 The City and County, along with St. Patrick and Community hospitals, should fund the proposal resulting from the 10-Year Plan to End Homelessness, which likely will include a drop-in center and permanent supportive housing. With the nearly \$4.5 million in yearly uncompensated care costs resulting from the treatment of Missoula’s homeless population by these two hospitals, even a fraction could be reinvested into meaningful preventive services that would significantly benefit both the hospitals and the community.

PERSONAL SNAPSHOT –Michael Sandborn

“In 2010, I was arrested and charged with felony embezzlement of \$22,000 from my employer. I was sentenced in Missoula to five years with the Department of Corrections. Just before my offense, I went through a divorce and lost my health insurance as a result. I then lost coverage for my mental health medication and therapy visits, sending me into crisis. In the past, I’ve attempted suicide four times, due to depression.

I spent time in Deer Lodge (Montana State Prison) as well as Shelby (Crossroads Correctional Center), where I did not receive medication or services for my mental health condition. I feel that more mental health services both before my arrest and during prison would have been helpful to me. They might have prevented my offense in the first place.

Now I am at the Missoula Pre-Release Center. I think more resources should be spent finding small group housing and employment for offenders and putting them on state probation and parole, rather than sending them to pre-release centers. Even after leaving the pre-release center, I will be on probation for 15 years. As a part of my sentence for embezzling \$22,000, I was fined \$60,000 to reimburse the state for hiring a forensic accountant. I was released to the Great Falls pre-release center. I had a job that stopped paying me, so I was revoked from the pre-release center for inability to pay. For this violation, I was sent back to prison to complete my sentence. Having a sanction would have been more useful.

As for programming, I think peer-to-peer programming is more effective than some of the other programs we are required to take.”

- Michael Sandborn

Treatment Courts

Since Miami-Dade County launched the first drug court in 1989, similar diversionary models have been adopted across the country. More than half of the nation's roughly 3,400 problem-solving courts target specific adult populations, including those charged with DUIs, veterans, and people with co-occurring mental health and substance abuse disorders.

A growing body of research indicates that recidivism rates among drug-court participants are between 10 percent and 30 percent lower than that of control groups.

In Missoula and elsewhere, drug courts, also called problem-solving or alternative courts, share a common structure. Rather than incarceration (pre- or post-trial), participants remain in the community under the oversight of a treatment court team comprised of the presiding judge, defense and prosecuting attorneys, social service providers, and advocates who use sanctions and rewards to support abstinence from drugs and alcohol. Defendants are screened for eligibility based on criminal history, case information, and substance abuse issues. In Montana, all drug court participants are tested a minimum of twice a week for drugs and alcohol. Sanctions for failing to maintain sobriety range from an increase in counseling requirements to program termination and incarceration.

There has been increasing funding for research on the effectiveness of treatment courts in decreasing recidivism and long-term costs to the justice system. The National Institute of Justice, in its 2010 Multisite Adult Drug Court Evaluation, found a 10 percent overall decrease in recidivism among 1,157 drug court participants in eight states, as compared to non-participants. The report also found that alternative court defendants were 17 percent less likely than a probationer comparison group to test positive for drugs. Other research, including that cited by the Government Accountability Office in its 2005 assessment of the diversionary model, has found recidivism among drug-court participants to be between 10 percent and 30 percent lower than that of control groups.¹¹⁶

Additionally, while cost avoidance calculations of diversionary courts vary, Multisite Adult Drug Court Evaluation researchers estimate that they yield \$1.50 in benefits for every dollar invested. A study by the Urban Institute Justice Policy Center in 2008 found savings from decreased incarceration and improved social outcomes associated with drug court interventions are roughly \$2.21 for every dollar invested.

¹¹⁶ Retrieved at <http://www.gao.gov/new.items/d05219.pdf>

Other studies take into account the defendant ceasing involvement in substance abuse-driven crime and incarceration, and the reduction of potential future victims, and calculate a cost benefit of between \$3,000 and \$13,000 per participant.¹¹⁷

Best practices for drug courts include: treatment, drug testing, appropriate sanctions, incentives for positive behavior, intensive judicial oversight, and community support services.

Montana

When Fourth Judicial District Court Judge John Larson launched the Missoula County Youth Drug Court in 1996, it served as the state’s only problem-solving court. Today it operates alongside 30 other diversionary courts statewide, including five tribal programs. Policy and governance in non-tribal diversionary courts is guided by state statute and the Montana Supreme Court. Montana law prohibits drug offenders who have been convicted of a sexual or violent offense from participating in drug court. Best practices for drug courts include: treatment, drug testing, appropriate sanctions, incentives for positive behavior, intensive judicial oversight, and community support services.

Montana’s diversionary courts typically have dockets of between 10 and 25 cases, due to the increase in time and staffing required for each case.¹¹⁸ Court jurisdiction extends from 12 to 18 months. Between November 2010 and October 2014, there were 1,083 discharges from Montana’s diversionary courts.¹¹⁹ During that time, 52 percent graduated from their programs and 32.5 percent were terminated for failing the program. The remaining participants had neutral dispositions, which may include medical discharge, voluntary withdrawal, or case transfer to another jurisdiction. (Criminal charges and motor vehicle citations within a 48-month period after drug court disposition are classified as a re-offense by the Office of the Court Administrator (OCA) – meaning the treatment court offense is still stackable and can lead to enhanced penalties for subsequent offenses). Those who graduated from diversionary courts had a 25.6 percent recidivism rate, compared to 37.6 percent for those who failed drug court.

Diversionary courts in Montana - as well as nationally - must increase their data collection, particularly in the area of recidivism and other key outcomes. While this is challenging as many programs remain underfunded and therefore understaffed, it is critical to ensuring future funding and success of programs. A January 2015 performance evaluation of the alternative dockets conducted by the Montana Legislative Audit Division cautioned that recidivism data collected by the OCA should improve. “The (judicial) branch does not measure court performance or

¹¹⁷ Marlowe, Douglas B. (2010). [Research Update on Adult Drug Courts](#).

¹¹⁸ [Montana Drug Courts: An Updated Snapshot of Success and Hope](#). Montana Office of Court Administrator.

¹¹⁹ Data from the Montana Office of Court Administrator.

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participant outcomes by examining comparison groups of non-drug court participants with program graduates at least six months after exiting a drug court program, as required by best practices and standards for drug courts.”

Drug courts are also somewhat unique in the funding model – a successful court will have significant positive impacts on county budgets – including significant savings in pre-trial detention costs. However, Montana’s general fund is the primary funder for these courts, at \$963,000 in FY 2014, with an average of \$4,721 per participant. Additional funding comes from federal and local governments, area drug task forces, private organizations, donations, and participant fees.¹²⁰

Missoula

Three diversionary courts serve adults in Missoula.

- The Missoula Family Drug Treatment Court: District Court Judge John Larson launched this court in 2008 to oversee cases of parents who, due to substance-abuse, are at risk of losing their children. As of December 2015, the court had open cases for 14 defendants – all of them parents facing criminal charges or civil child abuse/neglect allegations. According to court staff, court graduates had a 21 percent recidivism rate. The court employs one case manager. In FY 2015, the court received \$92,000 in funding. Additional resources would allow the court to accept more defendants into the program.
- Standing Master Brenda Desmond presides over two adult drug courts – the Missoula County Co-Occurring Treatment Court and the Missoula Veterans Court. Between July 2009 and September 2014, the courts admitted 112 participants. 68 percent graduated, while 29 percent were terminated from the programs. During the four-year study window, program graduates had a 33 percent recidivism rate, based on alleged offenses committed within a 48-month period after discharge.

Many operational costs are shared between the two courts. Desmond estimates that with additional funding of \$48,850, the courts could accept 39 defendants, 12 defendants more than the current docket. There is currently a 24-person waitlist for the courts, which are staffed by a three-quarter-time coordinator and half-time case manager. Screening defendants is time-

¹²⁰ The Montana Drug Offender Accountability and Treatment act sets parameters for drug court fees, stating, “A drug offender shall pay the total cost or a reasonable portion of the cost to participate. The costs paid by a drug offender may not exceed \$300/month. The costs assessed must be compensatory and not punitive in nature and must take into account the drug offender’s ability to pay. Upon a showing of indigency, the drug treatment court may reduce or waive costs.” According to the OCA, 1,654 participants across the state paid \$218,607 in fines, \$647,040 in fees, and \$134,963 in restitution between May 2008 and October 2014. During that time, participants also performed 19,785.57 hours of community service.

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consuming as they must constitute a high enough risk of re-offense to warrant additional drug court resources, while also being able to safely live in the community. In FY 2015, the courts received nearly \$66,000 from the Montana general fund.

- The Co-Occurring Court launched in 2004 to serve offenders with addiction and mental health disorders. As of December 2015, Co-Occurring Court had a docket of 18. With additional funding, the Co-Occurring Court could accommodate 24 defendants.
- The Veterans Court opened in 2001. As of December 2015, Veterans Court had a docket of nine. With additional funding, the Veterans Court could accommodate 15 defendants.

Recommendation:

- 3.8 The City and County should fund the Co-Occurring and Veterans Court in the amount of \$48,850 per year for costs associated with personnel, drug and alcohol testing, and treatment services. The City and County should assist the court in finding grant funding for its ongoing operational expenses. Court staff should adopt best practices for measuring outcomes for participants, including recidivism measures.

DUI Court

Evidence-based DUI Courts have also proven effective at reducing recidivism for drunk drivers.¹²¹ Like drug courts, defendants should be screened for high risk of re-offending before admission. Defendants in the alternative bodies should be adults with no prior violent offenses and long-term moderate-to-severe alcohol dependency.¹²² Similar to drug courts, DUI courts should require:

- Appropriately tailored treatment programs, after clinical assessment
- Alcohol testing
- Intense court supervision
- Sanctions and incentives to motivate behavior
- Prosecuting attorney willing to defer sentence (but still remain stackable)
- Connection to community support and resources through case management

¹²¹ Ashley Harron, JD, PsyD, National Association of Drug Court Professionals; Judge J. Michael Kavanaugh (Ret.) (January 2015). [The Bottom Line: Research Update on DUI Courts.](#)

¹²² [National Center for DWI Courts: The Ten Guiding Principles of DWI Courts.](#)

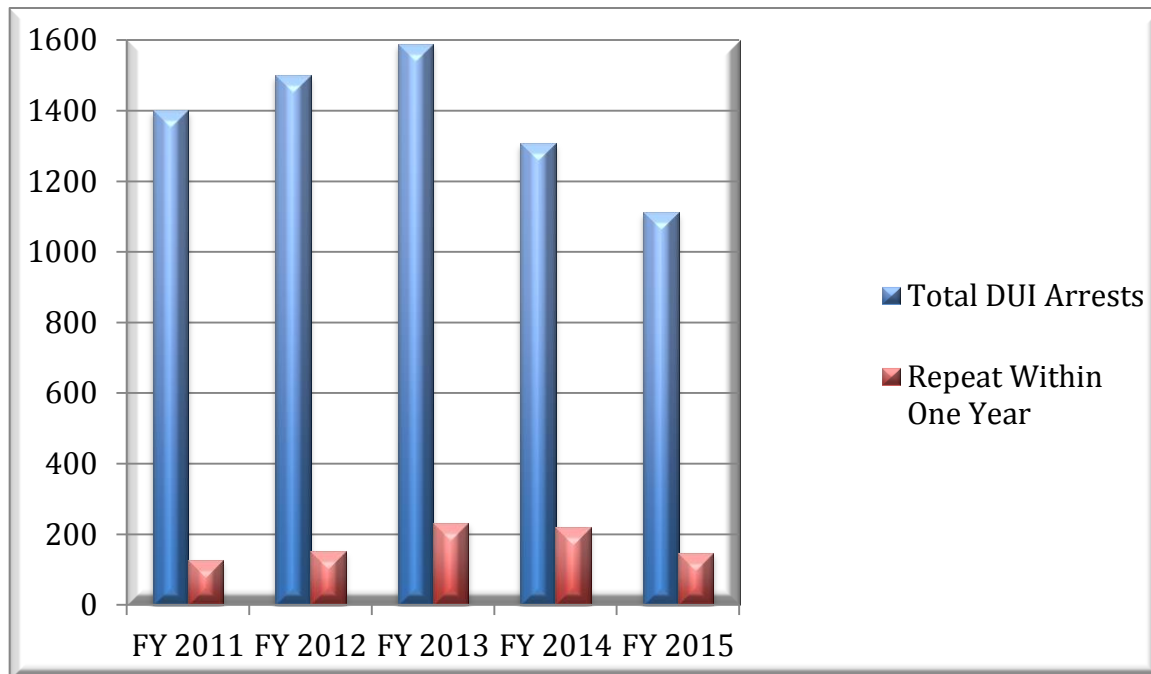


Chart 3.2: DUI Arrests in Missoula County (Total and Repeat Arrests)

Recommendation:

- 3.9 The County should work with Justice Court to implement an evidence-based DUI Court for moderate and high risk individuals who can safely live in the community during their participation.

Vulnerable Populations in Jail

Far too many detainees have significant behavioral health needs best met in a setting outside of a detention center, but they are incarcerated because of barriers to better placements. While the jail can never and should never operate as a mental health institution, meaningful mental health and addiction services must be provided in the detention center for those who will continue to be placed there until broad institutional changes occur. While providing adequate services to this population creates additional costs to the County and state, it also leads to significant cost savings and avoidance through reduced recidivism, hospitalizations, institutional placements, and other positive social and resource impacts.

While the jail can never and should never operate as a mental health institution, meaningful mental health and addiction services must be provided in the jail for those who will continue to be placed there until broad institutional changes occur.

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In recognition of the growing population of jail detainees with unmet mental health needs, Missoula County secured grant funding for a social worker inside the jail to assist in connecting this population with services with the hope of securing more appropriate placements and reducing time spent in jail. Historically, the jail has not had the necessary staffing to screen its population for mental health conditions.

MCDF is working to increase mental health screening with the help of Theresa Williams, a licensed clinical social worker recently employed fulltime by Western Montana Mental Health Center to work closely with jail staff at the detention center to screen and provide services.

In August 2015, the jail instituted the Brief Jail Mental Health Screen (BJMHS), developed by the Policy Research Institute with a grant from the National Institute of Justice.¹²³ The BJMHS is comprised of eight yes-or-no questions, takes less than three minutes to administer, and is designed for use by officers or booking technicians with little or no mental health training. It is intended to screen for present (not past) symptoms of serious mental illnesses such as schizophrenia, bipolar disorder, and major depression. Since implementation at the Missoula jail, 16 percent of inmates have been flagged for follow-up for a more in-depth mental health assessment (the national average is 11 percent screened for follow-up). The test relies on self-reported data and its accuracy and reliability are affected by a person's use of drugs or alcohol or by non-cooperation. It does not provide a specific diagnosis or take the place of staff observation.

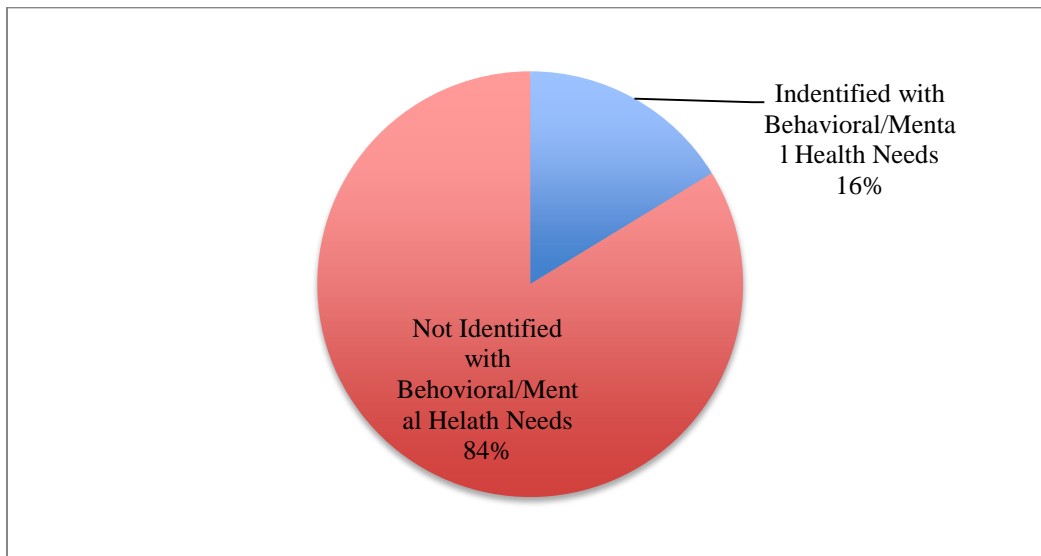


Chart 3.3: Percentage of Nonviolent Inmates Identified with Behavioral / Mental Health Needs (FY 2015)

¹²³ The BJMHS was validated in a peer-reviewed study of 10,330 inmates at four jails in New York and Maryland.

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According to Williams' data, she served 485 clients 2,018 times in FY 2014 and FY 2015. Her services include case management, mental health care facilitation, and planning with jail staff for appropriate responses to client crisis. In August 2015, Williams received 125 referrals for services. She receives referrals from jail staff, inmate family members, community mental health providers, and inmates themselves. Williams works with stakeholders to divert those with serious mental illnesses from jail into alternative placements, when appropriate and feasible. She also conducts a one-day training every three months for jail staff on self-care and mental health. She participates in stakeholder groups outside the jail and helps work with law enforcement and others to improve communication and services for inmates with serious mental illness.

In November 2015, WMMHC applied for and received a grant from the Montana Mental Health Trust for a case manager to work under Williams in the jail to meet her program needs. Additional staff will allow Williams to eventually develop and implement comprehensive treatment and management plans for people in jail with maladaptive behavior. Additional staff will also allow Williams to develop inmate mental and medical health forms that can help integrate detainee treatment inside the jail with outside community services. Williams would like to have staff trained in cultural competency for service provision to Native American inmates.

Primarily because individuals no longer have a payment source once incarcerated, there is a shortage of licensed addiction counselors (LACs) for treatment inside the jail. Having an LAC on the MCDF mental health team, especially one with experience or competency working with Native American community members, would be a significant benefit, as incarcerated individuals are sober and often very motivated. The LAC could provide individual counseling and group chemical dependency programs that judges could consider at sentencing. Courts are increasingly ordering detainees to undergo chemical dependency evaluations before being released pre-trial. The lack of addiction counselors available to perform such evaluations leads to an increase in jail days as inmates wait. Having an LAC on site to do chemical dependency evaluations should significantly reduce the number jail days served by individuals awaiting pre-trial release.

The lack of LAC availability is leading to an increase in jail days as inmates await evaluations.

While space for staff is limited at the jail, it is feasible within the current facility to house a few more additional staff by repurposing current space.

Health Services

As discussed in Section One, jailors have a constitutional duty to provide for the medical and mental health needs of those in custody. Missoula County contracts with Partnership Health Center for routine dental services, and with Correctional Health Providers (CHP) for medical services. Williams, MCDF's social worker,

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provides counseling services to the extent she is able. Because of need and her limited time, there are significant unmet mental health needs. When an inmate has a mental health crisis, a Mental Health Provider (credentialed to provide psychiatric evaluations) comes to the jail to assess the individual. In rare circumstances, the individual is taken to the emergency department for a mental health evaluation.

It is not uncommon for county detention centers to contract with private for-profit entities for medical services. In recent years, however, the trend has shifted to detention center partnerships with community health providers capable of providing medical and behavioral health services in and out of jail. Many of those living in poverty with addiction and/or mental health challenges are community health center patients before and after detention. The community health center serving the Missoula area is Partnership Health Center.

Mental health experts in the Missoula community have expressed concerns about mentally ill inmates having restricted access to certain medication brands and dosages while incarcerated that are critical to their stabilization. The jail's existing medical provider contract with CHP allows the company to use a formulary that restricts certain drugs. Concerns for inmate safety and the potential for abuse, in addition to the dangers inherent to selling or trading a sought-after drug, prompt jail medical providers and administrators to restrict certain drugs. The decision to limit medications can also be financial. For example, a schizophrenic inmate might enter the jail with a prescription for an anti-psychotic drug provided in the form of a twice-monthly shot. Due to the higher cost of the injectable drug compared to a pill, CHP may exclude it from the formulary, and the inmate will have to take a pill that might be less effective or more easily avoided. The result can lead to a disruption in prescription protocol that triggers inmate instability, putting the detainee and jail staff at risk.

The jail could assist those already enrolled in a health plan with suspension of their insurance, as opposed to termination, making access to benefits much easier upon release, rather than triggering the entire re-application process. An inmate with schizophrenia might enter the jail and be prescribed an anti-psychotic drug in the form of a twice-monthly shot. CHP may exclude it from the formulary, and the inmate will have to take a pill that might be less effective or more easily avoided.

As of Jan. 1, 2015, Montana expanded Medicaid to cover childless adults making up to 138 percent of the federal poverty level. That sum is roughly \$16,000 annually for an individual. Any incarcerated individual who meets Medicaid's financial criteria can now receive coverage for medical treatments that necessitate at least a 24-hour stay outside jail.

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Under federal law, a jail can apply for and be designated as a Certified Application Counselor (CAC) organization.¹²⁴ This means MCDF could train case management staff to help people apply for health coverage through the Health Insurance Marketplace or with Medicaid. Such coverage stands to pay expenses associated with care upon release, or in limited circumstances, while detained. As a CAC-certified entity, the jail could also assist those already enrolled in a health plan with suspension of their insurance, as opposed to termination, making access to benefits much easier upon release, rather than triggering the entire re-application process.¹²⁵ The Gallatin County Detention Center recently became a CAC.

Recommendations:

- 3.10 The jail should review its contracts for medical services and future contracts with vendors to ensure they provide for the best continuum of care in and outside of MCDF. Contracts should ensure that medical staff have mental health care credentials and specify use of a formulary that provides for individualized medication management plans that prioritize mental health stabilization. The jail should pursue collaborations with Partnership Health Center whenever possible. To measure progress, MCDF could periodically administer an inmate survey on the quality of medical or mental health care. (The 2015 ACLU of Montana jail report, “Locked in the Past” ranked MCDF worst in the state for medical care. The finding was based on a self-reported survey of inmates around the state; 83.3 percent of Missoula inmates were dissatisfied with medical care provided at the Missoula jail, nearly double the statewide average for those dissatisfied with mental health care at 43 percent. Although the self-reported survey was comprised of an extremely small sample size, results can be considered baseline).
- 3.11 Jail staff should apply to the Center for Medicare and Medicaid (CMS) to become a Certified Application Counselor (CAC) organization. Implementation of this recommendation stands to yield significant cost savings in medical care for MCDF.
- 3.12 The County and jail should ensure funding for a minimum of two social workers and two case managers in the jail to assist with mental health services and diversion, programming, case management, re-entry planning, and applications for social service benefits. MCDF can repurpose space to accommodate the additional staff. These positions could be hard-funded by Missoula County and City, or the County could apply for state mental health jail diversion grants under HB 33 to fund these positions (or a combination of both). State and local funding should be supplemented with other grant funding, as it becomes available.

¹²⁴ See 45 CFR 155.225.

¹²⁵ See <https://marketplace.cms.gov/technical-assistance-resources/assister-programs/cac.html>

Repurposing the Juvenile Unit

Following a national trend, better approaches to juvenile justice in Montana have led to a decreasing need for youth detention beds. Juvenile units have special federal and state requirements to ensure humane treatment, such as making classroom space available for educational programming, and maintaining completely separate facilities for youth to ensure no interaction with adult inmates. Counties with underused juvenile detention units are repurposing them to serve other populations. Most recently, the Flathead County Detention Center closed its juvenile unit and converted it to house its burgeoning adult population. Stakeholders have suggested the Missoula jail repurpose its under-capacity 24-bed juvenile unit to serve adults with behavioral health needs. Unit lighting and physical infrastructure, including cells and classroom space, present a calmer, less chaotic environment than MCDF general population pods.

While juveniles are not the Missoula City-County Jail Diversion Master Plan’s target population, a basic analysis of the youth population is necessary to help determine the feasibility of repurposing the MCDF juvenile unit. This plan makes no recommendation as to whether the juvenile unit should be repurposed. Ultimately, it is up to state and County policy-makers whether to operate a regional juvenile facility or to repurpose the unit. The purpose of this data is to inform that decision.

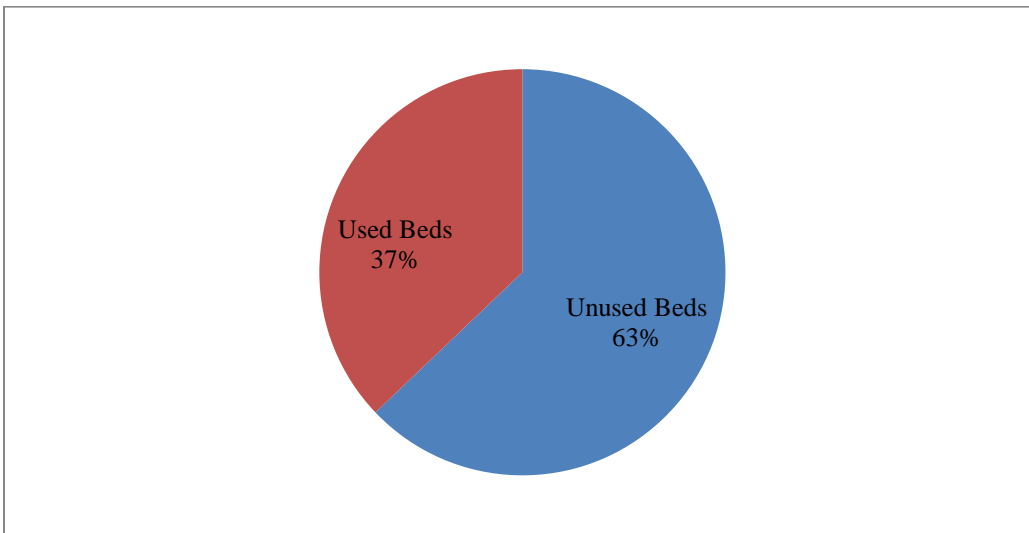


Chart 3.4: Percentage of Juvenile Bed Days Unused (FY 2015)

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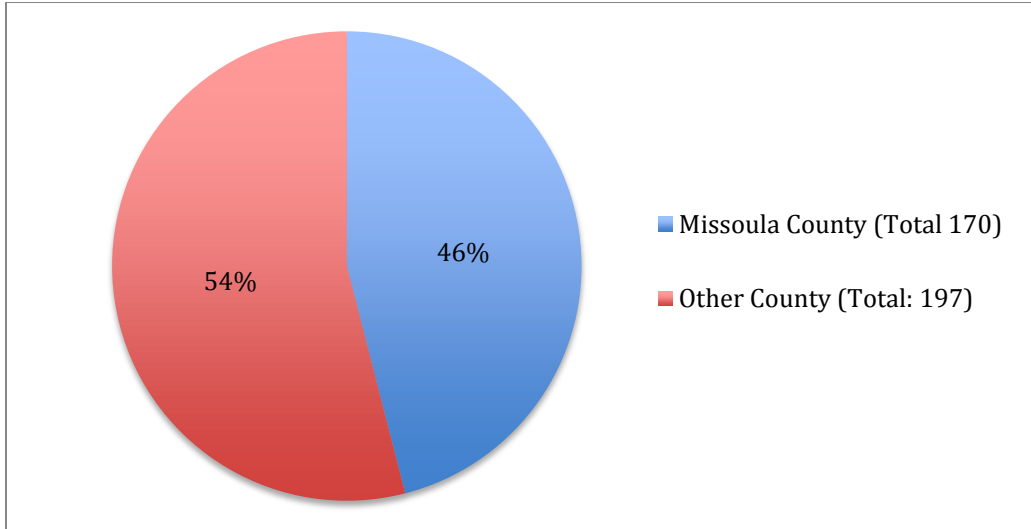


Chart 3.5: Percentage of Missoula County Juveniles in the Juvenile Unit (FY 2015)

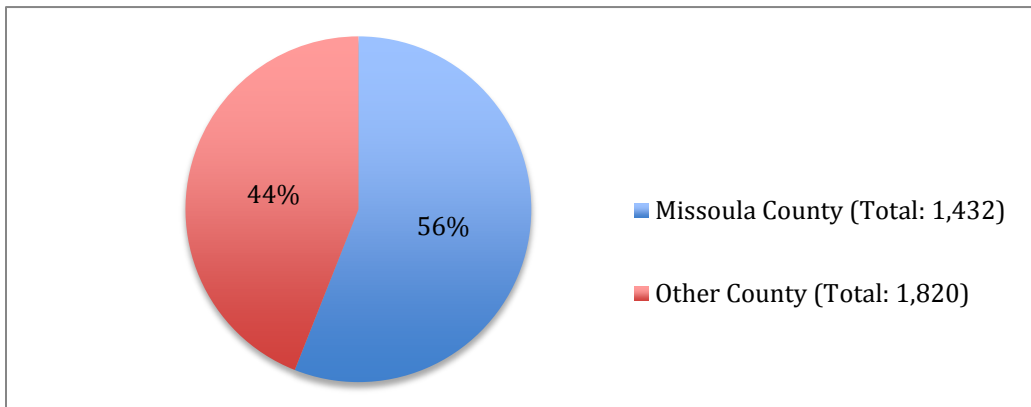


Chart 3.6: Percentage of Juvenile Beds Days Used by Missoula County Juveniles (FY 2015)

The juvenile unit was significantly underutilized in FY 2015, with just over one-third of bed capacity filled. Additionally, while Missoula County juveniles represent less than half the total bookings, they stay longer at the jail and represent 56 percent of total jail bed days.

There are inherent incentives for using youth detention sparingly when a county does not have its own juvenile detention unit. First, the county is responsible for most transportation costs associated with getting the minor to and from any court hearing. Second, the per-night cost of jailing a youth is much higher than adult detention, ranging from \$200-\$350, paid by the originating county. Many juveniles in the Missoula jail are there because of juvenile probation status violations, meaning they are under Department of Corrections Youth Parole division

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jurisdiction, as ordered by a court, or they may be in aftercare (parole) with the DOC.

In FY 2015, only 25 percent of juveniles in the Missoula jail were held on violent offenses. The rest faced charges for nonviolent crimes, such as a property or drug offenses. Most nonviolent offenders were held on technical probation violations, such as missing a urinalysis test or court date, or otherwise violating conditions of their release.

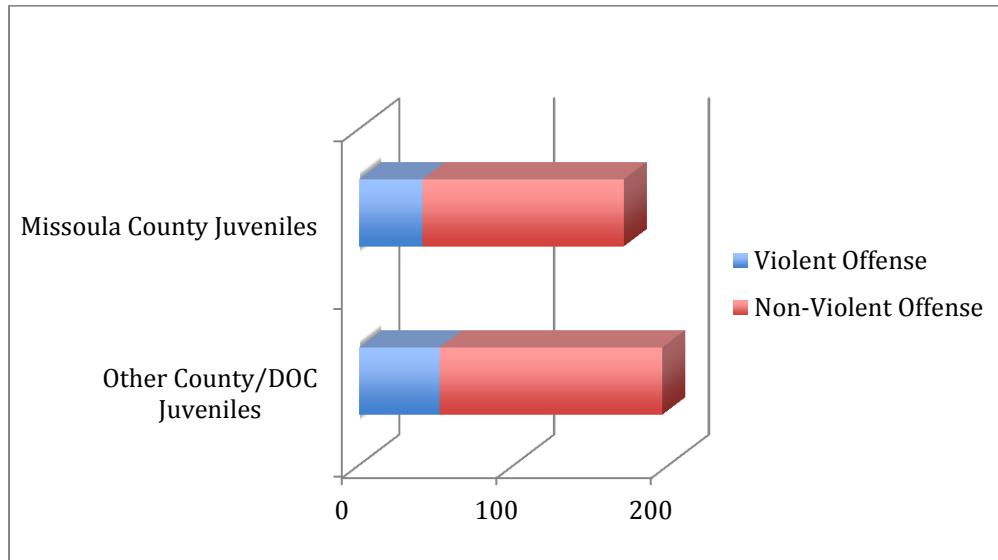


Chart 3.7: Juveniles by County and Offense Type (FY 2015)

As Montana jails transition youth beds to accommodate adult populations, making juvenile jail space scarcer, the state will need a plan for juvenile detention. Any such plan should consider evolving best practices that minimize time in jails and prisons.

One option for youth detention in Missoula is to create alternative secure community placements. Secure community beds may operate alongside out-of-county youth detention for juveniles posing a public safety risk. Such a scenario would allow for repurposing the MCDF juvenile unit to serve adult inmates with behavioral health needs that cannot be safely managed in the community.

Missoula County could also build a smaller unit for its youth offenders and repurpose the current juvenile unit for adult offenders. Changes to the juvenile unit will be controversial for some justice system stakeholders. The County should include these stakeholders in discussions about future planning for the unit.

Programming

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The jail facilitates a limited number of programs, including Alcoholics Anonymous (AA) and religious services. Now that there is a full-time social worker in the jail, a coping skills group is offered up to seven times per week, in addition to a peer-to-peer recovery group for younger males called “Vision and Voice.” Community service providers run these programs, with jail staff facilitating participation and security checks on volunteers. Traditionally, county jails have been viewed – and have viewed themselves – as non-correctional facilities and therefore have not prioritized programming inside their facilities. This trend is shifting nationally, however, as data shows the benefits of providing services in jails to assist with skills offenders and pre-trial detainees need for re-entry.

County jails have traditionally been viewed – and viewed themselves – as non-correctional facilities. They didn’t prioritize rehabilitation inside their facilities.

National evaluations of correctional program outcomes includes work from the National Institute of Justice.¹²⁶ Below are a few programs highlighted by the National institute of Justice to have beneficial outcomes:¹²⁷

- “Changing Course” has an inmate create an interactive journal. It is designed to help jail inmates screened or identified as having potential substance use disorders make the connection between their substance use and criminal behaviors. Participant recidivism rate was significantly lower than for the control group.¹²⁸
- “Seeking Safety” is a class for incarcerated women. It is a manualized cognitive-behavioral intervention for women with co-occurring Posttraumatic Stress Disorder (PTSD) and Substance Use Disorder. Evaluation results suggest that the program significantly reduces PTSD and depression scores in program participants.¹²⁹
- “Motivational Interviewing for Substance Abuse” is a client-centered semi-directive psychological treatment approach that concentrates on improving and strengthening individual motivation to change. Treatment group participants significantly reduced intoxicant consumption after participation, as compared to the control group.¹³⁰

Further, the U.S. Department of Justice and the U.S. Bureau of Prisons recently commissioned a study from the RAND Corporation on the current state of

¹²⁶ Funded by the US DOJ’s Office of Justice Programs.

¹²⁷ <http://www.crimesolutions.gov>

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id.

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correctional educational programming.¹³¹ According to that study, 37 percent of inmates in state prisons across the country had less than a high school diploma compared to 19 percent in the general population.¹³² Key findings from the Rand Corporation include:

- Inmates who participated in correctional education programs had a 43 percent lower chance of recidivating than those who did not.
- There is a \$5 savings on re-incarceration costs for every dollar spent on education.
- The odds of obtaining employment post-release among inmates who participated in correctional education was 13 percent better than for those who did not.¹³³

Because incarceration lengths vary significantly and are largely unpredictable, classes offered in the county jail should have regular entry points and not require consecutive attendance or cumulative knowledge. Detainees can be accepted on a largely rolling basis. Educational programs, such as Adult Basic Education (ABE) in reading, writing, and math, as well as GED preparation, are recommended.¹³⁴

Gallatin County programming constitutes one example of increasing investments in corrections education. Gallatin County employs a program director to oversee 165 volunteers who help facilitate 60 inmate groups. Programs include anger management, yoga, AA, and academic tutoring.

Professionals working with jail populations can use ACEs in parenting class settings to educate an individual, creating self-awareness of the individual's root causes of negative behavior.

Although more research is needed on the effects of wellness classes, including mindfulness, yoga, and meditation, on jail populations, research on the general public suggests at least temporary reductions in stress levels.

Much promising work has been done on the effects of Adverse Childhood Experiences (ACEs) on adult dysfunction, including poor parenting decisions, unhealthy relationship patterns, substance abuse, and at-risk or criminal behavior.¹³⁵ An ACEs screen been developed to assess an individual's childhood

¹³¹ Steele, Jennifer L., Bozick, R., Williams, M.V., Turner, S., Miles, N.V., Saunders, J., Steinberg, P.S., (2014). [How Effective is Correctional Education, and Where Do We Go From Here?](#) Rand Corporation.

¹³² Id at xiii.

¹³³ Id at iii.

¹³⁴ See also [GED Testing in Correctional Centers, GED Testing Service Research Studies](#), 2011-3.

¹³⁵ See work done by the [Center for Disease Control & Prevention: Division of Violence Prevention](#).

The jail should also prioritize culturally appropriate programming for Native American detainees, including programs on historical trauma.

experiences with abuse, neglect, and household dysfunction.¹³⁶ Professionals working with jail populations can use ACEs in parenting class settings to educate individuals, creating self-awareness of root causes of negative behavior patterns. In this way, the pattern is interrupted and new parenting behaviors can be created. In some cases, it would be appropriate for a detainee's family to participate in such a class. In Missoula, The Parenting Place provides this type of programming to screened pre-release participants and is beginning to work with the jail population.

Recommendation:

- 3.13 Jail staff should assess detainees and make recommendations and information regarding any appropriate jail programs available to the individual.
- 3.14 MCDF should solicit and facilitate programming from volunteer service providers in the community. The jail should prioritize evidence-based programming demonstrated to reduce recidivism, improve participant mental and/or physical health and well-being, and otherwise improve participant outcomes. The jail should also prioritize culturally appropriate programming for Native American detainees, including those capable of addressing historical trauma. Programs may include education classes, classes on early childhood trauma and parenting, peer-to-peer programs, women-centered classes, and general skills classes.
- 3.15 The jail should accommodate smudging ceremonies important to several Native American tribes. A healing and purification ritual that involves burning and smudging should be considered a routine offering at the jail.

PERSONAL SNAPSHOT - T.H.

“I have a severe mental health diagnosis. Several years ago, I was self-medicating with alcohol and blacked out. When I came to, I had been arrested for significant property damage to a downtown business. I don't remember any of it, but I was charged with a felony. I was in Judge (Brenda) Desmond's treatment court and attended every single week for two years. It saved my life.

¹³⁶ Id.

“We should be putting people in touch with resources and services and identifying them when they come to the jail, rather than having them cycle in and out with no one identifying why they are there and how to prevent them from returning – whether with treatment or mental health care. Those who need them have absolutely no awareness they exist, how to use them, or awareness of ALL the resources. Every single person who leaves jail should be assigned a case manager. Pricey? As opposed to what? The prison averages

In FY 2015, 35 percent of those with a bond set on nonviolent charges could not afford to post it and remained in jail pending case disposition.

\$33,000 a year (to house an offender). Health insurance is the law, and people who need it most have no idea how to get it. Mental health and addiction services MUST be provided in the jail.

“As for programming, I think peer-to-peer programming is more effective than some of the other programs we are required to take.”

- T.H.

SECTION FOUR: PRE-SENTENCING

The vast majority of the jail population is comprised of inmates awaiting case disposition, through a verdict, dismissal, or plea agreement. Most nonviolent individuals booked into the jail are released on their own recognizance or are able to post bond at some point. However, in FY 2015, 35 percent of those with a bond set on nonviolent charges could not afford to post it and remained in jail pending case disposition. Pre-trial detention length varies; duration varies largely based upon the speed with which cases move through the court system. Pre-sentenced detainees may be diverted from jail through the pre-trial supervision program, or through court-approved placement at a facility for individuals with behavioral health issues. This section addresses the pre-trial population, bond process and challenges, the pre-trial supervision program, and other diversionary strategies. It also examines the speed of the criminal justice process, identifying recommendations for increasing the pace of case disposition for incarcerated defendants.

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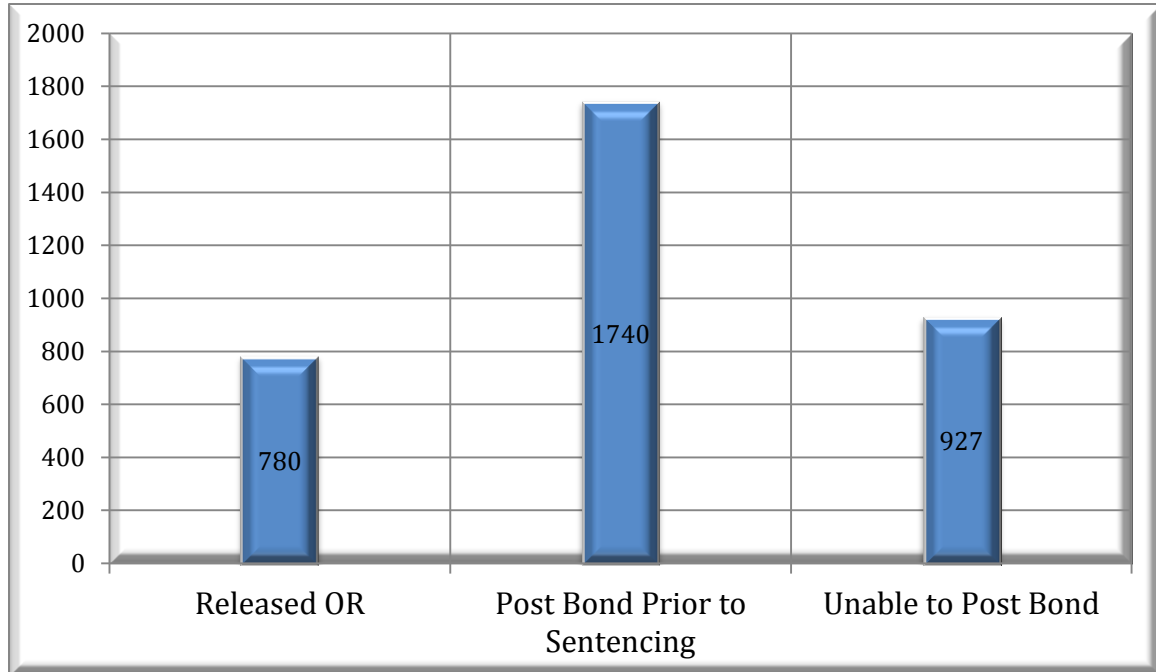


Chart 4.0: Number of Nonviolent Pre-trial Detainees, by Release Ability (FY 2015)

The pre-trial population is predominantly white males. Native American men and women, however, comprise a population disproportionately large when compared to their overall representation in the community.

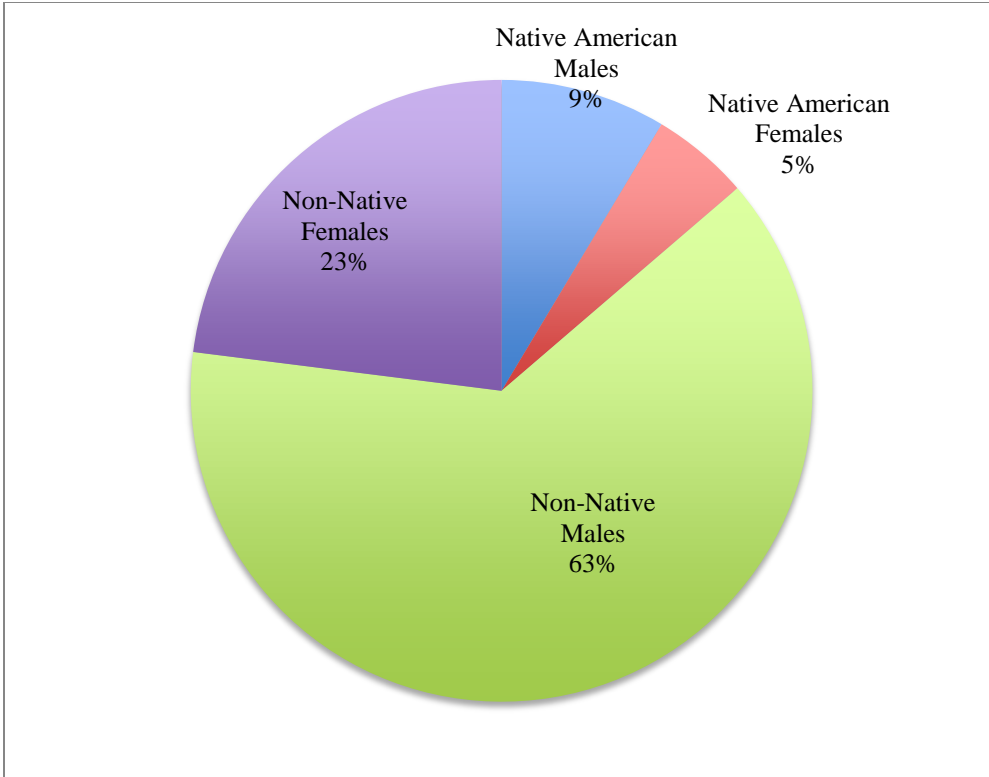


Chart 4.1: Percentage of Total Nonviolent Pre-trial Detainees, by Race (FY 2015)

Booking Data

In FY 2015 alone, there were 5,997 total bookings into the jail – roughly 16 individuals per day. Detention staff in the MCDF intake area collect data from individuals booked, if time allows, in addition to performing numerous tasks associated with a jail admission. Most medium and large jail facilities have dedicated booking clerks. A dedicated booking clerk collects additional data on those admitted into the jail. As much data as possible is collected upon initial booking, as an individual may bond out at any time. If the inmate is under the influence of alcohol or drugs or is otherwise uncooperative, clerks follow up with detainees after booking.

MCDF does not have a booking clerk, which limits the quantity and quality of information about a defendant collected by booking officers. Quite simply, existing staffing levels do not allow for in-depth information gathering. That said, jail administration agrees with stakeholders that increased data collection constitutes a critical step toward meeting inmate needs and helping to develop

MCDF does not have a booking clerk, which limits the quantity and quality of information about a defendant collected by booking officers.

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meaningful policy. Collecting booking data should be a required task, as it is essential to cultivating an understanding of the jail population and for constructing baseline measurements from which outcomes may be charted. Clerks should collect the following data:

- Income/employment status
- Housing status
- Familial status
- Education level
- Status of health insurance coverage and receipt of other public benefits, so the inmate may be referred to a case manager or social worker for appropriate action (suspension rather than termination, when possible, e.g.);

This data will also help the jail offer inmates appropriate programming and identify the types of re-entry services that might be most useful upon release.

Recommendation:

- 4.0 The JDMP Consultant recommends the jail have at least one officer on shift at all times trained in the collection of in-depth booking data. At the request of the judiciary, the booking staff should produce weekly reports to Municipal, Justice, and District courts that list detainees by court, with current length of stay, charge, and judge.

Warrants

When someone fails to appear¹³⁷ at a court date to pay a fine or fee, the presiding judge often issues an arrest warrant. If a defendant does not comply with a term of a sentence (often failing to pay a fine, fee, or restitution), a warrant may be issued for their arrest for failing to comply. Unless the judge specifies, these warrants may be executed during the day or night. They may be discovered during a routine traffic stop, or an officer may go to a defendant home and arrest them.

¹³⁷ See [MCA 46-6-212](#)

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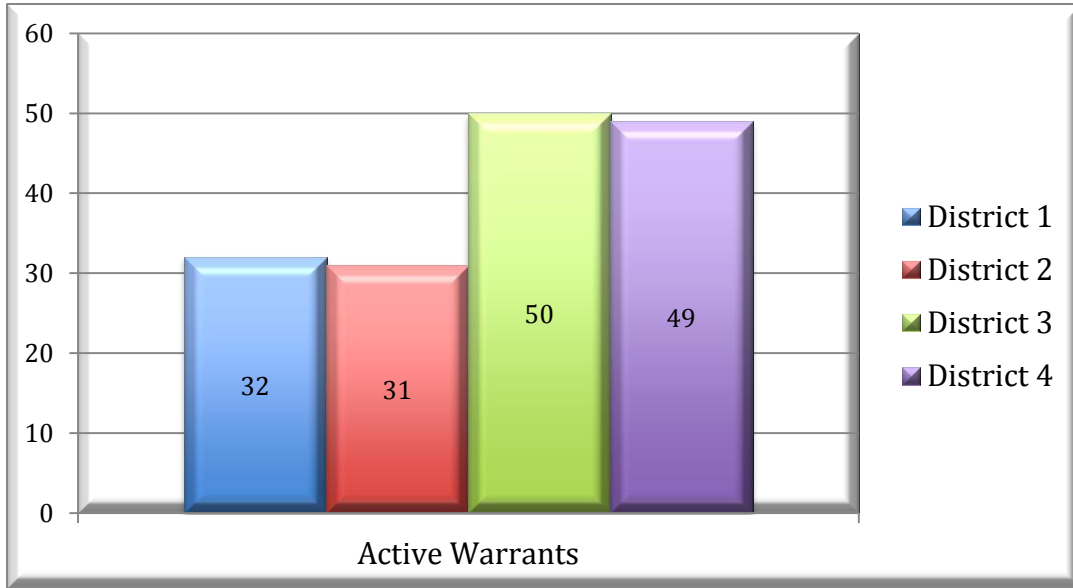


Chart 4.3: Active Warrants in Missoula County District Court, by Court (On 2/1/2016)

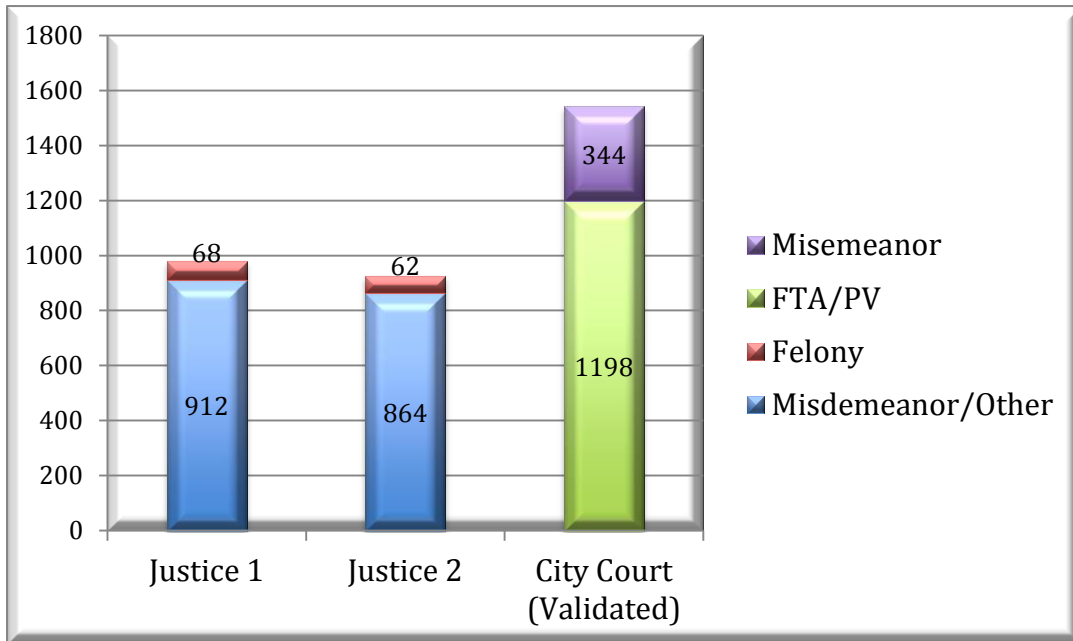


Chart 4.4: Active Warrants in Missoula County Justice Court & Missoula City Court, by Type of Charge (On 2/1/2016)

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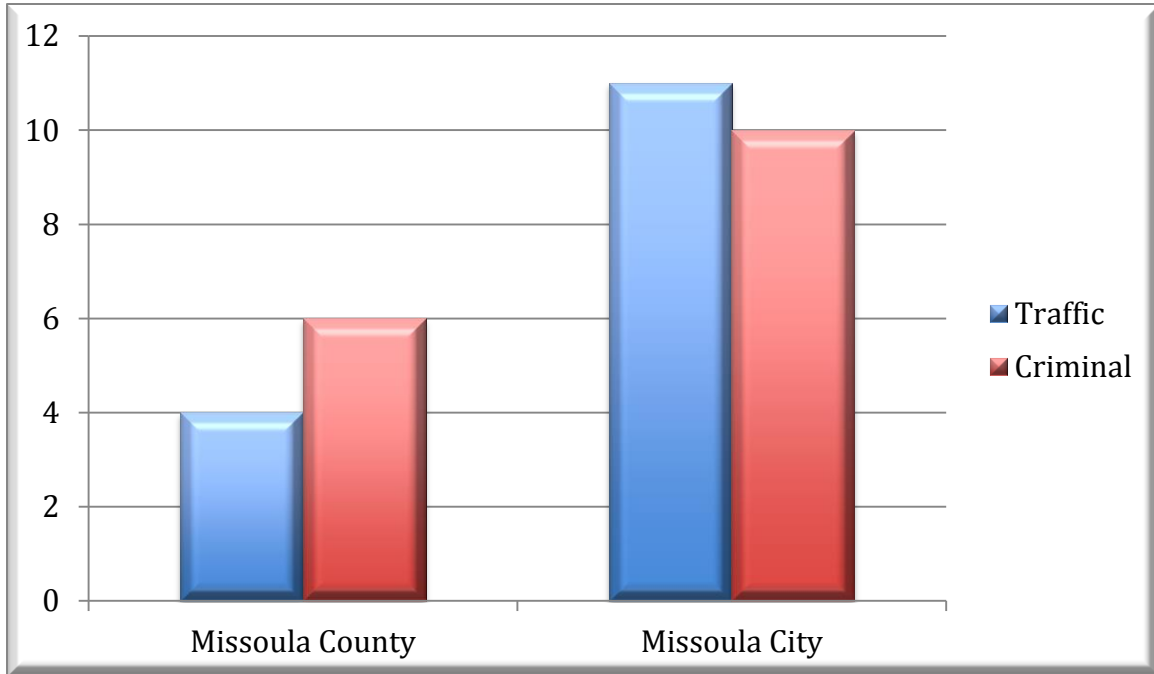


Chart 4.5 FY 2015 Number of Misdemeanor Warrant-Only Arrests, by Agency, by Warrant Type (During Daytime Hours)

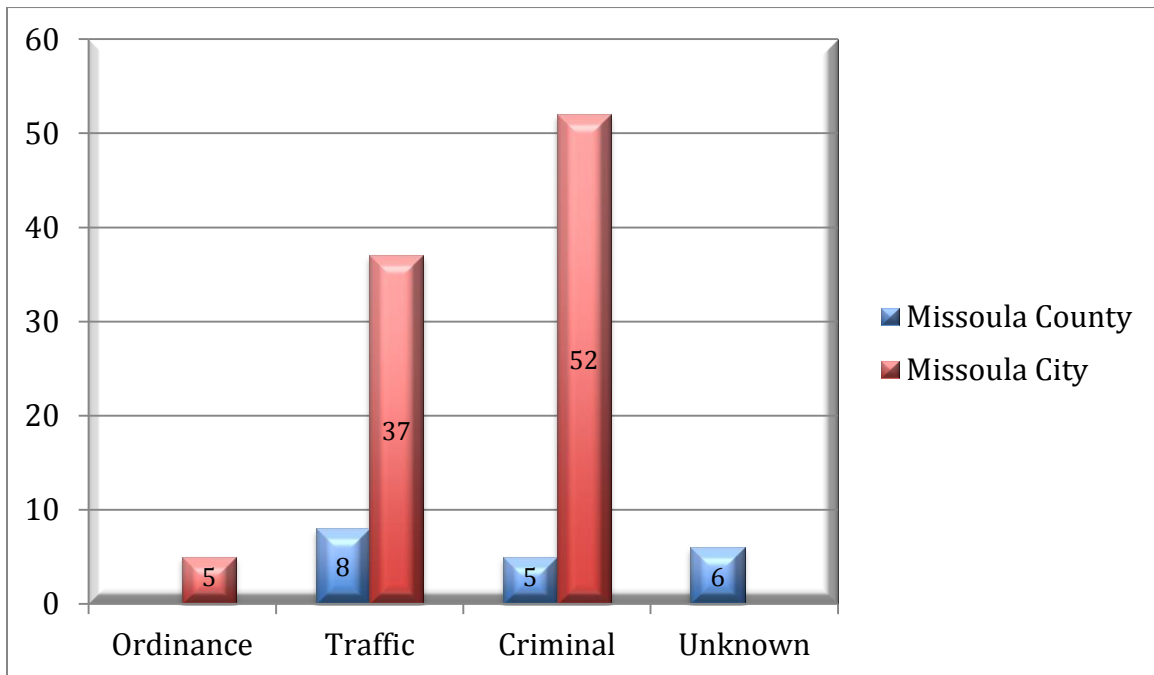


Chart 4.6: FY 2015 Number of Ordinance/Misdemeanor Warrant-Only Arrests, by Agency, by Warrant Type (After Hours)

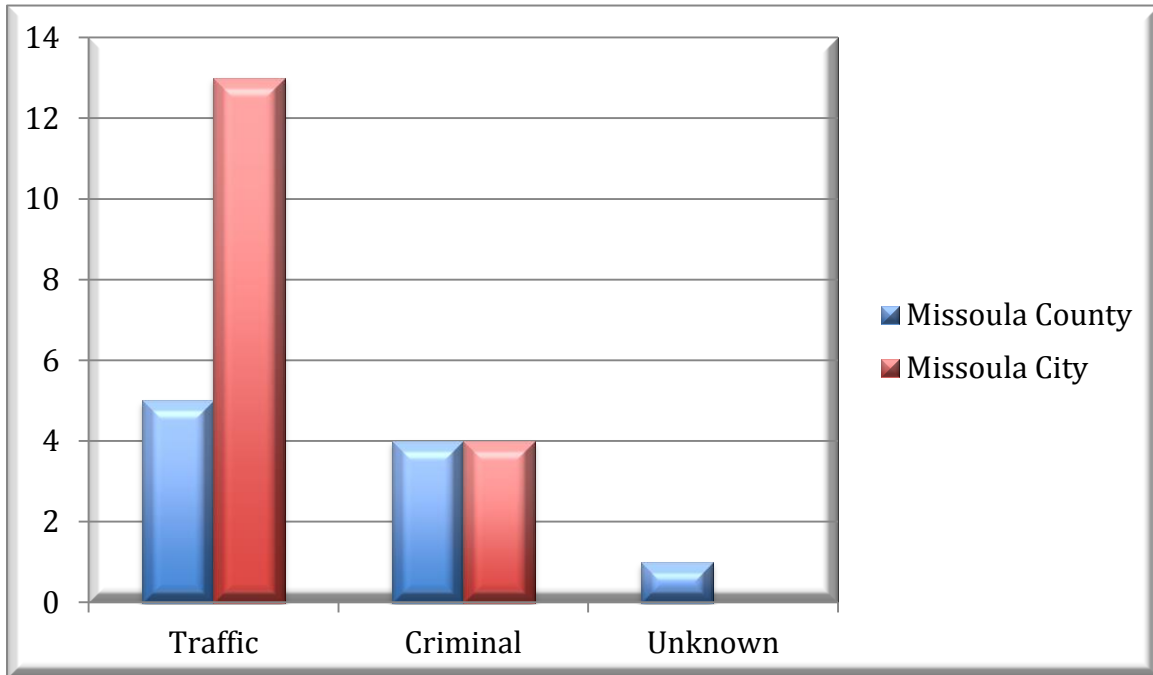


Chart 4.7: FY 2015 Number of Misdemeanor Warrant-Only Arrests, by Agency, by Warrant Type (All Hours)

If law enforcement arrests someone on a warrant at a time when a judge is not available, such as in the evening or on the weekend, the individual is incarcerated. If the defendant is able to pay fines and fees owed to bond out, they are released. If not, the individual remains in jail until a judge is available to see them. If law enforcement arrests an individual unable to bond out on a Friday, they remain jailed through Monday. Often on petty nonviolent charges, bond is set based on the amount of the fine or fee owed.

If someone is arrested on a Friday and cannot afford to bond out, they will remain jailed until Monday.

If a Missoula County Justice of the Peace held night court once a week, law enforcement could arrest individuals with outstanding warrants at that time and immediately take them before a judge. The judge could make an independent analysis of the person's ability to pay the amount owed and otherwise determine

Ninety-two percent of after-hours warrants served by MPD in 2015 stemmed from nonviolent ordinance violations and misdemeanors.

how best to clear the defendant's warrant. This would save jail space now consumed for minor infractions; help clear backlogged warrants, and save individuals the experience of being detained after a routine traffic stop.

Booking data indicates that in Fiscal Year 2015, 92 percent of after-hours warrants served by MPD

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stemmed from nonviolent ordinance violations and misdemeanors. Ordinance violations are for behaviors such as having an open-container of alcohol in public, or having an off-leash dog. For these after-hours warrant arrests in 2015, 45 individuals served an average of 5.7 days each in jail before they were able to post bond or were released by a judge. Based on the \$108-per-night expense of jailing an individual, such after-hours arrests cost the county \$27,648. That's an average of \$615 per person. Nearly one-third of the defendants held had bonds of \$250 or less.

One example of an after-hours arrest for an outstanding warrant came on Nov. 30, 2015, when police arrested L.L. on four Municipal Court warrants stemming from city ordinance violations. L.L.'s violations included two open container tickets, one for public urination, and another for camping in a city park. L.L. was homeless and indigent at the time. Her bond for all the cumulative citations totaled the cost of the tickets - \$319. Ten days after L.L.'s arrest, the court released her. Her jail stay cost the County \$1,080.

Another example of expenses associated with such warrants came on March 26, 2015, at 7:15 p.m., when an individual was jailed on a municipal warrant stemming from having a dog at large. Law enforcement arrested the individual for failing to appear in court and pay a \$75 ticket. The individual was released the following day, at a cost to the County of \$108 for the night's stay.

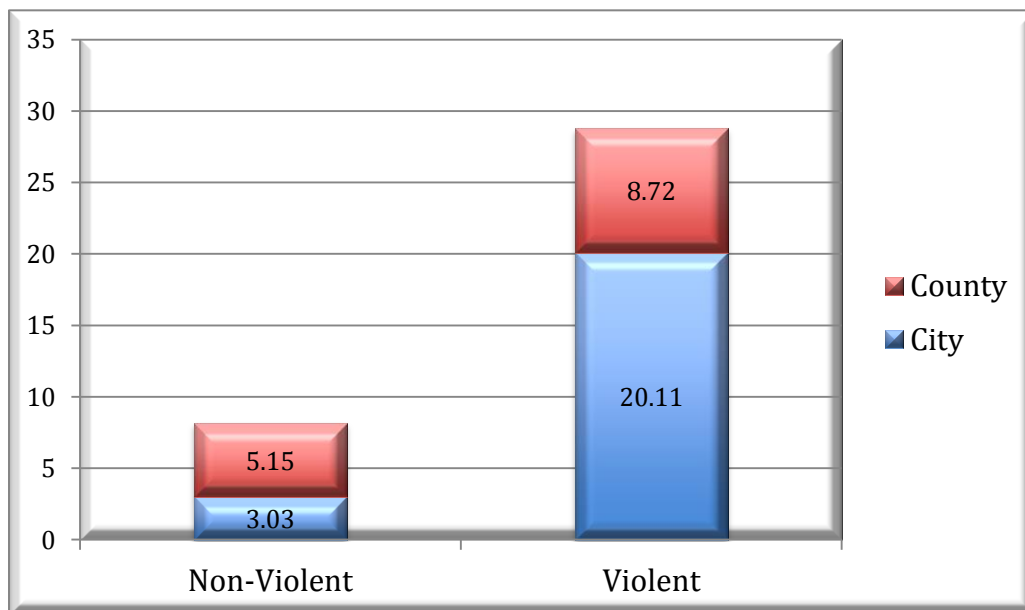


Chart 4.8: Average Number Days Served After Warrant Arrest, by Nonviolent and Violent, by County and City (FY 2015)

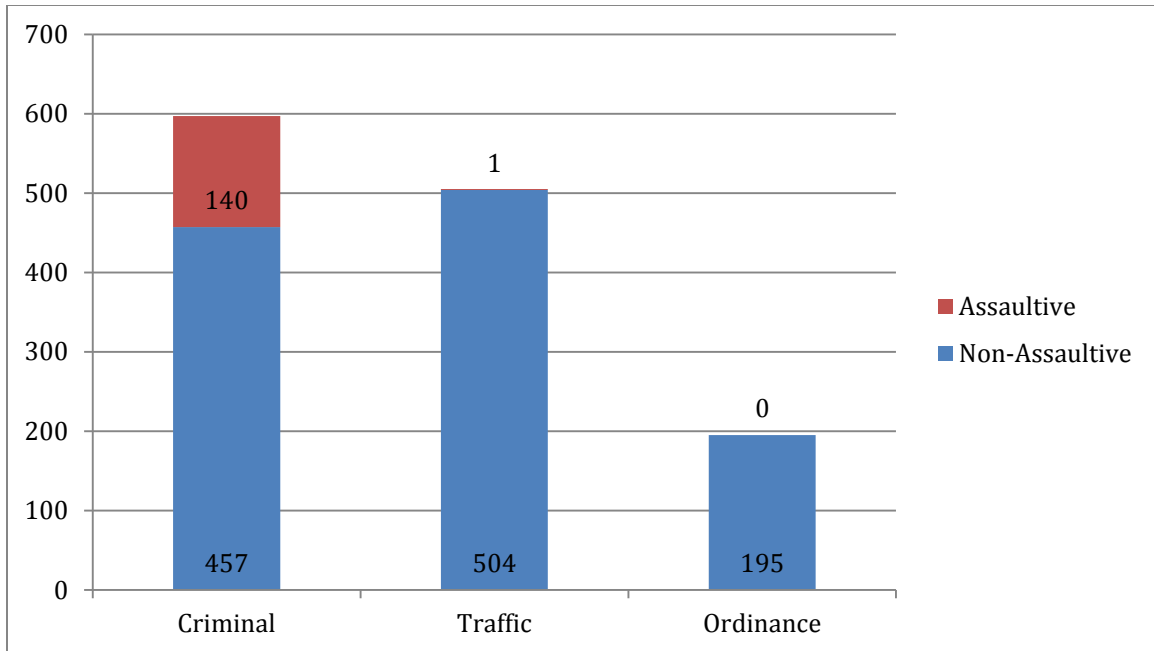


Chart 4.9: All Validated Active Municipal Court Warrants, by Offense Type, by Assaultive & Non-assaultive (Through October 2015)

Recommendation:

- 4.1 The County should work with the judiciary and the Sheriff’s Office to support night court in Justice Court. Justice Court and the Sheriff’s Office should determine the number of operational days per month. Minimal additional costs are anticipated to result from the change. Court staff can flex time to work evenings. As an elected official, meanwhile, the Justice of the Peace does not qualify for overtime. Because defendants will already be accompanied by law enforcement, night court is unlikely to necessitate a bailiff.
- 4.2 Municipal and Justice Court judges should specify that nonviolent ordinance and misdemeanor warrants be executed only during regular court hours. When MPD brings a defendant to Municipal Court during the day, the court should make sure the individual is not taken to jail before seeing a judge.
- 4.3 The City police should not execute warrants after hours solely for nonviolent ordinance or misdemeanor violations.

In Municipal Court, there are over 11,432 arrest warrants issued for 8,026 individuals for misdemeanor or municipal ordinance offenses. In a city with a population of roughly 70,000, this is a concerning number. Of these 11,432 warrants, only 1,543 have been verified as valid as of this publication. The remainder, issued before the current judge’s tenure, need to be validated to ensure they do not include warrants for matters already resolved, or not valid when issued.

Arrests made on warrants that are no longer valid represent a significant liability to the City, but also and perhaps to a greater degree, to the County, which may ultimately be held liable when someone is wrongfully detained.

The municipal judge has made validation a priority, but she needs additional resources to ensure timely processing.

Arrests made on warrants that are no longer valid represent a significant liability to the City. Such warrants present perhaps a greater risk to the County, which may be held liable for a wrongful detention. Additionally, arrests on warrants for traffic offenses occurring years prior, warrants an individual may not be aware of, can disrupt the lives of otherwise law-abiding citizens.

Recommendation:

- 4.4 The City should provide Municipal Court with staff necessary to process warrants, until every active warrant is validated. MPD should only arrest individuals from the validated warrant group.
- 4.5 Municipal Court should quash warrants for petty nonviolent offenses older than five years, as long as the individual has no other outstanding charges from that time.

Bonding

The Montana Constitution provides a legal presumption of pre-trial release, except in capital cases, stating:

“All persons shall be bailable by sufficient sureties, except for capital cases, when the proof is evident or the presumption great.”¹³⁸

Statute further clarifies, “All persons shall be bailable before convictions, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense charged.”¹³⁹ The Constitution also states, “Excessive bail shall not be required.”¹⁴⁰ Montana law further requires the court to balance community safety with the defendant’s likelihood of making court appearances, and to impose the least restrictive conditions on the defendant:

¹³⁸ [Const. Art. 2 § 21.](#)

¹³⁹ [MCA 46-9-102.](#)

¹⁴⁰ [Const. Art. 2 § 22.](#)

“The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant’s appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.”¹⁴¹

Those booked into the jail face three alternatives. The first is release upon one’s own recognizance (OR), without monetary security. The second alternative is to have bond set by a judge. In such instances, defendants pay bond or do not. If unable to pay bond, individuals remain in jail until their trial date, or are screened and accepted by the Pre-trial Supervision Program.¹⁴² Pre-trial supervision conditions vary widely, depending on factors such as judicial discretion – judges may impose any number of bond conditions, for example – the nature of the alleged crime and circumstances, and defendant history. Pre-trial release should not be based on an individual’s ability to pay.

One consistent concern regarding the increase in length of jail stays is the length of time from arrest to case disposition.

Recommendation:

- 4.6 Judges should not rely solely on bond amounts requested by the prosecution. They should instead set bond based on an evidence-based risk assessment, narrowly tailoring conditions of release to be the least restrictive.

Pre-trial release should not be based on an individual’s ability to pay.

Case Processing

Because critical data is often not tracked, it is difficult to use quantitative data analysis to analyze trends in pre-trial detainee case processing. Any delay in case processing for an incarcerated individual contributes to an increase in jail time. Delays clearly occur. Finding their root causes and answers to how best to address them isn’t a simple exercise, however. This plan focuses on evaluating cause and consequence of criminal case continuances for individuals incarcerated. When contemplating process, a lack of comprehensive data, led the JDMP Consultant to rely on stakeholder interviews.

Continuances

¹⁴¹ [MCA 46-9-108\(2\)](#).

¹⁴² In very rare instances of crimes that shock the conscience, or of those who pose an extreme flight risk, bond may be denied altogether. This is very rare with nonviolent offenders.

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One consistent concern regarding the increase in length of jail stays is the period of time that elapses between arrest and case disposition. The JDMP consultant heard concerns from stakeholders that continuances requested by defense counsel – particularly public defenders who represent the majority of defendants in jail – are causing delays in disposition. Due to how data is kept, however, continuances are difficult to track. Such information requires manual collection. Therefore, a sample of continuances was analyzed that included all continuances filed in Municipal Court in September 2015.¹⁴³

Of all criminal cases continued, 21 percent of the defendants were incarcerated. Of those incarcerated, 78 percent of those with continued cases were in jail on nonviolent charges.

Data indicated the number of continuances requested by public defenders was actually disproportionately low, 62 percent. The public defender’s overall Missoula caseload constitutes nearly 80 percent of the criminal docket. In light of data tracking challenges, it is clear that more analysis and better tracking is needed to glean a more accurate picture of reasons for continuances and extent to which they are causing a backlog among jailed defendants. For example, the Public Defenders’ office or the courts should keep track of why continuances are requested for cases of jailed clients. Judges, meanwhile, should deny continuance requests unless a defendant’s right to a competent and prepared attorney is in question. Public defenders should manage caseloads to prioritize contact with jailed clients.

In all courts, judges should move court dates up the docket for jailed defendants. With the assistance of a new booking technician to provide at least a weekly census, by judge, of pre-trial detainees, courts should prioritize these hearings, deadlines, and sentencing dates.

In all courts, judges should move court dates up the docket for jailed defendants. The addition of a new MCDF booking technician responsible for providing weekly or bi-weekly censuses of pre-trial detainees would assist courts to prioritize hearings, deadlines, and sentencing dates for incarcerated individuals.

¹⁴³ Justice Court continuances could not be tracked.

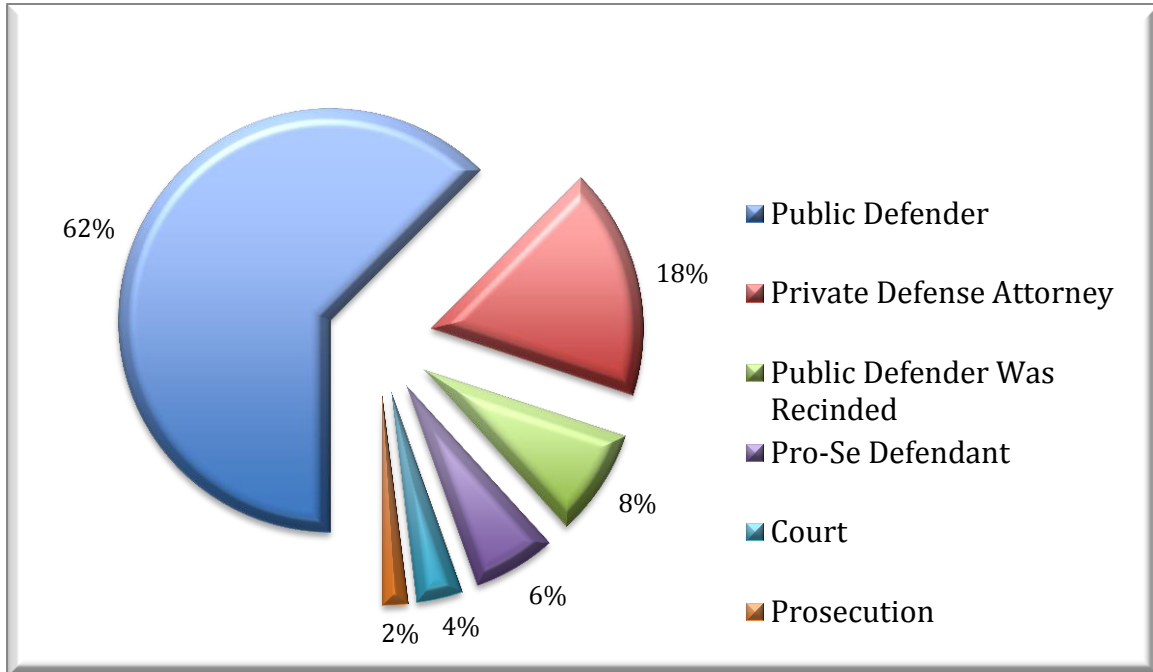


Chart 4.10: Total Municipal Court Continuances (210) and Source of Request (Sept. 2015)

Recommendation:

- 4.7 Once the booking clerk provides weekly or bi-weekly reports to the courts regarding jailed defendants, the presiding judge should prioritize court dates for jailed defendants.
- 4.8 Each court should track continuance requests for jailed defendants and address underlying causes with defense counsel. OPD attorneys should prioritize jail visits for clients. The OPD regional manager should monitor continuance request rates and address inconsistencies.

Discovery & Plea Agreements

One of the recommendations in the Borg Report was to speed up discovery (the prosecutor must gather all state evidence against a defendant and send it to the defendant or his attorney) and plea agreements. Because of the complexity of circumstances that might delay a trial or entry of a plea, it is difficult to quantify the extent to which avoidable delays contribute to extended jail days for pre-trial detainees. It is also difficult to measure outcomes for whether internal policies or practices have sped up case dispositions. Due to the nature of witness cooperation and contemporaneous recollections, it is typically in the prosecution’s best interest of to hasten case disposition. Current practice in the offices of the City and County

When low-risk defendants “are detained pre-trial, they are more likely to commit new crimes in both the near and long term, more likely to miss their day in court, more likely to be sentenced to jail and prison, and more likely to receive longer sentences.”

attorneys is to encourage prosecutors to provide discovery to defendants as soon as possible and plea offer submissions occur as soon as is practicable.

Failing to Appear

One significant need is for improved communication between attorneys and/or the courts with out-of-jail defendants on their required court appearances. Ensuring defendants attend scheduled appearances will decrease bench warrants for failing to appear and associated arrests and jailings.¹⁴⁴ To this end, Municipal Court staff is exploring the feasibility of using text message alerts to remind defendants of court dates (an individual could provide consent to this service at the initial hearing). Additionally, the Missoula Office of the Public Defender is considering a pilot project

Municipal Court staff are exploring the feasibility of using of text message alerts to remind defendants of court dates.

that would utilize an increasingly holistic approach to defense, inclusive of social work functions.¹⁴⁵ Such a program would help attorneys track clients and inform them of court appearances. It would also help public defenders to ensure defendants stay compliant with pre-trial requirements, such as maintaining housing or connection to other services.

Recommendation:

- 4.9 The Missoula Public Defenders office, as well as the courts, should consider the use of low-cost technology, such as text messages or auto-calls, to remind defendants of court dates.

Chemical Dependency Evaluations

Meetings with stakeholders indicate there is nearly universal belief that judges are increasingly ordering chemical dependency evaluations (CDEs) in cases where substance abuse may be an indirect or direct cause of criminality.¹⁴⁶ Pre-trial detainees are often required to receive such evaluations prior to release from jail, so

¹⁴⁴ Further discussion on underlying Failure to Appear warrants is found in the next section.

¹⁴⁵ For more information on this approach, see [The Bronx Defenders Holistic Defense](#).

¹⁴⁶ It should be noted there is also concern from defense attorneys that CDEs are increasingly being required for defendants in cases where substance abuse is not indicated by the defendant’s history or charging documents. This should be monitored, as it could lead to unnecessary evaluation expenses and additional jail days.

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judges may rely on evaluation recommendations to set terms of release. This practice is leading to an increase in pre-trial jail days, as it can sometimes take weeks or longer before this evaluation occurs. This lag can be attributed to the limited number of professionals capable of providing the evaluation and the time it takes to complete them in jail. As part of WMMHC's increase in behavioral support staff, it should employ a Licensed Addiction Counselor at the jail. This individual could conduct CDEs at MCDF. Completing the process more quickly will reduce the number of jail days spent waiting for these evaluations.

Municipal Holds

Detainees in the jail often have charges pending in both Municipal and District courts, either stemming from the same or different incidents. Many times an offender is sentenced in District Court to the DOC on a felony charge, yet held in jail pending sentencing for a charge in Municipal Court. This type of hold can take weeks or months to resolve, depending on how quickly the case moves. The JDMP Consultant advises that any inmate be moved to a state placement once sentenced to the DOC, and not be held in the jail on municipal charges.

Recommendation:

- 4.10 Low-level, nonviolent municipal charges should run concurrent with a felony state sentence.

Risk Assessment

There are too many low-risk nonviolent individuals awaiting trial in the Missoula County jail. In FY 2015, there were 927 people incarcerated on nonviolent charges who were unable to post bond or otherwise secure release before case disposition. Significant changes are needed to ensure more nonviolent defendants receive appropriate community supervision. A growing body of evidence indicates that releasing nonviolent offenders from detention earlier would yield better safety outcomes. Even a short pre-trial stay in jail – as few as two days – is more likely to lead to poorer outcomes for the defendant and for public safety, as compared to releasing an individual within twenty-four hours.¹⁴⁷ When low-risk defendants “are detained pre-trial, they are more likely to commit new crimes in both the near and long term, more likely to miss their day in court, more likely to be sentenced to jail and prison, and more likely to receive longer sentences.”¹⁴⁸ Getting individuals awaiting trial back into their communities, and to housing, employment, and familial connections significantly lowers their chances of recidivating. Research shows that

¹⁴⁷ Subramanian, R. *et al.*, (2015). [Incarceration's Front Door: The Misuse of Jails in America](#). Vera Institute of Justice.

¹⁴⁸ (2013). [Developing a National Model for Pretrial Risk Assessment](#). The Laura & John Arnold Foundation.

such stability also stands to reduce jail sentences (likely due to judicial consideration of community ties and stability during sentencing).¹⁴⁹

Pre-trial Supervision Program

Since 1998, Missoula County has contracted with Missoula Correctional Services (MCS) for its Pre-trial Supervision program. The City does not contract for a pre-trial supervision program. In FY 2015, the County paid MCS \$501,363 for Misdemeanor Probation Program and Pre-trial Supervision services. A per-person, per-day rate was not available for either program. MCS reports that Pre-trial Supervision offenders paid MCS \$5,104 in supervision fees and \$33,834 in fees for urinalysis, GPS monitoring, and alcohol monitoring. MCS employs three pre-trial detention officers. MCS reports a total average daily population for FY 2015 of 37.54.

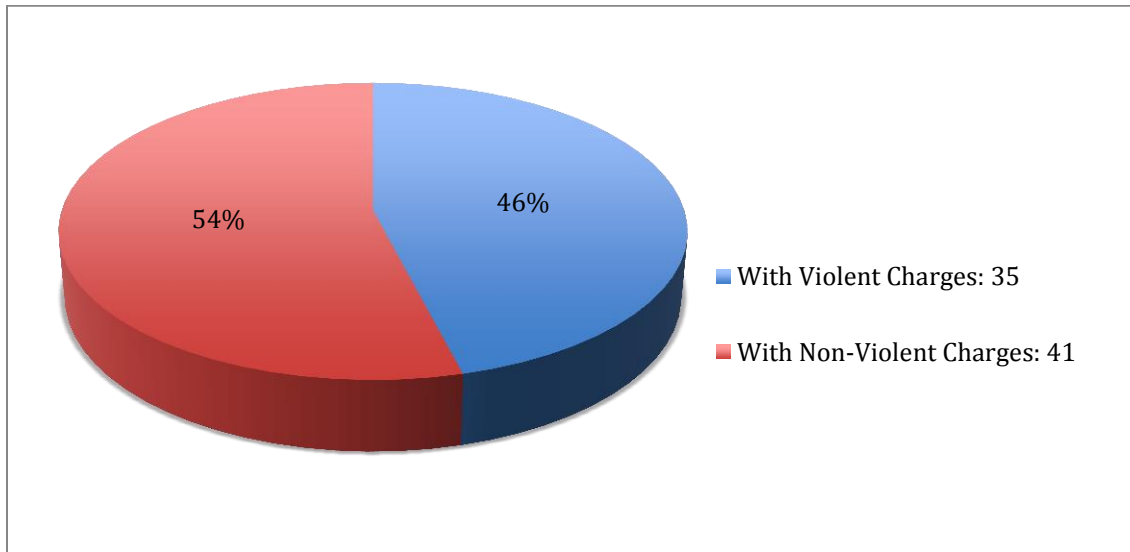


Chart 4.11: Percentage of Pre-trial Supervision Program Participants by Type of Charge (Of 76 Total Participants Released in FY 2015)

¹⁴⁹ Id.

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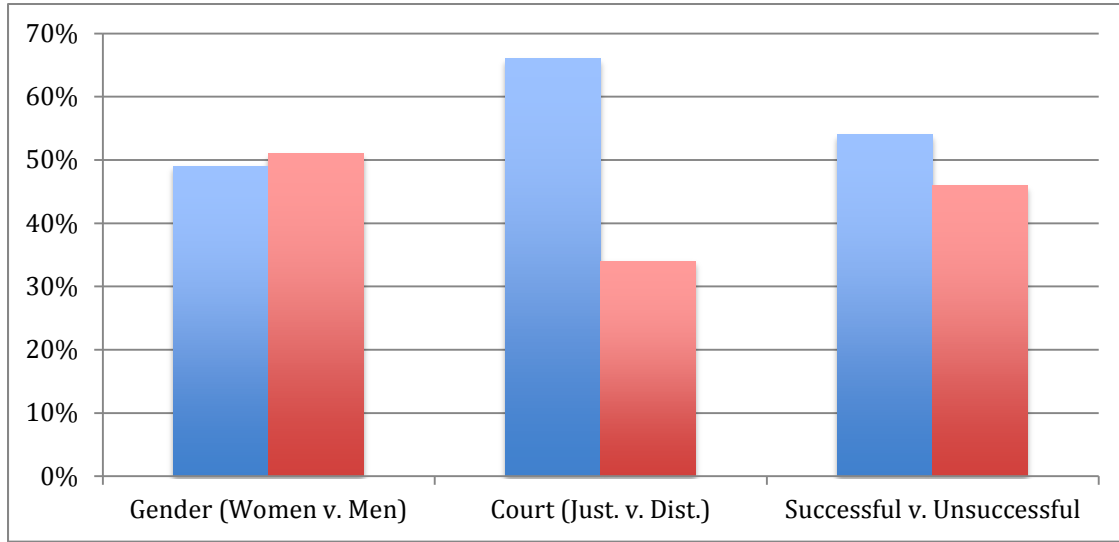


Chart 4.12: Percentage of Nonviolent Pre-trial Supervision Program Participants, by Gender, Court, & Success Rate (of 41 Total Nonviolent Participants Released in FY 2015)

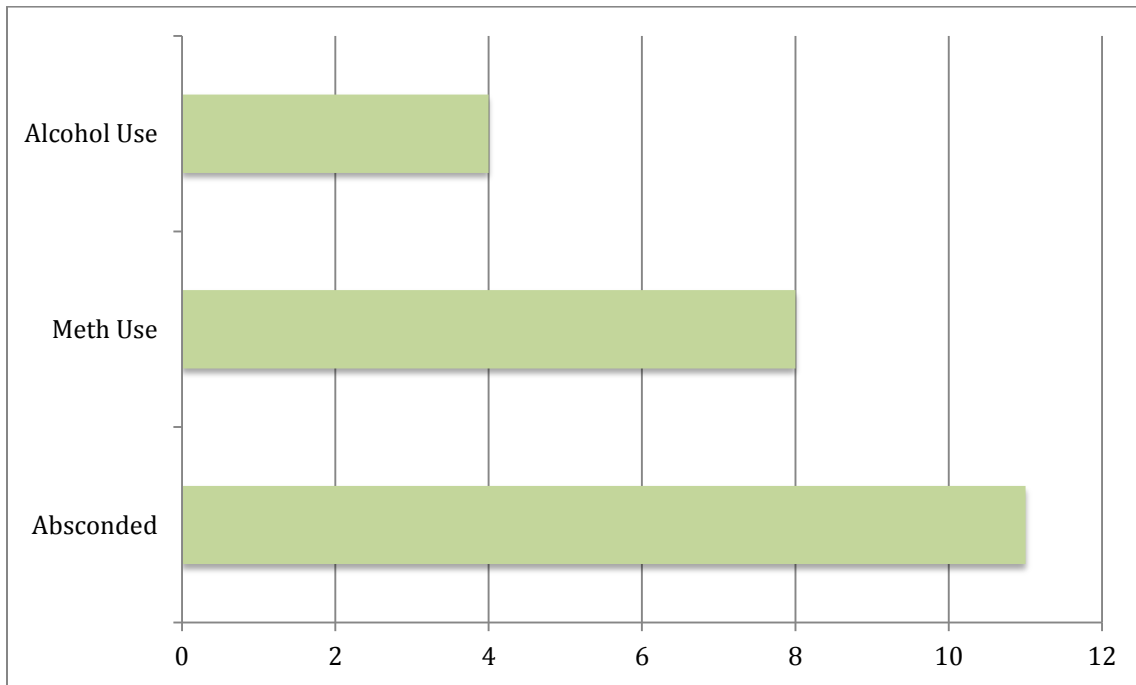


Chart 4.12: Unsuccessful Nonviolent Pre-trial Supervision Program Participants (19), by Three Most Frequent Violations (Of 41 Total Nonviolent Participants Released in FY 2015) (Participants could have more than one violation)

Screening

As noted in the following section on misdemeanor probation, a significant amount of recent evidence-based research highlights best practices for employing pre-trial screening tools. Such studies indicate that judges and other criminal justice system stakeholders carry biases that contribute to an overestimation of factors not determinative to defendant risk of re-offending or absconding. Such biases can also lead to underestimations of factors proven to be more influential.¹⁵⁰

In 2011, the Laura and John Arnold Foundation, a private philanthropic foundation, drew from a study of 746,525 pre-trial cases to evaluate to what extent risk assessments across the country were predictive. The foundation details some of its findings in the 2013 report, “Developing a National Model for Pre-trial Risk Assessment:”

“Every day in America, judges have to answer a critical question again and again: What are the chances that a recently arrested defendant, if released before trial, will commit a new crime, a new violent crime, or fail to appear for court?”

“This may be the single most important decision made in the criminal justice system because it impacts everything that follows: whether or not a defendant is sentenced to jail or prison, how long he is incarcerated, and most importantly, how likely he is to commit violence or other crimes in the future. Yet most of these decisions are made in a subjective manner, without the benefit of data-driven, objective assessments of the risks individual defendants pose to public safety.

“Today, in many jurisdictions, judges do their best to apply their experience and instinct to the information they have about a defendant to make a subjective determination of whether he will commit a new crime or fail to return to court if he is released. In other jurisdictions, judges may follow court guidelines that require that all defendants arrested for a specific crime receive the same conditions of release (such as supervision, bail, or drug testing), regardless of risk. But neither method of deciding whether a defendant should be detained or released – a subjective evaluation, or an offense-specific one-size-fits-all approach – provides a reliable measure of the risk that a defendant poses. And yet this decision – whether to release or detain a defendant – is far too important to be left to chance.”¹⁵¹

¹⁵⁰ Id.

¹⁵¹ (2013). [Developing a National Model for Pretrial Risk Assessment](#). The Laura & John Arnold Foundation.

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Judges should set bond based on an evidence-based risk assessment and an assessment of defendant ability to pay, rather than an arbitrary amount based on the type of crime.

In Missoula, MCS staff screen only defendants referred by a judge for pre-trial supervision. Individuals are only vetted for the most intensive option, pre-trial

Judges and others in the criminal justice system carry their own biases and often over-estimate factors that are not objectively as critical in determining a defendant's risk of re-offending or absconding, and under-estimate factors that are proven as more determinative.

supervision, rather than for different release options based on risk level. For screening purposes, MCS uses a list of questions compiled by organization staff. The screening question list was not made available by MCS for this plan. Jail staff reports, however, that MCS primarily accepts defendants with stable housing and/or employment in the community. This leads to lower-risk defendants entering a program that should be reserved for those deemed comparably high risk. Another issue with existing pre-trial release protocol is that there can be several days delay between the time an individual is incarcerated and when pre-trial supervision staff screen them for program admission, leading to an increase in jail time served.

An increasing body of evidence, including that from the Arnold Foundation, demonstrates that placing low-and-moderate-risk individuals into programs designed for high-risk offenders, which include stringent drug-and-alcohol testing, regular supervision, rehabilitation education, fee mandates, and significant personal restrictions, can lead to worse outcomes than if the low-risk individual secured release absent conditions.¹⁵² Montana law requires the least restrictive release conditions be imposed on individual.¹⁵³ The use of a validated risk assessment improves public safety by increasing release for low-risk offenders, while restricting release of those more likely to commit a crime or flee.

Nonviolent defendants should be screened for various levels of release, dependent on risk assessment findings. A recommendation for release should be made to the judge at the first opportunity.

Levels of release should include:

- Low Risk: set a low bond (taking into consideration a defendant's ability to pay even a low bond), release the individual, OR;
- Moderate Risk: require some level of alcohol/drug or GPS monitoring when appropriate, possibly bench monitoring;

¹⁵² Id.

¹⁵³ [MCA 46-9-108\(2\)](#).

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- High Risk: assign to the Pre-trial Supervision Program, with conditions individualized to the defendant and narrowly tailored to impose the least amount of sanctions, using best practices to incentivize compliance. If sanctions are necessary, they should be temporary when possible and step-up, rather than terminating supervision and jailing.

Around the country, justice policies are increasingly focusing on identifying potential risk factors associated with an individual's release from detention, rather than determining release suitability and conditions based primarily on the alleged charges.¹⁵⁴ According to the National Council on State Legislatures, "Since 2012, 20 laws in 14 states created or regulated the use of risk assessments during the pre-trial process. In 2014 alone, 11 laws were passed to regulate how risk assessment tools are used to help determine whether, and under what conditions, a defendant should be released. Vermont adopted a law that requires the court to conduct risk assessments on most defendants, including on those unable to post bond after 24 hours."¹⁵⁵

An increasing body of evidence shows that putting low and moderate risk defendants into pre-trial release programs designed for high-risk offenders can lead to worse outcomes than if the low-risk defendant is released absent conditions.

¹⁵⁴ (March 2015). [Trends in Pre-Trial Release: State Legislation](#). National Council of State Legislatures.

¹⁵⁵ Id at 1.

Several other states are considering implementation of new pre-release policies as a means to address capacity constraints in county detention facilities, while also

Under the current pre-trial supervision program, the failure rate for nonviolent defendants is relatively high – nearly half of all released participants return to jail. This type of failure rate would be within acceptable range if all the participants were high risk.

improving public safety. Those deliberations come on the heels of statutory changes in Vermont, Colorado, Delaware, Hawaii, New Jersey, Maine, and West Virginia, which have all in recent years adopted uniform statewide risk assessment protocols.¹⁵⁶ (Note that numerous states have laws to protect victims of alleged perpetrators who are released pre-trial, in particular in cases of sexual and domestic violence. As the master plan population is nonviolent, these policies were not examined). The states identified above each have statewide pre-trial services programs for which most defendants are eligible to participate. In Colorado, pursuant to a 2013 law, counties develop pre-trial services using an approved best-practices model. The success rate, measured by attendance at court hearings and no additional charges, was much higher than projected. For high-risk offenders, the success rate was 60 percent, more than double the estimated rate.¹⁵⁷

While much of the research around risk assessments in the criminal justice context focuses on probation and parole processes, with some used in sentencing, the Arnold Foundation commissioned a team of expert researchers to develop a comprehensive, scientifically validated pre-trial risk assessment tool. In 2013, the foundation introduced the Public Safety Assessment (PSA-Court), which is now used in over 29 cities and states.

Perhaps most unique and interesting is that researchers found no increase in validity with defendant interviews – the PSA-Court relies entirely on data obtained without interviewing the individual.

PSA-Court uses a three-pronged six-point scale, predicting separately the risk of failing to appear, likelihood of committing a new crime, and likelihood of committing a new violent crime. Based on the Arnold Foundation study of 746,525 cases, researchers identified nine predictive factors that can be gleaned from readily available information. Among the Arnold Foundation’s most notable findings is that researchers found no increase in risk assessment validity resulting from defendant interviews – the PSA-Court relies entirely on data obtained without interviewing the individual. Researchers also found that “defendants in each category failed at similar rates, regardless of their

¹⁵⁶ Id at 3.

¹⁵⁷ Id at 3.

race or gender. The results confirmed that the assessment does not over-classify non-whites' risk levels."¹⁵⁸

While pre-trial options in Missoula County should be expanded and updated based on best practices, these reforms should be in addition to bond reform.

Release Based on Risk Level

Once a defendant is screened for risk level, terms of release should be tailored to the individual. At the low-risk level, defendants should be released without bond or with a significantly reduced bond. At the high-risk level, more stringent supervision should be required, but again, this should not be a standard list of conditions; release conditions should be tailored to the individual. The biggest barrier to implementing a more nuanced screening process is the absence of a payment source from the County or City for judges to offer different types of pre-trial services for indigent defendants, such as simple alcohol monitoring. Under the existing pre-trial supervision program, the failure rate for nonviolent defendants is relatively high with nearly half of all released participants going back to jail. This type of failure rate would be within acceptable range if all participants were high risk.¹⁵⁹ This is especially true given that the relatively low supervision ratio – well under 15 participants per officer, and that the population is not restricted to high-risk defendants, but includes individuals at all risk levels. Reforms should significantly increase the population of those charged with a crime who are suitable for safe community monitoring.

Recommendations:

- 4.11 If an individual is charged with a nonviolent crime and is unable to post bond within 12 hours, the County should have trained staff administer the PSA-Court assessment. The assessment and recommendations for conditions of release should be made available to the judge at the defendant's initial appearance.
- 4.12 The County and City should provide funding for judges to draw from to pay for pre-trial services for indigent offenders. Funding should follow the individual and enable judges to order alcohol monitoring or drug testing.
- 4.13 In pre-trial supervision program contracts, the County should either pay per person per day, or have a minimum number of supervisees per officer, to increase capacity. The County should require annual or twice-yearly reports on costs and failure rates, etc., and require policies on evidence-based incentives and sanctions. The County should also consider a target success rate, working with a vendor for a compliance plan. The County should

¹⁵⁸ Id at 5.

¹⁵⁹ See Latessa, Edward. (2009). [Validation of the Ohio Risk Assessment System: Final Report](#).

structure the contract to ensure pre-trial supervision programs offer required classes on site and include them in the supervision fee.

SECTION FIVE: SENTENCING AND POST-SENTENCING

Sentencing Laws and Mandatory Minimums

The Montana Constitution states, “Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims.”¹⁶⁰

While the criminal justice system requires a delicate balance of coequal but separate powers of the judiciary and legislative branches, the state legislature has repeatedly weighed in to set policy. Notably, the legislature requires diversionary sentencing from jail or prison for nonviolent offenders without lengthy criminal histories. The relevant statute was most recently amended in 2005 and reads:

46-18-101. Correctional and sentencing policy.

- (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.
- (2) The correctional and sentencing policy of the state of Montana is to:
 - a. Punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;
 - b. Protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;
 - c. Provide restitution, reparation, and restoration to the victim of the offense;
 - d. And encourage and provide opportunities for the offender’s self-improvement to provide rehabilitation and reintegration of offenders back into the community.
- (3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:
 - a. Sentencing and punishment must be certain, timely, consistent, and understandable.
 - b. Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.
 - c. Sentencing practices must be neutral with respect to the offender’s race, gender, religion, national origin, or social or economic status.
 - d. Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

¹⁶⁰ [Article II, § 28.](#)

- e. Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.
- f. ***Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.*** (emphasis added)
- g. Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.
- h. Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, cost of assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.
- i. ***Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles.*** (emphasis added)

MCDF's sentenced population is significantly smaller than its pre-trial population. As state law mandates, only offenders sentenced to less than one year serve out their detention in the jail.

Despite the sentenced population's comparably small size, it still represents a significant number of detainees. Sentencing policies have a distinct impact on this population. While incarcerating an individual prevents them from committing crimes in the community, there is little evidence to demonstrate that incarceration reduces recidivism. In contrast, there is evidence to show it actually has a criminogenic effect.¹⁶¹

Mandatory Minimums

There are two statutes that create a mandatory minimum sentence for a nonviolent offender and contribute to increased jail days in county jails – third offense theft and driving while suspended. The current Missoula Municipal and Justice Court judges support eliminating the required minimum sentences and instead providing judges with the discretion to impose an appropriate sentence, based on the nature of the crime and taking into account mitigating circumstances. While most of the research on mandatory minimums has been done in the context of federal drug law, much of it is relevant to other offenses. Studies have shown that mandatory minimums do not serve their intended purpose of deterring offenders with certain and specified incarceration times.¹⁶²

¹⁶¹ See Cullen, Francis T., Jonson, C.L., Nagin, D.S. (2011). [Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science](#). The Prison Journal, Vol. 91, No. 3.

¹⁶² See Meierhoefer, Barbara S. (1992). [The General Effect of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentences Imposed](#). Washington DC: Federal Judicial Center. See also (May 6, 2014). Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System. US Sentencing Commission.

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“A person convicted of a third or subsequent offense shall be fined \$1,500 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.”¹⁶³ This means that someone who is convicted of – or pleads guilty to – petty theft must receive 30 days in jail regardless of any mitigating circumstances of his or her current crime, or past record of two prior petty theft offenses. Similarly, a two-day mandatory minimum sentence exists for the second offense of driving while one’s license is suspended or revoked (DWSR).¹⁶⁴ There are numerous reasons a person’s license may be suspended or revoked, including the conviction of a DUI offense or offenses. However, a person’s license will be mandatorily suspended if the Department of Motor Vehicles receives a report from any court of law, indicating an individual 1) failed to appear after being charged with a misdemeanor; or 2) has not complied with an imposed sentence, “including but not limited to the payment of a fine, costs, or restitution.”¹⁶⁵

The DWSR minimum sentence is particularly concerning, as it disproportionately affects the poor. Driving has been determined by the courts to be a privilege, rather than a right, and subject to sanctions and restrictions. However, the ability to operate a car can be a necessity for obtaining and maintaining employment or parenting responsibilities, especially if one resides in an area outside the urban core and lacks public transit. Restricting one’s ability to work for the underlying inability to pay a fine or fee perpetuates a vicious cycle without positive outcomes for the community or the offender. While statute currently provides for this, the Montana Constitution explicitly derides debtor’s prison, stating, “No person shall be imprisoned for debt except in the manner provided by law.”¹⁶⁶

Restricting one’s ability to work for the underlying inability to pay a fine or fee perpetuates a cycle absent positive outcomes for the community and the offender.

There are two major concerns with jailing for DWSR when the license was suspended for failing to pay a fine or fee associated with a previous, oftentimes minor, traffic conviction. They are cost and liability. First, in municipalities that have studied the cost of jailing for failing to pay a fine or fee, they have found a nearly 2:1 expense: the cost of jailing this population was nearly twice the total value of the fine or fees owed.¹⁶⁷

The second concern is liability for jailing the indigent for inability to pay. In 1983, the U.S. Supreme Court found in *Beardon v. Georgia* that courts could not jail someone simply for failing to pay a fee or fine.¹⁶⁸ A judge must first consider a

¹⁶³ [MCA 45-6-301 \(8\)\(a\)](#).

¹⁶⁴ [MCA 61-5-212](#).

¹⁶⁵ [MCA 61-5-214](#).

¹⁶⁶ [Article II § 27](#).

¹⁶⁷ See NPR Investigative Report, [Guilty and Charged](#), (2014).

¹⁶⁸ [461 U.S. 660 \(1983\)](#).

person's ability to pay and whether they are willfully refusing. Rather than a subjective assessment of a defendant, advocates argue that *Beardon* requires a more thorough assessment of a defendant's current and prospective financial situation. States and municipalities have recently enacted reforms to municipal revenue collection through the courts, either through amnesty days,¹⁶⁹ whereby an individual can see a judge to resolve a payment issue without arrest, or with state law reforms.¹⁷⁰ Civil rights groups are increasingly challenging jailing and sentencing practices stemming from underlying failures to pay. Most recently, the ACLU filed suit in the Superior Court for the State of Washington against Benton County, Washington, where one in four people jailed for a misdemeanor offense was incarcerated for failing to pay fines and fees. The suit alleges district courts in that state are not making a sufficient determination of defendant ability to pay, and that an underfunded public defender system is contributing to the problem.¹⁷¹

Rather than suspend licenses or issue warrants for failing to comply with financial requirements of a sentence, Municipal and Justice Court judges should send billing statements to offenders notifying them of the outstanding debt and the consequences of non-payment.

Additionally, under Montana law, "the sentencing judge may not order a defendant to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose."¹⁷² Despite Montana statutes mandating payment of fees, reform advocates note that both the U.S. and Montana Constitutions prohibit imposition of fees without an independent assessment of inability to pay by the courts. Note that *Beardon* also requires the judiciary to make an independent assessment, rather than waiting for the issue to be raised by the defendant or defense counsel.¹⁷³

Master plan stakeholders requested data on the extent to which Missoula judges suspend driver licenses for failing to pay a fine or fee, particularly in Municipal Court. Currently, when someone is booked into the jail for driving while their license

¹⁶⁹ Amnesty programs have launched in California and Chicago, among other jurisdictions, for those unable to pay past traffic citations.

¹⁷⁰ Colorado recently changed state law to prevent jailing for failure to pay fines and fees, after the Amer. Civil Liberties Union challenged practices in three cities. See [HB 14-1061](#): Eliminate Prison for Inability to Pay Fines (2014).

¹⁷¹ *Fuentes v. Benton County*, complaint found at <https://www.aclu.org/legal-document/fuentes-v-benton-county-complaint>

¹⁷² [MCA 46-18-231\(3\)](#).

¹⁷³ While some nonviolent offenders are given the option of working off fines (but not fees) through community service, if an individual truly cannot pay, they should not be assessed even if the individual does not complete community service.

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is suspended or revoked, jail staff has no way to determine whether the license was suspended for failure to pay a fine or fee stemming from a low-level traffic offense, or for something more substantive like a DUI. More efforts are needed to capture data capable of determining how frequently judges penalize defendants with driver license suspension for failing to pay financial obligations.

Recommendation:

- 5.0 The City and County should support legislation, and advocate for such legislation through their respective lobbying associations, to eliminate mandatory minimum sentences for nonviolent crimes, including driving while suspended or revoked and petty theft, thereby restoring judicial discretion.
- 5.1 Municipal and Justice Court judges should institute an independent objective assessment process to determine a defendant's ability to pay fines and fees and waive financial penalties appropriately.
- 5.2 Rather than suspend licenses or issue warrants for failing to comply with financial requirements of a sentence, Municipal and Justice Court judges should send billing statements to offenders notifying them of the outstanding debt and the consequences of non-payment. If a Municipal or Justice Court judge does suspend a license or issue a warrant for failing to comply with financial requirements of a sentence, he or she should keep data on the incidents.

Initiative 2 Enforcement

In 2006, 56 percent of voters in Missoula County passed Initiative 2, the purpose of which was to “make investigations, citation, arrests, property seizures, and prosecutions for adult marijuana offenses Missoula County’s lowest law enforcement priority.”¹⁷⁴ The Board of Missoula County Commissioners later amended the policy to apply only to misdemeanor marijuana offenses (possession of two ounces or less).¹⁷⁵

Master plan stakeholders requested data on whether arrest rates in Missoula County for misdemeanor possession of marijuana reflect de-prioritization of such charges. As seen in Chart 5.0, arrests solely for misdemeanor possession of marijuana (or with a drug paraphernalia charge) are rare, but a spike occurred in FY 2015. Jail data indicates there were 21 total such arrests during the past 10 years, representing 33 jail days served. City and County law enforcement are responsible for equal portions of marijuana-related arrests. Misdemeanor possession of marijuana charges are typically associated with additional criminal allegations.

¹⁷⁴ [Text of Initiative No. MSLA2006-02.](#)

¹⁷⁵ See [MCA 49-9-102\(2\)](#).

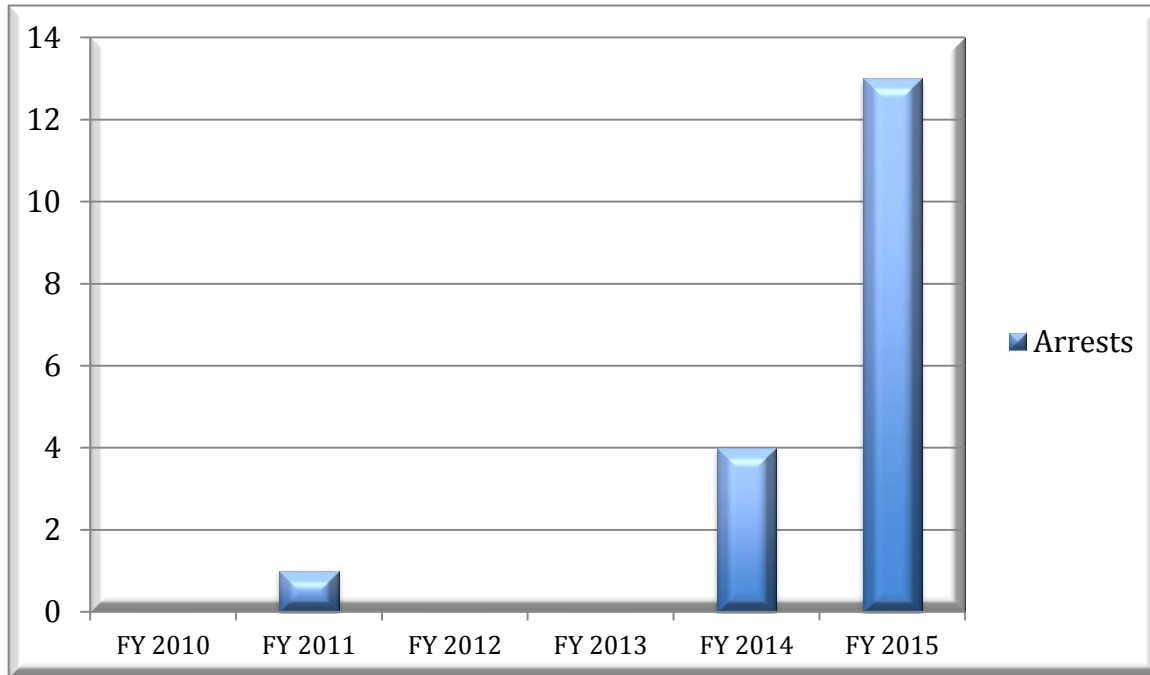


Chart 5.0: Arrests in Missoula County for Misdemeanor Possession of Marijuana Only, or With Drug Paraphernalia Charges

Current Diversionary Sentencing

Work Release

Under state law, a judge may sentence offenders to work release, if prosecutor, sheriff, and defendant agree.¹⁷⁶ The purpose of the program, which allows offenders to leave jail for work, is to allow offenders to maintain employment. Individuals on work release must remain confined at jail at all other times for the duration of their sentence. This option is ideal for offenders who have stable employment, shorter sentences, and are nonviolent. This program stands to be a significant tool for allowing offenders to continue employment while also instilling accountability, but the Missoula jail is currently unable to offer this sentencing option due to lack of bed space. If beds were made available, MCDF, with a judge's approval, could allow an offender with a shorter sentence (ideally 10 days or fewer) to schedule jail time around employment. For example, an individual could check in from Friday night to Sunday night. Because of the current size of the jail population, and its cyclical weekend surge, this is not currently a possibility. It is the hope that through use of other diversionary programs, beds necessary for a work release program will open in the future.

¹⁷⁶ MCA 46-18-701.

Recommendation:

- 5.3 As soon as is feasible, as reductions with the jail population allow, the jail should institute a work release program.

Work Program

Under Montana law, “a county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail.”¹⁷⁷ Statute specifies that county commissioners must establish such programs, which sheriffs oversee. Offenders may only work with governmental or nonprofit organizations.¹⁷⁸ Labor performed may not replace or otherwise compete with the private sector.¹⁷⁹ Each eight-hour day of work performed by an individual serves as the equivalent of two days in jail. Individuals who abscond from jail work programs commit the offense of escape (although this is rarely, if ever, charged).¹⁸⁰

Only nonviolent offenders can participate in jail work programs. Individuals must receive approval from both the sentencing judge and the sheriff to participate.¹⁸¹ Operated by the Sheriff’s Office, Missoula County established its Work Program in 1996. As of September 2015, 8,167 offenders had logged 18,779 days in the program. This represents a cost avoidance of \$2.03 million in cumulative per diem costs that otherwise would have gone to expenses associated with jail stays.¹⁸² (Unlike Community Service, Work Program participants do not receive credit toward fines). Most frequent placements for the Work Program include the jail itself, Missoula Animal Control, and the Missoula County Fairgrounds. Such jobs largely entail indoor cleaning, outdoor maintenance, and yard work.

¹⁷⁷ [MCA 7-32-2225](#). Note that in Missoula County, the work program allowed by statute is also commonly referred to as “Work Release.” While these are two different programs and Missoula does not have a work release program as provided by statute, the term is often used to describe the work program.

¹⁷⁸ Id.

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ [MCA 7-32-2227](#).

¹⁸² Offenders must pay a one-time processing fee of \$25. Each day in the program costs \$10, \$4 of which goes toward the Workers Compensation fee.

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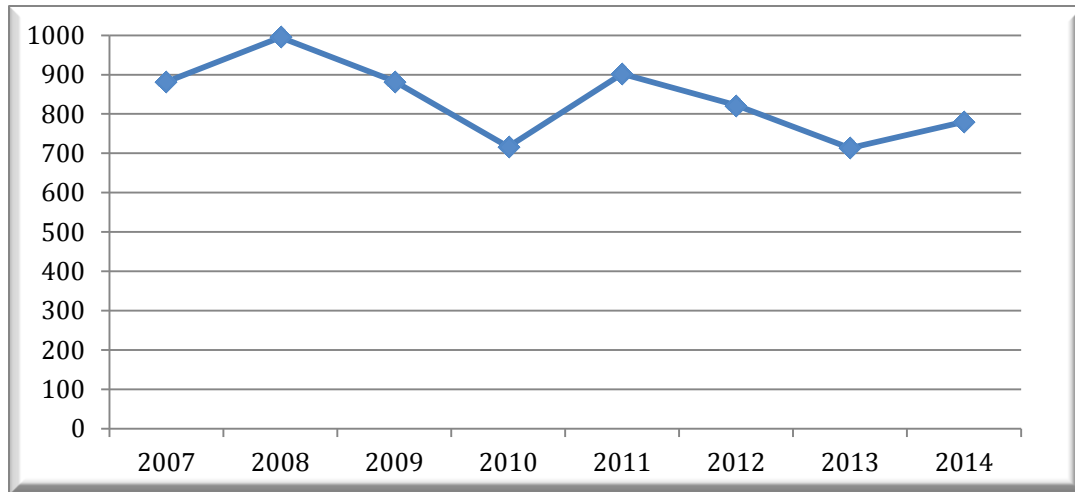


Chart 5.1: Work Program Participants

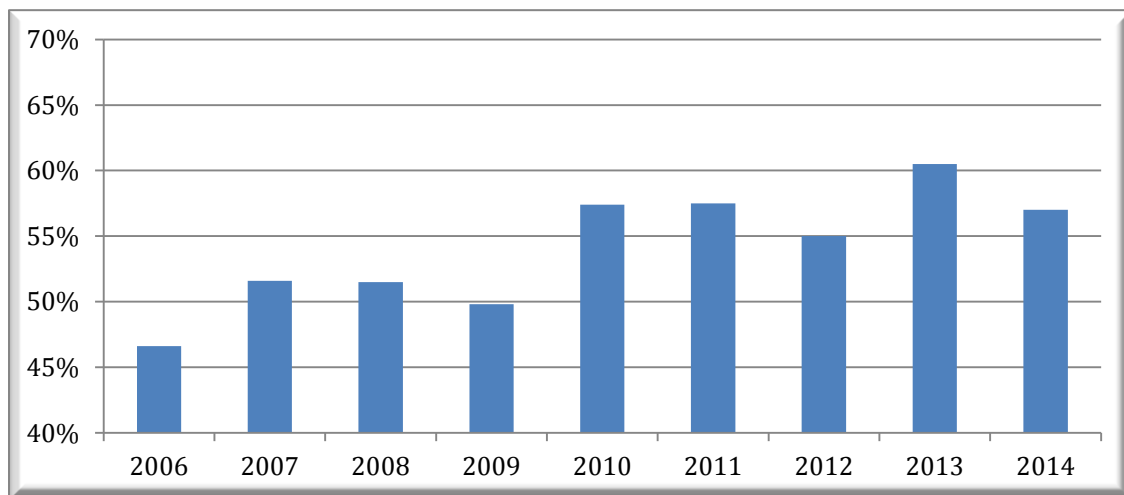


Chart 5.2: Work Program Completion Rate

In 2014, 780 participants were ordered into the Missoula County Work Program from Municipal and Justice Courts for a total of 1,299 days credited and a cost avoidance of \$140,292 based on the average daily cost of jailing. Because of the administrative staff time involved in facilitating the Work Program, judges secure an affirmative indication of interest from defendants before ordering it. In 2014, the program had a 57 percent completion rate. Successful participants were those who signed up for the program within five weeks of sentencing, as ordered by the court, and who arrived on time to work required hours.

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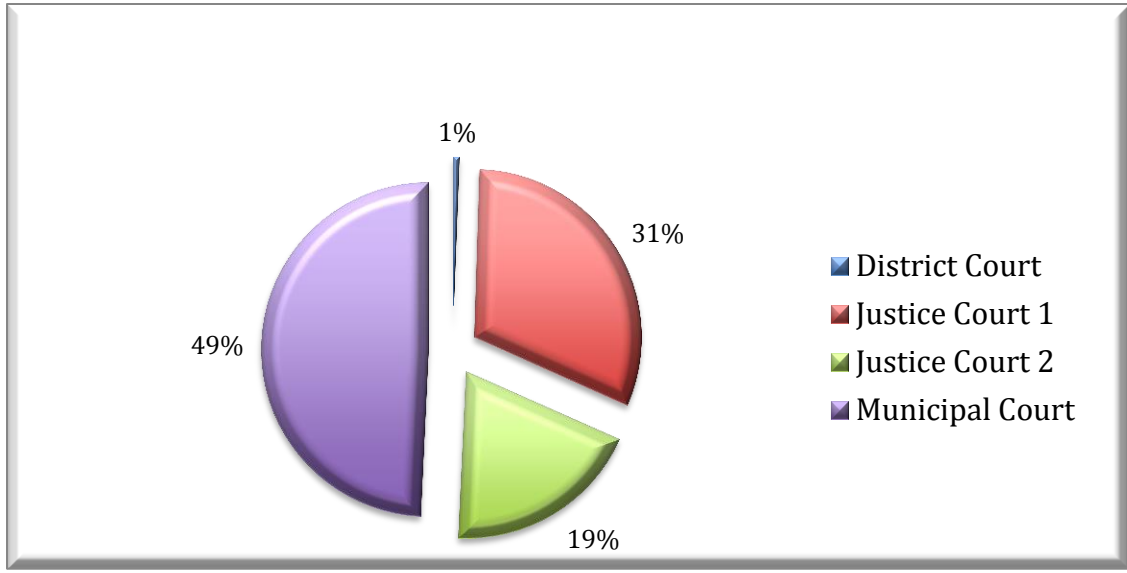


Chart 5.3: Work Program Usage Rate by Court (Out of 780 Total Participants) (FY 2014)

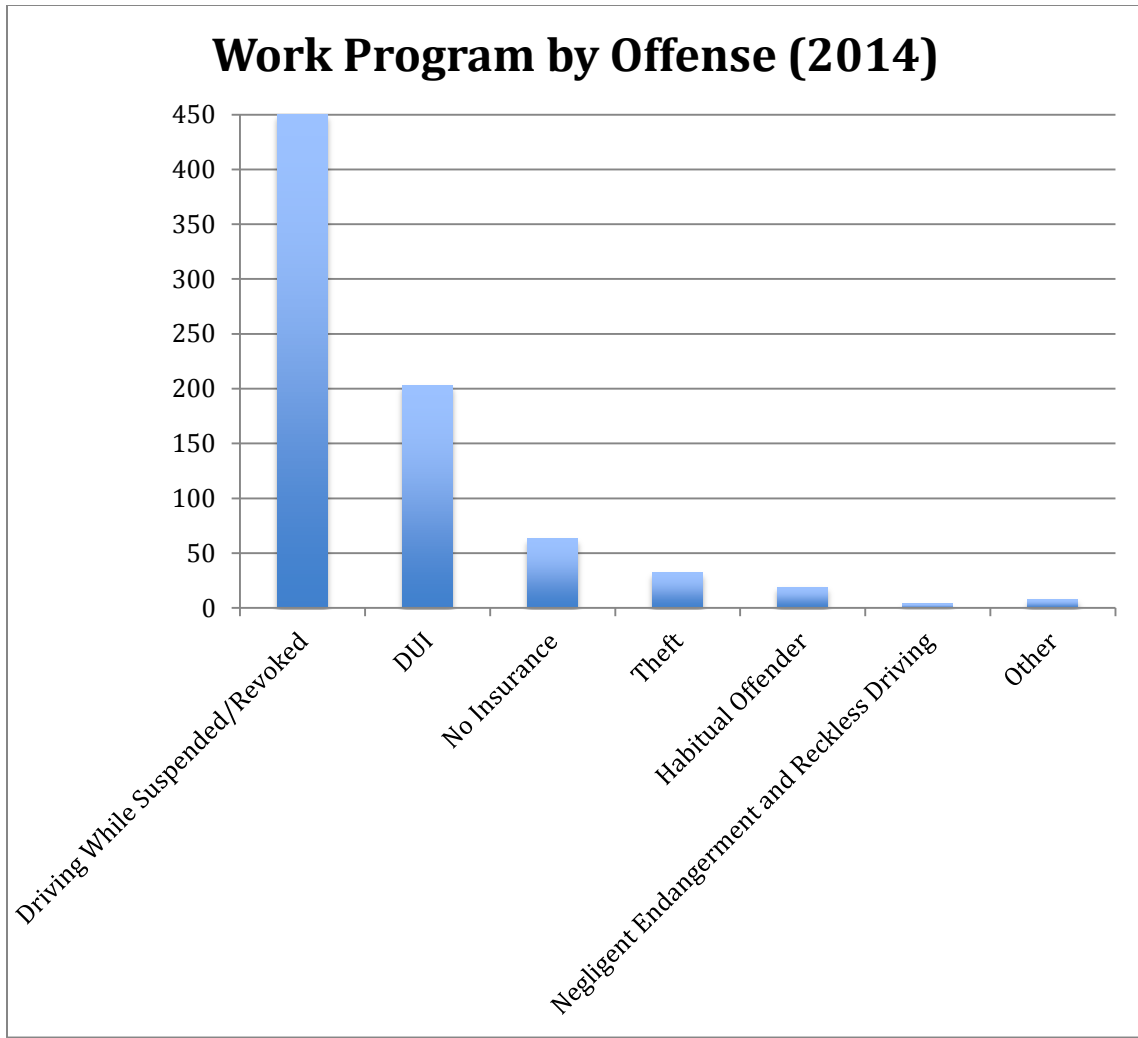


Chart 5.4: Work Program Participants, by Offense Type (Out of 780 Total Participants) (FY 2014)

Recommendation:

- 5.4 Allow a 15-minute grace period for arriving late to a Work Program site. Currently, participant who are even a few minutes late can be terminated from the program. The justice-involved population often has difficulty with transportation, particularly those who are prohibited from driving. This allowance will likely increase Missoula County Work Program success rates. Also, placement opportunities should exist for people with physical disabilities, and judges should be informed of these positions.

Community Service

The Community Service program is run by Missoula Correctional Services, and contracted for by both the City and County. In FY 2015, the County’s contract was

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\$73,522 and the City's was for \$68,400. Participants pay \$1.50 per hour to participate. MCS pays workers compensation fees, matches participants to placements, and reports to the court how many hours are completed. It is a hybrid diversion program, as its purpose is to provide an alternative for offenders to work off court fines. (Fees, such as statutorily required fees, and restitution to victims may not be paid off by participation in the Community Service Program.)

Community Service is not a sentencing alternative to jail, but it keeps offenders out of jail for failing to comply with sentencing requirements to pay fines.¹⁸³ It is often assigned in addition to jail. For defendants with limited work experience, Community Service can provide work history for resume building. The sentencing judge determines how much each community service hour will be credited toward fines. Municipal Court credits \$10 per hour. Stakeholders suggest the hourly rate be increased to \$15 per hour to allow people to work off fines faster. Often, participants will pay off a portion and work off a portion of the amount due to the court. The placements are governmental or non-profit agencies who rely on volunteer labor. Most common placements include the Poverello Center and Goodwill. The Community Service program is less structured than the Work Program. If an individual is habitually late or there are performance or behavioral concerns, the placement agency will report this to MCS.

For many with limited work experience, community service may provide a positive work history for resume building.

Recommendation:

- 5.5 Justice and Municipal Courts should increase credit for Community Service to \$15.00 per hour to incentivize participation.

Alternative Jail

Alternative Jail allows an offender to serve his or her sentence in a location other than the county jail. Defendants may be sentenced to the Alternative Jail Program out of Municipal or Justice Court. Pursuant to state law, the jail may designate a private entity to incarcerate inmates.¹⁸⁴ Missoula Correctional Services runs the Alternative Jail Program, which is co-located with the MCS pre-release center. Alternative Jail is comprised of two rooms offering four beds each, to total eight beds. Males and females are housed separately. Offenders check-in at 9 a.m. and leave at 9 a.m. on their last day. Twenty-four hours in Alternative Jail is equivalent to twenty-four hours of traditional detention. Offenders in Alternative Jail are required to wear an orange uniform and are not allowed phone or television access. There is 24-hour security, and meals and medication (if needed) are delivered to the

¹⁸³ It is a sentencing requirement for some juvenile offenses, rather than in lieu of fines, including Minor in Possession charges.

¹⁸⁴ [MCA 7-32-2232](#).

room. Offenders are not allowed to leave the room, but may bring a book or use a radio.

In general, Missoula judges would like this as a sentencing option for low-level nonviolent and first-time offenders. (For those in Co-occurring Court, it is critical that any sanctions not result in loss of medication for mental health diagnoses. Currently, treatment court can pay for its participants to be sanctioned in Alternative Jail, if the jail's contract medical provider will not provide a prescribed medication). However, while it may be the most appropriate placement for an individual, because there is no payment source, only those who are able to pay the \$75/night cost are able to use this diversionary option. Municipal and Justice Court judges would like the ability to have this sentencing option available, regardless of an offender's ability to pay. It is less than the \$108 per night cost for the jail.

Recommendation:

- 5.6 The City and County should provide a payment source for judges to sentence indigent offenders to Alternative Jail rather than the jail. It is less expensive and a more appropriate setting for first-time nonviolent offenders.

Misdemeanor Probation

In 1996, Missoula County began contracting with Missoula Correctional Services to provide a Misdemeanor Probation Program to offenders sentenced in Justice Court. The change came on the heels of judicial requests for assistance supervising offenders and ensuring compliance with the terms and conditions of their sentences. The goal was to keep defendants out of jail and also deter them from committing future offenses. In 2011, the City began contracting with MCS for its Misdemeanor Probation services. In FY 2015, costs incurred to the City for Misdemeanor Probation totaled \$179,336.36.

There is no screening tool used to recommend to a judge whether misdemeanor probation is an appropriate placement for an individual, and which conditions are most appropriate.

There is no screening tool for judges to draw from when deciding if misdemeanor probation constitutes an appropriate placement. Absent such a tool, stakeholders have expressed ongoing concern, as early as the Borg Report, about what they perceive as burdensome and unnecessary conditions placed by the MCS Misdemeanor Supervision Program on offenders, including costly treatment programs and classes, in addition to the program's relatively high failure rate. MCS would not share its arrest and sanction policies for inclusion in this document, limiting attempts to engage in a comprehensive program evaluation. This report

does, however, include best practices for misdemeanor probation screening and supervision.

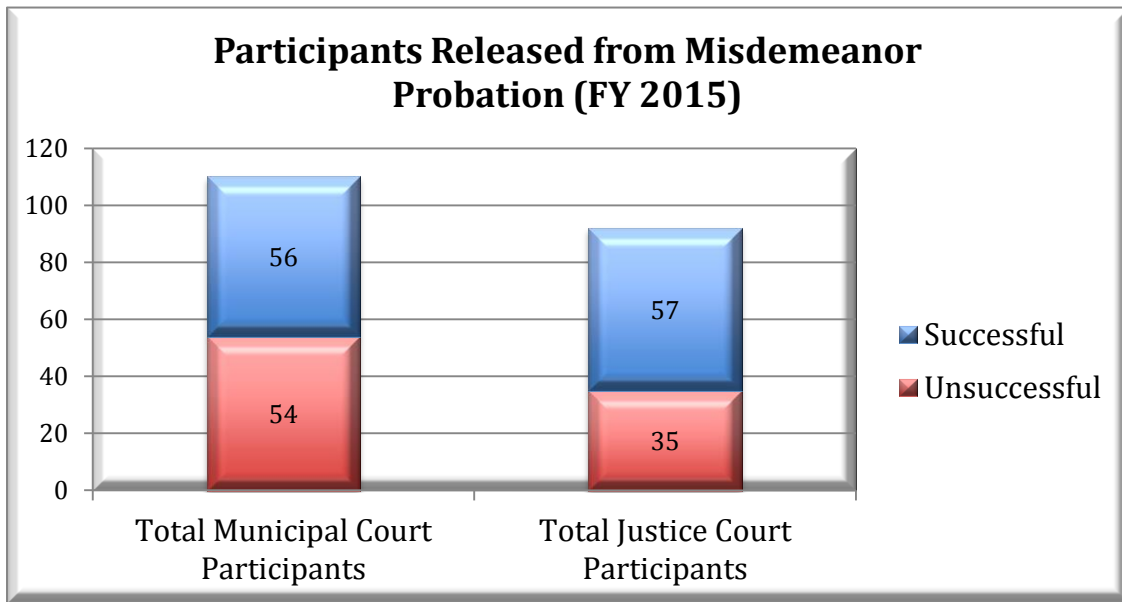


Chart 5.5: Nonviolent Misdemeanor Probation Participants Released in FY 2015, by Court, by Success Rate

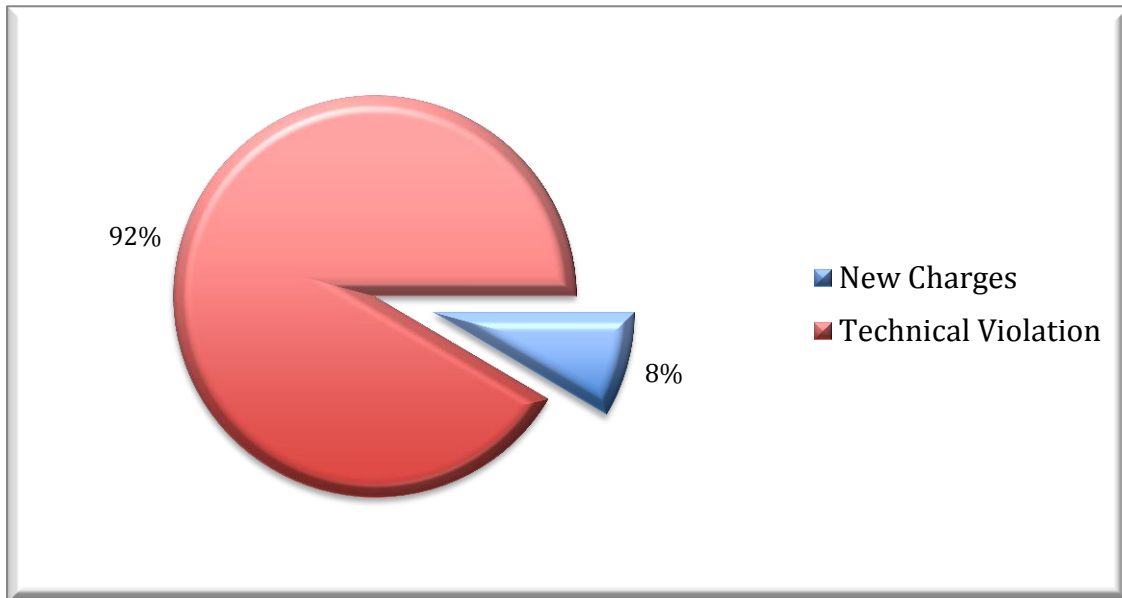


Chart 5.6: Percentage of Unsuccessful Nonviolent Misdemeanor Probation Participants with New Charges vs. Technical Violations (Of Total Nonviolent Participants Released in FY 2015)

MCS would not share its arrest policy or sanction policies, so program evaluation was limited.

The MCS Misdemeanor Probation Program does not track recidivism after an offender successfully completes the program, or when individuals are remanded into custody for failing to comply with probation directives.

The JDMP Consultant advises MCS to work with jail staff to adopt a recidivism measure for participants and track re-offense rates among participants released from the program.

Similar to pre-trial supervision, sentencing an offender to misdemeanor probation without screening to determine risk level for re-offense is not recommended. As discussed earlier in this plan, low-risk offenders placed in intensive programs are more likely to have negative outcomes than those released on their own recognizance or who are subject to basic monitoring. Low-risk offenders are more likely to succeed without intensive oversight and more likely to fail with it.¹⁸⁵ Secondly, placing low or moderate-risk offenders in programming that is more intense than necessary constitutes a poor use of City and County resources. Once defendants are screened for risk, judges should consider a wide variety of sentencing options to match with offender risk level. Sentencing mandates should be tailored to the individual, taking into consideration, for example, classes or rehabilitation programs already completed. Note that pre-trial risk assessments could also be used to determine whether someone is an appropriate candidate for misdemeanor supervision.

When low risk offenders are put into intensive programs, they are more likely to have negative outcomes than if they were OR-ed or had basic monitoring, if appropriate. They are more likely to succeed without the program and more likely to fail with it.

Any misdemeanor probation program should have explicit policies on sanctions and incentives. Offenders should be clear on how violations are managed, and how successes will be rewarded, with the information provided in writing to the individual. Sanctions could include time in MCS' Alternative Jail, more restrictive curfews, and an increase in the number of check-ins and drug testing. As with sanctions, positive reinforcement should be applied strategically. Evidence shows that incentivizing positive behavior among probationers is more effective than calling upon sanctions to modify behavior. Probation officer training should be a priority, with an emphasis placed on motivational interviewing skills and interacting with individuals experiencing mental health disturbances. MCS should offer required classes in-house to the greatest extent possible. Class costs should be

¹⁸⁵ Lowenkamp, Christopher T. (2004). [Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders.](#)

included in supervision fees, thereby reducing the amount of money offenders spend on required programming.

Recommendation:

- 5.7 Arrestees should be screened for risk level in order to determine conditions of release. Judges should also use the risk assessment to tailor sentencing options to the individual's level of risk. Misdemeanor probation should be used only with high-risk offenders.
- 5.8 For low and moderate risk nonviolent offenders, judges should consider electronic monitoring and home arrest.
- 5.9 The City and County should require contracted vendors to make available policies on sanctions and incentives. The City and County should require an annual report detailing the per-person per-day cost of probation, and work with the jail to adopt and monitor recidivism outcomes. Contracts should also be explicit in the classes that may be required by participants and to the greatest extent possible, be included in the contracted cost and be made available on evenings and weekends.

Home Arrest and Basic Electronic Monitoring

The menu of options for nonviolent offenders, both pre- and post-trial, is limited and focuses on services best suited for high-risk arrestees and offenders. In order to correct this imbalance, Missoula City and County need to first consistently identify and distinguish between low, medium, and high-risk individuals, and provide individualized and additional services for low risk offenders.

Montana law provides home arrest as a sentencing option under for all misdemeanor and nonviolent felonies.¹⁸⁶ Home arrest can be a suitable option for someone with a short sentence, and for whom placement in jail would jeopardize employment, housing, or ability to parent. Additionally, it avoids confining a low-risk offender in jail. Cost estimates range from \$10-15/day with limited staff investment, compared to \$108/day for jail.

Depending on risk level, offenders can be quite successful on electronic monitoring alone. Simply having an alcohol-related offense does not mean an individual is an addict and needs intensive monitoring and/or inpatient treatment. Again, more intense supervision and more conditions of supervision do not correlate to better outcomes for low risk offenders. Under the 24/7 Sobriety Program, judges can order people accused of their second or subsequent drunken driving offense to take twice-daily alcohol breath tests as a condition of release pending trial. There should be options for judges to order a GPS or alcohol monitoring, or require random drug

¹⁸⁶ [MCA 46-18-10](#).

Currently, re-entry services at the jail are limited, and for most, non-existent.

tests, unconnected with a requirement for a full supervision program, for those unable to pay.

Recommendation:

➤ 5.10 The County and City should implement a home arrest monitoring program and electronic monitoring program for low and moderate risk offenders, run by the jail or through a private provider, as a sentencing option. This sentencing option should not be contingent upon an offender's ability to pay, and the City and County should provide payment for low-income offenders.

Re-Entry

While this plan is focuses on the jail population and re-entry from the jail into the community, it should be noted that significant efforts are underway in the community to assist felony offenders with re-entering the community from prison, pre-release centers, or other state DOC facilities. Offenders with a felony record face barriers in finding employment and housing, both of which are critical for reducing the chance that an offender will violate conditions of release or commit a new crime. Led by state Probation and Parole Officer Landee Holloway and community leader Jana Staton, Missoula Partners for Reintegration has as its mission "to make Missoula a welcoming community for previously incarcerated individuals who want to succeed, by enhancing their access to housing, jobs, treatment, social connections and relationships, and by working to change community practices, policies, misconceptions and stigma. . . The ultimate goal . . . is to reduce the rate at which offenders return to prison, because that will result in a safer Montana, fewer victims, and lower cost to Montana taxpayers."¹⁸⁷ Recently, non-profit housing organization Homeward is partnering with the Missoula Pre-Release Center to provide a financial literacy program for inmates.

Recently, non-profit housing organization Homeward is partnering with the Missoula Pre-Release Center to provide a financial literacy program for inmates.

Re-entry services at the jail are limited, and for most, non-existent. A re-entry service provider works to connect an individual to housing, employment, and public benefits one might be eligible for, and can assist with the task of re-establishing benefits that were terminated upon detention. Connecting this population with safety net services, especially housing, has been a proven deterrent to future criminal activity.

Thousands of nonviolent detainees are released from the jail every year, either pre-trial or post-sentence. As it stands, the jail does not collect complete income/asset

¹⁸⁷ See <http://www.pfrmt.org>

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data on its bookings, which would help determine who might qualify for public benefits. Sheriff McDermott has decided that this data will be collected in the future. Also, a detainee's financial position will likely decline while incarcerated. National data on jail population demographics is illustrative of the connection between poverty and incarceration:

- Ninety percent of people who enter county jails have no health insurance.
- Sixty percent of the jail-involved population has income of less than 138 percent of the poverty line.
- Thirty three percent of detainees have incomes of between 100 percent and 400 percent of the poverty line, making them eligible for a subsidy on the federal marketplace.¹⁸⁸

In order for releasees to become stable and connect to a payment source to meet their physical and behavioral health needs outside jail, it is imperative they receive assistance in applying for public benefits at the end of their incarceration, with some amount of continued contact through the process.¹⁸⁹

Montana's recent expansion of its Medicaid program to include adult, childless individuals with incomes of 138 percent or lower of the federal poverty level stands to have a significant positive impact to the justice-involved adult population, as Medicaid is now a payment source for behavioral health needs and preventative medical care. Over time, as more individuals booked into the jail arrive with either Medicaid or with a policy through the federal marketplace, it is critical that coverage be suspended, rather than terminated. If coverage is only suspended, defendants upon release will simply need to apply for reinstatement, rather than submitting a new application.

As more people who are booked into the jail arrive with either Medicaid or with a policy through the federal marketplace, it is critical that coverage be suspended, rather than terminated upon jailing.

Best practices in public benefit assistance recognize that individuals – particularly those with behavioral health needs – often have difficulty navigating application processes. SOAR (SSI/SSDI¹⁹⁰ Outreach, Access and Recovery) “is an approach that helps states increase access to mainstream benefits for people who are homeless or

¹⁸⁸ Somers, Stephen, Nicoletta, E., Hamblin, A., McMahon, S., Heiss, C., Brockmann, B. (March 2014). [Medicaid Expansion: Considerations for States Regarding Newly Eligible Jail-Involved Individuals](#). Health Affairs, Vol. 33, No. 3.

¹⁸⁹ See Dennis, Deborah, Abreu, D.J., (April 2010). [SOAR: Access to Benefits Enables Successful Reentry](#). Corrections Today, Vol. 72, Issue 2.

¹⁹⁰ SOAR-certified case managers can also be trained to provide assistance with Medicaid and federal marketplace applications, as well as the Supplemental Nutrition Assistance Program (SNAP), in addition to SSI/SSDI.

at risk for homelessness” by providing SOAR-certified case managers with training, technical assistance, and strategic community relationships, so that they can successfully help clients navigate the public benefits landscape.¹⁹¹ As explained by Montana DPHHS:

“Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) are disability income benefits administered by the Social Security Administration (SSA) that also provide Medicaid and/or Medicare health insurance to individuals who are eligible. The application process for SSI/SSDI is complicated and difficult to navigate. Nationally, about 37% of individuals who apply for these benefits are approved on initial application and appeals take an average of two years to complete. For people who are homeless and returning to the community from institutions (jails, prisons, or hospitals) access to these programs can be extremely challenging. Approval on initial application for people who are homeless and who have no one to assist them is about 10-15%. For those who have a mental illness, substance use issues, or co-occurring disorders that impair cognition, the application process is even more difficult – yet accessing these benefits is often a critical first step in recovery.”¹⁹²

In addition to assisting with SOAR, a re-entry specialist can help develop re-entry plans for those inmates identified as high-risk for homelessness or otherwise vulnerable to navigating housing and employment once released.

Recommendation:

- 5.11 The County should hire or otherwise provide for at least one SOAR-certified re-entry assistant to work with the jail population with public benefit applications and re-entry plans that include housing and employment options. The assistant can assist in having benefits properly suspended upon incarceration – when necessary – rather than terminated. The annual savings to the County for Medicaid expansion to the jail population (for 24-hour medical treatments outside the jail) should be reinvested in this re-entry position.

¹⁹¹ See <http://dphhs.mt.gov/amdd/soar>

¹⁹² Id.

APPENDICES

Public Meeting Comment¹⁹³

On Sept. 29, 2015, a public meeting was held in downtown Missoula. Nearly 75 people attended and heard a presentation on nine proposed diversion policies. An online survey of stakeholders gauged the level of support for the following:

Below are comments from the public meeting:

“It is those charged with low-level offenses and awaiting court dates and trials who are overcrowding the Detention Center. In other words, the *poor* and *under privileged* – those who often lose hope or feel it hopeless to fight the system, so they sometimes just plead guilty instead.” (Carol Byington, Missoula County Resident)

“Emergency detention beds are a high priority for NAMI members. Missoula also really needs chemical detox beds.” (Madeleine McKelvey, NAMI)

“When you require classes for probation, I feel they need to be in the evening hours. In order for people to stay out of the jail, they need to feel “self worth.” Not many employers are willing to let their employees leave early three days a week to attend classes.” (Public Comment, Anonymous)

“Adding jail service providers is a good idea. Clients need help filling out housing applications, CD treatment facility applications, medical and mental health forms, etc.” (Kelli S. Sather, Deputy Public Defender)

“Quality control for treatment programs, program evaluation integrated into systems – continuous. Trauma-informed. Reduce sentencing for ticketable offenses such as “blocking access to entryways” and urinating in public, which criminalize homelessness. Refrain from fencing areas frequently used by people experiencing homelessness (like under the Madison St. bridge and by the pedestrian walking bridge). Harm reduction models in treatment for substance abuse.” (Public Comment, Anonymous)

“Do you have estimates of the number of people who could be diverted to emergency detox, drop-in centers, or regular out-of-jail detox centers? Also, kudos to you all for generating this discussion.” (Chely Sabol)

“One of the biggest problems is Justice and City Judges need to OR offenders, which has nothing to do with District Court Judges. Usually, if a District Court Judge sets a bond, the offender is looking to get revoked and sent to treatment or prison. The jail is full of non-felony offenders who can’t get out due to being poor. Justice/City Judges need to get on board and quit sentencing jail time to these (illegible). Pre-

¹⁹³ Public comments may be edited for length and/or clarity. Some names or identifying information withheld at the request of the submitter.

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release centers are not just for violent offenders. Any type of offender can go to PRC as long as they are accepted. Just wanted to clear that up as it was said. Expand jail programming. All options are good as they keep offenders out of jail. Provide for mental health. Lower bonds and shorten jail stays. Deal with warrants outside of jail.” (Anonymous)

“Yes to Option 2, add a social worker and case managers. I assume some people could be released if they had access to case management and release planning. Yes to Option 7 – some people could be safe for the community if they were monitored electronically at whatever level is deemed appropriate. Yes to Option 6 – but educating of prosecutors would be helpful as well since it seems that most of the time the courts set bail based on the prosecutor’s recommendation. As for detox, it is better to find a community option than to do it in jail.” (Brenda Desmond)

“Option 6 – Revising bond policies (specifically getting rid of excessive and punitive bail) would yield the quickest result in reducing the jail population. However, to accomplish this, the three judges in the courts of limited jurisdiction in Missoula will have to agree to reform. These three judges (two justices of the peace and one municipal court judge) set all bails at the initial appearance of defendants in both felony and misdemeanor cases. They are the “gate keeper” to the jail and have almost unlimited discretion (in practice at least) to make decisions regarding bail. High bails hurt the poor and effectively coerce a lot of misdemeanor defendants into waiving their constitutional right to trial in order to get out of jail (commonly seen in disorderly conduct cases where the maximum jail time is only 10 days).” (Rob Henry, Public Defender)

“Service providers/contractors need to be non-profit, or government based/controlled. Even though DUI, Drug, and Domestic Violence Courts are state funded, why can’t local government augment that funding to improve upon them? Statutes allow jail to release inmates to go to work and then come back at the end of the work day. That could be accomplished with a less restrictive facility in conjunction with sobriety programs.” (Carrie Garber)

Additional Public Comment

The following comments were received through an email created for the *JDMP* and noticed to the public:

“Jailing every addict is wrong. Addiction is not a crime . . . criminalizing it as in jailing them does not help anyone. Not them, not their families, not our community. Violent criminals against partners and children are going free while addicts are being jailed.” (Kim H.)

“I would like to share a story of a gentleman currently incarcerated in the jail. He was out on bond for a suspected DUI. He was ordered to wear a monitoring

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bracelet, and then was given a portable breath analyzer. Both of these units cost at least \$300/month, with no conviction. The Breathalyzer unit detected alcohol. A warrant was issued for his arrest, without informing him of the warrant. He was pulled over while driving and arrested.

When he was able to post bond, a chemical dependency evaluation became a releasing factor. It would be several weeks before the evaluation could be completed. He remains in jail while the Public Defender who is supposed to give preferential treatment to those incarcerated is overwhelmed by his caseload. This man is nonviolent. He is not a rapist, murderer, or thief. He has a disease that needs treatment, not incarceration.

When will we quit putting people who require care behind bars, and not offering them any help? He has lost his employment and apartment. He is not getting treatment. By continuing to keep people with an addiction in jail, we are only hurting our own society.” (Kim P.)

“I am a LCSW in Missoula and I work with sexual offenders in the community and in MASC. I have worked in corrections for ten years. Part of the problem is lack of available services like housing and case management, for those with co-occurring issues. So those with a mental illness become criminalized. The flip side to that is then the overcrowding becomes a challenge, as I would like my own clients to be placed in jail as a sanction for their behaviors. In such cases, there is often understandable push back due to the overcrowding in the jail.” (B.E.)

“The jails are 75-80 percent full of people that a judge will not let bond out. My fiancé is there and we had his evaluation done that the judge requested, two job letters from employers, community help for him, and treatment set. They still will not let him out on bond.” (Anonymous)

“My mother suffered depression and sometimes was suicidal later in life. She was never locked up in jail but she had me to help her. I know suicidal people end up in jail. My mom got emergency treatment at Providence Center in 2010. Is there anything we can do with public policy or jail policy to keep people like this out of jail and in a better setting with treatment, if they are not a threat to the public? People now can end up in a sort of indefinite limbo in jail with similar circumstances. That has to be a factor in the overcrowding – trying to find a better place to put them to get them stable.” (G.B.)

“It has been heavily demonstrated that treatment courts are highly effective at both reducing recidivism and costs overall for those with both substance use and mental health issues. We already have several treatment courts in place in Missoula – all have been demonstrated to be effective, but they are too underfunded and understaffed to accept more people. The co-occurring court has a wait list, and the referral process is slow due to lack of staff to process referrals and lack of treatment

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providers who can do chemical dependency assessments on a sliding scale or get into the jail.” (Hannah Halden)

“I am an attorney in Missoula and have spent the last five years representing conflict clients for the Office of the Public Defender. I have represented many indigent clients who have drug and alcohol addiction problems who languish in Missoula County Jail for months while their cases are pending, or while waiting to get into DOC treatment programs.

One of the most frustrating things I have found in representing these clients is the complete dearth of alternative treatment options in Montana for clients who do not have health insurance. None of my clients is eligible for the Recovery Center because they have only one Medicaid bed and there is a several month long wait list.

Similarly, the Montana Chemical Dependency Center also repeatedly refused to accept my clients who are languishing in jail for months. Most of them have already been sitting in jail for a week before anyone can even get them an MCDC application. Here are some suggestions:

- Use the cost of jailing to pay for a drug patch for defendants while their case is pending. Give judges money/discretion to order defendants to wear a GPS unit, even those who can't pay for it.
- Provide defendants with assistance in purchasing or obtaining health insurance, so they can qualify for treatment programs.
- Provide defendants with money to attend Teen Challenge for women in Missoula.
- Reward probation officers who help their clients succeed on probation, instead of rewarding those who revoke.
- Build a facility where mothers who have addiction problems can live with their children while recovering from addiction.” (Anonymous)

Charts

Average Daily Jail Population Chart

Figures were calculated using New World Systems DSS (Decision Support Software) database, which uses SQL data connections to access the New World Systems (Current Jail Management) database.

Selected Fields include:

Housing Date. Calendar; limited to Calendar year 2007 - Calendar year 2015

Prisoner Type; not equal to MASC

Housing History; Avg Daily Population

Facility - Bed; not equal to Missoula County Juvenile Facility

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Average Length of Stay (Days)

Figures were calculated using New World Systems DSS (Decision Support Software) database, which uses SQL data connections to access the New World Systems (Current Jail Management) database.

Selected Fields include:

Booking Date.Calendar; limited to Calendar year 2007 – Calendar year 2015
Prisoner Type; not equal to MASC
Inmate Status; not equal to Juvenile, Juvenile Convicted as Adult
Length of Stay; Avg Length of Stay in Days

Under the Influence of Alcohol or Drugs FY15

Figures were calculated using New Word Systems DAM (Data Analysis and Mapping); accesses the New World Systems database; Data Dictionary = Corrections, Topic Groups = booking, Export Files = Microsoft Excel Files (Data Filtered within Excel)

Selected Fields include:

Booking Date/Time; limited to FY15
Statute, Crime Class, Description; not limited; Combine
Assaultive Flag; not limited; Combine
Global Subject Jacket Type; not equal to Juvenile Jacket
Prisoner Type; not equal to MASC
Booking Questionnaire Questionnaire Name; Like Officer Observation
Booking Questionnaire Question Number; equal to 001

Homelessness

Figures were calculated using New Word Systems DAM (Data Analysis and Mapping); accesses the New World Systems database; Data Dictionary = Corrections, Topic Groups = booking, Export Files = Microsoft Excel Files (Data Filtered within Excel)

Selected Fields include:

Booking #; combine
Booking Date/Time; limited to FY15
Booking Charge Statute; combine
Booking Charge Statute Crime Class; combine
Booking Charge Statute Description; combine
Assaultive Flag; not limited; Combine
Jacket Type; not equal to Juvenile Jacket
Prisoner Type; not equal to MASC
Booking Inmate Global Subject Address; not limited
Booking Inmate Global Subject Address Common Name; not limited

Active Warrants

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Figures were calculated using New Word Systems DAM (Data Analysis and Mapping); accesses the New World Systems database; Data Dictionary = Law Enforcement Records, Topic Groups = Wants and Warrants, Export Files = Microsoft Excel Files (Data Filtered within Excel)

Selected Fields Include:

- Warrant Issued by ORI
- Warrant Issuing Judge
- Warrant Number (Remove Duplicates for Count Total)
- Warrant ORI (Validated MT032011J for Municipal)
- Warrant Status; Limited to Active
- Warrant Charge Statute
- Warrant Charge Statute Crime Class; Filtered per Judge
- Warrant Charge Statute Description

Warrant Arrests

Figures were calculated using New Word Systems DAM (Data Analysis and Mapping); accesses the New World Systems database; Data Dictionary = Corrections, Topic Groups = booking, Export Files = Microsoft Excel Files (Data Filtered within Excel)

Selected Fields include:

- Prisoner type; not equal to MASC
- Global Subject Jacket type; not equal to Juvenile
- Booking Date/Time; limited to Range FY15
- Arrest ORI
- Warrant ORI
- Warrant Type
- Warrant Number
- Booking Charge Statute Assaultive Flag
- Booking Charge Statute
- Booking Charge Statute Crime Class
- Booking Charge Statute Description
- Booking Charge Remarks
- Booking Charge Charge Status; excel filtered to warrant only
- Days Served; Calculated using excel formula = days360

Non-Violent Pre-Trial Population (FY2015)

Figures were calculated using New Word Systems DAM (Data Analysis and Mapping); accesses the New World Systems database; Data Dictionary = Corrections, Topic Groups = booking, Export Files = Microsoft Excel Files (Data Filtered within Excel)

Selected Fields Include:

- Booking Date/Time; limited to Range FY15
- Booking Charge Statute; combine
- Booking Charge Statute Crime Class; combine
- Booking Charge Statute Description; combine
- Booking Charge Statute Assaultive Flag; combine

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Booking Charge Sentence Court Disposition
Prisoner Type; not equal to MASC, Commitment, Book and Release
Booking Inmate Global Subject Jacket Type; not equal to Juvenile Jacket

Pre-Trial Detainee County FY2015

Figures were calculated using New Word Systems DAM (Data Analysis and Mapping); accesses the New World Systems database; Data Dictionary = Corrections, Topic Groups = booking, Export Files = Microsoft Excel Files (Data Filtered within Excel)

Selected Fields Include:

Booking Date/Time; limited to Range FY15
Booking Charge Statute; combine
Booking Charge Statute Crime Class; combine
Booking Charge Statute Description; combine
Booking Charge Statute Assaultive Flag; combine
Booking Inmate Global Subject Race
Booking Inmate Global Subject Sex
Prisoner Type; not equal to MASC, Commitment
Booking Inmate Global Subject Jacket Type; not equal to Juvenile Jacket

Behavioral/Mental Health FY15

Figures are tracked outside of the NWS Database using an excel spreadsheet. Entry is completed by MCDF Reception Staff based on submissions of the BJMHS (referred vs. non-referred)

Juvenile Jail Beds FY15 (3 Juvenile Related Charts)

Figures were calculated using New Word Systems DAM (Data Analysis and Mapping); accesses the New World Systems database; Data Dictionary = Corrections, Topic Groups = booking, Export Files = Microsoft Excel Files (Data Filtered within Excel)

Selected Fields Include:

Booking Date/Time; limited to Range FY15
Booking Charge Statute; combine
Booking Charge Statute Crime Class; combine
Booking Charge Statute Description; combine
Booking Charge Statute Assaultive Flag; combine
Booking Inmate Global Subject Jacket Type; equal to Juvenile Jacket
Booking Housed For ORI
Booking Release Date
Days Served; Calculated using excel formula = days360

Recommendations

- 3.0 The City and County should prioritize and encourage CIT training for patrol officers. The City policymaking body should adopt a written CIT policy that includes ideal response from dispatch to disposition of a CIT call. The policy should allow for longer response times for patrol officers to CIT calls, and for more than one responding officer. Additionally, there should be enough CIT-trained officers so that there is at least one on every shift.
- 3.1 The jail should require a Mental Health Professional (MHP) evaluation for anyone presenting to the jail in a mental health crisis, as part of the medical check-off. The jail should not accept a sign-off from physicians from emergency departments, but from MHPs only.
- 3.2 Both the City and County should continue support for CIT coordinators within their agencies. Missoula CIT coordinators should remain engaged in statewide efforts for ongoing education, consistency in application of CIT programs statewide, and idea sharing for improvements to the program. Administrators should prioritize and support these efforts, compensating coordinators as they engage in continued learning programs.
- 3.3 CIT training should include and underscore resources for Native Americans in crisis.
- 3.4 The County should continue applying for HB 33 and HB 34 grant money to construct and operate secure crisis beds. The County should also work with WMMHC to ensure the beds are operationally solvent. These beds should reduce the number of people Missoula County sends to the state hospital; significantly, decrease strain on the St. Patrick Hospital Emergency Department, and reduce expenses associated with hospital uncompensated care. New secure beds will reduce the number of people booked into the jail in mental health crisis and generally improve outcomes for this population.
- 3.5 The City and County, in partnership with St. Patrick Hospital and WMMHC, should draft a funding plan to build and staff four to six social detox beds to serve uninsured or underinsured. Estimated yearly costs to staff the facility would range between \$250,000 and \$300,000. Such an expenditure will be more than offset by the cost avoidance in uncompensated medical care.
- 3.6 The City and County, along with St. Patrick and Community hospitals, should fund the proposal resulting from the 10-Year Plan to End Homelessness, which likely will include a drop-in center and permanent supportive housing. With the nearly \$4.5 million in yearly uncompensated care costs resulting from the treatment of Missoula's homeless population by

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these two hospitals, even a fraction could be reinvested into meaningful preventive services that would significantly benefit both the hospitals and the community.

- 3.7 The City and County should fund the Co-Occurring and Veterans Court in the amount of \$48,850 per year for costs associated with personnel, drug/alcohol testing, and treatment services. The City and County should assist the court in finding grant funding for its ongoing operational expenses. The Court staff should adopt best practices for measuring outcomes for participants, including recidivism measures.
- 3.8 The County should work with Justice Court to implement an evidence-based DUI Court for moderate and high risk individuals who can safely live in the community during their participation.
- 3.9 The jail should review its contracts for medical services and future contracts with vendors to ensure they provide for the best continuum of care in and outside of MCDF. Contracts should ensure that medical staff have mental health care credentials and specify use of a formulary that provides for individualized medication management plans that prioritize mental health stabilization. The jail should pursue collaborations with Partnership Health Center whenever possible. To measure progress, MCDF could periodically administer an inmate survey on the quality of medical or mental health care. (The 2015 ACLU of Montana jail report, “Locked in the Past” ranked MCDF worst in the state for medical care. The finding was based on a self-reported survey of inmates around the state; 83.3 percent of Missoula inmates were dissatisfied with medical care provided at the Missoula jail, nearly double the statewide average for those dissatisfied with mental health care at 43 percent. Although the self-reported survey was comprised of an extremely small sample size, results can be considered baseline).
- 3.10 Jail staff should apply to the Center for Medicare and Medicaid (CMS) to become a Certified Application Counselor (CAC) organization. Implementation of this recommendation stands to yield significant cost savings in medical care for MCDF.
- 3.11 The County and jail should ensure funding for a minimum of two social workers and two case managers in the jail to assist with mental health services and diversion, programming, case management, re-entry planning, and applications for social service benefits. MCDF can repurpose space to accommodate the additional staff. These positions could be hard-funded by Missoula County and City, or the County could apply for state mental health jail diversion grants under HB 33 to fund these positions (or a combination of both). State and local funding should be supplemented with other grant funding, as it becomes available.

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- 3.12 Jail staff should assess detainees and make recommendations and information regarding any appropriate jail programs available to the individual.
- 3.13 MCDF should solicit and facilitate programming from volunteer service providers in the community. The jail should prioritize evidence-based programming demonstrated to reduce recidivism, improve participant mental and/or physical health and well-being, and otherwise improve participant outcomes. The jail should also prioritize culturally appropriate programming for Native American detainees, including those capable of addressing historical trauma. Programs may include education classes, classes on early childhood trauma and parenting, peer-to-peer programs, women-centered classes, and general skills classes.
- 3.14 The jail should accommodate smudging ceremonies important to several Native American tribes. A healing and purification ritual that involves burning and smudging should be considered a routine offering at the jail.
- 4.0 The JDMP Consultant recommends the jail have at least one staff on shift at all times who is trained in the collection of more in-depth booking data than is collected now. At the request of the judiciary, the booking clerk should produce weekly reports to the Municipal, Justice, and District Courts that list detainees by court, with current length of stay, charge, and judge.
- 4.1 The County should work with the judiciary and the Sheriff's Office to support night court in Justice Court. Justice Court and the Sheriff's Office should determine the number of operational days per month. Minimal additional costs are anticipated to result from the change. Court staff can flex time to work evenings. As an elected official, meanwhile, the Justice of the Peace does not qualify for overtime. Because defendants will already be accompanied by law enforcement, night court is unlikely to necessitate a bailiff.
- 4.2 Municipal and Justice Court judges should specify that nonviolent ordinance and misdemeanor warrants be executed only during regular court hours. When MPD brings a defendant to Municipal Court during the day, the court should make sure the individual is not taken to jail before seeing a judge.
- 4.3 The City police should not execute warrants after hours solely for nonviolent ordinance or misdemeanor violations.

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- 4.4 The City should provide Municipal Court with staff necessary to process warrants, until every active warrant is validated. MPD should only arrest individuals from the validated warrant group.
- 4.5 Municipal Court should quash warrants for petty nonviolent offenses older than five years, as long as the individual has no other outstanding charges from that time.
- 4.6 Judges should not rely solely on bond amounts requested by the prosecution. They should instead set bond based on an evidence-based risk assessment, narrowly tailoring conditions of release to be the least restrictive.
- 4.7 Once the booking clerk provides weekly or bi-weekly reports to the courts regarding jailed defendants, the presiding judge should prioritize court dates for jailed defendants.
- 4.8 Each court should track continuance requests for jailed defendants and address underlying causes with defense counsel. OPD attorneys should prioritize jail visits for clients. The OPD regional manager should monitor continuance request rates and address inconsistencies.
- 4.9 The Missoula Public Defenders office, as well as the courts, should consider the use of low-cost technology, such as text messages or auto-calls, to remind defendants of court dates.
- 4.10 Low-level, nonviolent municipal charges should run concurrent with a felony state sentence.
- 4.11 If an individual is charged with a nonviolent crime and is unable to post bond within 12 hours, the County should have trained staff administer the PSA-Court assessment. The assessment and recommendations for conditions of release should be made available to the judge at the defendant's initial appearance.
- 4.12 The County and City should provide funding for judges to draw from to pay for pre-trial services for indigent offenders. Funding should follow the individual and enable judges to order alcohol monitoring or drug testing.
- 4.13 In pre-trial supervision program contracts, the County should either pay per person per day, or have a minimum number of supervisees per officer, to increase capacity. The County should require annual or twice-yearly reports on costs and failure rates, etc., and require policies on evidence-based incentives and sanctions. The County should also consider a target success rate, working with a vendor for a compliance plan. The County should

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structure the contract to ensure pre-trial supervision programs offer required classes on site and include them in the supervision fee.

- 5.0 The City and County should support legislation, and advocate for such legislation through their respective lobbying associations, to eliminate mandatory minimum sentences for nonviolent crimes, including DWSR and petty theft, thereby restoring judicial discretion.
- 5.1 Municipal and Justice Court judges should institute an independent objective assessment process to determine a defendant's ability to pay fines and fees, and waive them appropriately.
- 5.2 Rather than suspend licenses or issue warrants for failing to comply with financial requirements of a sentence, Municipal and Justice Court judges should send billing statements to offenders notifying them of the outstanding debt and the consequences of non-payment. If a Municipal or Justice Court judge does suspend a license or issue a warrant for failing to comply with financial requirements of a sentence, he or she should keep data on the incidents.
- 5.3 As soon as feasible with reductions with the jail population, the jail should institute a Work Release program.
- 5.4 The jail should allow a 15-minute grace period for arriving late to a Work Program site. Currently, a participant who is even a few minutes late can be terminated from the program. The justice-involved population often has difficulty with transportation, particularly those who are prohibited from driving. This small allowance will likely increase the success rate. Also, placement opportunities should exist for people with physical disabilities, and judges should be informed of these positions.
- 5.5 Justice and Municipal Courts should increase credit for community service to \$15.00 per hour to incentivize participation.
- 5.6 The City and County should provide a payment source for judges to sentence indigent offenders to Alternative Jail rather than the jail. It is less expensive and a more appropriate setting for first-time nonviolent offenders.
- 5.7 Arrestees should be screened for risk level in order to determine conditions of release. Judges should also use the risk assessment to tailor sentencing options to the individual's level of risk. Misdemeanor probation should be used only with high risk offenders.
- 5.8 For low and moderate risk nonviolent offenders, judges should consider electronic monitoring and home arrest.

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- 5.9 The City and County should require contracted vendors to make available policies on sanctions and incentives. The City and County should require an annual report detailing the per-person per-day cost of probation, and work with the jail to adopt and monitor recidivism outcomes. Contracts should also be explicit in the classes that may be required by participants and to the greatest extent possible, be included in the contracted cost and be made available on evenings and weekends.
- 5.10 The County and City should implement a home arrest monitoring program and electronic monitoring program for low and moderate risk offenders, run by the jail or through a private provider, as a sentencing option. This sentencing option should not be contingent upon an offender's ability to pay and the City and County should provide payment for low-income offenders.
- 5.11 The County should hire or otherwise provide for at least one SOAR-certified re-entry assistant to work with the jail population with public benefit applications and re-entry plans that include housing and employment options. The SOAR-certified staffer can assist in having benefits properly suspended upon incarceration – when necessary – rather than terminated. The annual savings to the County for Medicaid expansion to the jail population (for 24-hour medical treatments outside the jail) should be reinvested in this re-entry position.