



## *EXECUTIVE SUMMARY*

# Pretrial Detention and Case Processing Measures: A Study of Nine New Mexico Counties

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Prepared by: Kristine Denman, Director, NMSAC

The New Mexico Statistical Analysis Center completed a study of pretrial case processing measures and pretrial detention within nine New Mexico counties. The purpose of this document is to describe the study and present key findings. These findings are described in detail in the full-length report entitled “Pretrial Detention and Case Processing Measures: A Study of Nine New Mexico Counties.”

### **Background**

Pretrial detention has garnered attention throughout the nation. Studies suggest individuals are unnecessarily detained pending trial (Green, 2011, Subramanian et al. 2015), and this is certainly a concern in New Mexico. For example, many individuals in Bernalillo County have been detained for relatively minor offenses up to the initial court appearance (Steelman, 2009) or beyond (Guerin, 2013; Kalmanoff et al. 2014). Freeman’s (2012) length of stay study of select counties reiterates that many misdemeanants are detained for some time in detention facilities throughout the state, with an overall median of 80 days ranging up to a median of 106 days at one facility. The length of detainment impacts not only the detainee. It also drains jail resources that would likely be better spent on those who have been convicted, rather than housing those who have not been convicted for an extended period of time.

There are likely many causes of excessive and unnecessary pretrial detention. Experts suggest that the use of an appropriate risk needs assessment, bail reform, alternatives to detention, and enhanced case processing may all play a role in improving the situation (Came, 2015; Greene, 2011; Kalmanoff et al. 2014; Subramanian et al. 2015). Several studies have examined case processing and pretrial detention in New Mexico. However, most of these efforts have been focused on Bernalillo County. Bernalillo County handles the largest number of cases, has had one of the worst overcrowding situations, and the longest time to disposition in the state. They also have the most

resources to study these problems, and therefore have been the subject of several studies examining case flow (e.g., Steelman et al., 2009), juvenile case processing (e.g. Swisstack et al., n.d.), and pretrial length of stay and overcrowding (e.g., Guerin, 2013; Kalmanoff, 2013). While other counties do not have the volume of cases that Bernalillo has, they are still impacted by pretrial length of stay and jail crowding. However, beyond the annual data reported to the Legislature and Administrative Office of the Courts (AOC), there is little data available to assess case processing outside of Bernalillo County. While Freeman (2012) and Guerin and Freeman (2005) examined length of stay for detainees in select counties, these were based on “snapshot” data and were limited in scope. Further, these studies did not include an assessment of case processing measures.

There are a total of 13 judicial districts in New Mexico’s 33 counties. Currently, all 13 judicial districts are required to report standard annual measures to the legislature (time to disposition from case filing) as set forth in the General Appropriations Act, and provide other information (total adjudicated, pending and convicted cases by offense type and court type) to the AOC for an annual report. The disposition rates reported by the AOC measure “whether a court is keeping up with incoming cases” (New Mexico Administrative Office of the Courts, 2016). As such, the measure is computed by dividing the total number of disposed cases by the sum of new and reopened cases. Thus, pending cases are included in the disposed numbers, but are not included in the denominator. A rate that exceeds 100% indicates that the court is reducing backlogged cases.

The AOC also summarizes the status of pending cases. This includes how many pending cases there are, and how long they have been pending (up to six months or more than six months) taking into account whether they are inactive due to a bench warrant. In addition, they report the total number of trials held, and disposition by trial type (convicted, acquitted, pled, dismissed, etc.).

Though the current performance measures used by the state are important, they are limited. They do not provide information about pretrial release decision making or whether there is differential case processing based on factors such as individual characteristics or pretrial detention. Moreover, as Steelman et al. (2009) point out, using the case filing date to calculate time to disposition may result in underestimates of actual time to disposition. As noted above, studies have focused primarily on Bernalillo County, leaving out important areas of our state despite the need and desire to understand case processing and length of stay in these areas. This study aims to examine pretrial detention in select New Mexico detention centers, and explore case processing performance measures not currently used in New Mexico.

## Current study

We address multiple objectives with this study. First, this study was intended to explore the feasibility of developing *case processing performance measures* that are more robust than those currently used. As noted above, current measures include time to disposition (from date of filing),

total adjudicated, pending and convicted cases by offense type and court type. We explore these using different methodologies. In addition, we examine clearance rates using date of filing, date of booking, or earliest date. These measures reflect pretrial detention times, and are important measures of case processing.

Second, this study is intended to understand the extent of *pretrial detention* and the factors that are associated with pretrial detention. Thus, we examine rates of pretrial detention and average time detained. In addition, we explore which legal (e.g., current offense severity, prior criminal history) and extralegal factors (e.g., defendant characteristics) are associated with pretrial detention (whether or not detained) and length of pretrial detention.

Third, we assess whether *pretrial decision-making* appears to be accurate. When deciding whether to release someone pretrial, the judge must weigh the consequences of detaining someone who has not been convicted against ensuring attendance at court proceedings and community safety. Thus, we examined failure to appear and new offenses committed during the pretrial period.

Finally, we explored whether *pretrial detention influences case processing and outcomes*. We examine whether pretrial detention is associated with adjudication, time to adjudication, and conviction. We seek to determine how pretrial detention is associated with case processing times and case outcomes, both independently and in conjunction with legal and extralegal factors.

## Data sources

We used several sources of data for this project. Nine county detention facilities participated in the study: Chaves County, Colfax County, Doña Ana County, Luna County, McKinley County, Otero County, Sandoval County, Santa Fe County, and Valencia County. Each of the participating counties provided us with an automated dataset capturing all bookings in 2012 and 2013, with the exception of Doña Ana, who provided 2012 data only. The study was approved by the University of New Mexico's Office of the Institutional Review Board.

In addition to the automated data from the detention facilities, we utilized information from two other sources. First, we obtained arrest data from the New Mexico Department of Public Safety (DPS), which maintains the state central repository of criminal history data. These data include arrests from 2001 to 2014. Second, we received automated data from the Administrative Office of the Courts (AOC). We used these data to track court cases related to bookings through magistrate and district courts (municipal cases were not included). In addition, both the DPS and AOC data were used to construct the criminal history of each individual in our sample as well as pretrial compliance measures.

## Data elements

In order to answer the questions posed above along with case processing statistics and performance measures, we created multiple variables. The first set of variables measures key

pretrial case processing points. We constructed the *length of pretrial detention* (number of days from booking to release, adjudication, or end of the study if not yet adjudicated); *the number of days between booking and case filing*; whether the cases associated with the booking were *adjudicated within two years*; and *time to disposition* from the filing date, booking date, and earliest date. Among adjudicated cases, we determined whether the case resulted in *conviction*, and determined the *sentence type* from the AOC data.

The second set of variables captures compliance and performance while on pretrial status. Specifically, we tracked *failure to appear* among individuals who were released pretrial, as well as whether they committed a *new offense* while released. We constructed both measures from the DPS data.

The last set of data includes legal and extralegal variables that may influence pretrial detention and case processing decisions. These measures include *demographics*, *current offense*, and *prior criminal history*.

### Sample

Our final sample included individuals who were booked into a participating New Mexico county detention center (jail) between January 1, 2012 and December 31, 2013 for a new offense. Over the two-year period, a total of 80,470 bookings occurred at these facilities. Since some individuals were booked multiple times, we selected each person's first booking for a new offense within each county. This resulted in a sample of 32,357 bookings. Just over one-quarter (25.9%) of the bookings involved one or more felonies. Thus, most bookings (74%) involved misdemeanors.

However, we were not able to find all cases in the court database. We found an associated court case within the same county for 17,930 of the 32,357 eligible bookings. Although we found the majority (75%) of felony cases, we found just half of misdemeanor cases. As a result, most analyses were completed with the sample of 17,930 cases.

It is important to point out that this study follows everyone who was booked for the first time for a new offense within each county. Due to this, the results differ in some ways from studies that use a different methodology, like a point in time study (see, e.g., Freeman, 2013).

### Analytic approach

We calculated univariate and bivariate descriptive statistics to examine the sample, explore case processing statistics, and to understand the relationships between key decision points and legal and extralegal variables. We completed multivariate analyses including logistic and multivariate regression to assess which factors are associated with pretrial detention, adjudication, and conviction while holding the other variables constant.

We calculated logistic regression models for dichotomous (binary) dependent variables (e.g., whether or not someone was detained pretrial). We calculated multiple regression models to assess which legal and extralegal factors are associated with time detained pretrial and time to adjudication. All analyses were completed using SPSS v. 23 software.

## Key findings

### Case processing measures

#### Bookings

- Over 80,000 bookings occurred over the two years at the nine detention centers<sup>1</sup>
  - 48,643 individuals were booked, some in more than one county
    - The average number of bookings per person was 1.65
- There were 50,879 bookings per person per county
  - 38,507 bookings for individuals within each county were for one or more *new offenses* (as opposed to probation violation, federal hold, tribal hold, etc.)
  - 32,357 bookings within each county involved a *first* booking for an individual for a *new offense*
- 24% of first bookings for a new offense were associated with more than one criminal case; most of these (89%) were cases that were bound over from the magistrate court to the district court

#### Time to case filing from offense date

- The majority of cases are filed well within New Mexico guidelines from time of offense
  - Overall, the median time between the offense and case filing date was 2 days
  - The median number of days between offense and case filing was much shorter for magistrate court cases (2 days) than cases involving the district court only (93 days)

#### Time to case filing from booking date

- Bookings occurred prior to the filing date in most (87%) of the cases
  - Bookings occurred prior to or the same day as filing more often in cases involving only misdemeanors (91%) than those with felony offenses (82%)
- Cases were filed more quickly when the individual was detained at the time of filing (median of 1 day from booking ) than if the individual was not detained at the time of filing (median of 2 days from booking), but this varied by court venue
  - Cases heard in district court only were filed within a median of 6 days of booking if the individual was in custody, and 50 days if not in custody

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<sup>1</sup> One county, Doña Ana, provided 2012 data only. Based on their 2012 bookings, we project that the total number of bookings for all nine counties for both years would be over 90,000.

### *Best date to measure time in the criminal justice system*

- Case filing date is the most accurate beginning date for cases heard in district court only since many individuals are booked after the filing date
- Booking date is the most accurate beginning for cases that begin in magistrate court since many of these individuals are booked prior to the filing date
- However, the minimum of either the case filing date or the booking date is the most accurate to measure time in the criminal justice system

### *Adjudication*

- The vast majority of cases (92%) associated with a booking were adjudicated within two years
- Among magistrate court cases, those bound over to district court were disposed of more quickly than those not bound over
  - The median number of days to disposition in the magistrate court was 30 days for cases bound over and 108 days for those fully resolved in magistrate court
  - 92% of bound-over magistrate cases were disposed of within six months at the magistrate level
  - 69% of cases heard only in magistrate court were disposed of within six months
- Among district court cases, those heard only in district court were resolved more quickly than cases that began in magistrate court
  - The median number of days to disposition for felony cases heard only in district court was 331.5 days and those that began in magistrate court were adjudicated within a median of 352 days
  - Approximately 50% of felony cases were adjudicated within one year, regardless of whether they began in magistrate court.

### *Conviction rates*

- 58% of bookings with cases heard only in magistrate court resulted in a conviction
- 80% of bookings with one or more cases heard in district court resulted in a conviction

### *Sentencing rates*

- Among those convicted:
  - Judges ordered confinement in 54.6% of district court cases
  - Judges ordered confinement in 37% of magistrate court cases
- Very few individuals (less than 1%) were released with time served only

## Pretrial detention

### *Detention rates and length of detention*

Most individuals are booked and released after a relatively short time. Among everyone booked for a new offense over the two-year period:

- Two-thirds of individuals booked were detained at least one day
- The mean number of days detained was 13, with a median of 1 day
  - Among those whose cases were heard in district court, the average number of days detained was 40, with a median of 4 days
  - Among those whose cases were heard only in magistrate court, the average number of days detained was 5, with a median of 1 day
- Among those detained the entire pretrial period, the average number of days detained was 59 days, with a median of 17 days

However, a relatively small number of people are detained for a long time.

- 35% are held 4 days or more; 10% are held 21 days or more
- Using a cross-sectional (snapshot) methodology, we found that among the 341 people booked between January 1, 2012 and June 30, 2013 who were still detained on June 30, 2013:
  - The median number of days detained for felony offenders was 156
  - The median number of days detained for misdemeanants was 26 days

### *Relative influence of legal and extralegal variables on whether or not detained pretrial and length of pretrial detention*

- Gender was related to both *whether* someone was detained and *length of detention*
  - Overall and in magistrate court cases only, males were significantly more likely to be detained one or more days; however, gender was not a significant predictor of whether someone was detained in cases involving district court
  - However, males were more likely to spend a greater number of days detained than females regardless of the court involved
- Age was related to *whether* someone was detained, but not *length of detention*
  - Older individuals were more likely to be detained one or more days if the magistrate court was involved, but age was not a significant predictor of whether someone was detained in cases involving the district court
- Race was a significant predictor of both *whether* someone was detained and *length of detention*
  - Native Americans and Hispanics were significantly more likely to be detained than White defendants

- However, Hispanic defendants were more likely to spend fewer days detained than Whites
- Among magistrate court cases only, Native Americans spent a significantly greater amount of time detained than White defendants
- Serious offenders were more likely to be detained and for a longer time
  - The odds of detention were significantly lower for those with a drug offense, DWI, public order, or “other” offense compared to those with a violent offense in cases overall and in magistrate cases
  - Felons were more likely to be detained than misdemeanants
  - Violent offenders were significantly more likely to be detained for a longer time than those charged with any other crime, except among magistrate court cases, where time detained pretrial was not significantly different for property offenders and violent offenders.
  - Felony offenders were more likely to be detained for a longer period of time
- Criminal history was related to both *whether* someone was detained and *length of detention*
  - The odds of detention were higher for those with a prior felony arrest, one or more arrests for a violent offense, or a prior failure to appear for a court date
  - Those with a prior arrest for a felony offense were significantly more likely to spend a greater amount of time detained pretrial regardless of court venue
  - Prior arrests for a violent crime significantly increased length of detention among all cases and magistrate court cases, but not district court cases
  - Those with a prior failure to appear for a court case were significantly more likely to spend a shorter amount of time detained than those without a prior failure to appear in cases overall
- The amount of bond ordered was not significantly related to *whether* someone was detained but was related to *length of detention*
  - The higher the bond amount, the longer the time detained pretrial

### Pretrial detention decision-making

- Overall, approximately 20% of individuals experienced a pretrial failure
  - 15% of individuals whose cases were heard only in magistrate court either committed a new offense prior to case adjudication or failed to appear at court
  - 37% of individuals whose cases involved the district court either committed a new offense prior to case adjudication or failed to appear at court
- New offenses were more common (18%) than failure to appear (7%)
- The most common new offense was a property offense (24%) followed by a public order offense (22%)



## Pretrial detention and case outcomes

- Longer pretrial detention was significantly related to an increase in time to adjudication
- Longer pretrial detention was associated with a significant increase in the odds of conviction
- Other legal and extralegal variables predicted case outcomes as well
  - Time to adjudication was quicker for older individuals in magistrate cases and cases overall, but was not significant in district court cases
  - Time to adjudication was quicker for Native Americans relative to White defendants regardless of the court venue
  - Felonies took longer to adjudicate overall, but were adjudicated more quickly if heard in magistrate court
  - Conviction was less likely among older individuals, Hispanics and Native Americans, but more likely among males
  - Conviction was much more likely in DWI cases compared to violent offenses

## Selected recommendations

- Explore the feasibility of including time to filing as a performance measure
  - This should include time from offense date and time from booking date (if it precedes the filing date)
- When assessing time in the system, it would be best to use the earliest date of exposure (booking or filing date) if possible.
- It is important to understand the total time it takes for a case to be fully adjudicated. In our sample, we found that most cases heard in district court began in magistrate court. Thus, if possible, we recommend creating measures that account for the time it takes for cases to be resolved in magistrate court before being transferred to district court. The time to resolution should measure the time in magistrate court, district court, as well as the total time from the first filing or booking date to final resolution.
- Models of pretrial detention suggest that both legal and extralegal variables predict whether someone is detained and for how long. Further, especially among district court cases, over one-third of individuals committed a new offense during the pretrial period. In order to standardize detention practices and minimize pretrial failure, it may help to use a pretrial risk needs assessment. However, if a tool is chosen, it must be validated before widespread use, so it is important to pilot the instrument and assess its effectiveness before widespread implementation.
- It is important to understand the relationship between pretrial detention and case outcomes. Future research should include additional measures of case complexity and case severity to assess whether the relationship between length of pretrial detention and case outcomes continues once these factors are taken into account.



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**New Mexico Statistical Analysis Center**

**Institute for Social Research**

**University of New Mexico**

**MSC02-1625**

**Albuquerque, New Mexico 87131-0001**

**(505) 277-6247 Fax: (505) 277-4215**