

Implementation of CGL recommendations - City Attorney's Office

Implementing a Second Judicial Division (page 6)

Municipal Court already assigns cases by alphabetical division – defendant last name. The City Attorney's Office divides the Non-DV prosecutors by alphabet as well to assist in the workflow. We went further and changed the way conflicts are reassigned to minimize the amount of time that a prosecutor must straddle dockets of different judges; so, the prosecutors in one judge's court will handle conflicts within that court.

Because there are three DV prosecutors, one prosecutor must appear in both judges' courts while the other two are assigned to one. The DV prosecutors are largely able to handle their own conflicts within the DV Unit. On rare occasions where all three prosecutors have a conflict, the case is assigned by alphabet to one of the general prosecutors.

The establishment of a second judicial division has fulfilled the objectives outlined in the CGL study. As anticipated by CGL, a second judicial division has enhanced judicial availability, facilitated extended courtroom interactions, provided greater scheduling flexibility, and increased opportunities for walk-in appearances. Consequently, the court has expanded opportunities for appearances and case resolution (thereby improving overall efficiency and reducing reliance on *Pro Tem* judges). All stakeholders involved in this transition were committed to its successful implementation. Workflows and processes continue to be looked at critically and adjustments are made if warranted.

Impact of Jail Overcrowding (page 6)

Montana law requires arrest and incarceration of those charged with DV offenses. In practical terms, this means that each offender charged with a DV offense must first appear before a judge before they are eligible to post bond and be released from jail. Depending on the severity of jail overcrowding, this can sometimes be a factor when DV prosecutors make charging decisions. Even in the event of severe overcrowding, Yellowstone County Detention Facility (YCDF) command staff has accommodated DV offenders with rare exceptions. When those exceptions do occur, the DV Prosecutors will work with YCDF to reduce the overall jail population. City prosecutors are available at the initial appearance dockets and strive to resolve cases at the time of initial appearance.

With the exception of misdemeanor offenses punishable by more than 6 months in jail, all cases are expected to be tried in absentia for those defendants who fail to appear for trial. This has led to many more subpoenas being issued to officers for trial and much longer bench trial dockets. However, this also has cut down on the time from case filing to case resolution and the number of cases on recurring on pretrial dockets (omnibus, calendar call). All of these steps have an impact on jail overcrowding.

However, YCDF continues to struggle with overcrowding. While controlling the inmate population is the duty of Yellowstone County, the Billings Municipal Court has been invested in handling its caseload with the greatest degree of efficiency possible while preserving the rights of the accused. The CGL study recommends an arraignment center concept. The City Attorney's

Office has been actively collaborating with partners in the criminal justice system on projects to reduce jail overcrowding. Our office is attending CJCC subcommittees (including for the arraignment court concept and case processing committee). Staff are taking a collaborative approach to this process. As set forth in the CGL study, for the arraignment center concept to be successfully implemented it is essential to allocate judicial, prosecutorial, and defense resources to the development and implementation of an arraignment center. Municipal Court is not yet participating in the arraignment court, which began in February, but is planning to begin participating this spring. Municipal Court and the City Attorney's office will need sufficient resources before participating in the program.

Integration of criminal justice information systems, Vital Role of Court Technology, and Prosecutor's Case Management System (pages 7 & 8)

The state previously responded negatively to requests for establishing an interface between the City Attorney's case management system, Prosecutor by Karpel (PbK) and the state's e-file system. Likewise, the state was unable to support an interface between PbK and Municipal Court's Full Court Enterprise (FCE) because the state was still rolling out FCE to all jurisdictions. The Supreme Court IT division indicated they could not engage in any "ancillary or outside projects until [they've] completed the 2025 biennial roadmap." It is unclear when, or if, this coordination and integration will be prioritized by the state in any way. However, there may be a way for the court to export information from their systems to PbK that will require less cooperation from the state but still will require funding for IT support.

There is potential for integration between law enforcement records management system (LERMS) and PbK. However, this will require dedicated staffing to investigate and direct the project as well as funding for such an interface.

Defendants with Cases in Multiple Courts (page 8)

Municipal Court frequently runs bonds concurrently and allows conditions of sentencing to be met with programs to be completed in satisfaction of Justice and District Court orders.

Prosecutors have access to information in a variety of systems including: LERMS, Corrections, Conweb, and the Montana Public Access Portal. The Montana Public Access Portal has case data from across the state of Montana (including district courts and courts of limited jurisdiction). Staff can also access Full Court for Yellowstone County Justice Court and District Court. These systems identify the nature of the defendant's criminal charges, the parties involved, and the status of the case. Prosecutors are utilizing this technology, to its fullest capabilities, to account for defendants with cases in multiple courts along with employing cross-jurisdictional cooperation and communication.

Court processes, Efficiency, and Early Resolution (page 8)

In response to the CGL study, prosecutors shifted focus to early case resolution and devoted additional resources to open court appearances. An additional prosecutor was added to the in-person open court schedule strictly to resolve cases. This has expedited the judicial process, reduced the backlog of cases, and decreased failures to appear. In addition, prosecutors are available and work to resolve cases during jail arraignments as appropriate. As a result,

prosecutors are noticing positive downstream consequences in their caseloads. The court has advised these efforts have led to a decrease of approximately 20 failures to appear per week.

Early case resolution and avoiding potential future warrants also promote responsiveness and rehabilitation. Defendants are ordered to address the underlying issues contributing to their behavior in closer proximity to when the offense was committed. This is especially important for defendants with substance abuse disorders and mental health issues.

Prosecutors created blank plea offer templates for arraignment, which are being used to facilitate resolution during initial appearances. As the next phase of this project, the prosecutors created charge-specific templates and have requested a dedicated printer to be located in Municipal Court to easily print plea offers specific to defendants.

In addition to improvements made to open court, the prosecutors also created a template in their case management software program for plea offers. They also utilize standardized plea offer language and recommendations to add efficiency to writing offers. This ensures cases are resolved swiftly without impairing case-specific discretion.

Avoiding prolonged court proceedings has yielded tremendous benefits for the justice system overall by reducing costs related to prosecution time, public defender representation, court resources, arrests, officer resources, and cycles of incarceration due to failures to appear.

Capacity for Continuous Improvement (page 9)

Historically, the City has prioritized the urgent to the detriment of the important and there is an acute shortage of staff who hold the ability and intellectual curiosity to see the big picture of how all of the departments relate to each other and how information and work flows through the system. While funding is necessary to improve systems, it is also important to staff in such a way that those who are capable of understanding the systems and designing improvements are relieved of the incessant and urgent work that prevents them from working on longer-term strategies that would create a capacity for continuous improvement.

Defendant Failure to Appear and Failure to Comply (page 9)

A master trial scheduling order has been implemented by the Billings Municipal Court which has dramatically cut down on the number of warrants for failure to appear (FTA). The master trial scheduling order sets trial dates and other deadlines at a defendant's initial appearance instead of requiring additional hearings or appearances by the defendant before scheduling a trial. Other than for serious misdemeanors, the current master trial schedule results in FTA warrants only being issued for failure to appear at the initial appearance or failure to appear at sentencing when convicted in absentia.

The implementation of the master trial schedule has led to notable efficiency improvements. It ensures a prompt response to criminal conduct when defendants fail to appear and are convicted in absentia. As noted above, there are constitutional constraints based upon whether the offense is a "serious" or "petit" misdemeanor. The master scheduling order is best suited towards "petit" misdemeanors (i.e. offenses which carry less than one year in jail). Furthermore, the master trial schedule also requires that defendants are arraigned. They must

appear before a judge to answer to their criminal charge. Due to jail overcrowding, processes such as issuing a notice to appear limit the defendant's initial contact with the court, resulting in downstream consequences and disrupting efficient justice outcomes.

Additionally, general prosecutors are requesting summonses when charging cases, except in situations where victim safety is a concern. This practice has proven effective in ensuring the timely arraignment of voluntary defendants.

Cases involving family violence and protective orders (page 10).

Prosecutors and BPD began a direct filing process prior to the CGL study, and we are starting to see its benefits. "Direct filing" refers to a process where the police officer files a complaint directly to the court with a request for the court to issue a warrant in cases that were previously sent to the City Attorney's Office for review/filing when the offender was no longer at the scene. This avoids any unnecessary delay in getting an initial review completed before charges are filed where the facts and circumstances clearly justify filing charges against a suspect who is not present at the scene of the offense. This direct file warrant process has been a success and is reflected in reduced dismissal and declination rates and increased case filings in 2024.

The CGL recommendations suggest strategies that have already been in place since well before 2015, and reinforcing these strategies with BPD has been an annual priority. Unlike other Victim/Witness programs in the state, the City's VW Specialists are proactive with victim contact. The VW Specialists are empowered to request follow-up from BPD directly in the event that a report is missing critical information or victim contact information. The VW Specialists attempt contact with every single domestic violence victim prior to arraignment, and all information obtained from these contacts are forwarded to the DV Prosecutors prior to arraignment.

While the CGL did not officially recommend increased family counseling services, the DV prosecutors are obligated to vehemently oppose any treatment option that requires victim participation. Couple's counseling is widely discouraged in domestic violence cases and is prohibited by the Violence Against Women Act. As the CGL report notes, the Municipal Court does not have jurisdiction over victims specifically and non-parties generally. Given the possible loss in funding and the danger posed to victims, the DV prosecutors are uniformly opposed to any form of couple's counseling.

The Municipal Court has generally been very protective of domestic violence victims and consistently orders bond conditions requested by the DV prosecutors. With the establishment of the state's first Family Justice Center, coordination and appropriate responses to offender behavior and victim safety will improve.

The issuance of protective orders has dramatically improved with the addition of a second Municipal Court Judge. While the CGL recommends legislative improvements to the protective order process, it seems unlikely the 2025 Legislature will be amenable to changes that alter the due process rights of respondents. The City Attorney's Office is also apprehensive about supporting such a change. The US Attorney's Office previously offered increased prosecutions of unlawful firearm possession cases, so the due process component must be protected in order for these federal laws to be adequately enforced.

Cases involving mental competency (page 11).

First, it is important to distinguish “Fitness to Stand Trial” from generalized concerns about the defendant’s mental health. This section of the CGL study attempts to address both simultaneously. However, there are significant distinctions in how these matters are handled. If there are grounds to believe that the defendant is unfit to stand trial, he or she must be evaluated by either a mental health professional approved by the Court or by the Montana State Hospital.

The state of Montana recently implemented the Community-Based Court-Ordered Evaluations and Stabilization Near-Term Initiative. This was launched on May 8, 2024, based on recommendations made by the Behavioral Health System for Future Generations Commission (BHSFG). This program provides another avenue for Fitness to Stand Trial evaluations to be conducted (and more importantly, paid for). This program also offers a list of community-based providers accepting referrals. One of our prosecuting attorneys, Chantel Anderson, has brought forth information about this initiative and has been in contact with DPHHS. She has been advised that there is funding available for evaluations conducted on behalf of municipal courts. She is coordinating with the court on reimbursement opportunities.

Fitness to stand trial issues are very complicated. There is a balancing of issues taking place (the right of the accused to a speedy trial, the cost of evaluation and restoration, and the interests of victims and public safety). The City and County Attorney’s Office work closely on these issues. The County has remained a strong partner in this area and accepts referrals for involuntary commitments. During the prosecution, it may become evident that a criminal case is not prosecutable because the defendant is unfit to stand trial. However, some of these defendants also present a risk to themselves or others. In these instances, there is coordination between the City Attorney’s Office, Yellowstone County Detention Facility, and the Yellowstone County Attorney’s Office civil division. These individuals are transported to Billings Clinic for a Psychiatric Admission Assessment. Based on the results of that assessment, the involuntary commitment process may begin and may ultimately result in a commitment to the Montana State Hospital. This also prevents the immediate release of individuals into the community who may be a danger to themselves or others. Through this established process, at the very least, the city ensures that a professional has evaluated these defendants and determined they are not a threat to themselves or others.

The Billings Municipal Court has a co-occurring treatment court. This program is available to individuals with co-occurring diagnoses (mental health and substance use disorder). The court has strengthened its partnership with the Mental Health Center. The Mental Health Center has offered a variety of resources to the co-occurring treatment court. The Mental Health Center also has a partnership with Yellowstone County Detention Facility. Staff from the Mental Health Center make referrals to the co-occurring treatment court. They also provide services, including placement in their mental health group home.

Prosecution based diversion programs (page 12).

General prosecutors already regularly utilize this option when appropriate. The DV prosecutors also utilize diversions when appropriate but using diversions as a default resolution is prohibited by the Violence Against Women Act.

Criminal Justice Coordinating Committee (page 12)

The CCJC and its subcommittees continue to meet on a regular basis. The CJCC continues to see strong cross-jurisdictional participation and includes membership from the Billings City Council.