

Montana Pretrial Release Guide

Revised November 2021

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

During the initial appearance hearing, the judge decides whether the defendant's charges meet the criteria for a capital offense.

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

Decision 2: The Judge Decides Pretrial Release Conditions

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

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

When the defendant's charges are a second or subsequent Driving Under the Influence (DUI), the release conditions automatically default to at least Release Level 2² and include substance testing.

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

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

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

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

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

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

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

Pretrial Release Conditions Matrix

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

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

The table below summarizes the release activities and conditions for the pretrial release levels.

Release Activities and Conditions for the Pretrial Release Levels

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

- Basic Required Conditions: The defendant shall appear in court for all hearings, abide by all laws, maintain contact with their attorney, and not leave the state without prior permission from the court.
- Court Reminders: The defendant shall read or listen to all court date reminders and reply if requested.
- Check-In: The defendant will check-in with a pretrial case manager at least once or twice per month. Check-ins may occur, at the discretion of the case manager, in-person or through telephone or videoconference.
- Other Case-Specific Conditions: May include No Contact Orders, Substance Testing, Electronic Monitoring, Criminal History Checks (upon court request), and any other case-by-case release condition.