

May 25 2021

Clerk, U.S. District Court  
District of Montana  
Missoula DivisionIN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANAIN RE: ACCESS TO FEDERAL  
COURTHOUSES IN THE DISTRICT  
OF MONTANA

ADMINISTRATIVE ORDER 21-8

The outbreak of coronavirus 2019 disease (“COVID-19”) has been in steady decline in the State of Montana for 25 weeks, and there are now fewer than 1,000 active cases across the state. The COVID-19 vaccine has been widely available to all Montanans over the age of 16 since April 1, 2021. Nearly 40 percent of all Montanans are now fully vaccinated, and local supply of the COVID-19 vaccine is more than adequate to satisfy the remaining demand.

The Centers for Disease Control and Prevention (“CDC”) recently updated its guidance to state that fully vaccinated<sup>1</sup> people need not wear face coverings or engage in social distancing, whether indoors or outdoors. The CDC goes on to recommend that unvaccinated people continue to wear face coverings and maintain social distance.

One day after the revised CDC guidance was announced,<sup>2</sup> the

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<sup>1</sup> A person is considered fully vaccinated against COVID-19 two weeks after receiving a second dose in a two-dose series or two weeks after receiving a single-dose vaccine.

<sup>2</sup> The CDC’s revised guidance was issued on May 13, 2021, while the “Safe Return to the Workplace” Handbook was published on May 14, 2021. The Administrative Office of the United States Courts has stated that the “Safe Return to the Workplace” Handbook does not account for the CDC guidance issued the day before, and that a revised version of the Handbook will be forthcoming.

Administrative Office of the United States Courts (“AO”) released a “Safe Return to the Workplace” Handbook summarizing the current state of AO policy guidance in relation to court operations during the COVID-19 pandemic. Among the recommendations in that handbook are that court units should inquire as to vaccine status only in such a manner as would permit anonymous responses, and that court units should not impose “negative employment consequences” on employees who choose not to be vaccinated. *Safe Return to the Workplace Handbook* at p. 7. The handbook goes on to advise that courts should not make vaccination status a condition of courthouse access for jurors, attorneys, or members of the public. *Id.* at p. 7-8.

Taken as a whole, the current policy guidance leaves this Court in a difficult position: the current CDC guidance advises that the Court impose different COVID-19 precautionary measures on people based on vaccination status, while the AO guidance discourages inquiry as to whether a particular people has been vaccinated, and further recommends that the Court not impose negative employment consequences” on those who are not vaccinated. The Court can give practical effect to the CDC guidance only if it can differentiate the vaccinated from the unvaccinated. Without that information, a rule adopting the dichotomous approach now recommended by the CDC is weakened by the lack of any reasonable means of enforcement. Moreover, it risks the introduction of

divisiveness among staff, attorneys, members of the public, and—most troublingly—jurors.

The Court’s consideration of how best to implement the most recent guidance does not take place in a vacuum. Potential changes to the Court’s current policy requiring face coverings must be balanced against the incremental increase in risk to public health that might result. The current state of COVID-19 infections, hospitalizations, deaths, and vaccinations is therefore highly relevant. The Court prepares a weekly “situation summary” aggregating the publicly reported information on COVID-19 infections and vaccinations in Montana and tracking changes in those metrics over time. The most recent such document, attached to this order, indicates a very low incidence of COVID-19 infections across the state and a steadily rising number of vaccinated residents.

Another relevant consideration is the state of local public health requirements. General orders requiring face coverings are no longer in effect in any public health jurisdiction in Montana; in most of the state, such orders were lifted months ago. The available information suggests that the rescission of such orders has not led to any discernible increase in the rate of new COVID-19 infections. Considering these facts, the Court is satisfied that the risk to public health associated with the rescission of the current policy requiring face coverings is very low.

Based on the foregoing considerations, the Court finds that the more practical and effective course is to continue to publicly post and provide to staff the latest public health guidance, but to rescind its order requiring face coverings and social distancing as to all staff and visitors. The Court expects that following the issuance of this order some vaccinated people will choose to continue to wear masks and maintain social distance in accordance with medical need or personal preference, some unvaccinated people will continue to wear masks and maintain social distance based on the current CDC guidance, and some people of both categories will choose to no longer wear masks or maintain social distance. The Court will continue to monitor the available public information on local COVID-19 infection rates and will reconsider this issue as circumstances require.

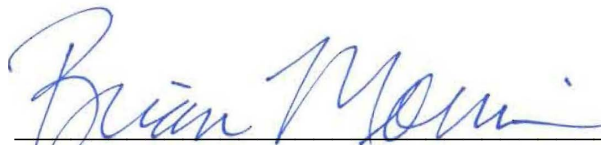
Accordingly, IT IS HEREBY ORDERED that effective June 1, 2021, the following protocols shall apply at the James F. Battin Federal Courthouse, the Mike Mansfield Federal Building and United States Courthouse, the Missouri River Federal Courthouse, the Paul G. Hatfield Federal Courthouse, the Russell Smith Federal Courthouse, and the United States Probation Offices located in Browning, Glasgow, and Hardin (hereinafter referred to collectively as “federal court facilities”).

1. Face coverings are permitted, but not required, at any federal court facility. Court facility employees and visitors are encouraged to follow all applicable public

health guidance. A deputy U.S. marshal or court security officer may direct a person to temporarily lower or remove a mask for purposes of identification or security screening.

2. The Court encourages occupants of federal court facilities to maintain a social distance of at least six feet from others, provided such efforts do not interfere with standard court security procedures or the secure movement of detainees within a federal court facility.
3. To the greatest extent possible, the clerk of court shall, upon request, accommodate any petit or grand juror's request to perform his or her jury service in a socially distanced setting.
4. This order supersedes the contrary provisions set forth at pages 4-6 of Administrative Order 21-4. Otherwise Administrative Order 21-4 remains in effect.

Dated this 25th day of May, 2021.

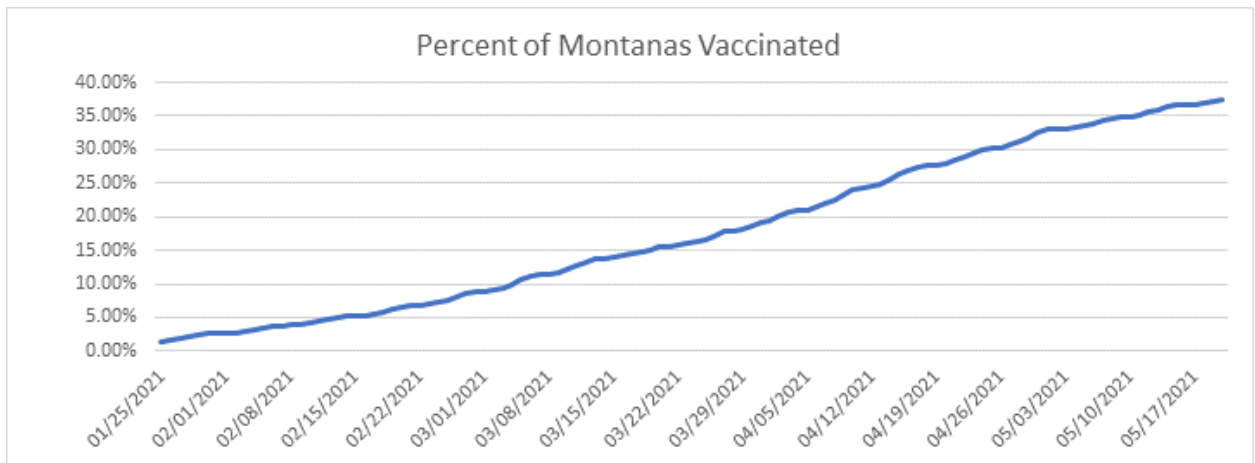
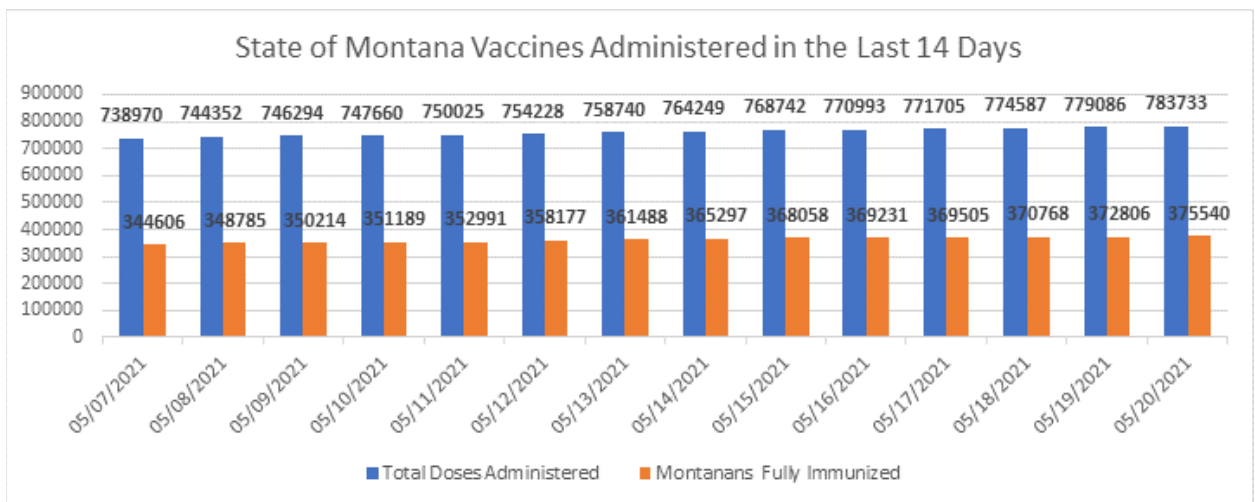
  
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Brian Morris, Chief Judge  
United States District Court

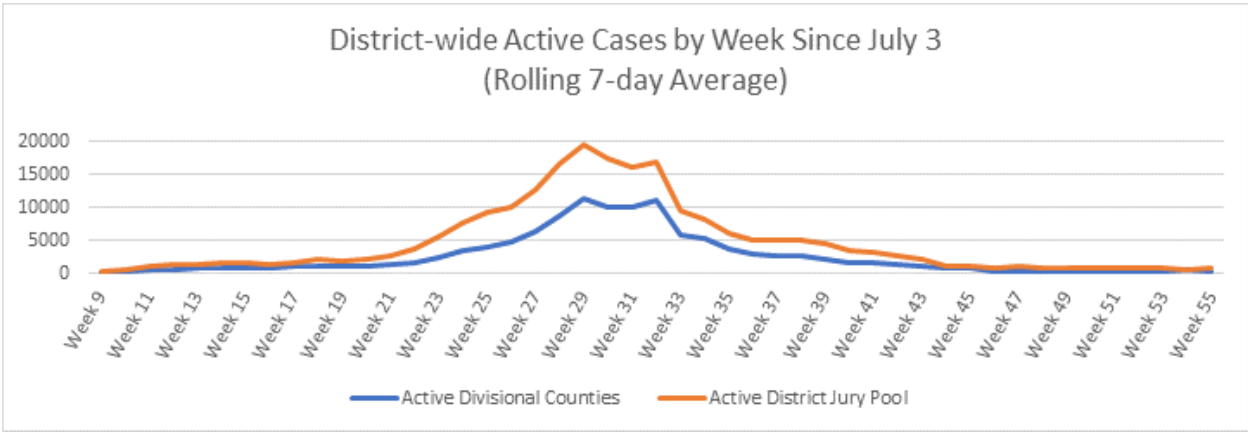
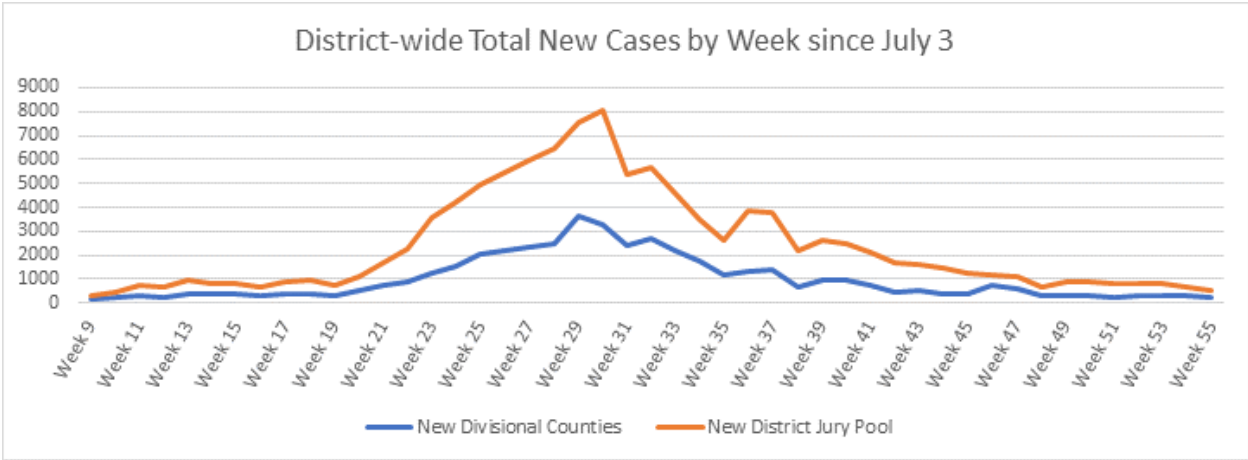
**United States Courts  
District of Montana**

**Situation Summary: Resumption of Operations, Phase 4, Week 3  
May 21, 2021**

**Statewide Statistics**

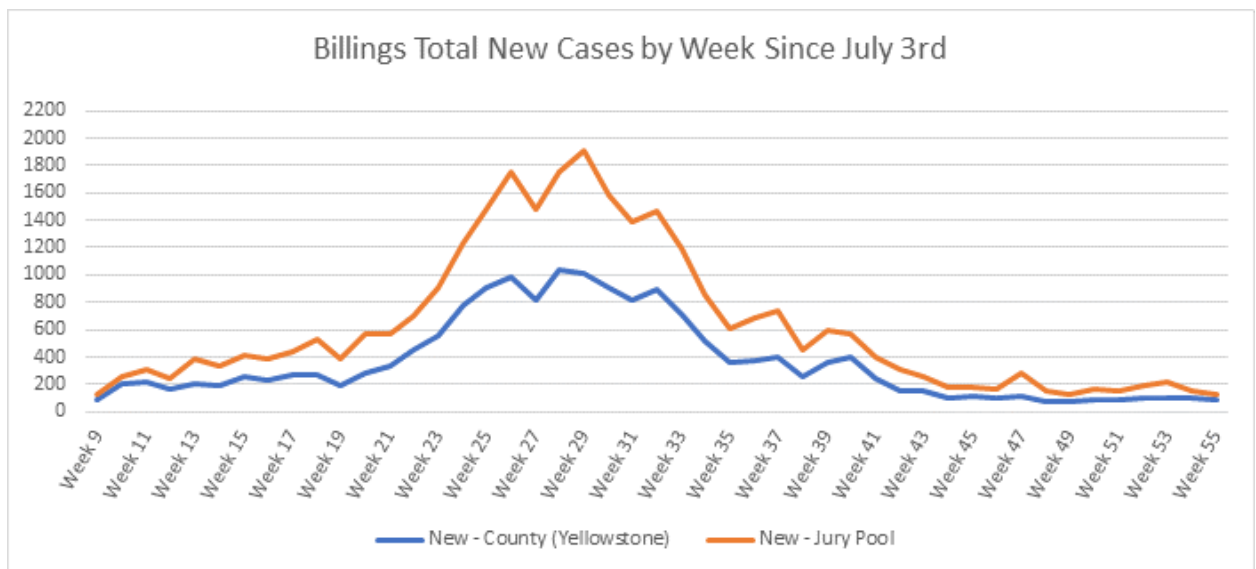
Total Confirmed Cases	New Cases in Jan/Feb/Mar/Apr/May	District-Wide Active Cases
111,025	12,387/4,076/3,616/3,952/2036	967



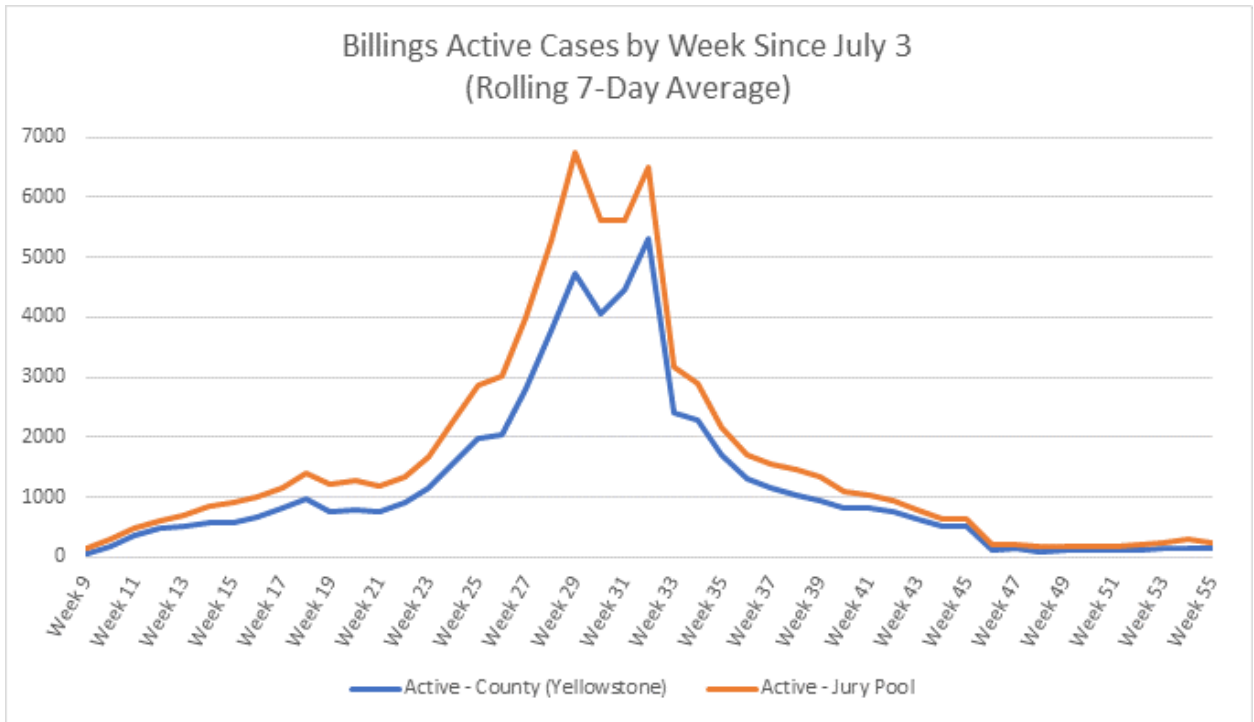


### Billings Division (Yellowstone County)

New Cases in last 14 Days	New Cases in last 7 Days	Active Cases as of Today	Active Cases in Jury Pool Counties	
182	108	137	231	
Courthouse Exposure		% Fully Vaccinated Yellowstone County	% Fully Vaccinated in Jury Pool	PPE Supply
None; Moved to Phase 4 on 5/3/2021		34.81%	32.45%	Good
Local County Restrictions:	Effective January 15 <sup>th</sup> per governor's directive - any public gatherings or events should be managed in a way that accommodates CDC social distancing guidelines. Masks mandate rescinded.			
Trial Schedule for Next Week:	In person hearings.			



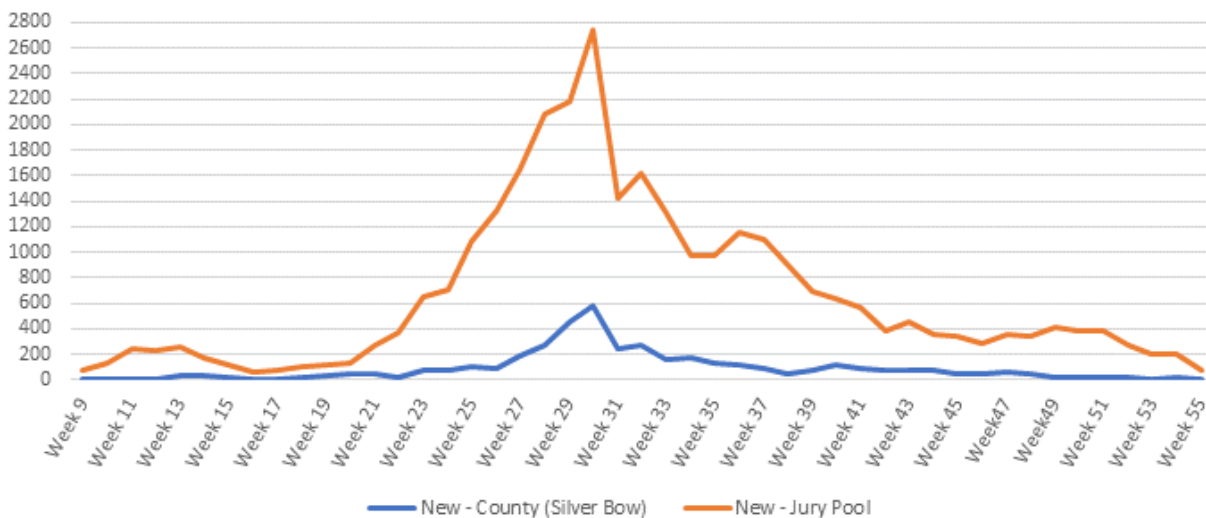




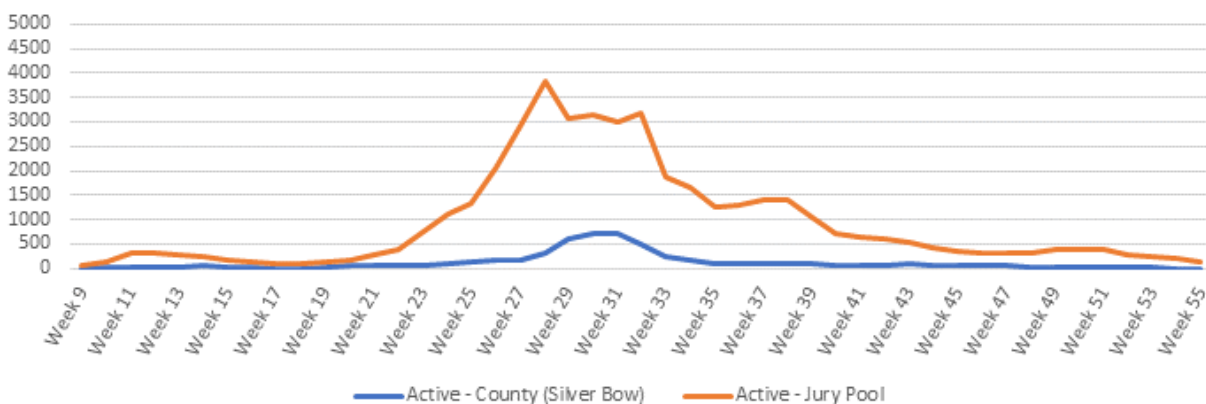
**Butte Division (Silver Bow County)**

New Cases in last 14 Days	New Cases in last 7 Days	Active Cases as of Today	Active Cases in Jury Pool Counties	
15	4	5	147	
<b>Courthouse Exposure</b>		<b>% Fully Vaccinated in Silver Bow County</b>	<b>% Fully Vaccinated in Jury Pool</b>	<b>PPE Supply</b>
None; Moved to Phase 4 on 5/3/2021		43.08%	43.77%	Good
<b>Local County Restrictions:</b>	Effective March 24 <sup>th</sup> – mask mandate is rescinded. No limit on gathering size. Businesses may operate normal hours at normal capacity.			
<b>Trial Schedule for Next Week:</b>	Video & telephonic hearings.			

Butte Total New Cases by Week Since July 3

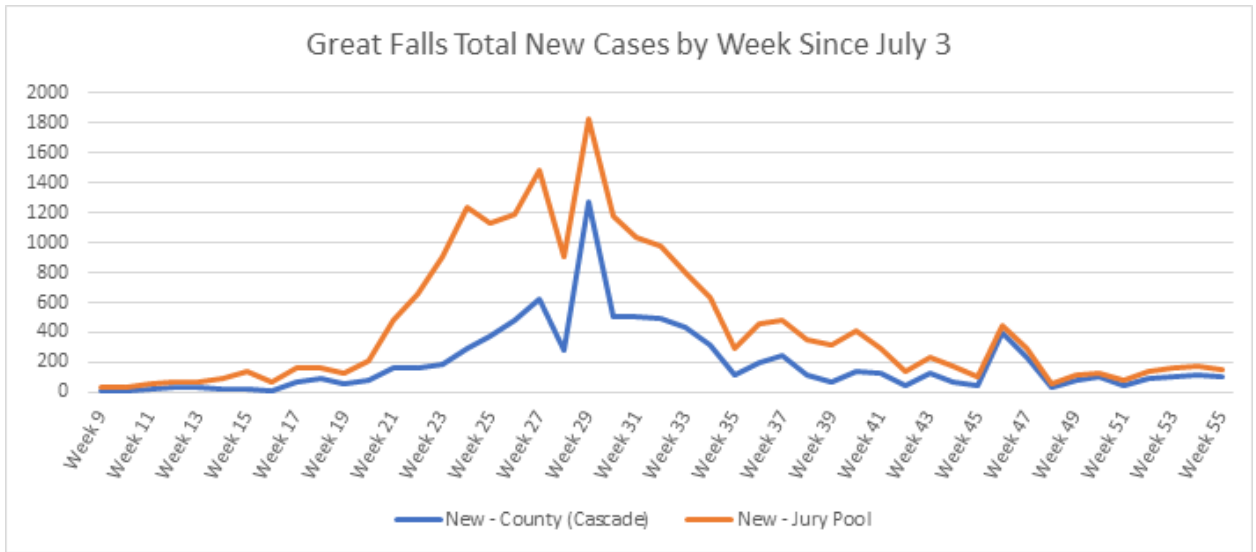


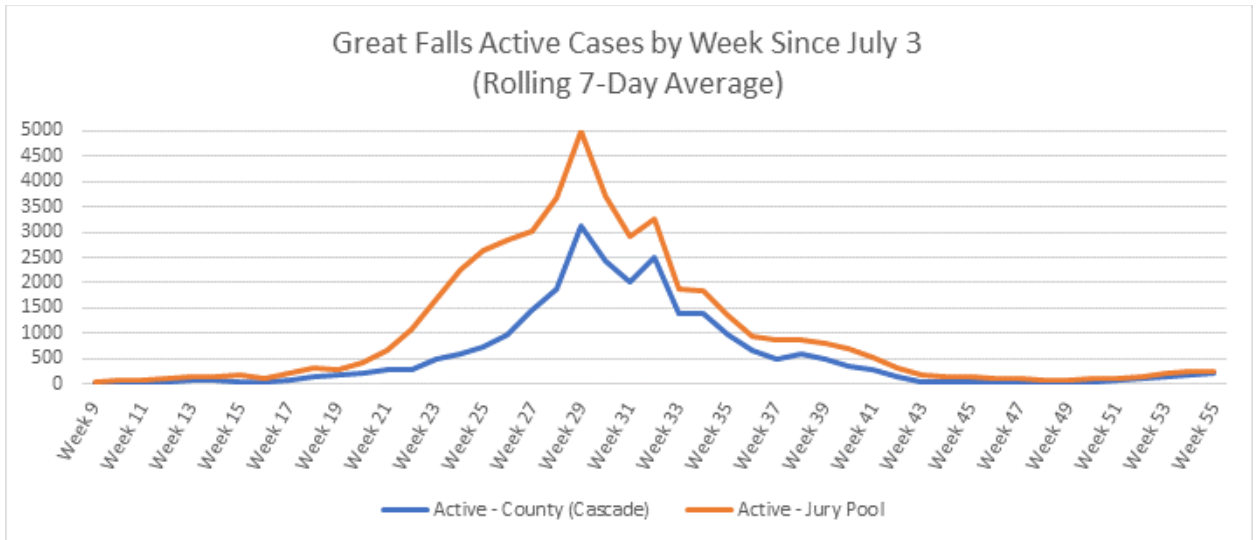
Butte Active Cases by Week Since July 3  
(Rolling 7-Day Average)



**Great Falls Division (Cascade County)**

New Cases in last 14 Days	New Cases in last 7 Days	Active Cases as of Today	Active Cases in Jury Pool Counties	
237	121	223	281	
Courthouse Exposure		% Fully Vaccinated in Cascade County	% Fully Vaccinated in Jury Pool	PPE Supply
None; Moved to Phase 4 on 5/3/2021		30.86%	29.87%	Good
Local County Restrictions:	As of Wednesday, March 17 <sup>th</sup> , Cascade County has achieved a case rate of less than or equal to 10 new cases per day per 100,000 population, for two consecutive weeks. As a result, the mask mandate and event capacity restrictions have been lifted, effective immediately.			
Trial Schedule for Next Week:	In person hearings.			

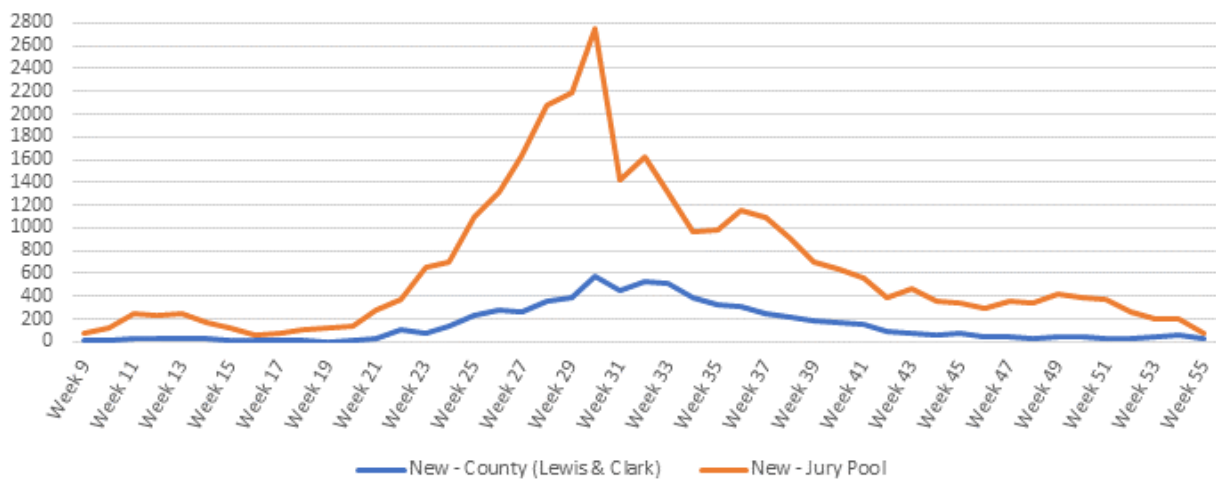




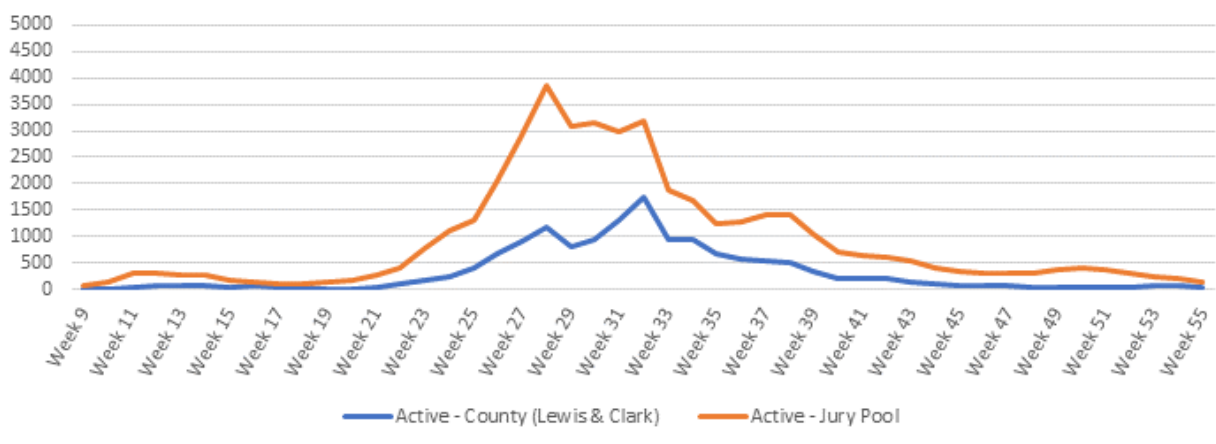
#### Helena Division (Lewis & Clark County)

New Cases in last 14 Days	New Cases in last 7 Days	Active Cases as of Today	Active Cases in Jury Pool Counties	
78	46	62	147	
Courthouse Exposure		% Fully Vaccinated in Lewis & Clark County	% Fully Vaccinated in Jury Pool	PPE Supply
None; Moved to Phase 4 on 5/3/2021		44.23%	43.77%	Good
Local County Restrictions:	Public gatherings vary daily. As of April 1 <sup>st</sup> , the gathering size is 50 to 250. Masks mandate has been lifted.			
Trial Schedule for Next Week:	In-person hearing.			

### Helena Total New Cases by Week Since July 3

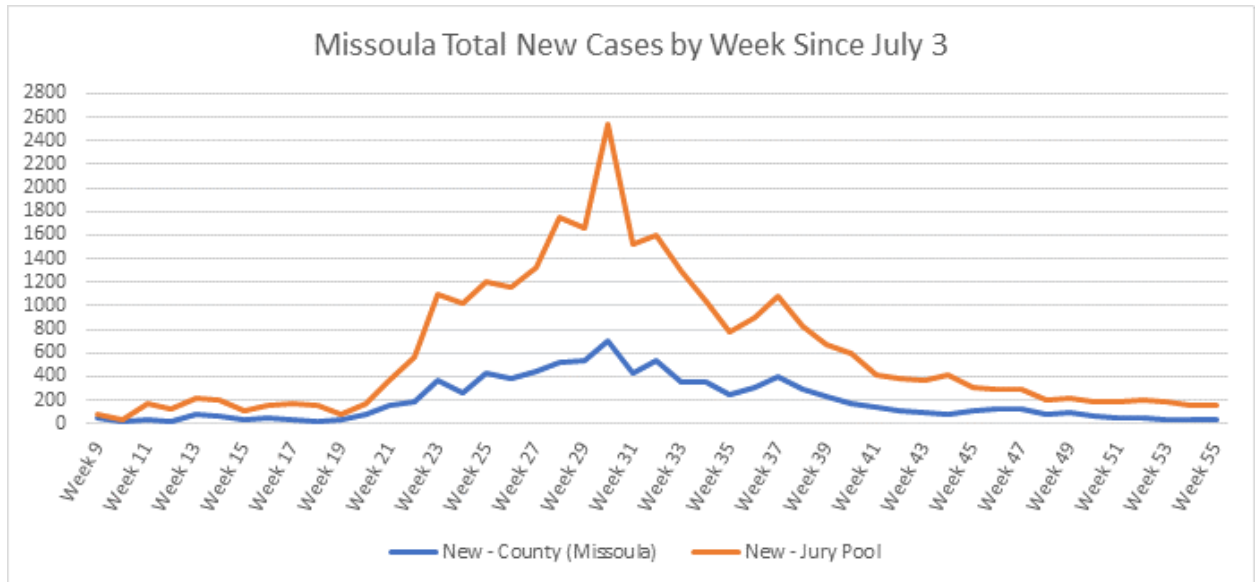


### Helena Active Cases by Week Since July 3 (Rolling 7-Day Average)



**Missoula Division (Missoula County)**

New Cases in last 14 Days	New Cases in last 7 Days	Active Cases as of Today	Active Cases in Jury Pool Counties	
72	38	53	308	
Courthouse Exposure		% Fully Vaccinated in Missoula County	% Fully Vaccinated in Jury Pool	PPE Supply
None; Moved to Phase 4 on 5/7/2021		48.96%	39.07%	Good
Local County Restrictions:	Effective May 11 <sup>th</sup> , 2021 Missoula County lifted the mask mandate.			
Trial Schedule for Next Week:	Jury trial and in-person hearings.			



Missoula Active Cases by Week Since July 3  
(Rolling 7-day Average)

