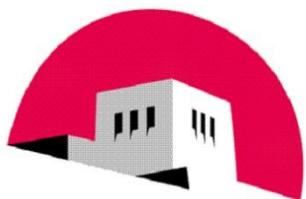


# **Jail Diversion Literature Review**

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## **Introduction**

Jail crowding and the efficient use of resources for jail detention have been a growing concern for an increasing number of communities in the U.S. for quite some time. Importantly, local jails and detention facilities do not control who is admitted or how long they stay. Equally importantly jail crowding impacts not only jails but all criminal justice agencies that use jails for their local incarceration needs (Davis, et al. 2004). Decisions and policies implemented by other criminal justice agencies determine how individuals flow into and out of jail and so directly impact the size of the total jail population (Pontell et al, 1989). This brief report is designed to document the issue of jail crowding in Bernalillo County in New Mexico and various strategies for reducing crowding that include jail diversion, a more focused effort of viewing jail crowding from a systems perspective, NM statutes that deal with jails, and different specific ways to affect jail population based on local and national research. Because local jails do not control who is admitted or how long they stay many of the ways to effect jail crowding are controlled by other criminal justice agencies. Increased efficiencies in the criminal justice system, which impact jail crowding, will also positively, impact other criminal justice agencies.

The report contains several sections. First, we describe jail population trends and jail crowding nationally, in New Mexico, and in Bernalillo County. Second, we describe jails and jail crowding from a systems perspective with a focus on identifying how local criminal justice agencies may affect jail populations.

An estimated 12.9 million persons were admitted into local jails in the 12 month period ending June 30, 2010 and local county and city Jails on June 30, 2009 held 748,728 inmates (Minton, 2011). Between June 30, 2009 and June 30, 2010 the confined population decreased 2.4% (18,706). This was the second consecutive annual decrease. There have only been two annual decreases since the Bureau of Justice Statistics (BJS) began surveying Jails in 1982. The incarceration rate declined in 2010 to 242 jail inmates per 100,000 U.S. residents. This is the lowest rate since 2003.

This two year decrease was concentrated in the jails with average populations of 1,000 or more inmates. Further 6 jails (Los Angeles; Maricopa County, AZ.; Orange County, CA.; Philadelphia; Fresno County, CA; and Harris County, TX) accounted for nearly half of the decline in jail populations.

The estimated rated capacity for all jail jurisdictions at midyear 2010 reached 866,974 beds, which is an increase of 2.0% (17,079 beds) from midyear 2009. This was less than the average annual increase each year since 2000 (2.5% or 22,281 beds). Rated capacity is the maximum number of beds or inmates allocated to each jail facility by a state or local rating official. The percentage of capacity occupied at midyear 2010 (86.4%) was the lowest since 1984 (Minto, 2011).

While jails nationally have experienced a two year decrease in populations this has varied considerably by jail and many jails are still crowded. The Bernalillo County Metropolitan Detention Center (MDC) is one of the 50 largest jails in the U.S. and in 2010 was the 35<sup>th</sup> largest jail in the U.S. as measured by population and the 47<sup>th</sup> largest in terms of capacity. In June 2010

the MDC was at 120.2% of capacity. Only one of the 50 largest jails in the U.S. had a higher percent of capacity occupied. Similar to national trends the MDC jail population has been decreasing. In May 2011 the MDC was at 111.8% of capacity compared to June 2010 when the MDC was at 120.2% of capacity. This is a reduction of 8.4% or 190 individuals.

Historically, jails have served two main purposes:

- To detain people prior to trial and pending conviction or sentencing. These people either have not been released pretrial because they are thought to pose a threat to society or themselves, or they have not been able to post bail. They comprise the largest proportion of people held in jails.
- To hold people sentenced to usually less than one year.

Jails also have very little control over the types and numbers of inmates in custody or how long inmates stay. These decisions are made by law enforcement agencies, judges, prosecutors, and others in the criminal justice system.

Jurisdictions that want to protect public safety while slowing the growth of their jail or prison populations can do two basic things:

- divert a greater number of low-risk offenders from jail or prison or
- reduce the length of time that the lowest-risk offenders stay behind bars

Of course, jurisdictions can attempt to do some combination of the two. Both options require strong community corrections programs to ensure that offenders in the community remain crime and drug-free (Pew Center, 2008).

### **Why are Jail Populations Increasing**

A recent report by Petteruti and Walsh (2008) on the impact of jail expansion and effective public safety strategies listed a variety of reasons for growing jail populations. Reasons included:

- Prison crowding: Because many state prison systems are crowded local detention facilities are holding people who might previously have been sent to a state prison.
- Changes in policing practices – a change in policing practices has led to an increase in arrests for low-level offenses, such as drug offenses. Also, zero tolerance policies on quality of life crimes have led to more arrests for crimes such as loitering and panhandling.
- Jails have become institutions for people with mental illnesses – The closing of state mental health facilities beginning in the 1960s have left people with fewer treatment options and many individuals now end up in the criminal justice system.
- People detained for immigration violations are increasingly held in jails
- More people are being held pretrial - the majority of people held in jails are held pre-trial and this proportion has increased steadily over the last 10 years.
- More people are denied pretrial release and of those who are granted bail, fewer can afford to post the amount – while research and data on pre-trial release is limited the

State Court Processing Statistics (SCPS) found that since 1992 fewer people have been released pre-trial without bail, fewer are granted bail, and fewer of those granted bail have been able to post the payment.

- Outcomes of people released pretrial – advocates for higher bail amounts and keeping people in jail pre-trial have voiced concerns that people released pre-trial often don't return to court and may commit new crimes while released. Limited available research does not support this concern.
- Fewer people are serving sentences in the community – nationally since 2001 there has been a steady decreased in the number of individuals under jail custody who are serving this sentence in a community based program.

In addition to the reasons discussed above there is the well documented link between crime and drug use that includes a number of dimensions. First, some crimes violate laws prohibiting the possession, use, manufacture, or distribution of illegal drugs. Second, some crimes are linked to drugs because users are motivated by their need for money to support their continued drug use. Third, some crimes are linked to a drug using lifestyle. Likelihood of involvement in criminal activity is increased because users are exposed to more situations that encourage crime and users may participate more frequently in a deviant lifestyle (NIJ, 1994). Drug users in the general population are more likely than non-users to commit crime (NIJ, 1994).

#### Jail Crowding in Bernalillo County

Many of the factors listed by Petteruti and Walsh impact the MDC. Until recently New Mexico was one of a few states where more than 50% of the total inmates were held in local jails. In 2005 New Mexico had the 3rd highest jail incarceration rate of 43 reporting states (BJS, 2006). The MDC also houses large numbers of mentally ill individuals. The Psychiatric Services Unit (PSU) at the MDC serves as a treatment center for inmates who have mental and/or developmental disabilities and are residents of BCDC. The PSU's overall goal is to stabilize inmates who have been admitted to the PSU. One of the main focuses of the PSU is to identify inmates who may be suicidal and stabilize those individuals. The PSU is budgeted for 6 registered nurses, 10 counselors, 2 social workers, 1 administrator, 2 records administrators, and 2 psychiatrists. The PSU is staffed 24 hours a day seven days a week and includes 4 housing pods of 32 beds each. The PSU is routinely at capacity. In addition, PSU staff serve arrestees in the general population and typically the PSU has a caseload of approximately N clients.

The MDC also contains a large population of arrestees who use illicit drugs. From 1998 through 2003 the National Institute of Justice (NIJ), Arrestee Drug Abuse Monitoring (ADAM) Program measured drug use among arrestees by calculating the percentage of individuals with positive urine tests for drug use. The MDC was one of the 39 participating sites. In the MDC in 2003, 75% of male arrestees and 74% of female arrestees who participated in the ADAM program tested positive for any drug. Further, of those testing positive it was estimated that 41% of males and 44% of females were at risk for drug dependence (Zhang, 2003). There is little reason to believe this number and percent has changed.

There is considerable uncertainty about the degree to which drug use causes crime or the degree to which criminal involvement causes drug use, and so while drugs and crimes are linked the relationship is unclear and the relationship should be interpreted cautiously.

We are currently reviewing MDC booking information, release information, and other arrestee information to better understand if booking practices have changed in regards to the number and type of bookings over time (i.e. more bookings on minor drug charges, public order charges [public drunkenness], and probation violation charges). We are also analyzing individuals' detained pre-trial, types of releases pre-trial, and how individuals perform while released pre-trial.

In total this type of information will provide information that will be useful in discussing and understanding changes in the MDC population.

### **Jail Diversion**

Recently a State Legislator from California stated that “we build jails for people we’re afraid of, and fill them with people we’re mad at” (The Economist, 2011). Jail crowding can be partly controlled by deferring individuals who are not a threat to society, such as illegal substance abusers, individuals who commit nonviolent acts with mental health issues, those who commit non-aggravated DWI, and other non-violent crimes (Bureau of Justice Assistance, 2000). The Bureau of Justice Assistance (2000) found offenders who are effectively screened and qualify for jail diversion programs, and are supervised in the communities they are released to do not pose an increased threat to society.

Jail diversion is synonymous with pretrial diversion which is defined by the National Association of Pretrial Services Agencies (NAPSA) as community based alternatives for nonviolent defendants to better address the underlying social and psychological reasons for their criminal behavior (NAPSA, 2011). There are two types of jail diversion programs defined by NAPSA (2011):

- The most common type of jail diversion program connects arrestees and defendants with mental illnesses and or substance abuse with community based treatment providers
- The second type of jail diversion program is a pretrial program that diverts detainees from jail who are deemed safe to be supervised in the community while awaiting trial

### **Best Practices for Implementing Jail Diversion Programs**

Currently, research on what practices are considered best for implementing jail diversion programs are limited (NAPSA, 2011). Based on a survey of 27 different diversion programs and a revision of national pre-trial diversion standards NAPSA identified nine promising practices. Three emerging practices were also identified which lacked research support and so were not defined as best practices. Promising practices were measured by the programs' theory and policy, practical experience, and empirical data (NAPSA, 2011). Below is a bulleted list of NAPSA's the nine identified promising practices followed by the three emerging practices (a full description of each practice can be found in “Promising practices in pretrial diversion”).

#### **Promising Practices**

- Formalized cooperative agreements between the pretrial diversion program and key stakeholders to assure program continuity and consistency
- Defendant access to counsel before the decision to participate in pretrial diversion

- Specific due process protections incorporated into programming
- Broad, equitable, and objective diversion eligibility criteria, applied consistently at multiple points of case processing
- Uniform and validated risk and needs assessment to determine the most appropriate and least restrictive levels of supervision and services needed
- Intervention plans tailored to individual participant risks and needs and developed with the participant's input
- Graduated sanctions short of termination as responses to participant behavior
- Maximum possible privacy protections for participants and program records
- Independent program evaluations

#### **Emerging Practices**

- Programs have written policies and procedures backed by a formal mission statement
- Programs have an automated management information system that supports performance measurement and evaluation
- The program audits the performance of the external programs it uses for participants

According to NAPSA (2011) pre-trial diversion provides an effective, short term intervention which saves jail and court time and reduces recidivism. The report also notes there is a need for more research and evaluation and additional collaboration and partnering with pre-trial release programs and problem solving partners.

#### **Types of Jail Diversion Programs**

Many types and variation of jail diversion programs exist (NAPSA, 2011). Mental health services, crisis intervention teams, issuing citations in lieu of arresting nonviolent offenders, and specialized courts (i.e. drug courts, mental health courts, driving while intoxicated courts) were found to be the most publicized and reported on diversion programs. Another program that has shown to effectively reduce the jail population and free up the swelling court case loads is court date notification systems. These programs are described below.

##### *Citations for Nonviolent Offenders:*

In an effort to help alleviate overcrowding in the local jails, the Bernalillo County, New Mexico Sheriff's department has instituted a policy since the early 1980s of issuing citations to nonviolent offenders rather than arresting and booking them into jail (Bureau of Justice Assistance, 2000). Clear guidelines must be set forth to give officers direction on who may qualify for this type of diversion. Anyone posing as a flight risk or a risk to the community must be excluded from the program. Due to the success of the program instituted by the Bernalillo County Sheriff's Department, the Albuquerque Police Department has established a similar program (Bureau of Justice Assistance, 2000).

##### *Court Date Notification Systems*

In 2005 the Jefferson County, Colorado Sheriff's Department began a pilot program called the Court Date Notification Program. The program was created with the goal of lowering the number of individuals who fail to appear for their scheduled court hearings by contacting them with a phone notification of their court hearing date while providing quality customer service. The goal of lowering the failure to appear (FTA) rate would reduce the time the courts have to

spend of FTA warrants and would help reduce the number of individuals who are brought to jails on FTA warrants (Jefferson County CJPU, 2006). The program is simplistic in nature. The court date notification personnel calls defendants 1 week in advance to notify them of their upcoming court date. The court date notification personnel also is trained to answer questions that normally would be fielded by the court clerks, provides directions, has the ability to look up other court information for defendants, is knowledgeable of the other agencies within the court system and forwards defendants to those agencies when appropriate, and helps to reduce the fears of the court system held by some defendants. The pilot program proved successful and the program was permanently put into place in March of 2006 (Jefferson County CJPU, 2006).

The program was followed for 6 months after permanent implementation between April and September 2006. During this time period funding for the program allowed for only one full time staff person to implement the program which limited calls made to just over half of the population that could benefit from the program. The program proved successful again, reducing the FTA rate by 52%, and reducing the predicted FTA warrants issued by approximately 425 (Jefferson County CJPU, 2006). The program has been praised by the court system for saving approximately 1,100 hours of judges', court clerks', police officers', and booking staffs' time, and has been praised by defendants who have been contacted for the customer service they received during this 6 month period (Jefferson County CJPU, 2006). After the 6 month study period the program began to train volunteers to help contact more defendants. Volunteers are helping to keep the cost of the program down and the program is now able to reach 100% of defendants awaiting their court dates who have supplied the court system with current and correct contact information (Jefferson County CJPU, 2006).

#### *Mental Health Services*

Due to the lacking research behind the effectiveness of mental health jail diversion programs the Substance Abuse and Mental Health Services Administration (SAMHSA) provided funding for a three year study of mental health jail diversion program starting in 1997 (Steadman et al., 1999). The study followed numerous sites, collected extensive background and outcome data on diverted offenders and on comparison subjects, was comprised of diverse participants, and gathered the cost effectiveness of the sites (Steadman et al., 1999). The sites studied were both pre-booking and post-booking jail diversion programs (SAMHSA, 2004). The purpose of the SAMHSA study was not to compare how different types of jail diversion programs work, but to see if diversion programs are effective. The mental health treatment programs varied in services provided. Current best practices in mental health services field is beyond the scope of this report; those practices are not elaborated upon here. The results of the 3 year observational study revealed that mental health jail diversion programs successfully connect eligible participants to community based services, reduce the number of days a person spends in jail, reduce cost to the criminal justice system, increase the cost of treatment, and do not increase public safety risk (SAMHSA, 2004). Both the diverted participant group and the comparison non-diverted group showed improvements in their mental health symptoms; however neither group showed significant improvements over the other group (SAMHSA, 2004).

The Crisis Intervention Team (CIT) model developed in 1988 in Memphis, Tennessee is a mental health jail diversion program which has been adopted by numerous states within the U.S. with approximately 400 programs in operation (Compton et al., 2008). A Crisis Intervention

Team is comprised of law enforcement personnel, mental health professionals, and mental health advocates. The goal of the program is to divert individuals with mental health disorders from being arrested and booked into jail while linking those individuals with appropriate mental health services. The CIT model appears to be effective in connecting individuals with appropriate mental health services, and appears to have a lower arrest rate than other pre- and post-booking jail diversion programs (Compton et al., 2008).

### *Specialized Courts*

There are numerous specialized courts in existence. Three of the most popular and utilized specialized courts are presented in this report. The courts presented are: drug courts, driving while intoxicated (DWI) courts and mental health courts. All specialized courts reviewed were created with the frame work of drug courts in mind. Because drug courts are the model for the other courts, drug courts are addressed first, then descriptions of DWI courts and mental health courts are presented. While the design of specialty courts vary from jurisdiction to jurisdiction in how they are implemented and operates in general they seek to address an underlying problem that led to the person's involvement in the criminal justice system, and there is a judge at the center of the problem-solving effort. Traditionally specialty courts have focused on pretrial diversion and admitted individuals before any plea is made. Many programs are now post-plea.

#### **Drug Courts:**

The first drug court was implemented in Dade County, Florida in 1989. Due to the success of drug courts over the past two decades of being able to divert individuals from jail, reduce the number of drug related crimes, reduce recidivism, and provide effective substance abuse treatment all in a cost effective way, the number of drug courts have expanded dramatically to approximately 2140 drug courts currently operating in the U.S. (ONDCP, 2011). The policy and procedures of drug courts provides offenders with greater structure and supervision than they would receive even if they were on probation or parole (Belenko, 1998). This enhanced supervision method along with frequent substance abuse monitoring and treatment provides an avenue to effectively hold the offender accountable and treat the substance abuse disease.

The model for the drug court system according to Belenko (1998) is as follows:

- Judicial supervision of structured community-based treatment
- Timely identification of defendants in need of treatment and referral to treatment as soon as possible after arrest
- Regular status hearings before the judicial officer to monitor treatment progress and program compliance
- Increasing defendant accountability through a series of graduated sanctions and rewards
- Mandatory periodic drug testing

#### **DWI Courts:**

DWI courts are designed to resemble drug courts, but with further emphasis on alcohol abuse monitoring and reduction of DWI recidivism (NDCI, 2004). The goals of DWI courts are to reduce DWI recidivism, bring accountability to offender's actions, provide behavioral modification to the offenders in an attempt to reduce recidivism, stop the abuse of alcohol,

protect the public, treat victims of DWI offenders fairly and justly, and provide the public education of DWI Courts and the benefits brought to the community they serve (NDCI, 2004).

**Mental Health Courts:**

Although mental health courts are based on the drug court model, all mental health courts are independently constructed and there is no single model to replicate a mental health court after (Steadman, Davidson, & Brown, 2001). Mental health courts have historically only accepted low-level offenses, but according to the CMHS National GAINS Center (2007) some mental health courts are beginning to accepting felony cases as well. The norm for low-level offenses is to dismiss the charges upon successful completion of the court appointed mental health program (CMHS National GAINS Center, 2007). For higher-level offenses (felonies) defendants are expected to enter a plea before being the mental health court program (CMHS National GAINS Center, 2007). Mental health courts' goals are to decriminalized people with mental illness, rapidly connect those with mental illness to community treatment providers, and defer individuals who qualify for the program from jail and further incarceration (Griffin, Steadman, & Petrila, 2002).

Other types of problem solving courts or specialty courts include veterans' courts, community and re-entry courts, and domestic violence courts.

**Conclusion**

There are many types and varities of jail diversion programs. Jail diversion programs should possess uniform eligibility criteria, structured supervision and delivery of services, and upon successful completion of the required terms and conditions of the diversion program dismissal (or its equivalent) of the pending charges should occur (NAPSA, 2011). Jail diversion programs when well implemented and structurally sound are proving to be effective in accomplishing in reducing jail populations and reducing recidivism while not compromising community safety (Bureau of Justice Assistance, 2000; NAPSA, 2011).

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