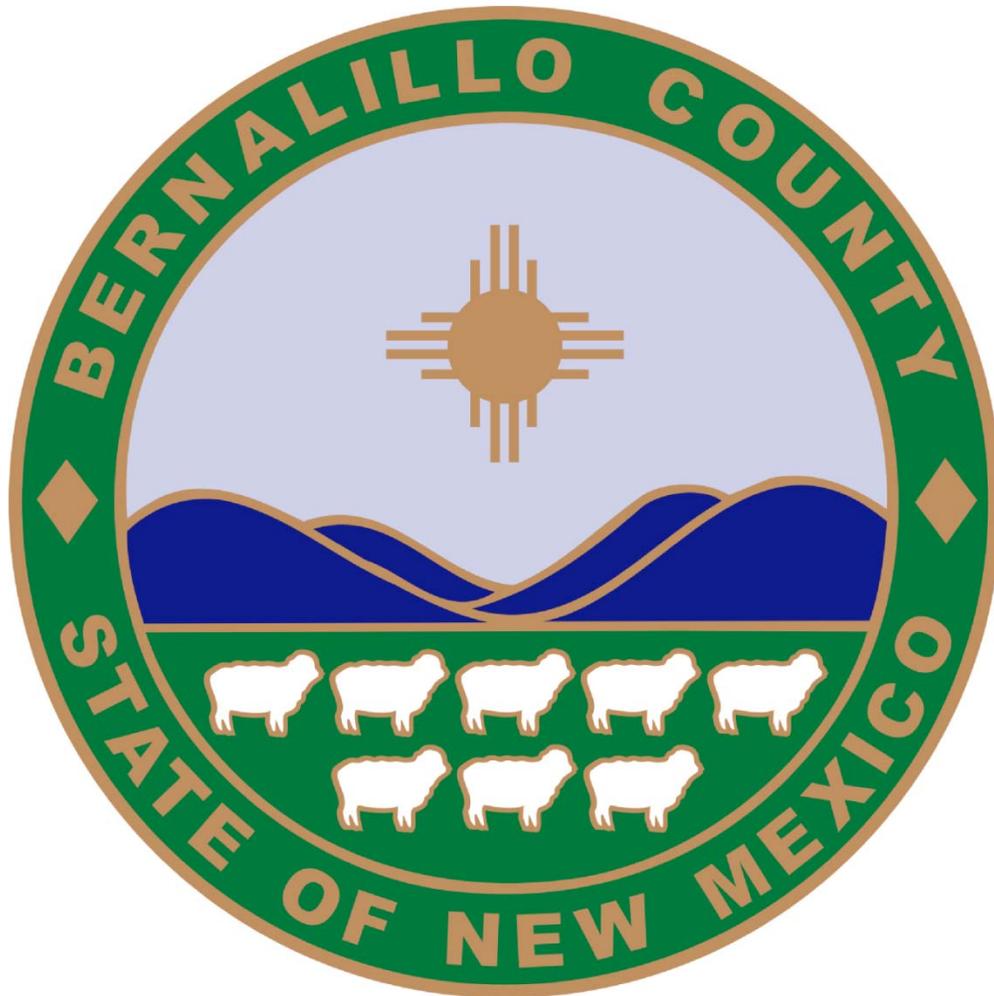


**Adequately Budgeting for the 2nd New Mexico Judicial District
Pretrial Services Division, Using Evidence-Based Practices Which
Produce Safe Reductions in Jail Populations**

Using Release Data from 2009



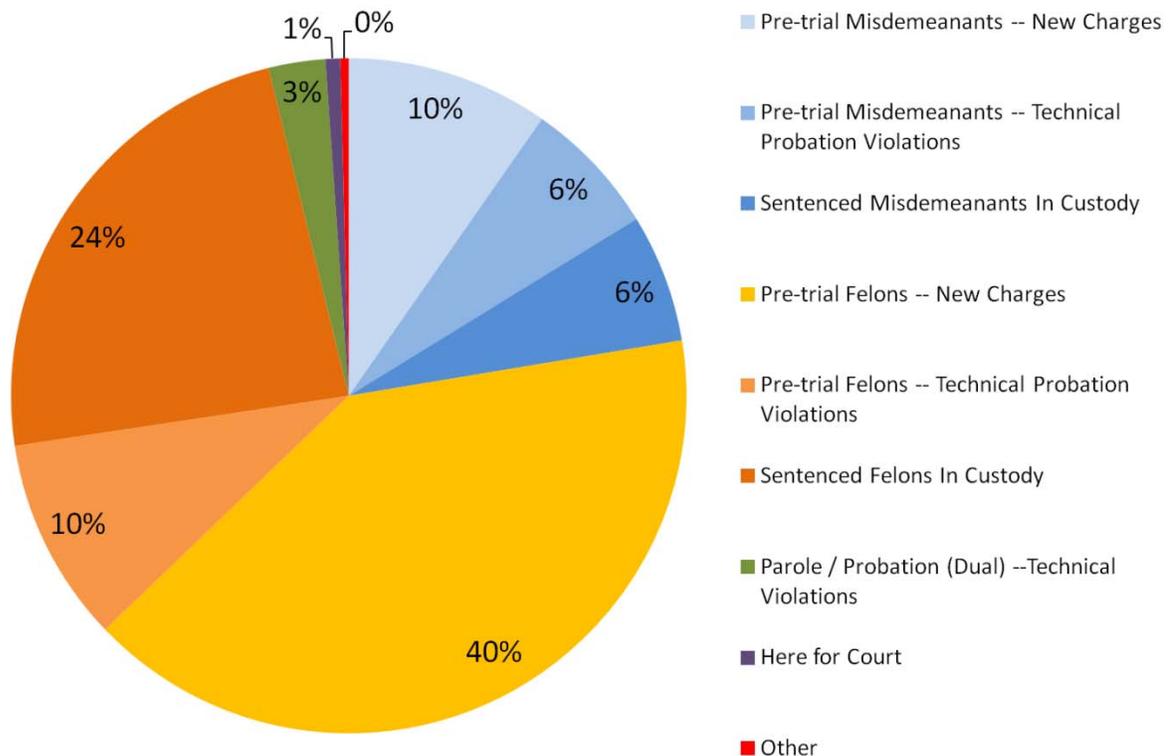
Submitted to the Chair of the Bernalillo County Public Safety Advisory Board, Michael Brasher

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

The urgency to reduce the jail population without negatively impacting public safety has turned the attention of criminal justice stakeholders to multiple competing strategies which focus on many different contributing factors. Each of the contributing factors affects portions or “slices” of the jail population of varying magnitudes. Given the limited public resources, a triage of the problem is necessary in order to avoid investing in solutions where the expectations are inflated far beyond the likely outcomes. As such, any plan to reduce the population which does not target the greatest population aggravators, and any plan lacking evidence-based solutions targeted by data-driven analysis should be viewed with skepticism.

In order to perform a triage of the jail population problem, a glance at the breakdown of the population is necessary. The breakdown of the Metropolitan Detention Center population provided in the pie chart below reveals the largest and most disproportionate portion of the population;

Typical Makeup of the MDC Population



As depicted in the figure above, approximately 40% of the population of the Bernalillo County Metropolitan Detention Center belongs to the “Pretrial Felon” category. Only 10% of the population belongs to the “Pretrial Misdemeanant” category. The large percentage is indicative

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

of two problems. First, the length of time it takes on average for a felony case to be disposed should be reduced. Second, the number of offenders awaiting the disposition of their felony charges while detained in the MDC should be reduced. If felony cases move through the criminal justice system and arrive at their disposition in less time, and if fewer offenders are compelled to await such dispositions from inside the jail then the number of pretrial felons in custody can be reasonably reduced. Therefore, special attention should be given to improving felony case flow while increasing the use of pretrial services for offenders awaiting the disposition of their felony charges.

The 2nd Judicial District Court has been working closely with the National Center for State Courts to look at strategies to improve felony case flow, as well as to study the benefits such case flow improvements could provide the various local criminal justice stakeholders. The County should continue to support these efforts by the Court. This report will focus on the appropriate expansion of pretrial services necessary in order to divert pretrial offenders who do not pose a public safety risk from costly detention while they await the disposition of their felony charges.

In juvenile criminal justice, the number of offenders entering the criminal justice system, and therefore the number of individuals who can potentially be safely diverted from secure detention is very small. Most large juvenile detention centers, such as the one operated by Bernalillo County, maintain average daily populations of about 60 individuals in their juvenile detention center.

In comparison, adult detention centers, such as the one operated by Bernalillo County, average daily populations of well over 2000 individuals. The number of adults who might be safely diverted from secure detention also averages in the thousands. Therefore, the adult criminal justice system nationwide gave rise years ago to a system of detention diversion alternatives intended for those awaiting the resolution of their criminal charges. This system was called “pretrial services.” The consortium of pretrial services agencies across the United States was called the National Association of Pretrial Services Agencies (NAPSA).

In 1976, the U.S. Department of Justice funded the establishment of the Pretrial Services Resource Center, now called the Pretrial Justice Institute, in response to a request from The National Association of Pretrial Service Agencies (NAPSA) Board of Directors. In a 1975 survey by the National Center for State Courts, 91% of pretrial program directors expressed a need for further training and technical assistance for themselves and their staffs. Spurred by this finding, the NAPSA directors submitted a proposal to the Law Enforcement Assistance Administration for the funding of an entity that could provide such assistance. The proposal was funded and the Pretrial Justice Institute was incorporated on December 2, 1976.

The Pretrial Justice Institute (PJI), which is the foremost authority on pretrial services in the U.S., describes pretrial services in the following way:

Pretrial services are programs (typically units within county governments, state governments or nonprofit agencies) that help judicial officers make bail decisions by

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

providing information, assessments of risk, sometimes a recommendation, and in some cases, supervision for those released to the program. The judicial officer then incorporates other information, such as the facts and circumstances of the alleged offense, in reaching a decision. Pretrial services can play a central role in plans to reduce jail crowding.

In supervised pretrial release, defendants are released on their promise to adhere to certain court-ordered non-financial conditions, such as reporting in person on a regular basis. Compliance is closely monitored by pretrial services or other criminal justice staff. Failure to comply can result in return to jail. Supervised pretrial release is a vital component in the spectrum of release options. It permits the safe release of moderate-risk defendants who are ineligible for less restrictive options.

After an analysis of existing bail-setting practices and jail use, supervised pretrial release should be part of a comprehensive approach to effectively using costly jail beds. An effective pretrial services program with supervised pretrial release can contribute to reduced detention rates – without jeopardizing community safety or the integrity of the legal process.

The American Bar Association describes Pretrial Services similarly:

The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. The judge or judicial officer decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, temporarily detain a defendant, or detain a defendant according to procedures outlined in these Standards. The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, it subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. (American Bar Association Standards, Third Edition, 1968)

Although pretrial services provide a safe and effective way to control the jail population, a threat to this criminal justice best practice persists; commercial sureties and the current bail system.

The bail system as it now generally exists is unsatisfactory from either the public's or the defendant's point of view. Its very nature requires the practically impossible task of transmitting risk of flight into dollars and cents and even its basic premise – that risk of financial loss is necessary to prevent defendants from fleeing prosecution – is itself of doubtful validity. The requirement that virtually every defendant must post bail causes discrimination against defendants and imposes personal hardship on them, their families,

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

and on the public which must bear the cost of their detention and frequently support their dependents on welfare. (American Bar Association Standards, Third Edition, 1968)

Public safety and system efficiency have become such large factors in criminal justice decision making that commercial sureties have been banned in several parts of the country. In some states, the political fight between proponents of commercial sureties and proponents of pretrial services continues. At the heart of the debate is reluctance by commercial sureties to relinquish their very profitable enterprises to system efficiency. The American Bar Association, however, has called for the abolition of commercial sureties for decades.

There are at least four strong reasons for recommending abolition of compensated sureties.

- 1. First, under the conventional money bail system, the defendant's ability to post money bail through a compensated surety is completely unrelated to possible risks to public safety. A commercial bail bondsman is under no obligation to try to prevent criminal behavior by the defendant.*
- 2. Second, in a system relying on compensated sureties, decisions regarding which defendants will actually be released move from the court to the bondsmen. It is the bondsmen who decide which defendants will be acceptable risks – based to a large extent on the defendant's ability to pay the required fee and post the necessary collateral.*
- 3. Third, decisions of bondsmen – including what fee to set, what collateral to require, what other conditions the defendant (or the person posting the fee and collateral) is expected to meet, and whether to even post the bond – are made in secret, without any record of the reasons for these decisions.*
- 4. Fourth, the compensated surety system discriminates against poor and middle-class defendants, who often cannot afford the non-refundable fees required as a condition of posting bond or do not have assets to pledge as collateral. If they cannot afford the bondsmen's fees and are unable to pledge the collateral required, these defendants remain in jail even though they may pose no risk of failure to appear in court or risk of danger to the community. (American Bar Association Standards, Third Edition, 1968)*

Despite the obvious benefits of pretrial services, compared to commercial sureties, the expansion and operation of pretrial services throughout the country has encountered challenges which have limited its effectiveness:

A good example is found in the creation of the Harris County, Texas, Pre-Trial Release Agency, which became a focus of attention when a federal court acted to remedy "severe and inhumane overcrowding of inmates" at the Harris County jail. The federal court, recognizing the Agency's strong fundamental premise and great expectations at its creation in 1972, nevertheless found it to be "foundering," "deficient," and "ineffective" in 1975. The reasons for this were many, including harassment and sabotage by the money bail bondsmen, the Agency's inefficient physical placement, its lack of effective

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

internal practices, and its lack of an adequate budget, personnel, training, and supervision. One of the biggest barriers to the Agency's success, however, was its reliance on methods that were largely subjective and often arbitrary. As the court noted, "[t]he largest impediment to prompt, efficacious operation of pretrial release is the agency's use of, and total reliance upon, a subjective standard of evaluation of each interviewee. That is, the 'gut' reaction of the interviewer is used to determine whether a defendant is a good risk for release on recognizance." To remedy this particular situation, the court ordered the Agency to adopt an objective point system for evaluating release on recognizance, "designed with a view towards reducing to a minimum the refusing of 'PR' bonds on 'hunches.'" ("The History of Bail and Pretrial Release," by the Pretrial Justice Institute)

Unlike Harris County in the 1970's, the 2nd Judicial District Court Pretrial Services Division has both very competent and devoted personnel. Very soon, the division will also possess an objective risk assessment tool known as COMPAS which will be implemented later this year. The tool will provide the Pretrial Services Division with the ability to perform risk assessments, track clients in a case management module, track release violations and sanctions, and then provide pre-sentence investigations. The tool will provide the Division with the ability to place offenders in levels of supervision commensurate with their level of risk, while

However, similar to Harris County, the 2nd Judicial District Court Pretrial Services Division lacks an adequate budget to serve all of those charged with a felony that do not pose a public safety risk to the community and merely require a level of supervision during the period prior to a full disposition of charges. Below is an analysis and explanation of the required budget for a pretrial services division which intends to divert from jail those who are charged with a felony and do not pose a public safety risk to the community.

Best Practices in Pretrial Services

As a preface to the cost analysis of adequate felony pretrial services within Bernalillo County, the following are the "most widely recommended and implemented practices" by pretrial services agencies:

1. *Utilize an objective, research-based risk assessment instrument to assist judicial officers in making release decisions;*
2. *Use the risk assessment instrument's results to set meaningful supervision conditions;*
3. *Gather information for risk assessments through defendant interviews but verify that information with other sources;*
4. *Vary the level of pretrial supervision and programming according to the specific risk of defendants, using intensive supervision only with the highest risk defendants;*
5. *Establish specialized programs for defendants with special needs;*
6. *Develop a formal system of reminders for all defendants to help ensure appearance at scheduled court dates; and*
7. *Create meaningful consequences for violation of pretrial release conditions.*

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

(“Evidence-Based Practices in Pretrial Screening and Supervision”, by the Vera Institute)

The 2nd Judicial District Court Pretrial Services Division has been actively working to implement a pretrial services risk assessment tool with the County’s assistance. The tool Pretrial Services is currently working to implement is known as “COMPAS.” The tool will provide Pretrial Services with the ability to engage in all of the best practices described above by the Vera Institute. Specifically, Pretrial Services will have the ability to differentiate offenders by risk level, thereby being able to prescribe both the appropriate level of supervision AND the appropriate sanctions in response to any violations while under supervision. The course charted by the 2nd Judicial District Court Pretrial Services Division is consistent with standards of best practice:

Studies suggest that supervision that is not commensurate with the defendant’s level of risk can result in worse outcomes. Researchers have concluded that focusing resources on higher-risk defendants increases pretrial success while an overuse on low-risk individuals produces failure. An effective pretrial release program provides a continuum of options for defendants at all risk levels and supervision that is tailored directly to the individual’s needs and release conditions. Low risk defendants may need nothing more than reminders of court appearance dates, while medium level individuals may require periodic phone or office check-ins....The highest-risk defendants can be supervised under even more stringent supervision, such as day reporting centers that require daily check-ins and substantive programming. (“Evidence-Based Practices in Pretrial Screening and Supervision”, by the Vera Institute)

Therefore, the use of an objective risk assessment tool will enable the 2nd Judicial District Court Pretrial Services Division to enhance its ability to protect the public’s safety by placing defendants in various levels of supervision commensurate with the defendant’s level of risk. The only remaining impediment to the effective operation of the 2nd Judicial District Court Pretrial Services Division once it fully implements the COMPAS risk assessment tool will be the means by which to provide appropriate level of services to all those for whom the tool identifies as candidates for safe pretrial supervision. Limited by its current funding, the 2nd Judicial District Pretrial Services Division will not be fully capable of utilizing its enhanced abilities to safely reduce the jail population unless it receives an infusion of additional funding adequate for the number clients that can be safely supervised while awaiting the disposition of their felony charges.

Appropriately Funding the 2nd Judicial District Court Pretrial Services Division

The amount of additional funding the 2nd Judicial District Court Pretrial Services Division needs in order to operate adequately depends upon its adherence to the principles of appropriate risk level assignment, net widening avoidance, performance-driven practices, and supervision case load standards. Any oversimplified approach to pretrial services which neglects one or more of these principles will create little to no positive impact on reducing the jail population or ensuring public safety. As a matter of fact, such an approach can worsen outcomes.

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

Budgeting Must Assume Ongoing Appropriate Risk Level Assignment of Defendants: One of the factors that must be assumed constant when calculating the amount of funding necessary to adequately operate a pretrial services program in Bernalillo County is the strict adherence to the risk level assignment of defendants. Appropriate risk level assignment furthers the constitutional objective of providing the least restrictive means of confinement to those who have not yet been convicted of their charges. Pretrial service agencies should be designed and operated on the principle of using the least restrictive alternative possible in order to appropriately (1) match the degree of restriction to the risks posed by the defendant, (2) increase or decrease restrictiveness according to the defendant's performance, and (3) ensure cost-efficiency by "reserving" costly secure detention beds for defendants who represent the greatest risk to public safety.

Studies suggest that supervision that is not commensurate with the defendant's level of risk can result in worse outcomes. Researchers have concluded that focusing resources on higher-risk defendants increases pretrial success while an overuse on low-risk individuals produces failure. Offenders who comply with low risk level requirements, but who are (inappropriately) expected to comply with moderate or high risk level requirements may be unnecessarily violated even though they appear in court and remain arrest-free. Assessing for level of risk to reoffend allows agencies to triage defendants and to focus on those defendants who pose the higher risk of continued criminal conduct. This principle states that our most intensive levels of supervision should be reserved for higher-risk offenders. Placing lower risk offenders into intensive supervision both increases their criminality due to the co-mingling with higher risk offenders and disrupts and degrades their pro-social networks and supports, such as marriage and family, employment, and school participation. Expending criminal justice resources on lower risk offenders therefore, would be contra-indicatory to the objective of reducing recidivism.

Based on the defendant's risk level and performance while on pretrial release, restrictiveness and supervision should be increased or decreased. This practice is called "graduated sanctions." A validated "grid" of graduated sanctions should be utilized by pretrial service agencies to ensure the appropriate response of restrictiveness and change in supervision. COMPAS comes equipped with a validated graduated sanctions grid similar to that of the Ohio Progressive Sanctions Grid.

The validated Ohio Progressive Sanctions Grid significantly reduces reliance on court hearings, court sanctions, and local jail detention. It also offers a more efficient and concentrated use of hearings, and better congruence between offender risk and revocation sanctions. The grid's progressive approach to sanctions, which should be sensitive to the offender's level of risk, insures that offenders are less likely to experience a violation hearing and be remanded to secure custody for technical violations.

The grid relies on front-end agency responses to violations by increasing the level of contact with the offender, increasing the supervision level, increasing the frequency of drug testing, and permitting pretrial release supervisors to tailor sanctions which are consistent with the offender's level of risk and violation behavior, which work better than an excessive use of punitive

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

sanctions. This progressive sanction regime serves as an important cost-effective population management tool because secure detention resources are used sparingly and limited mostly to high risk offenders or those who pose public safety risks. This is because the progressive structure of the grid also allows for critical, community-based interventions to occur before pursuing a hearing, without increasing overall rates of reoffending.

The grid also provides a structural opportunity to align sanctions with high-risk and potentially chronic violators on the front-end of supervision, allowing those offenders to retain any pro-social experiences gained without facing the presumption of immediate remand. Research indicates that interventions consistent with the Ohio Progressive Sanction Grid are especially effective for high risk and need offenders supervised under the grid's guidelines, and research also supports a heavier use of control sanctions for high risk offenders where necessary, even though overuse of punitive sanctions worsens outcomes in general.

Violation behavior is categorized within risk level, forming the vertical axis of the grid. Risk scores are from the offender's static COMPAS assessment. High-level violations include absconding, violations of protective orders, victim contact, program terminations, change of residence and certain misdemeanor offenses. Low-level violations mostly include employment, reporting, substance abuse, and curfew violations. Sex offender violations, weapons infractions, threatening behavior, out-of-state fugitive status, and causing bodily injury are handled uniquely as "major" violations and are not addressed through the grid.

The County will collaborate with the District and Metro Court Pretrial Services departments and develop a comprehensive list of high, low, and "major" violations with which to guide the application of the sanction grid. It is important to note that the grid does not provide structured menus of specific sanctions in each response cell, nor does it incorporate incentives along with sanctions as part of a single unified system of response strategies. Rather, the cells refer mainly to levels of organizational response, which include local unit-level responses (as determined by the probation officer), pretrial supervisor summons, and remand hearings.

A sanction refers broadly to any official response imposed on the offender. More specifically, unit-level sanctions imposed by detention alternative personnel include responses such as more restrictive conditions, structured supervision activities, substance abuse testing and monitoring, housing and other community referrals, upgrades in supervision levels, increased reporting, informal and written reprimands, summons to a pretrial services supervisor, and halfway house and/or non-residential program placement.

Referral to a remand hearing is necessary in order for a remand to secure custody to be considered. The sanction grid allows multiple opportunities to impose unit-level sanctions before initiating the process to pursue a remand hearing. This break between local and hearing-level response thus constitutes the main progressive element of this grid, rendering it less structured and incremental than other graduated sanction systems, such as conventional drug courts, that incorporate more nuanced response options. Importantly, however, this helps preserve probation

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

officer discretion and allows opportunities for more tailored interventions to be imposed at the higher risk levels, consistent with the violation behavior.

On the other hand, the system is explicitly proportional in that the number of local sanctions allowed decreases with increases in risk and violation severity. As an intermediate step, the grid directs probation officers to schedule one or more Pretrial Service Office Summons prior to resorting to a remand hearing. These refer to unit-level sanctions that require appearances in front of pretrial service supervisors as a vehicle for amplifying the importance of abiding by the conditions of supervision and restating the consequences of non-compliance. Finally, the grid presumes that remand hearings will be scheduled out of custody except when overridden by public safety concerns or in cases involving out-of-state fugitives.

Matching the degree of restriction to the risks posed by the defendant, as well as increasing or decreasing restrictiveness according to the defendant's performance, both work to reduce the incidence of pretrial defendants being returned to secure detention due to over-zealous responses to sometimes frivolous violations. Validated graduated sanctions grids combine the assignment of restriction based on risk level, with the increase or decrease in restrictiveness according to a defendant's performance in order to ensure cost-efficiency by "reserving" costly secure detention beds for defendants who represent the greatest risk to public safety. Graduated sanctions ensure that punitive supervisors intent on enforcing their own zero-tolerance approach to minor violations such as program tardiness are not able to impose upon taxpayers secure detention costs in the millions of dollars a year when sometimes the defendants are "low risk" offenders or non-habitual in the commission of minor violations.

Budgeting Must Assume Adherence to Principle of Net Widening Avoidance: Another factor that must be assumed constant when calculating the amount of funding necessary to adequately operate a pretrial services program in Bernalillo County is the strict adherence to the risk avoidance of net widening. "Net widening" is used to describe the "net" of the correctional system being cast wider as a result of the enthusiasm for a correctional initiative which in the end results in the initiative's use in cases where it is not appropriate. Net widening can occur when a community based correctional measure is introduced to reduce the use of custody but, in practice, the measure is applied to offenders who would otherwise have been given a less restrictive sentence such as unmonitored probation or community service. Put simply, net widening occurs whenever an offender is dealt with more formally than he would have been had the applied initiative not been available.

Supervision in the community is undoubtedly less expensive than incarceration. However, there is no overall cost saving where a community based sanction is used in place of another, less restrictive sanction. For example, whenever electronic monitoring is imposed on an individual who would also be eligible for an unmonitored community sanction, the overall cost to the correctional system increases. The effect is a more intrusive and expensive alternative, not to incarceration, but to unmonitored probation and other community sanctions.

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

A consistent finding that has emerged from the evaluation of diversion programs has been validation of the net-widening speculation. It has been demonstrated that both adult and juvenile diversion practices are being applied largely to clients who were previously not subject to justice system insertion. The total numbers of offenders under the control of the state have increased while the population targeted for reduction has not been reduced. In short, the net of social control has been thrown more widely (or some might say the mesh has been made smaller).

It is of major importance for diversion program evaluators to be alert to diversion's net-widening potential and to be familiar with useful evaluation strategies for identifying and measuring net-widening. Any diversion program evaluation which fails to address the net-widening issue would have to be considered incomplete or superficial, given diversion's reported net-widening results. Moreover, without specific consideration of net-widening, evaluators cannot be sure whether or not they are evaluating a diversion program or various transformations of the concept.

Budgeting Must Assume an Adherence to Performance-Driven Practices: The last factor that must be assumed constant when calculating the amount of funding necessary to adequately operate a pretrial services program in Bernalillo County is the strict adherence to pretrial service performance-based practices. Pretrial services agencies have as their primary objective ensuring the appropriate identification and supervision of individuals capable appearing in court and abstaining from criminal conduct while residing in the community instead of in jail. Therefore, all activities conducted by pretrial services agencies must be done in such a manner as to ensure the achievement of the primary objective. Pretrial services cannot afford to submit to political, whimsical, subjective, non-factual and non-performance-driven practices.

For example, mandatory drug and alcohol treatment should not be ordered as a condition of pretrial services. Pretrial services and its corresponding alternatives to detention are not meant to punish offenders or to provide treatment. Applying "treatment" program expectations to pretrial services can have negative consequences. For example, offenders who comply with pretrial services, but who are (inappropriately) expected to attend drug treatment and demonstrate changes in attitude, demeanor, self-control, etc., may be unnecessarily violated even though they attend the program, appear in court, and remain arrest-free.

An example of a practice which should be avoided if a pretrial service agency is to remain true to its primary objective is the concurrent use of bond and pretrial supervision. Despite its seemingly intuitive additional public protection, the additional requirement of payment of a financial bond, even if it is paid directly to the court, is discriminatory in nature and may cause some who could otherwise be safely supervised in the community to remain in jail. Financial bonds do not promote public safety and impose additional detention costs on taxpayers.

Standard 1.4 (g)

This Standard directly addresses a practice followed in some jurisdictions of imposing both money bail (to be provided through a compensated surety) and conditions that include supervision of the defendant by the jurisdiction's pretrial services agency. The effect is to make the pretrial services agency a kind of guarantor for the bail bondsman,

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

in effect subsidizing the commercial bail industry by helping to reduce the risk that a defendant released on money bail will not return for scheduled court appearances.

Other provisions of the Standards emphasize that financial bail should be used only if other conditions are insufficient to minimize the risk of nonappearance, and that, if financial conditions are imposed, the bail amount should be posted with the court under procedures that allow for the return of the amount of the bond if the defendant makes required court appearances. There is no reason to require defendants to support bail bondsmen in order to obtain release (and to pay the bondsman a fee that is not refundable even if they are ultimately cleared of the charges), and the practice of providing for supervision by the pretrial services agency simply encourages perpetuation of the undesirable practices associated with commercial bail bonding. It also drains supervisory resources from often understaffed and overworked pretrial services agencies, making it more difficult to supervise the defendants for whom they properly have responsibility. (National Association of Pretrial Service Agencies Standards, 3rd Edition)

The last example of adhering to performance-driven practices within pretrial services is in regards to which defendants are targeted for pretrial services and when those defendants are targeted.

In all cases in which the defendant is in custody and charged with a criminal offense, an investigation to provide information relating to pretrial release should be conducted by pretrial services or the judicial officer prior to or contemporaneous with a defendant's first appearance. (American Bar Association Pretrial Release Standard 10.4-2)

All defendants arrested and booked should have the opportunity to be interviewed and screened for pretrial release on recognizance or under a level of supervision provided by pretrial services. All defendants charged with a felony should have the opportunity to be considered for pretrial release by District Court at the moment of booking.

Of all factors to consider when calculating the true cost of felony pretrial services, this standard is one of the most important. Defendants who are afforded the opportunity to bond out pose a public safety risk for two reasons. First, the decision is not based on an objective risk assessment, but rather on the ability of the defendant to pay the bond. Second, bail bondsmen do not closely supervise, drug test, and monitor their clients. Nor do they remind them to pay court fees or appear in court.

Release decisions that are instead based on objective risk assessments ensure that dangerous criminals are not released back into the community. Defendants who are supervised by pretrial service agencies tend to show up to court, and tend to commit fewer violations while awaiting the resolution of their criminal charges. If Bernalillo County is to reduce the jail population while ensuring public safety, it should fund the 2nd Judicial District Court Pretrial Services Division sufficiently so as to afford the Division the ability to interview every defendant booked on a felony charge at the moment of booking, or shortly before the first appearance hearing.

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

Budgeting Must Assume Adherence to Supervision Case Load Standards: Caseloads must be of a size that provides pretrial supervisors with sufficient time to devote to each offender in order to achieve supervision objectives. Just as teachers with overly large classes will be reduced to just maintaining order and sending misbehaving students to the principal’s office, supervisors with overly large caseloads can do little more than monitor the defendants and return the non-compliant ones to jail. Appropriate class/caseload size is the necessary precondition to effectiveness in these two systems. Without adequate time for supervision (or teaching), effectiveness is just a pipe dream.

One of the principles of effective community corrections is accurate risk assessment at intake and at regular intervals during supervision. It is essential that valid and reliable instruments be used to assess risk and needs and guide decisions about risk level assignment. Accurate classification of cases will allow the allocation of resources and the scaling of caseloads in the most effective fashion. The evidence suggests that staff resources and services should be targeted at intensive and moderate to high risk cases, for this is where the greatest effect will be had. Minimal contacts and services should be provided to low risk cases.

Best Practices in Pretrial Service Caseload Distributions

Case Type	Level of Supervision	National Institute of Corrections Probation Caseload Standards	Broward County	Maricopa County	11 Comparable Counties Surveyed	Caseload Standards Utilized for 2nd NM District Court Pretrial Services Budget Forecasting
Intensive	¹ Electronic Monitoring	20:1	?	30:1	?	30
High Risk	² Standard Supervision	50:1	111.5:1	75:1	80:1 to 125:1	125
Moderate Risk		200:1				
Low Risk	³ Release on recognizance (ROR)	No limit? 1,000?	?	?	?	1000

¹ Electronic Monitoring/House Arrest defendants are placed on curfew and not allowed to leave the confines of their residence unless authorized by Program staff. Defendants are monitored 24 hours per day using various methods such as radio frequency tracking, remote alcohol testing and drive-by monitoring, and active and passive GPS.

² Standard Supervision consists of monitoring the activities of felony and misdemeanor defendants through phone calls, office and home visits, and court reminder letters.

ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH TARGET SAFE REDUCTIONS IN JAIL POPULATIONS

At first glance, the reaction to the caseload standards will be that many more staff will be needed to put them into practice. In reality, reallocation of staff and cases in a comprehensive way will allow staff to be shifted to the supervision of higher risk cases and away from lower risk. Supervision resources should be concentrated where they can do the most good (moderate and high risk) and be shifted away from areas where they are not needed as much, if at all (low risk). Pretrial service agencies need to stop wasting time on what does not work or what may even do “harm” and focus their resources on what does work and does do “good” in terms of public safety.

Because pretrial programs vary widely in terms of organizational structure, supervision methods, and types of caseloads, industry caseload standards have not been established by professional pretrial associations. In Broward County Florida, however, they ascertained what an appropriate staff caseload would be when they interviewed eleven pretrial association officials and experts around the country. Those individuals’ opinions ranged from caseloads of 80 to 125 clients, with several citing a 100:1 client to staff ratio as being ideal. Broward County settled on a standard supervision caseload of 111.5:1 for its pretrial services supervisors as a result of that exercise.

Also in 2004, Maricopa County Pretrial Services, a division of Adult Probation, engaged in a staffing study for supervision services. A comprehensive one month data collection and analysis was conducted to determine caseload ratios. Guidelines for work expectations were taken from the Pretrial Resource Center’s best practices and the ABA guidelines. The result of the study defined caseload ratios at 75:1 for standard supervision and 30:1 for electronic monitoring.

In a National Institute of Corrections publication entitled “Caseload Standards for Probation and Parole,” adult probation caseload standards were recommended:

Adult Caseload Standards

Case Type	Cases to Staff Ratio
Intensive	20:1
Moderate to High Risk	50:1
Low Risk	200:1
Administrative	No limit? 1,000?

³ Release on Recognizance (ROR) is a form of release that allows defendants who are deemed to be at low risk of absconding or committing a crime while awaiting trial to be released from jail without posting a bond or being supervised; the defendant is required to provide a promise to appear in court, signed or unsigned, to secure their release pending trial. ROR affords defendants the least restrictive form of release, which is consistent with New Mexico statutes and lessens the use of public funds.

**ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT
PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH
TARGET SAFE REDUCTIONS IN JAIL POPULATIONS**

Probation caseload standards are relevant because in many jurisdictions, the same department supervises both those on probation and those on pretrial release. Such is the case, for example, at the Bernalillo County Metropolitan Court and the Maricopa County Superior Court.

Given the information gathered from NIC, Maricopa County, Broward County, and the eleven counties surveyed by Broward County, the following caseload standards are recommended for the 2nd Judicial District Court Pretrial Services Division:

Case Type	Level of Supervision	Caseload Standards Utilized for 2nd NM District Court Pretrial Services Budget Forecasting
Intensive	Electronic Monitoring	30
High Risk	Standard Supervision	125
Moderate Risk		
Low Risk	Release on recognizance (ROR)	1000

In order to apply the caseload standards in an informative way, a distribution of risk level for Bernalillo County defendants must be established. For purposes of this analysis, a comparison to another jurisdiction using the COMPAS tool will have to suffice because the historical absence of the utilization of any objective and validated risk assessment tool by pretrial services in Bernalillo County renders the analysis of any accurate data impossible. The following is the risk level distribution in Broward County, according to the COMPAS tool:

Case Type	Level of Supervision	Broward County (COMPAS Tool)	Ohio State (Locally Developed)
Intensive	Electronic Monitoring	22%	17%
High Risk	Standard Supervision	59%	54%
Moderate Risk			
Low Risk	Release on recognizance (ROR)	19%	29%

A recent validation study of the locally developed pretrial services risk assessment tool for the State of Ohio has been included in the table above as a means of comparison. Although a study of the risk distribution in Bernalillo County would be preferable, as a means of forecasting the initial budget of a properly funded pretrial services program, the following risk level distribution will be utilized:

**ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT
PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH
TARGET SAFE REDUCTIONS IN JAIL POPULATIONS**

Case Type	Level of Supervision	Bernalillo County Risk Level Distribution (Speculated as comparable to Broward County)
Intensive	Electronic Monitoring	22%
High Risk	Standard Supervision	59%
Moderate Risk		
Low Risk	Release on recognizance (ROR)	19%

Creating an Accurate Budget for Felony Pretrial Services: Holding all other variables constant and true to standards of best practice, it is possible to solve for the budget of an efficient felony pretrial services program that both reduces the jail population and ensures public safety. The steps to establishing that budget consist of determining the number of individuals the pretrial services program will supervise of each risk level, determining the number of pretrial supervisors or specialists necessary to supervise those alleged felons assessed to belong to each level of risk, and then determining the amount of any auxiliary pretrial service administration (“overhead”) necessary to support the entire program.

The average daily population of the MDC, including those assigned to the Community Custody Program (CCP), tends to remain around 2600 inmates. The population is currently at 2745 inmates. The rated capacity of the facility is 2236. The MDC is considered “overcrowded” at its current 123% capacity population, although cyclical changes throughout the year will cause it to fluctuate. In order to eliminate the need for inmates to be housed in some cases three per cell when the facility was designed to house two inmates per cell, and in order to relieve many other problems resulting from the overcrowded conditions, the population at the MDC would need to be reduced to its rated capacity of 2236 inmates. In order to operate at this level of capacity, the MDC would have to safely reduce its current average daily population by 509 inmates.

If the Pretrial Services Division is expected to reduce the MDC population by 509 inmates, the principle of net widening avoidance should be examined. Utilizing release data provided by a data set statistically sampled by the University of New Mexico Institute for Social Research, and citing figures from population reports prepared by Dr. Nicol Moreland, P.H.D., the above table provides estimated sizes of two important estimated caseloads; alleged felons free on bond, and alleged felons free on pretrial release (denoted by both “Release on Agency” and “Third Party Release”).

Intuitively, the current estimated pretrial service caseload should continue to be supervised if the additional supervision capacity of 509 defendants would be expected to impact the MDC population. However, net widening avoidance dictates that those alleged felons currently free on bond (or at least the equivalent number of defendants) would also have to be supervised by pretrial services before any additional pretrial service clients would precipitate a reduction in the jail population. The reason for this phenomenon is that bail bonds and pretrial services compete

**ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT
PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH
TARGET SAFE REDUCTIONS IN JAIL POPULATIONS**

with each other for clientele without any scientific, objective, or otherwise validated method for differentiating the criteria for release on bond from release to pretrial services. The decision is entirely subjective.

Recognizing the additional pretrial service capacity and motivated by the superior public safety provided by pretrial services as compared to bail bondsmen, judges would predictably release fewer inmates on bond and more to pretrial services. Given the superior supervision provided by pretrial services, public safety outcomes in the community would be realized, but absolutely no impact on the jail population would occur until pretrial services replaced the use of commercial sureties as a means of releasing defendants into the community.

MDC Release Data, 2009					
Bookings Held	26,448		Bookings Held	26,448	
Of Bookings Held, % and # released on Bond	33.50%		Of Bookings Held, % and # released 3rd Party	6.30%	
	8,860			1,666	
% and # of Bond Releases (of held) in District Court	20%		% and # of 3rd Party Releases (of held) in District Court	30%	
	1772			500	
Felony Cases Released on:		Bond			ROA/Third Party
Annual Releases		1772			500
Average Case Length*		315			314
Annual Bed Days Saved		558,185			156,958
Average Case Load		1529			430
*excluding pending cases with current warrants					
Minimum Number of Alleged Felons Who Must be Supervised by Pretrial Services Before a Decrease in the Jail Population Can be Expected, Due to the Potential Net Widening Affect Inherent in Dealing with the Number of Felons Already Released on Bond					1959

Figure Attributed to Data from Dr. Nicol Moreland's MDC Population Analysis from 2009
 Figure Derived from New Mexico Institute for Social Research Sampling Releases from 2009
 Figure Derived from a Data Calculation

The table above demonstrates that pretrial services would have to replace the “service” currently provided to the courts by bail bondsmen for as many as 1529 alleged felons at any given time. Therefore, in addition to releasing 509 of the estimated 1098 pretrial felons currently in custody at the MDC (40% of the current 2745 in custody, consistent with the pie chart included at the beginning of this report), pretrial services would need to continue to supervise the estimated 430 alleged felons currently on its caseload AND an additional 1529 alleged felons belonging to the bail bonds “caseload.” The total required caseload of pretrial services necessary to reduce the MDC population to its rated capacity of 2236 inmates is 2468.

**ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT
PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH
TARGET SAFE REDUCTIONS IN JAIL POPULATIONS**

Anticipated Pretrial Services Caseloads Per Supervision Level, Using COMPAS					
Risk Levels	Level of Supervision	Anticipated Risk Level Distribution Using the COMPAS Tool	Minimum # of Alleged Felons Who Should be Supervised by Pretrial Services to Overcome Net Widening	Anticipated Pretrial Services Caseloads Per Supervision Level, Using COMPAS	Additional # to be Supervised by Pretrial Services In Order to Reduce MDC Population to Operational Capacity
Intensive	Electronic Monitoring	22%	1959	431	509
Moderate to High	Standard Supervision	59%		1156	
Low	Release on Recognizance	19%		372	
Totals	Totals	100%		1959	

The table above demonstrates the potential risk distribution of the 1959 defendants based on the aforementioned risk distribution experienced with COMPAS in Broward County, Florida. The 509 new defendants remain to be separated by risk level.

# of Supervisors Necessary to Manage Each Level of Risk					
Risk Levels	Levels of Supervision	Additional Pretrial Services Caseloads Per Supervision Level, Using COMPAS	Anticipated, Plus Additional Pretrial Services Risk Level Distributions With COMPAS, by Risk Level	⁴ Recommended Caseload Standards Utilized for 2nd NM District Court Pretrial Services Budget Forecasting	# of Supervisors Necessary to Manage Each Level of Risk
Intensive	Electronic Monitoring	112	543	30	18
Moderate to High	Standard Supervision	300	1456	125	12
Low	Release on Recognizance	97	469	1000	0
Totals	Totals	509	2468		30

⁴ Based on the Broward County Model

**ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT
PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH
TARGET SAFE REDUCTIONS IN JAIL POPULATIONS**

The table above demonstrates the separation of the 509 new defendants into risk levels consistent with the same risk distribution utilized in the previous table. The combination of the two groups yields the risk distribution in bold. Utilizing the aforementioned caseload standards established for Bernalillo County, a total of 30 pretrial supervisors would be needed in order to supervise the 2468 defendants.

The following table applies the 30 needed pretrial supervisors to a budget based on the Broward County Pretrial Services model. Electronic monitoring, investigator, and management costs are derived from the Broward County Pretrial line items in proportion to the pretrial supervisor cost. The resulting cost of annual pretrial services program that supervises all three risk levels is \$5,074,368.

Cost Analysis of Funding Pretrial Services Sufficiently to Reduce the MDC Population to Operational Capacity, Supervising All Risk Levels	
Current Cost of Supervisor Salary and Benefits	\$ 62,000.00
# of Supervisors Necessary to Manage All Risk Levels	30
Total Supervisor Salaries and Benefits	\$ 1,873,651.21
Salaries and Benefits for Management/Support	\$ 544,033.45
Salaries and Benefits for Interviews/Investigations	\$ 936,825.60
Electronic Monitoring	\$ 1,719,857.41
Total Cost for Pretrial Services of All Risk Levels, Reducing the Jail Population to Operational Capacity	\$ 5,074,367.68

The Community Custody Program presents both an obstacle and an opportunity to expand pretrial services. Rarely are misdemeanants, either pretrial or sentenced, permitted to participate in CCP. CCP therefore depends large in part on those charged with or convicted of felonies. The obstacle CCP presents to pretrial services ties back to the net widening avoidance principle. Specifically, if Pretrial Services is to henceforth consider every pretrial felon for participation in the program, which pretrial felons would CCP supervise? Hopefully the answer to that question is “none” since doing so would either be indicative of net widening by supervising a defendant who would have otherwise been supervised by pretrial services, or it would infringe on public

**ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT
PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH
TARGET SAFE REDUCTIONS IN JAIL POPULATIONS**

safety by supervising someone who would have otherwise not qualified for pretrial services upon a risk assessment.

CCP presents an opportunity for funding the expansion of the pretrial services program since its continued existence would only threaten pretrial services or public safety. The annual budget for CCP is about \$1.7 million, but the rising costs of supervising high risk defendants is placing CCP on track to spend closer to \$3.2 million. Even \$3.2 million in savings will not justify \$5.07 million in pretrial services, so a modification to the budget for pretrial services must be made. The most palatable change to the program, both from a cost and public relations perspective, is to accept 543 fewer “intensive” risk and 543 more “moderate to high” risk defendants into the program. The following table demonstrates the change:

# of Supervisors Necessary to Manage All Except the "Intensive" Risk Level						
Risk Levels	Level of Supervision	Additional Pretrial Services Caseloads Per Supervision Level, Using COMPAS	Anticipated, Plus Additional Pretrial Services Risk Level Distributions With COMPAS, by Risk Level	Anticipated, Plus Additional Pretrial Services Risk Level Distributions With COMPAS, Excluding the Intensive Risk Level	Recommend ed Caseload Standards Utilized for 2nd NM District Court Pretrial Services Budget Forecasting	# of Supervisors Necessary to Manage Each Level of Risk
Intensive	Electronic Monitoring	112	543	0	30	0
Moderate to High	Standard Supervision	300	1456	1999	125	16
Low	Release on Recognizance	97	469	469	1000	0
Totals	Totals	509	2468	2468		16

A policy of only accepting low (ROR) and moderate-to-high defendants into the felony pretrial services program, and concurrently not releasing ANY defendants charged with a felony on financial bond, would reduce the jail population to rated capacity while ensuring that all “intensive” level defendants remained in custody. In addition, the elimination of a need for expensive intensive supervision resources would achieve all desired objectives using the CCP funding stream. The following table demonstrates the effective use of risk level limits and funding reallocation to reduce the jail population without negatively impacting public safety:

**ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT
PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH
TARGET SAFE REDUCTIONS IN JAIL POPULATIONS**

Cost Analysis of Funding Pretrial Services Sufficiently to Reduce the MDC Population to Operational Capacity, Supervising All Except the "Intensive" Risk Level	
Current Cost of Supervisor Salary and Benefits	\$ 62,000.00
# of Supervisors Necessary to Manage All Risk Levels	16
Total Supervisor Salaries and Benefits	\$ 1,020,779.21
Salaries and Benefits for Management/Support	\$ 296,393.50
Salaries and Benefits for Interviews/Investigations	\$ 936,825.60
Electronic Monitoring	\$ -
Total Cost for Pretrial Services of All Risk Levels, Reducing the Jail Population to Operational Capacity	\$ 2,253,998.31

In short, without spending any additional funding, the jail can reduce the population to rated capacity using evidence-based practices. The following is a demonstration of the cost comparison between the different methods of managing the inmate population:

Cost Per Day/Per Defendant in MDC	
Approximate Cost Per Day/Per Inmate	\$ 80.00
Cost Per Day/Per Defendant in CCP	
Annual Program Cost	\$ 3,222,482.00
Average Daily Population	215
Daily Program Cost	\$ 8,828.72
Cost Per Day/Per Inmate	\$ 41.06

Cost Per Day/Per Defendant in Proposed Pretrial Services Program (Supervising ALL Risk Levels)	
Annual Program Cost	\$ 5,074,367.68
Average Daily Population	2468
Daily Program Cost	\$ 13,902.38
Cost Per Day/Per Defendant	\$ 5.63

**ADEQUATELY BUDGETING FOR THE 2ND NEW MEXICO JUDICIAL DISTRICT
PRETRIAL SERVICES DIVISION, USING EVIDENCE-BASED PRACTICES WHICH
TARGET SAFE REDUCTIONS IN JAIL POPULATIONS**

Cost Per Day/Per Defendant in Proposed Pretrial Services Program (Supervising Only Low and Moderate to High Risk Levels)	
Annual Program Cost	\$ 2,253,998.31
Average Daily Population	2468
Daily Program Cost	\$ 6,175.34
Cost Per Day/Per Defendant	\$ 2.50

Alternative Strategies Which Do Not Adhere to Evidence-Based Practices: Some have speculated that moving a similar number of inmates into residential treatment and thereby funding such a move through the closing of a unit at the MDC, combined with the resources dedicated to the Community Custody Program, would accomplish such a goal. However, closing down an entire unit would not ease overcrowding. Closing down an entire unit at the MDC would inevitably obligate the MDC to change its official rated capacity without the ability to place any of the remaining inmates in that unit. The new rated capacity for the 28 remaining pods would be 1739. The MDC would ironically become more overcrowded.

To illustrate this increase in inmate density at the MDC, take for example its current headcount. Echo unit currently houses 577 inmates. CCP manages 211 inmates in the community. The total number of inmates, “under roof”, at the MDC is 2534. The rated capacity is currently 2236 inmates, placing the MDC at 113% of its rated capacity. By moving the equivalent of all inmates currently housed in Echo unit to residential treatment, and by shutting down Echo unit in order to fund such a venture, the new total “under roof” MDC population (without the ability to utilize CCP) would be 2168. Based on the new rated capacity of 1739, the MDC would then be operating at 125% of its rated capacity, which is more crowded than its previous 113% of rated capacity.

In addition to the increased crowding conditions, without specific net-widening avoidance strategies the potential for offenders being ordered to the residential treatment facility who might have otherwise been placed on probation would “widen the net” of the criminal justice system. Absent net-widening avoidance strategies, offenders who might not otherwise have been placed in secure custody would be ordered into residential treatment. These offenders would occupy the limited residential treatment capacity, thereby limiting ability of the Courts to place in residential treatment those who might otherwise have been placed in secure custody.

Without the ability to reopen the closed unit funding the residential treatment facility, the overcrowded conditions at the MDC would compound without the ability to relieve crowding with the residential treatment facility which would be treating the lower risk offenders who would otherwise have been sentenced to probation, community service, etc. Since the closed unit would have to be reopened to avoid building additional capacity, taxpayers would absorb the rise in criminal justice costs without the benefit of a reduction in population.