INSTITUTE FOR SOCIAL RESEARCH

New Mexico Statistical Analysis Center

Bail Reform

Baseline Measures

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October 2019

This project was supported by Grant # 2017-BJ-CX-K018 from the State Justice Statistics program. The State Justice Statistics program is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

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Acknowledgements

We would like to thank the Chaves, Doña Ana, Luna, and Santa Fe County detention centers for their willingness to provide these data to us and for their participation in this project. We would also like to thank the New Mexico Department of Public Safety and Administrative Office of the Courts for allowing us to use their data for this project, as well as the Sentencing Commission (NMSC) who provided those data directly to us. Finally, we would like to thank the Bureau of Justice Statistics for providing the funding for this study through their State Justice Statistics Program.

Introduction

In 2016, the voters of New Mexico passed a constitutional amendment to reform bail practices in the state. The intention of the amendment was to ensure that the courts do not detain individuals solely because they cannot post bond, while ensuring the detention of those who pose a danger to the community or are a flight risk. The court may impose conditions of release to limit and monitor the defendant's behavior while awaiting trial. These conditions should be the least restrictive possible while ensuring public safety and appearance at court.

Why Bail Reform?

Bail reform has been an important conversation both nationally and within New Mexico. Studies (e.g. Steelman et al., 2009) conducted in New Mexico indicated that judges set high bonds to keep dangerous individuals detained. Although a common practice, the New Mexico Supreme Court ruled the practice unconstitutional in an appeal brought in *New Mexico v. Brown*. The Court found the defendant in the case successfully argued that bail was unnecessary to ensure his appearance in court and protect the safety of the community, and that he was an appropriate candidate for supervised pretrial release. Further, the Court found that the bail required in the case was based only on the nature and seriousness of the offense and was excessive, contrary to the state's requirement that bail not be based exclusively on the specific crime. This case spurred lawmakers to propose legislation to amend the New Mexico Constitution, which was passed by voters in 2016. The amendment expands the conditions under which an individual can be denied bail, without any time limitations. Specifically, anyone is subject to the denial of bail if accused of a felony and the prosecuting attorney can prove the person is a danger to the community. The amendment also indicates that individuals who pose a flight risk may be detained without bail. It requires, however, that individuals who do not meet these criteria (dangerousness or flight risk) cannot be detained solely because they cannot post bond.

Need for Study of Bail Reform

Implementing criminal justice reforms of any type comes with many challenges. These challenges can emerge over the course of implementation and can impact not only those who are involved with the criminal justice system, but community members as well.

New Mexico has already faced numerous challenges in its endeavor to implement bail reform. For example, there was no planning period built in to prepare for the implementation of the amendment. The amendment passed in November 2016; the New Mexico Supreme Court then developed rules guiding bail reform, publishing them in July 2017, eight months after the amendment passed. Thus, in the initial months, courts throughout the state were operating without formal guidelines, leading to inconsistent implementation. Further, the New Mexico Supreme Court justices have continued to modify the rules as challenges have emerged and clarification is required. Initially, there were challenges to the rules. The Bail Bond Association of New Mexico in conjunction with five state lawmakers filed a lawsuit claiming the New Mexico Supreme Court modified the rules without legislative approval; a federal judge denied the action, and the 10th Circuit of Appeals upheld that decision. Other stakeholders have also raised practical concerns. Since this is an unfunded mandate, there have been concerns raised that there are not enough resources to implement the rules. Some argue that the amendment puts a greater burden on those working in the criminal justice system, such as prosecutors and pretrial services. Furthermore, government officials and community members have expressed concerns for public safety, especially after several high profile cases resulted in the pretrial release of the accused.

The new rules require prosecutors to decide whether to request that a defendant be detained soon after arrest. According to Rule 5-401, conditions of release must be set within three days after the date of arrest if the defendant is in custody, within five days after the date of arrest if the defendant is not in custody, or before arraignment. Prosecutors must file a motion for pretrial detention, as set forth in Rule 5-409. Although the prosecutor can file this motion at any time, prosecutors are under pressure to make a quick decision about detention early in the case. They must quickly weigh the consequences of releasing a defendant who may be dangerous or a flight risk against the possibility of taking freedom away from someone who does not meet these criteria, and in fact, given the constitutional presumption of innocence, may not be guilty. If prosecutors choose to file a motion, the courts then hold a pretrial detention hearing. This occurs within five days of the filing or within five days of the date the person is arrested due to the motion. While the prosecutor or defense attorney can appeal the decision, in order to be successful they must show that the circumstances have substantially changed. One way that defendants may be detained after initial release is if they violate the conditions of release. After hearing the evidence about the violation, the judge may order detention at that point per Rule 5-403.

Bail reform in New Mexico intends to detain those who are a danger to the community or pose a flight risk pretrial to ensure that they appear at their court date as well as to ensure the safety of the community. Prior to reform, those who could not pay the bail or bond ordered were held in jail during the pretrial period, but those who could afford bail or bond might be released regardless of whether they were a threat to the community. These reform measures seek to detain only those deemed dangerous or at risk of fleeing, rather than those who do not have the financial means to secure their release. These decisions are made early on in the case. Considering the desired effects of bail reform in New Mexico, it is important to study its impact on the state and whether, despite the challenges, these new measures are working towards keeping the community safe while not infringing upon the rights of the defendants.

Current Study

The current study is the first phase of a multi-year project examining the impact of New Mexico's constitutional amendment on bail. In this phase, we construct and report baseline performance measures to assess pre-amendment practices. In subsequent years, we will focus on the implementation of the new constitutional amendment, including identifying implementation facilitators and challenges. The final phase will assess outcomes, measuring change after the amendment is implemented. Besides constructing the baseline measures, the current study develops the methodology to be used for subsequent phases. We will continue to gather data to assess change during the transition period.

The current project explores the following research questions and associated performance measures:

1. How are defendants currently released from jail? (Release decisions)
   - Number and proportion of individuals released from jail by release type category (their own recognizance, unsecured bond, secured bond, etc.) (Release type rate)
   - What is the average amount of bail ordered by bond type (cash/surety, unsecured, detained with bond)?
   - What proportion of defendants ordered to post bond do so?
2. What factors are associated with release types and amount of bond ordered?
   - Does this vary by jurisdiction?
3. What are the rates and lengths of pretrial detention? (Pretrial detention rate; pretrial length of stay)
   - How do these vary by bond type, bond amount, and other factors? (Use of bond as a tool for

detention)

4. Among those released pretrial, what are the failure rates? (Pretrial failure rates)
   - Number and proportion of individuals released pretrial who fail to appear (FTA rate)
   - Number and proportion of individuals released pretrial who have a new offense and new violent offense (Community safety rate)
   - Number and proportion of individuals released pretrial who have a failure to comply (FTC rate)
5. What factors are associated with pretrial failure?

Throughout this report, we use the terms “bail” and “bond” interchangeably. There are, however, important differences between the two. Bail refers to the amount of money the judge orders a defendant to pay in order to secure their release from jail; this is the full amount ordered. Bond, on the other hand, indicates that a third party has posted money on behalf of the defendant to secure their release, often by a bail bond company. The defendant typically pays some percentage of the bond to the bondsman. Despite these differences, these terms generally refer to the amount of money the judge orders the defendant to pay for release to ensure the person will return to court. Therefore, we use the terms interchangeably as a matter of convenience.

Methods

Sample

The sample includes individuals booked into one of four New Mexico county detention centers for a new felony offense between January 1, 2015 and December 31, 2016. We exclude inmates who were booked in order to serve a sentence for a previous charge; detained on federal charges or a tribal warrant; slated for extradition to another county or state; held for another jurisdiction; or detained for a probation/parole violation only. Since some individuals may be booked on a new charge more than once during the project period, we limited this analysis to their first offense.

The facilities included in this phase of the study are the detention centers in Doña Ana, Santa Fe, Chaves, and Luna Counties. Doña Ana and Santa Fe hold the third and fourth highest number of detainees in the state. Furthermore, Doña Ana, Santa Fe, and Chaves Counties are home to three of the five most populous cities in New Mexico (Las Cruces, Santa Fe, and Roswell, respectively). Luna County, along with Doña Ana County, is located on the southern border of New Mexico. Luna is a relatively small facility, located in a rural area. Thus, the county facilities included here include a mix of rural and urban areas. The counties included here represent four of the 13 judicial districts in New Mexico.

We followed arrestees through May 6, 2019 to measure short-term outcomes. This time frame should provide a long enough follow-up period to capture the dispositions of the majority of individuals booked in 2015 and 2016.

Data Sources

We utilized several data sources for this project. First, we received automated detention center data from each of the participating counties. Data elements included dates of booking and release, statute violations, demographic information, personal identifiers, a reason for booking, the arresting agency’s Originating Agency Identification(ORI) number and description, reason for detention (e.g., held without bail), method of release (e.g., bail or with release conditions), and the amount of bail ordered.

In addition to the detention center data, we used data from two other sources. The New Mexico

Department of Public Safety (DPS) maintains a central repository of criminal history data for the state. The New Mexico Statistical Analysis Center (NMSAC) receives quarterly statewide arrest data; this data also serves to populate an individual's state criminal history record. These data include all hardcopy and electronically submitted fingerprint impressions in New Mexico. Each entry represents a custody change: arrest or incarceration, with one line of data for each offense type associated with a given arrest or incarceration. The data we currently receive from DPS includes the following elements: name, date of birth, last four digits of social security number, race, sex, offense type, arresting agency, and date of arrest. These data were joined to the detention center data using personal identifiers (name, date of birth, and last four digits of the social security number), as well as other appropriate data elements, such as the date of arrest and date of booking. We currently have data from January 2000 to the current quarter.

Finally, we included automated data from the Administrative Office of the Courts (AOC). Each line of data includes offender information (name, date of birth, social security number), offense type (all charges for which prosecution against an individual is being sought), court case number, state tracking number, date of case filing, date of disposition, and disposition of each charge. We also received, upon request, information regarding conditions such as the amount of bond required at the initial hearing, changes in the amount of bond ordered, and information about failures during the pretrial period. We joined these data using personal identifiers (name, date of birth, and last four digits of the social security number) and other appropriate data elements such as the booking date and county in which the arrest occurred. Although felony offenses are the primary focus of this study, we merged the bookings for new offenses, regardless of offense degree. For this study, however, we limited analyses to bookings involving felonies to ensure data accuracy and inform data processing for future years.

Variables

Using information provided in these datasets, we constructed the variables needed to answer our research questions. First, we determined the *bail/bond amount* from the booking data and the automated AOC data. In some instances, the bail/bond amounts changed throughout their cases. We chose the amount at release, and used this amount for the analyses.

Second, we created a variable capturing *release type*. This has seven outcomes, including: release on recognizance (ROR) or no bond ordered, released on unsecured/appearance bond, released with secured bond (includes both cash and surety bonds), dismissed same day, not released with bond ordered (detained entire pretrial period with an unpaid bond ordered), not released with no bond ordered, and other. There were few cases that fell into the "other" category. "Other" consists of individuals released to a treatment facility, furloughed, or sent to other authorities. Importantly, when constructing release type, we considered whether the person was detained during the entire pretrial period. Generally, if the individual remained in jail the entire pretrial period, we classified the release type as detained with bond or detained without bond. We also collapsed these outcomes into a dichotomous variable measuring whether the individual was *released or not* during the pretrial period. Note that in some cases, the determination of whether someone was released pretrial was not straightforward. For example, in a handful of cases, the judge dismissed the case the same day as arrest. Although technically "detained" pretrial, we grouped these with "ROR or no bond required" for most analyses as bond was not required for released.

As alluded to above, we constructed a variable indicating *pretrial detention*. This is a nominal variable with three outcomes: not detained, detained some period of time, and detained during the entire pretrial period. The measure used three dates to determine pretrial detention amount: date of booking, date of release, and the date of adjudication. Additionally, we measured the *length of pretrial detention*. We

calculated the number of days between the date of booking and the date of release from the detention center or date of adjudication (whichever came first). In a few cases, the case had not yet been disposed by the end of the study period. In those cases, we used 3/1/19 as the end date.

One complication in determining the length of pretrial detention is that the person may return to the detention center after their initial release. For this study, we consider only the initial detention period. This means that for those released and later rebooked for a failure to appear or other violation, we do not capture their full pretrial detention period.

We tracked *pretrial failure* using data from the AOC and DPS. Using both sources, we gathered information regarding *failure to appear* (FTA) and *failure to comply* (FTC) among individuals released pretrial. Importantly, defendants often have multiple cases occurring simultaneously. Since we used both sources, these rates are likely higher than one would find if using only AOC or if only considering FTAs and FTCs for a given court case. Another measure of pretrial failure is new offending. Using DPS data, we identified *new offenses* that occurred during the pretrial period.[1] Besides new offenses in general, we created a variable that indicated whether the new offense was *violent* (e.g., homicide, rape, robbery, assault). Since we rely on both AOC and DPS data, we may overestimate the pretrial failure rate for specific cases, but not for the pretrial period overall since the data are consistent with real behaviors occurring between the booking date and end date.

We expected that a number of legal and extralegal variables would be related to release type, bail decisions, pretrial detention, and pretrial failure. These include demographics, current offense, and county of jurisdiction. Demographics consisted of *age* at arrest, *sex*, and *race/ethnicity*. These variables were available in all three datasets. We used the detention center database as the primary database to garner these data, and used the other datasets in case the variables were missing from the detention center. Importantly, race/ethnicity may or may not be self-identified and may instead be perceived race/ethnicity depending on the standard procedures used by each agency.

We garnered *current offense* from the AOC data. "Current offense" reflects the most serious offense with which the individual was charged in the court case. We defined the most serious offense using the Uniform Crime Reporting (UCR) hierarchy of offenses. This prioritizes violent offenses first, then property, drug, DWI, and all other offenses. For example, if a case involved multiple offenses, such as a property, violent, and drug offense, then the case was coded as violent.

This study also takes into account prior criminal history, using DPS arrest data (prior arrests) and AOC data (prior convictions). Consistent with pretrial risk assessment tools, we constructed *prior failure to appear* and *prior conviction for a violent offense* as measures of criminal history. Finally, given that there may be some jurisdictional differences, we identified the *county* in which the case was booked and tried.

Analysis of Data

Analyses of the data include univariate, bivariate, and multivariate statistics. First, we utilized descriptive statistics to assess the performance measures (release type, average bail amounts, pretrial detention rates, and failure rates) and describe the sample. Bivariate analyses assess the relationship between these key outcomes and legal and extralegal variables. When reporting results, we often use several statistical terms: mean, median, outlier, standard deviation, and statistically significant. The mean indicates the arithmetic average of all cases included for that variable, and may be referred to in the

[1] New offenses include violent, drug, property, DWI, and other offenses but excludes arrests involving non-DWI related traffic offenses only.

report as the mean, average, or arithmetic average. The median indicates the mid-point of all cases when values for the variable are listed from smallest to largest. In other words, the median indicates the point at which the values of half the cases are less and half are more. An outlier is a case that has a value that is much smaller or greater than the others. This is important to note because outliers can increase or decrease the value of the mean in a way that may not be representative of all cases. However, outliers do not affect the median. Standard deviation is used to discuss the average distance from the mean; a smaller standard deviation indicates that values tend to be close to the mean. Finally, all measures of significance are reported using p-values. The lower the p-value, the more confident one can be that the observed difference is not due to chance. We use the common threshold of .05 and consider anything at or below that level to be statistically significant. Statistically significant findings are noted both in the text and in or below tables and figures.

In addition, we conducted multivariate tests of release type, length of detention, and failure to appear. These models included the following factors: demographics, current offense, prior criminal history, and county. We used several statistical models: logistic regression, multinomial logistic regression, and negative binomial regression. A logistic regression is conducted when the dependent variable has two possible outcomes (e.g. failing to appear or not), and it measures the association of one or more independent variables with the outcome of the dependent variable. The results produce an odds-ratio coefficient for each independent variable. This coefficient can be interpreted as the multiplicative change in the odds of an event occurring. For example, for the relationship between offense type and failure to appear, the reference category may be “other” offenses. If the odds-ratio for defendants booked for violent offenses is .481, this means that defendants booked on violent offenses are about 52% less likely than those booked on “other” offenses to have a failure to appear. In other words, violent offenders have .481 times the odds of “other” offenders of failing to appear. Odds ratios greater than one indicate that the odds of the outcome occurring are more likely, while those less than one indicate the odds of the outcome occurring are less likely when comparing one category of the variable to the reference category.

We used a multinomial logistic regression analysis when the dependent variable was categorical and had three or more possible values. Like regular logistic regression, multinomial logistic regression provides the relative risk (odds ratio) of an event occurring for each independent variable. However, there is also a reference category for the dependent variable. For example, consider a multinomial logistic regression predicting release type. Release type has several possible outcomes (e.g., release on own recognizance, released with unsecured bond, not released). The reference category may be “not released/detained” and gender is one of the independent variables. Male is the reference value for the independent variable. If the odds-ratio for females being released on their own recognizance is 2.306, this means that women are about 130% more likely to be released on their own recognizance than to be detained than males. In other words, females have 2.306 times the odds of males of being released on their own recognizance than to be detained.

Negative binomial regression is appropriate when the dependent variable is an observed count (i.e., the number of days detained). We chose this model rather than a standard multiple regression because the data were over dispersed. In other words, the distribution of the dependent variable did not follow a normal bell curve. Like logistic regressions, the values of each independent variable are compared to a reference value. The coefficient produced is the expected log count rather than an odds-ratio. The coefficients indicate increases or decreases in the expected log count. Values can be negative or positive. For example, consider a model with the dependent variable as days of detention and the independent variable is gender, with males as the reference category relative to females. If the coefficient is negative, females would have a decreased expected log count, or are expected to have a shorter

length of detention than males.

Results

This report separates the results into three primary sections. It begins by describing release decisions, focusing on release type and bond amounts. The intention of this section is to understand the release decisions judges make, including whether or not bond is ordered, and if so, how much. We also explore whether legal and extralegal characteristics play a role in release type. This section addresses research questions 1 and 2. The second section explores pretrial detention rates and associated length of detention, addressing research question 3. The final section examines pretrial failure rates and the factors associated with pretrial failure, research questions 4 and 5.

Release Decisions

Among the 4,275 individuals booked on a felony offense in our sample, 3,709 (87%) were released from jail prior to disposition. Judges ordered a cash-only or secured bond for the majority (52%) of those released, while approximately a quarter of the sample were released on unsecured bonds. In just under 9% of the cases, judges released defendants on their own recognizance. A handful of individuals were booked, and the case was immediately dismissed (0.2%) or released by some other means (0.1%), such as transfer to a hospital. Of the 566 individuals not released, the majority had a cash bail or bond ordered, but did not post it. Just eight individuals were detained without bail or bond. Table 1 summarizes the results.

Table 1. Release Types

Release Types			
Release	**Type**	**N**	**%**
Released pretrial	Released on own recognizance	381	8.9%
	Unsecured appearance bond	1,085	25.4%
	Secured bond or cash bail	2,228	52.1%
	Dismissed same day	9	0.2%
	Other	6	0.1%
Detained pretrial	No bail/bond ordered	8	0.2%
	Bail/bond ordered	558	13.1%
Total N		4,275	100%

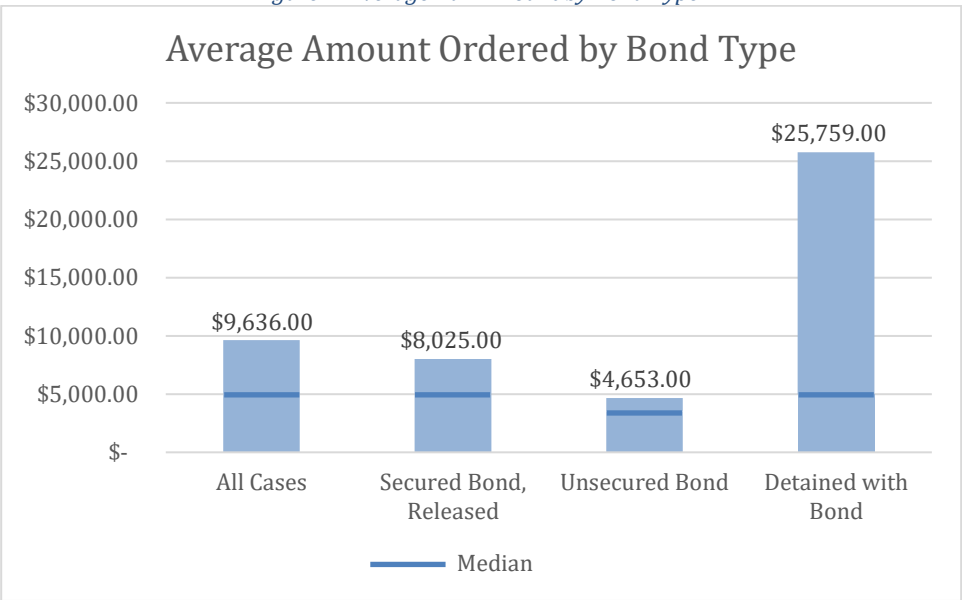
We examined the amount of bond ordered overall and by bond and release type (unsecured, secured, and not released with bail/bond) (see Figure 1). Some release types are excluded here (such as ROR), since no bond amount was required at release. Unsecured appearance bonds are included because they have associated bond amounts. However, release is not contingent upon whether defendants pay the bond amount. Rather, defendants are released with the agreement that if they fail to appear before the court they will have to pay the bond amount.

The average amount of bond ordered across all cases was $9,636. Furthermore, of the 2,786 cases with associated bond amounts (excluding unsecured appearance bonds), 2,228 posted bond. This means that about 80% of defendants ordered to post bond did so. There were marked differences between the average amount of bond ordered by bond and release types, and these differences were statistically significant. Those who were detained with bond had, on average, the highest amount of bonds ordered ($25,759) which was much higher than the overall average ($9,636). Those released on secured bonds had a lower average ($8,025) than cases overall, but this was almost twice that of those who were

released on unsecured bonds ($4,653).

In addition to examining the average amount of bond by bond and release type, we also explored the range and median. These results are available in Appendix A1. The median for all bond types was $5,000, with the exception of unsecured bonds ($3,500). Therefore, those detained with bond had a much higher average amount of bond, but the same median amount as those released with a bond. This indicates that some individuals had especially high bond amounts, which influenced the overall average.

Figure 1. Average Bail Amount by Bond Type



p<.001

Release and Bond by Demographics

While all those booked were more likely to be released than detained, females were significantly more likely to be released than males. Detention rates among females were approximately 9% whereas the proportion of males detained was close to 15%. When released, judges tended to release females on their own recognizance or on an unsecured bond more often than males, while males were more commonly released on a secured bond.

Detention rates among individuals identified as non-white and non-Hispanic were higher (17%) than white, non-Hispanic (14%) and Hispanic (13%) individuals. However, when released, judges ordered non-white, non-Hispanic individuals to pay a secured bond less often than either Hispanic or white individuals. Rates of release on own recognizance (ROR) were similar for non-white, non-Hispanic and white, non-Hispanic individuals, while Hispanic individuals had the lowest rate of RORs. These differences were statistically significant.

In regards to release type by average age, the differences were minimal and not statistically significant. These results are reported in Table 2 below.

Table 2. Release by Demographics

Release Type	Sex***		Race***			Age
	Male	Female	White - Hispanic	White - non-Hispanic	Not White or Hispanic	Average age (sd)
ROR	8.0%	12.3%	7.8%	10.7%	10.3%	32.06 (10.67)
Unsecured Bond	24.1%	29.5%	26.0%	23.5%	31.9%	33.51 (11.54)
Secured Bond	53.2%	49.3%	53.6%	52.1%	41.0%	33.60 (10.93)
Not Released	14.7%	8.8%	12.6%	13.6%	16.8%	33.08 (11.27)
Total N	3,202	1,063	2,363	1,630	273	33.37 (11.11)

***p<.001

In Table 3, we examined whether these demographics were associated with the amount of bond ordered. We found that the average amount of bond ordered varied significantly by sex, but not age or race/ethnicity. On average, females had significantly lower average bond amounts than males ($5,481 vs. $10,946, respectively). The maximum bond amount for females ($100,000) was also notably lower than that of males ($1,000,000). Note also that the median amounts, though, were identical.

Defendants identified as white, non-Hispanic had the highest average bond amount ($10,819), while Hispanic defendants had the lowest ($8,841). Regardless, the median bond amount for all groups was $5,000. Like the results for sex, this suggests that outliers (those with high bond amounts ordered) influence the average amounts, but unlike sex, these differences were not significant. Those who were age 55 or older at the time of booking had the highest average bond amounts ($11,892) relative to the other age categories, but the differences by age were not statistically significant.

Table 3. Bond Amount by Demographics

Average Bond Amount by Demographics						
		Mean (sd)	Median	Minimum	Maximum	N
Age	18-24	$8,507 ($45,663)	$5,000	$200	$1,000,000	492
	25-34	$9,779 ($42.669)	$5,000	$100	$1,000,000	1,563
	35-44	$9,877 ($38,115)	$5,000	$250	$1,000,000	964
	45-54	$8,305 ($16,082)	$5,000	$200	$250,000	520
	55+	$11,892 ($42,219)	$5,000	$100	$500,000	331
Race	Hispanic	$8,841 ($30,532)	$5,000	$100	$1,000,000	2,174
	White, non-Hispanic	$10,819 ($50,374)	$5,000	$100	$1,000,000	1,452
	Not White or Hispanic	$9,677 ($33,946)	$5,000	$500	$500,000	245
Sex* **	Female	$5,481 ($7,439)	$5,000	$500	$100,000	931
	Male	$10,946 ($44,886)	$5,000	$100	$1,000,000	2,939

Release and Bond by County

As demonstrated in Table 4, we examined release type by county. Santa Fe County had the lowest rate of individuals released on their own recognizance but a much higher rate of unsecured appearance bonds than the other three counties. On the other hand, Doña Ana County had the highest rate of individuals released on their own recognizance at approximately 17%, with Chavez County following at about 10%. In addition, Chaves and Doña Ana County had virtually identical rates of secured bond releases at about 57%, which was significantly higher than either Luna (42%) or Santa Fe County (46%). Nearly one-third of defendants in Luna County were detained (either with or without bond); this rate was much higher than that in the other counties.

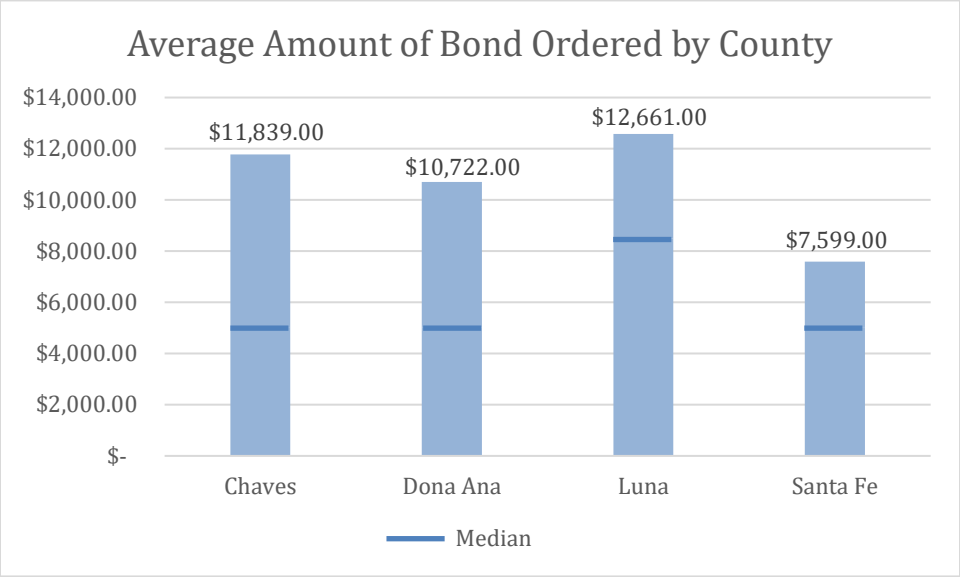
Table 4. Release Type by County

Release Type	County***				
	Chaves	Doña Ana	Luna	Santa Fe	N
ROR	9.9% (n=81)	17.3% (n=269)	7.3% (n=12)	1.4% (n=25)	9.1% (n=387)
Unsecured Bond	15.0% (n=123)	12.5% (n=195)	20.7% (n=34)	42.4% (n=733)	25.4% (n=1,085)
Secured Bond	57.0% (n=467)	57.3% (n=891)	42.1% (n=69)	46.3% (n=801)	52.2% (n=2,228)
Not Released	18.1% (n=148)	12.8% (n=199)	29.9% (n=49)	9.8% (n=170)	13.3% (n=566)
Total N	100% (n=819)	100% (n=1,554)	100% (n=164)	100% (n=1,729)	100% (n=4,266)

***p<.001

The average bond amounts varied by county, which is demonstrated below in Figure 2. On average, the bond amounts in Santa Fe County ($7,599) were significantly lower than in the other counties in the sample. Luna County had the highest bond amounts ($12,661), which, although not significantly higher than Chaves ($11,839) or Doña Ana ($10,722), was significantly higher than Santa Fe County. Interestingly, Luna also had the highest median ($8,500), the smallest standard deviation ($8,951), and the lowest maximum ($47,500) (see Appendix A2 for details). This implies that their higher average bond amount was not due to outliers, but rather indicates a pattern of higher, more evenly distributed bonds. Likely, the higher bond amounts contribute to the higher than average rate of detention revealed above.

Figure 2. Bond Amount by County



p<.05

Release and Bond by Current Offense

There was a statistically significant relationship between release type and the most serious offense, as evidenced in Table 5. Judges more frequently ordered a bond for those who had a violent offense or DWI. Judges ordered approximately 73% of those with a violent offense to pay a bond that either they paid (59%) or did not pay (15%); judges ordered approximately 72% of those with a DWI to pay a bond. Those with a violent offense were also more likely to be detained the entire pretrial period. Judges ordered an unsecured property bond more frequently in cases involving property crimes (34%) or "other" offenses (37%) than those whose most serious current offense was a violent crime (20%), drug (24%) or DWI (21%) Release on personal recognizance was the least common release type among those released, but was especially less frequent for those with a violent or DWI offense (approximately 6% each).

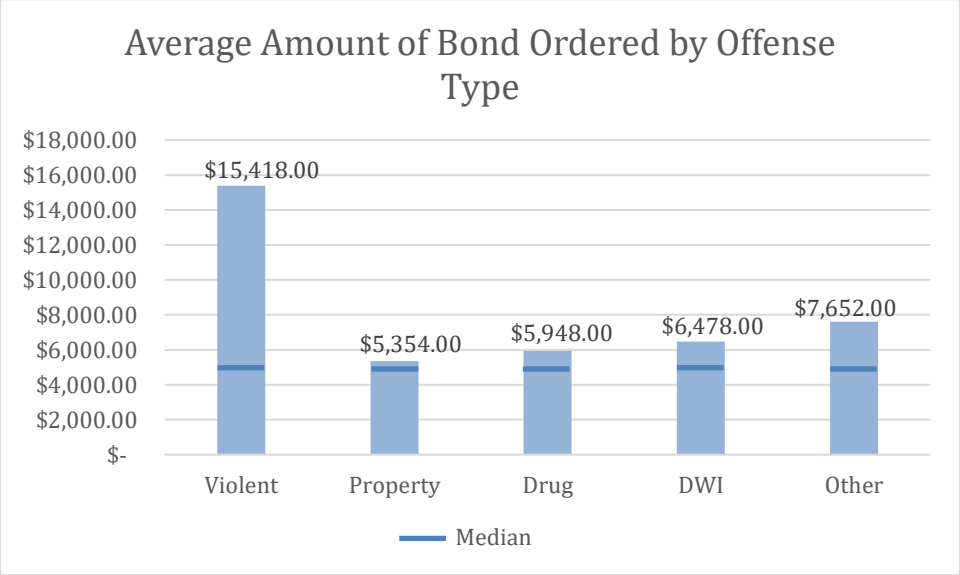
Table 5. Release Type by Current Offense

Release Type	Current Offense***					
	Violent	Property	Drug	DWI	Other	Total
ROR	6.2% (n=102)	10.1% (n=105)	12.0% (n=142)	6.0% (n=9)	11.9% (n=24)	9.1% (n=382)
Unsecured Bond	20.0% (n=328)	33.7% (n=349)	23.9% (n=282)	21.5% (n=32)	36.6% (n=74)	25.3% (n=1065)
Secured Bond	59.1% (n=971)	43.1% (n=447)	52.1% (n=615)	62.4% (n=93)	43.1% (n=87)	52.6% (n=2213)
Not Released	14.7% (n=241)	13.0% (n=135)	11.9% (n=141)	10.1% (n=15)	8.4% (n=17)	13.0% (n=549)
Total N	100% (n=1642)	100% (n=1036)	100% (n=1180)	100% (n=149)	100% (n=202)	100% (n=4209)

***p<.001

Bearing in mind the factors that are typically considered when ordering bail/bond, such as the nature of the crime, flight risk, and/or the safety of the community, it is perhaps no surprise that offense type was statistically significant in determining bond amount (see Figure 3). Judges ordered the highest average bond amount for incidents involving violent offenses ($15,418), nearly double the next highest category of "other" ($7,652). Interestingly, the median bond amount for all offense types was again $5,000 (see Appendix A3), implying the high average for violent offenses was due to a few high-amount outliers. Defendants with property offenses had the lowest average bond amount ($5,354), which was the closest to the median, and had one of the lowest maximum amounts. It would therefore appear that the relatively low average provides an accurate portrayal of bond amounts for property offenders.

Figure 3. Bond Amount by Offense Type



p<.001

Legal and Extralegal Factors Associated with Release Type: Multivariate Analyses

Table 6 summarizes the results of a multinomial logistic regression predicting release type. In this model, detention is the reference variable. Thus, this model compares those detained the entire pretrial period to each of the other release types (ROR, unsecured bond, and release with secured bond). Overall, the model was statistically significant. Some variables were significant regardless of whether the release type was ROR, unsecured bond, or secured bond. Specifically, defendants released by one of these methods were significantly less likely to have prior failure to appear or prior violent offenses. This indicates that those detained had more serious criminal histories and/or posed a flight risk. Females were significantly more likely to be released than detained, regardless of the method of release. Conversely, age was never a significant predictor of release type. Relative to those detained the entire pretrial period, those released on an unsecured bond were significantly less likely to be Hispanic. This was the only significant finding for race/ethnicity and release type.

It is notable that those released ROR or with an unsecured bond were significantly less likely to have a current violent offense, whereas there were no significant differences by offense type between those released by secured bond and those detained. This suggests that judges ordered those with a violent offense to post bond more often than those who do not have a violent offense.

Relative to those detained the entire pretrial period, those released ROR were significantly more likely to originate in Chavez and Doña Ana Counties relative to Santa Fe County, whereas those released on an unsecured or secured bond were significantly less likely to originate in these counties. Unsecured bonds were also less likely for cases that occurred in Luna County. This suggests that when cases originate in Santa Fe rather than Chaves or Doña Ana, they are less likely to result in an ROR being ordered and more likely to have an unsecured or secured bond ordered.

Table 6. Results of Multinomial Logistic Regression Predicting Release Type

		Release Type		
		ROR/No Bond Required	Unsecured Bond	Secured Bond
Demographics	**Age**	0.995	1.002	1.003
	Race (white is reference category)			
	Non-white, non-Hispanic	1.135	1.082	0.673
	Hispanic	1.056	0.743*	1.026
	Gender (Male omitted)			
	Female	2.306***	1.656**	1.416**
Current Offense	**Most serious offense (Other is reference category)**			
	Violent	0.248***	0.383**	0.897
	Property	0.443*	0.706	0.691
	Drug	0.562	0.726	1.036
	DWI	0.515	0.414	1.298
Priors	**Type of Prior**			
	Prior Failure(s) to Appear	0.832**	0.867***	0.865***
	Prior Violent Offense(s)	0.768***	0.796***	0.848***
County	**County (Santa Fe is reference category)**			
	Chaves	2.330**	0.125***	0.497***
	Doña Ana	8.888***	0.189***	0.876
	Luna	1.503	0.092***	0.247***
Model Summary	**Intercept**	2.204	43.341	28.698
	N	349	994	2,055
	Overall Log Likelihood chi-square (df)* **	906.946 (39)***, N=3,093		

**p<.01, ***p<.001

Pretrial Detention Rate and Length of Stay

Although 87% of those in our sample were released before trial, most were detained for some of the pretrial period. As Table 7 shows, 13% were not detained at all before trial, 73% were detained for some period of time, and about 13% were detained for the entire pretrial period. Judges dismissed a small number of cases (0.2%) the same day as booking. Thus, while they were technically detained for the entire pretrial period they were not categorized as such. Those detained for the entire pretrial period spent, on average, a remarkably greater average number of days in jail (133) than those who were detained pretrial for some period before being released (17). The differences in the median number of days detained supported this relationship (71 days compared to 3 days).

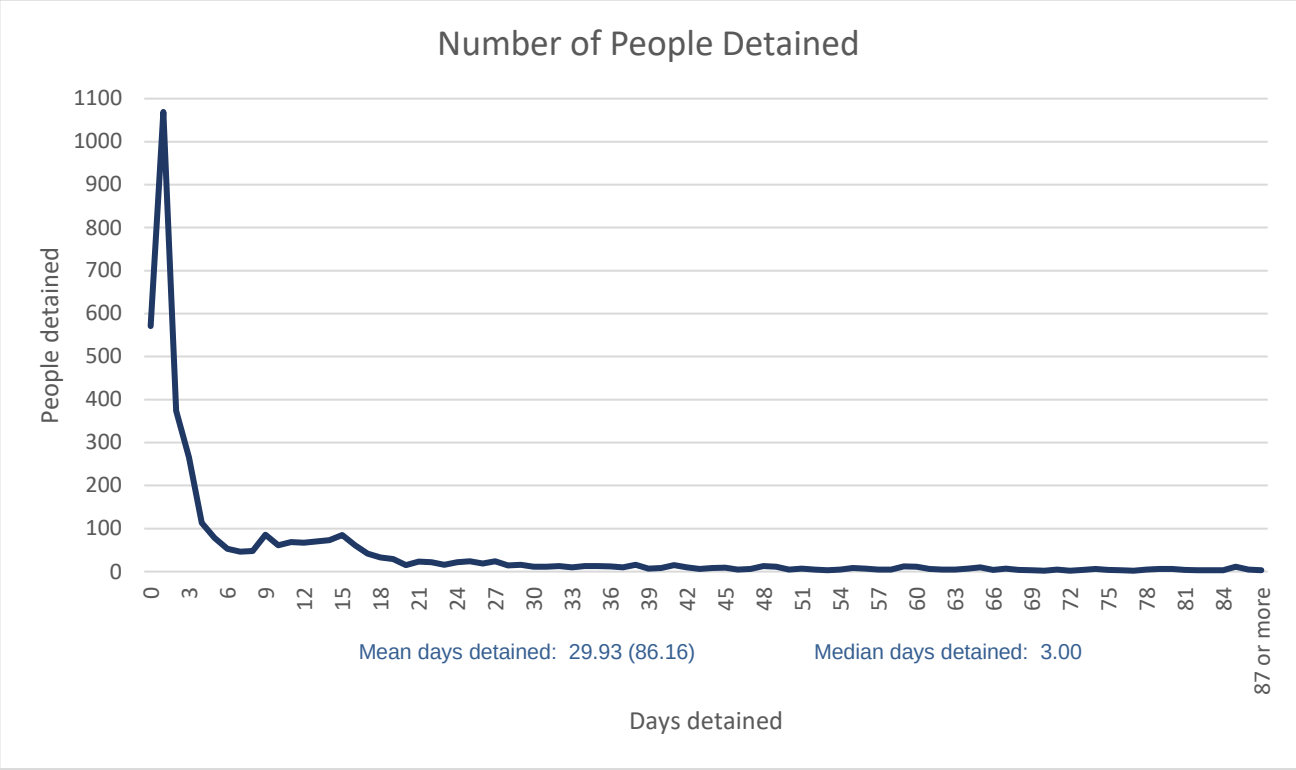
Table 7. Length of Pretrial Detention

	Days detained pretrial			
Detention*	Mean (sd)	Median	N	%
Detained entire pretrial, one or more days	133 (184)	71	566	13.2%
Detained some period of time	17 (42)	3	3,138	73.4%
Not detained	0 (0)	0	571	13.4%

*p<.05

Of those detained, the most common length of detention was one day, demonstrated below in Figure 4. However, many individuals remained in jail longer. Indeed, 200 individuals remained in jail for more than 60 days. As such, the arithmetic average was 30 days, while the median pretrial length of stay was only 3 days. This indicates that the higher arithmetic average was likely driven by those with higher detainment periods. In fact, the maximum number of days someone spent detained was 1,198 days, which was much higher than both the average and median pretrial length of stay.

Figure 4. Frequency of Detention Length



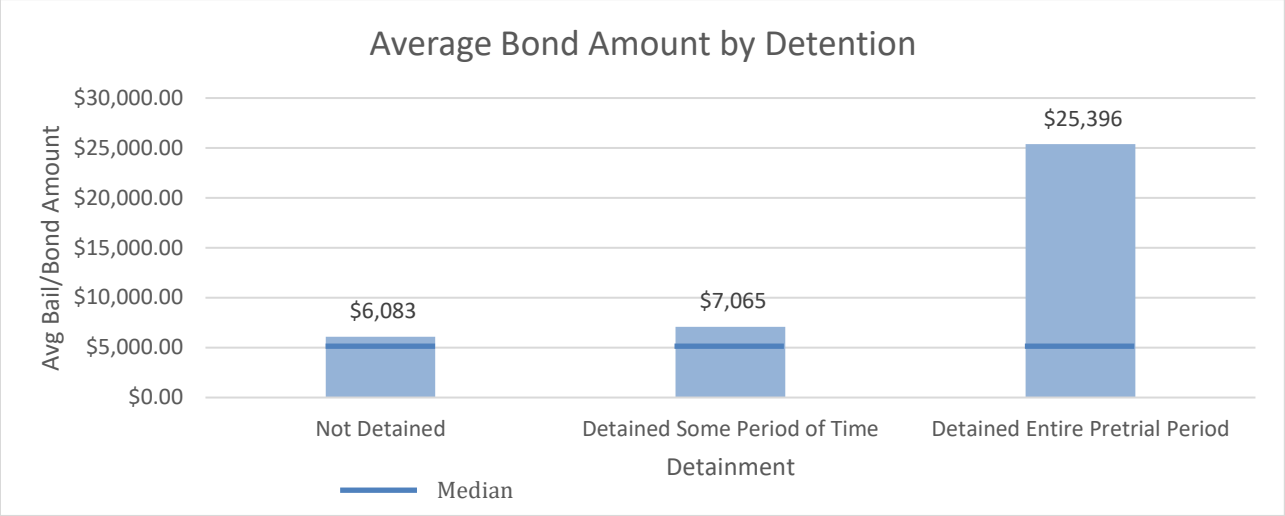
p<.001

Relationship Between Bond and Detention

The new amendment makes using bond as a way to keep people detained unconstitutional, but evidence suggests that prior to bail reform, judges frequently ordered bond. In this section, we explore the relationship between bond and detention rates.

Figure 5 demonstrates the average bond amount by rate of detention (not detained, detained some period of time, and detained entire pretrial period). Individuals detained the entire pretrial period had, on average, statistically significant higher bond amounts than those released pretrial. Those released immediately had the lowest average bond amounts. While the median amounts are all equal ($5,000), these findings indicate that there was a strong association between higher bond amounts and pretrial detention rates.

Figure 5. Bond Amount by Detention Rates



p<.001

There was also a significant relationship between release type and length of detention. Those with unsecured bonds and those released on personal recognizance spent, on average, significantly fewer days detained than those with secured bonds or those who were not released, as shown in Table 8. Individuals who were not released spent a significantly greater number of days detained on average (133) compared to all other release types. The median was also much higher for those not released, which suggests that the higher average was not just a reflection of outliers, although the maximum number of days detained was quite high (1,198). The average number of days detained for those released on a secured or cash bond was 16 days, which was longer than the average 11 days among those released on unsecured bond or ROR. Moreover, the median number of days was longer for those released with a bond (2 days) than those released without a secured bond (1 day).

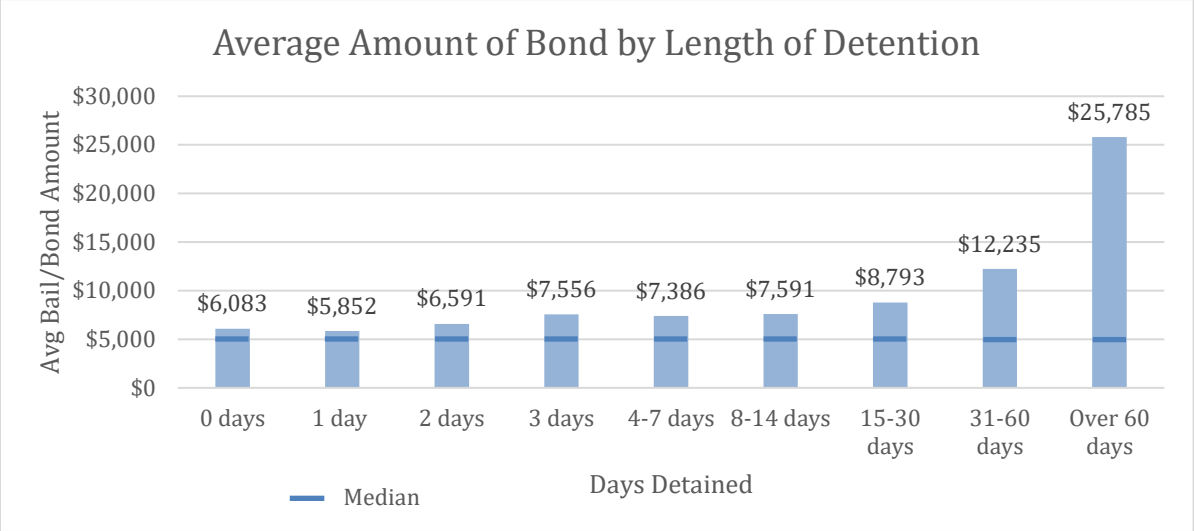
Table 8. Length of Detention by Release Type

Days Detained					
Release Type* **	**Mean (sd)**	**Median**	**Minimum**	**Maximum**	**N**
ROR	11 (28)	1	0	275	387
Unsecured Bond	11 (26)	1	0	325	1,085
Secured Bond	16 (45)	2	0	593	2,228
Not Released	133 (184)	71	1	1,198	566

***p<.001

Figure 6 represents the statistically significant relationship between the average amount of bond ordered and the length of detention. Generally, the bond amount increased with the length of detention, although there was not much variation in average bond amount by length of detention until the leap from 15-30 days ($8,793) to 31-60 days ($12,235). Those detained more than 60 days had significantly higher average bond amounts ($25,785), more than double that of those detained for 31-60 days ($12,235). The median bond amount for all length of detention categories was again $5,000, which implies that a few high-amount outliers influence the higher averages. Overall though, these findings reinforce the strong association between bond amount and length of detention.

Figure 6. Bond Amount by Length of Detention



p<.001

Pretrial Detention Rate and Length of Stay by Demographics

In general, males were significantly more likely to be detained for the entire pretrial period relative to females, while females were more likely to be released immediately than males. Rates of pretrial detention varied by race/ethnicity as well. Non-white, non-Hispanic individuals were detained for the entire pretrial period at a higher rate than either white, non-Hispanic individuals or Hispanic individuals. White, non-Hispanic individuals were detained for some period more often than Hispanics and non-white, non-Hispanics, and Hispanics were more often not detained at all compared to the other groups. Age was not a significant factor in rates of detention.

Table 9. Detention by Demographics

Detainment	Sex***		Race/ethnicity*			Age
	Male	Female	White – Hispanic	White – non-Hispanic	Not White or Hispanic	Average age (sd)
Detained entire pretrial, one or more days	14.7%	8.8%	12.6%	13.6%	16.8%	33.08 (11.27)
Detained some period of time	72.5%	76.3%	72.9%	74.6%	70.8%	33.50 (10.97)
Not detained	12.8%	14.9%	14.5%	11.8%	12.4%	32.88 (11.71)
Total	100% (n=3,208)	100% (n=1,066)	100% (n=2,367)	100% (n=1,634)	100% (n=274)	n=4,275

*p<.05 ***p<.001

As Table 10 shows, age was not significantly related to length of detention, though there was some variation across age groups. Those between the ages of 18 to 24 had the fewest number of average days detained (26), while those between the ages of 45 to 54 had the highest average of days detained (36). Although the average and median number of days varied by age group, the differences were not statistically significant.

There were, however, statistically significant differences in the average number of days detained by race/ethnicity and sex. As may be expected given the pretrial detention rates described previously, non-white, non-Hispanics had the highest average number of days detained at 37 days. They also had a high standard deviation, indicating there is a large amount of variance in the number of days detained within this group. Hispanic individuals had the lowest average days detained (27) and the lowest standard deviation. The medians for all categories were relatively similar, implying that differences are influenced by outliers.

Males were, on average, detained for significantly longer periods of time than females. The average number of days detained for females (19) was almost half of the average number of days detained for males (34). However, the medians were relatively similar for males and females, suggesting that the average differences observed were influenced by some outliers.

Table 10. Length of Detention by Demographics

Average Days Detained				
		Mean (sd)	Median	N
Age	18-24	26 (80)	2	1,038
	25-34	31 (92)	3	1,602
	35-44	27 (69)	4	907
	45-54	36 (100)	4	492
	55+	33 (97)	2	236
Race**	Hispanic	27 (83)	3	2,367
	White	33 (88)	3	1,634
	Not Hispanic or White	37 (105)	4	274
Sex***	Female	19 (61)	2	1,066
	Male	34 (93)	3	3,208

**p<.01, ***p<.001

Pretrial Detention Rate and Length of Stay by County

There were significant differences in rates of detention across counties (see Table 11). Luna County had the highest rate of detention for the entire pretrial period (30%), significantly higher than the average 13%. Chaves County had the greatest proportion of individuals released without any pretrial detention (20%), significantly higher than the average 13%. Doña Ana and Santa Fe Counties had the highest rates of individuals detained for some, but not all, of the pretrial period.

Table 11. Detention by County

Detainment	County***				
	Chaves	Doña Ana	Luna	Santa Fe	All Counties
Detained entire pretrial, one or more days	18.0%	12.8%	29.9%	9.8%	13.2%
Detained some period of time	61.6%	74.0%	61.0%	79.7%	73.4%
Not detained	20.4%	13.2%	9.1%	10.5%	13.4%
Total	823	1,558	164	1,730	4,275

***p<.001

The county in which the defendant was detained was also significantly related to the length of detention. Luna County had, by far, the highest average length of detention, at about 68 days. This was much

greater than the second-highest mark of 47 days (Chaves County). Furthermore, the median number of days detained in Luna County was 24, which was much higher than the other counties, suggesting that the higher average was not just an artifact of a few outliers. Conversely, Santa Fe County had the lowest average length of detention at 15 days, which was just under half of Doña Ana's average (33).

Table 12. Length of Detention by County

Average Days Detained			
County* **	**Mean (sd)**	**Median**	**N**
Chaves	47 (125)	4	823
Doña Ana	33 (84)	2	1,558
Luna	68 (113)	24	164
Santa Fe	15 (54)	2	1,730

***p<.001

Pretrial Detention Rate and Length of Stay by Current Offense

As shown in Table 13, there were significant differences in the rates of detention across offense types. Those booked for a violent offense were detained for the entire pretrial period more often than those booked for any other offense type. Property offenders were more often detained for some, but not all, of the pretrial period compared to those with other offense types. Rates of release without any detention was highest among those booked for an "other" offense.

Table 13. Detention by Current Offense

	Current Offense***					
Detainment	**Violent**	**Property**	**Drug**	**DWI**	**Other**	**Total**
Detained entire pretrial, one or more days	14.7%	13.0%	11.9%	10.1%	8.4%	13.0%
Detained some period of time	72.5%	76.7%	72.5%	75.2%	73.4%	73.7%
Not detained	12.8%	10.2%	15.6%	14.8%	18.2%	13.3%
N	1,645	1,036	1,180	149	203	4,213

***p<.001

There were also significant differences in length of detention based on current offense, illustrated in Table 14. Violent offenders had the highest average length of detention at 42 days, while those booked on a property offense had a significantly lower average of 27 days. Individuals who were arrested for an offense categorized as "other" had the lowest average detention at 16 days, following those with drug offenses (20 days) and DWI (21 days). These findings reflect those reported above regarding rates of detention. The medians for all categories of offenses were relatively similar (2 or 3 days), implying that the differences in mean detention length were influenced by high outliers.

Table 14. Length of Detention by Current Offense

Average Days Detained by Current Offense			
Current Offense* **	**Mean (sd)**	**Median**	**N**
Violent	42 (117)	3	1,645

Property	27 (71)	3	1,036
Drug	20 (46)	3	1,180
DWI	21 (55)	2	149
Other	16 (47)	2	203

***p<.001

Legal and Extralegal Factors Associated with Length of Detention: Multivariate Analyses

In order to determine whether the relationships found with length of detention hold once we consider multiple factors simultaneously, we calculated a negative binomial regression. Overall, the factors included in the model presented in Table 15 were statistically significant predictors of the dependent variable, days of detention. Out of the demographic variables included, race was the only factor that was not statistically significant. Race had a statistically significant relationship with length of detention in the bivariate, but not here. This indicates that once other factors are considered, race does not play a significant role in length of detention. The predicted number of days detained was significantly fewer for females relative to males. In other words, females were likely to spend significantly fewer days detained than males.

Age, though, was significant. As age increased, so did the length of detention. This is somewhat unexpected given that in the bivariate, we did not find a significant relationship between days detained and age. However, in that analysis we categorized age. Here, age is a continuous variable. Moreover, in general, the number of days detained increased with age until reaching the category 55 and over.

Relative to “other” offenses, those with a current violent, property, and DWI offense were expected to have longer lengths of detention. Prior criminal history was also significantly related to length of detention, with those having prior failure(s) to appear and violent offenses experiencing longer predicted lengths of detention. Finally, the county in which one was detained also significantly predicted length of detention. Those booked in Chaves, Doña Ana, and Luna Counties all had significantly greater expected days of detention relative to individuals booked in Santa Fe County.

Table 15. Results of Negative Binomial Regression, Length of Detention

		B
Demographics	**Age**	0.007***
	Race (White is reference category)	
	Non white, non Hispanic	0.050
	Hispanic	0.020
	Gender (Male is reference category)	
	Female	-0.253***
Current offense	**Most serious offense (Other is reference category)**	
	Violent	0.649***
	Property	0.490***
	Drug	0.049
	DWI	0.278*
Priors	**Type of Prior**	
	Prior Failure(s) to Appear	0.176***
	Prior Violent Offense(s)	0.243***
County	**County (Santa Fe is reference category)**	
	Chaves	1.366***
	Doña Ana	0.865***
	Luna	1.820***
Model summary	**Intercept**	1.642
	N	3,905
	Overall Log Likelihood (df)	1,947.745*** (13)

*p<.05, ***p<.001

Pretrial Failure Rates

Among those released pretrial, 37% committed some violation during the pretrial period, with many committing multiple violation types concurrently or consecutively. Pretrial failures included arrests for a new offense, failure to appear, and/or failure to comply with court-imposed conditions including failure to pay fines/fees. As shown in Table 16, the majority (26%) of these instances were due to acquiring a new offense, with 6% arrested for a violent offense. Within the sample of those released pretrial, 22% failed to appear in court, while 13% failed to comply with a court order.

Table 16. Pretrial Failure

Pretrial Failure	N	%	Total N
Any new offense during pretrial	965	26.0%	3,700
New violent offense during pretrial	233	6.3%	3,700
FTA during pretrial	823	22.4%	3,700
FTC during pretrial	470	12.7%	3,700
Any pretrial failure (new offense or FTA/FTC)	1,379	37.3%	3,700

p<.001

Pretrial Failure by Demographics

Table 17 illustrates pretrial failure by demographics. Males were significantly more likely to be arrested for violent offenses during pretrial release than females. Furthermore, males were slightly more likely than females to be arrested for any new offense (27% vs. 23%) or to fail to comply (13% vs. 11%), resulting in an overall significantly higher failure rate (38% vs. 34%). The only category in which females were as

likely as males to commit a pretrial failure was failure to appear (22% vs 23%).

The only category of pretrial failure significantly associated with race/ethnicity was failure to comply. For all other types, Hispanics, whites, and non-white, non-Hispanics were equally likely to have a pretrial failure. Whites had the lowest failure to comply rate by almost half, while Hispanics and non-white, non-Hispanics were roughly similarly likely to fail to comply (8% vs 15% of either Hispanic or non-white, non-Hispanic defendants). Race/ethnicity, therefore, was not a significant factor in the overall pretrial failure rate.

There is a significant relationship between age and failure types. Regardless of failure type, the average age of those with a pretrial failure was younger than those who had no pretrial failures.

Table 17. Pretrial Failure by Demographics

Failure Type	Gender		Race/ethnicity			Average Age (sd)	
	Male	Female	Hispanic	White	Not Hispanic or White	Failure	No Failure
Any new	26.9%* (n=734)	23.4%* (n=227)	27.4% (n=566)	23.8% (n=335)	26.4% (n=60)	31.93*** (9.79) (n=961)	33.93*** (11.47) (n=2,739)
New violent	8.5%*** (n=231)	4.9%*** (n=47)	7.5% (n=155)	7.0% (n=98)	11% (n=25)	30.37*** (9.53) (n=278)	33.66*** (11.17) (n=3,422)
FTA	22.3% (n=608)	22.7% (n=220)	23.0% (n=474)	21.6% (n=304)	22.0% (n=50)	31.90*** (9.76) (n=828)	33.85*** (11.41) (n=2,872)
FTC	13.4%* (n=366)	10.7%* (n=104)	15.4%*** (n=319)	8.4%*** (n=118)	14.5%*** (n=33)	32.98*** (10.06) (n=470)	33.47*** (11.23) (n=3,230)
Any failure	38.3%* (n=1,045)	34.5%* (n=334)	38.7% (n=799)	35.3% (n=497)	36.6% (n=83)	32.03*** (10.02) (n=1,379)	34.23*** (11.61) (n=2,321)

*p<.05, **p<.01, ***p<.001

Pretrial Failure by County

Of the counties included in the study, Chaves and Luna Counties had the fewest pretrial failures overall (27% and 30%, respectively), compared to 35% in Doña Ana County and 44% in Santa Fe County. Chavez County had the lowest proportion of any new offenses (12%) and was just behind Luna County in regards to the lowest proportion of new violent offenses (4%). Within both Luna and Chavez counties, the highest proportion of failures were failures to appear. Santa Fe County, by far, had the highest proportion of failures to comply at 28%, while Luna, second highest, only had 4% failures to comply. In general, the more populous counties (Doña Ana and Santa Fe) had higher proportions of pretrial failures than the less populous counties (Luna and Chaves) with only a few exceptions. These differences are largely driven by arrests for a new offense. These differences were statistically significant.

Table 18. Pretrial Failure by County

County					
Failure Type	**Chaves**	**Doña Ana**	**Luna**	**Santa Fe**	**Total**
Any new***	11.6% (n=78)	23.0% (n=312)	13.0% (n=15)	35.7% (n=556)	26.0% (n=961)
New violent***	4.3% (n=29)	10.3% (n=140)	3.5% (n=4)	6.7% (n=105)	7.5% (n=278)
FTA	21.2% (n=142)	20.6% (n=279)	26.1% (n=30)	24.2% (n=377)	22.4% (n=828)
FTC***	1.2% (n=8)	1.4% (n=19)	4.3% (n=5)	28.1% (n=438)	12.7% (n=470)
Any failure***	26.5% (n=178)	35.0% (n=474)	30.4% (n=35)	44.4% (n=692)	37.3% (n=1,379)

*p<.05, **p<.01, ***p<.001

Pretrial Failure by Current Offense

There were statistically significant differences in pretrial failure rates across offense types as well. Of those charged with violent offenses, 10% had a new violent offense during their pretrial period, higher than those with any other current offense type. Those booked on a property offense had the highest rate of pretrial failure overall (46%), followed by those booked on drug or "other" offenses (38%). Those booked on property and DWI offenses (34% and 28% respectively) had the highest rates of arrests for a new offense while released.

Table 19. Pretrial Failure by Current Offense

Current Offense						
Failure Type	**Violent**	**Property**	**Drug**	**DWI**	**Other**	**N**
Any new***	23.3% (n=326)	34.0% (n=306)	23.2% (n=241)	28.4% (n=38)	22.7% (n=42)	26.0% (n=953)
New violent**	9.8% (n=137)	7.0% (n=63)	5.2% (n=54)	6.7% (n=9)	7.0% (n=13)	7.5% (n=276)
FTA***	15.4% (n=216)	28.7% (n=259)	26.5% (n=275)	15.7% (n=21)	28.6% (n=53)	22.5% (n=824)
FTC**	12.2% (n=171)	15.5% (n=140)	10.5% (n=109)	18.7% (n=25)	13.0% (n=24)	12.8% (n=469)
Any failure***	31.2% (n=437)	46.4% (n=418)	38.1% (n=396)	36.6% (n=49)	38.4% (n=71)	37.5% (n=1,371)

**p<.01, ***p<.001

Pretrial Failure by Release Type

Pretrial failure varied by release type. A significantly greater proportion of individuals released on unsecured bond or on their own recognizance had pretrial failures (43% and 41%, respectively) than those released on a secured bond (34%). Rates of arrest for any new offense, FTA, or FTC were highest for those released on an unsecured bond relative to those released by other means. However, those released on their own recognizance also had high FTA rates, but extremely low FTC rates, as might be expected.

Table 20. Pretrial Failure by Release Type

	Release Type			
Failure Type	**ROR or no bond required**	**Unsecured Bond**	**Secured Bond**	**N**
Any new***	23.5% (n=91)	30.4% (n=330)	24.2% (n=540)	26.0% (n=961)
New violent	8.8% (n=34)	7.4% (n=80)	7.4% (n=164)	7.5% (n=278)
FTA***	27.9% (n=108)	29.1% (n=316)	18.1% (n=404)	22.4% (n=828)
FTC***	3.9% (n=15)	19.4% (n=211)	11.0% (n=244)	12.7% (n=470)
Any failure***	40.6% (n=157)	43.1% (n=468)	33.8% (n=754)	37.3% (n=1,379)

***p<.001

Legal and Extralegal Factors Associated with Pretrial Failure: Multivariate Analyses

As with release type and days detained, we computed a multivariate model to assess whether the factors associated with pretrial failure observed in the bivariate held once we considered multiple factors simultaneously. This logistic regression model has one dependent variable: failure to appear.

Overall, the model presented in Table 21 was significant (Model chi-square 149.15, p<.001). Those who did not fail to appear served as the reference group. With each unit increase in age, the likelihood of failing to appear decreased. In other words, older individuals were less likely to fail to appear at court, consistent with the relationship found in the bivariate. This was the only statistically significant relationship with failure to appear among the demographic variables.

Relative to “other” types of offenses, those booked on a violent offense were less likely to fail to appear. This finding reflects the bivariate relationship between offense type and pretrial failure above. Note, though, that this takes into account release type. Thus, even once bond type and release type are considered, those with violent offenses are more likely to appear at court relative to those with an “other” offense.

Those released on secured bonds were also less likely to fail to appear, relative to defendants released on unsecured bonds. There was no statistically significant difference in failure to appear between those released on unsecured bond and those ROR. Since this model takes into account important factors like current offense and prior criminal history, this reinforces the notion that secured bonds appear to aid in ensuring court appearance. Note, though, that it is likely that we do not have all key factors included here. Previous failure types were positively related to likelihood of failure to appear. Those with prior failure(s) to appear and prior violent offense(s) were more likely have a subsequent failure to appear than those who did not, with prior failure to appear having a stronger relationship than prior violent offenses. Finally, we found no statistically significant difference between the county and failure to appear in either this model or in the bivariate analyses.

Table 21. Factors Associated with Failure to Appear, Results from Logistic Regression

		Exp (B)
Demographics	**Age**	0.983***
	Race (White is reference category)	
	Non white, non Hispanic	0.914
	Hispanic	0.962
	Gender (Female is reference category)	
	Male	0.985
Current offense	**Most Serious Offense (Other is reference category)**	
	Violent	0.481***
	Property	0.964
	Drug	0.877
	DWI	0.653
Release Type	**Release Type (Unsecured bond is reference category)**	
	ROR or no bond	0.980
	Secured bond	0.576***
Priors	**Type of Prior**	
	Prior Failure(s) to Appear	1.196***
	Prior Violent Offense(s)	1.096*
County	**County (Santa Fe is reference category)**	
	Chavez	1.079
	Doña Ana	0.875
	Luna	1.194
Model summary	**Constant**	0.886
	N	3,398
	Model chi-square	149.152, 13 df***
	Cox & Snell R square model 3	0.054
	Nagelkerke R Square model 3	0.082

*p<.05, **p<.01, ***p<.001

Conclusion

As the first phase of a multi-year study that examines the impact of New Mexico's bail reform, this report sought to create baseline performance measures to assess pre-amendment practices. These baseline measures focused generally on release decisions, average amount of bond ordered, rates and length of pretrial detention, and pretrial failures. We also explored how these measures varied by demographic factors, current offense, the county of jurisdiction, and prior criminal history.

One objective of this project was to determine release practices prior to the constitutional amendment taking effect. Overall, defendants were released pretrial more often than they were detained the entire time before trial, though the majority of defendants in this sample spent some time detained. Half of those detained spent fewer than three days detained, with one day being the most common length of detention. However, this varied by rate of detention. Those detained the entire pretrial period spent a significantly greater amount of time detained than those detained for just part of the pretrial period. Overall, though,

most people spent a fairly short time in detention.

Judges typically ordered defendants to pay a cash or secured bond to ensure release. When they did not order a secured bond, judges frequently required an unsecured appearance bond. Thus, prior to bail reform, judges often required some financial payment or used a financial incentive to ensure defendants appeared at court. Furthermore, judges rarely held defendants without a bond. The majority of those defendants paid the bond ordered.

Among those who spent their entire pretrial period detained, nearly all had some amount of bond ordered, indicating that they spent the entire pretrial period detained because they could not afford to pay to be released. Thus, judges set an amount that prevented these defendants' release to the community. The average bond amount was significantly higher for those detained than for those released (though the median amount was the same). This supports the notion that judges were using high bond amounts to keep individuals detained prior to case resolution. However, we found that some people detained the entire pretrial period had bond amounts set as low as $200, offering some credence to the argument that defendants remain in jail simply because they cannot afford to post bond.

In general, there are two primary reasons to detain someone pretrial. One is to ensure the safety of the community. Of particular concern is preventing additional crimes, particularly violent crimes. While approximately one-quarter of the defendants released were arrested for a new offense during the pretrial period, very few defendants released pretrial were arrested for a new violent crime. The second primary concern is whether the defendant will appear at court. The failure to appear rate among those released was less than 25%.

Overall, we found that 37% of the released sample had some type of pretrial failure. This is consistent with failure rates found in a prior study of New Mexico (Denman 2017). These rates are also similar to national estimates. Using data between 1990 and 2004 for state courts in the largest 75 counties nationwide, Cohen and Reaves (2007) found that, similar to our current sample, 33% of defendants engaged in some form of pretrial misconduct.

Although the current sample appears to be similar to others in regards to pretrial failure in general, it is quite different from others in regards to arrests for new offenses. The earlier study by Denman (2017) found a higher new offense rate among defendants with cases tried in district court (35%, compared to 26%). Conversely, the pretrial study by Cohen and Reaves (2007) found a new offense rate much lower than the current study (17%, compared to 26%). Important to the discussion about pretrial release decisions is whether defendants appear at court. Here, we found a pretrial appearance rate that was notably higher than what we found previously (22% now, versus 15% in 2017).

Thus, although the overall pretrial failure rate is similar to that found in prior studies, the new offense rate fell in between those found in prior studies, and the FTA rate was much higher. This is partially due to the addition of the AOC as a source of FTA data. While the DPS data captures the majority of FTAs, the AOC data documents some that are not included in the DPS data. However, that does not account for all of the differences observed. There may be jurisdictional differences that account for some of the variation. Future iterations of this study will explore these differences in more depth.

An important consideration is whether release type is associated with pretrial failures. Of course, those released from detention centers have more opportunity to fail pretrial (though those detained can also pick up new charges or refuse to appear at court). Initial analyses suggest that those released with a bond amount were less likely to fail to appear, but this was not positively related to fewer new arrests or failures to comply. In the subsequent phases, we will carefully assess the impact of secured bond on

pretrial failure.

We conducted several multivariate analyses to determine whether certain legal and extra-legal factors were predictors of relevant outcomes: release type, length of detention, and failure to appear. One consistent finding was that males and those with a violent offense were more likely to be detained and to spend longer periods detained. The sex effect we found is consistent with prior research on pretrial release and detention (Demuth 2004; Spohn 2009), which found that men were significantly more likely than women to be held pretrial.

We also found prior FTAs and a history of violent offenses to be significant predictors of outcomes. Those who had prior FTAs or prior violent offenses were more likely to be detained, and for longer periods of time, than those who did not. They were also more likely to FTA once released. Prior criminal history of FTAs and violent offenses are often factors incorporated into risk assessment tools for determining release. Risk assessment tools, though, may not consider current offense type. This seems counterintuitive to the public, as they expect those accused of serious crimes to remain in custody. This study found that judges prior to bail reform required those with a current violent offense to post a cash or surety bond as a condition of release, and were detained for a greater number of days than those with some other offense types. While FTA was much lower for those with a current violent offense, rates of re-arrest for a violent offense were much higher. Whether this has changed with the new release practices will be assessed in future research.

This study showed mixed results when considering age as a predictor in the multivariate analyses. Age was not a significant predictor of release type when controlling for other legal and extra-legal factors. Age, however, was a significant predictor of length of detention, with time spent detained increasing with age. Although significant, the increase in predicted days was relatively small, which could be due to our finding that half of the sample was detained for fewer than three days. We also found that likelihood of failing to appear decreases with age, suggesting that younger individuals are more likely to commit this type of pretrial failure. Prior research supports the relationship between age and likelihood of failing to appear when examining the effects of pretrial conditions, sanctions, and screening (Levin 2007). However others, such as Lowenkamp and VanNostrand (2013), who explored the impact of supervision on pretrial outcomes; and Maxwell (1999), who examined the relationship between age and failure to appear in New York City, did not find age to be a significant predictor of failure to appear.

Although we found statistically significant differences across race/ethnicity in the bivariate analyses, race/ethnicity was not a significant predictor in any of our multivariate analyses except release type. Relative to those detained the entire pretrial period, those released on an unsecured bond were significantly less likely to be Hispanic. However, the general lack in significance indicates that once other factors such as sex and type of offense are controlled for, race/ethnicity no longer significantly predicts whether the person is detained, how long they spend detained, or whether or not they are likely to fail to appear. This suggests that, for at least these four counties in New Mexico, judges do not typically make decisions based on defendant race/ethnicity. In other words, there is no evidence of implicit bias. These findings are consistent with some prior research on pretrial release that find limited significant black-white differences in the pretrial release process, but do find differences between Hispanics and whites and blacks (Demuth 2004). Bornstein, Tomkins, and Neeley (2011) find, similar to this study, that there were no significant relationships between race and FTA rates in Nebraska. These findings, however, are inconsistent with others that do find racial/ethnic differences in pretrial release measures (Spohn 2009). In her study of pretrial detention of drug offenders in federal courts, Spohn (2009) found that black defendants were significantly more likely to be detained than white defendants. However, Demuth (2004) also found that black defendants were detained at higher levels than whites, but argued that this was a

result of black defendants' inability to post bond relative to white defendants, which was also evident in our findings.

Release decisions and length of detention vary by county; this finding remains when controlling for other relevant factors. Hood and Schneider's (2019) study of bail and pretrial detention supports the notion that important pretrial decisions, such as release type, are meaningfully influenced by the context of a given county. In their examination of bail and pretrial release practices across 75 large U.S. counties from 1990 to 2009, they found a great amount of variation across counties even when controlling for demographics, charges, and pretrial records. The current findings indicate that at the baseline, there is variation across counties. Future phases of the bail reform study should bear in mind these differences when addressing implementation of the bail reform changes across the state, and how this process may vary based on county characteristics. Variation across counties may also influence the outcomes of bail reform throughout New Mexico, since there is already evidence of variation at the baseline.

There were, however, limitations of this study that we will attempt to address in future phases. One limitation concerns the data we used for this project. Specifically, we constructed the FTA rate from two sources, which may have inflated the overall rate. In future analyses, we will explore these differences in more depth. Another important limitation is that this study focuses on only four counties in New Mexico. We intend to include additional counties in the future.

We will use the baseline measures created in this study as comparison as we explore the impact of bail reform in New Mexico. This study indicates that release decisions, detention, and pretrial failures vary by both extra-legal and legal characteristics. Furthermore, there is evidence that bond has been used as a tool for detention. The future iterations of this study will assess whether and how factors associated with release decisions, detention, and pretrial performance change, focusing especially on bail/bond.

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Appendix: Average bond amounts

Table A.1. Average Bond by Bond Type

Bond Type	Average Amount Ordered		Range of Amount Ordered	
				%
All cases	Mean (sd) Median Range N=3,871	$9,636 ($39,349) $5,000 $100-$1,000,000	**$1-1,000** **$1,001-2,500** **$2,501-5,000** **$5,001-10,000** **$10,001+**	7.7% 26.5% 36.2% 28.0% 1.6%
Secured Bond, Released	Mean (sd) Median Range N=2,228	$8,025 ($12,356) $5,000 $100-$250,000	**$1-$1,000** **$1,001-$2,500** **$2,501-$5,000** **$5,001-$10,000** **$10,001+**	7.3% 23% 37.1% 31.8% 0.9%
Unsecured Bond	Mean (sd) Median Range N=1,085	$4,653 ($4,624) $3,500 $250-$50,000	**$1-$1,000** **$1,001-$2,500** **$2,501-$5,000** **$5,001-$10,000** **$10,001+**	10.0% 38.1% 37.2% 14.7% 0.0%
Detained with Bond	Mean (sd) Median Range N=558	$25,759 ($98,929) $5,000 $200-$1,000,000	**$1-$1,000** **$1,001-$2,500** **$2,501-$5,000** **$5,001-$10,000** **$10,001+**	5.2% 17.7% 31.0% 38.5% 7.5%

Table A.2. Average Bond by County

Average Bond Amount by County*					
County	**Mean (sd)**	**Median**	**Minimum**	**Maximum**	**N**
Chaves	$11,839 ($52,595)	$5,000	$500	$1,000,000	734
Doña Ana	$10,722 ($44,397)	$5,000	$100	$1,000,000	1,283
Luna	$12,661 ($8,951)	$8,500	$380	$47,500	151
Santa Fe	$7,599 ($28,803)	$5,000	$500	$1,000,000	1,703

Table A.3. Average Bond by Current Offense

Average Bond Amount by Current Offense***					
Current Offense	**Mean (sd)**	**Median**	**Minimum**	**Maximum**	**N**
Violent	$15,418 ($61,367)	$5,000	$100	$1,000,000	1,536
Property	$5,354 ($5,189)	$5,000	$100	$47,500	930
Drug	$5,948 ($7,846)	$5,000	$250	$75,000	1,036
DWI	$6,478 ($5,453)	$5,000	$100	$25,000	140
Other	$7,651 ($13,493)	$5,000	$250	$1,000,000	177