

New Mexico's Pretrial Justice Initiative

Building the Framework



A Legal and Evidence Based Pretrial Justice System



AOC Pretrial Justice Program



Mission Statement:

Foster and enhance pretrial justice throughout New Mexico

Pretrial Justice Guiding Principles

“In our society, liberty is the norm and detention prior to trial or without trial is the carefully limited exception.”

U.S. v. Salerno

- Presumption of innocence
- Use of least restrictive conditions to reasonably assure court appearance and public safety
- Preventive detention only when no conditions can be applied to reasonably protect public safety

Pretrial Justice Implementation Goals



- Develop **framework** for statewide pretrial justice initiative
- Develop and implement practices and programs following legal and evidence-based practices established by the National Institute of Corrections (**NIC**), National Association of Pretrial Service Agencies (**NAPSA**) and the American Bar Association (**ABA**)
- Provide statewide pretrial justice training and technical assistance for **sustainability**
- Implement pretrial practices and programs statewide, standardize leveraging local resources and legislative criminal justice investment funding.
- National Leader

Today's Objectives



- **Pretrial Justice**
- **Legal Framework**
- **The Essential Elements of a Pretrial Justice System and Agency**
- **Measuring Pretrial Risk**
- **Pretrial Services Agency**
- **Pretrial Data and Performance Outcomes**
- **Sites and Operational Framework**

Pretrial Justice

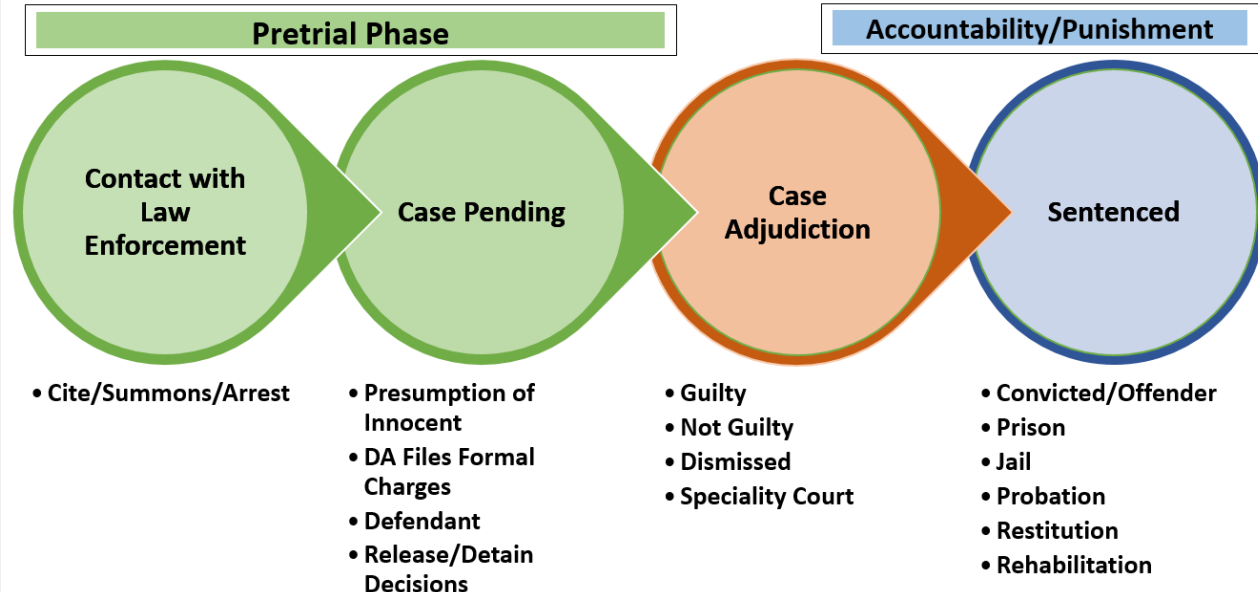
Pretrial Justice

The right to physical liberty is one of the foundational principles of the United States Constitution.

The U.S. Supreme Court is unequivocal in stating:

“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

The pretrial justice phase of a case begins at a person’s first contact with law enforcement and ends at case disposition. Disposition can include dismissal of charges, plea, or trial in which the defendant is found guilty or not guilty.



Pretrial Justice

The need to balance competing goals:

- ▶ Protect the public
- ▶ Assure court appearance
- ▶ Preserve legal and constitutional rights afforded to persons awaiting trial
- ▶ Pretrial is not Probation
- ▶ NAPSA, NIC, Arnold Foundation

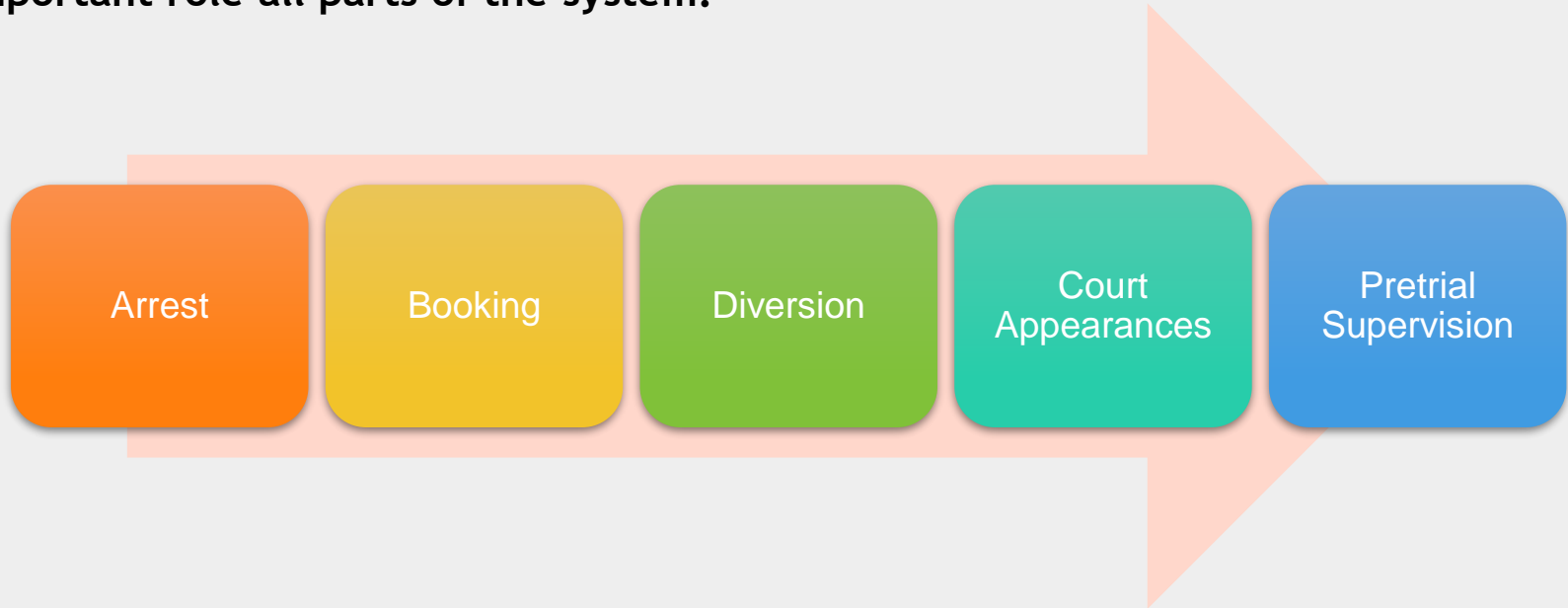


The honoring of the presumption of innocence, the right to bail that is not excessive, and all other legal and constitutional rights afforded to accused persons awaiting trial while balancing these individual rights with the need to protect the community, maintain the integrity of the judicial process, and assure court appearance.

VanNostrand, M. and Keebler, G. (2007). "Our Journey Toward Pretrial Justice," *Federal Probation*, Vol .71 (2): 20-25.

Pretrial Justice

Pretrial Justice is system, not only a tool or program consisting of many stakeholders: Law Enforcement, Jails, District Attorneys, Defense Attorneys, Courts who play an important role all parts of the system.



Legal Framework



The Legal Foundation



GOAL: MAXIMIZE RELEASE, APPEARANCE, AND SAFETY



SALERNO: LIBERTY IS THE NORM, DETENTION THE "CAREFULLY LIMITED EXCEPTION."



STACK: BAIL SET HIGHER THAN NEEDED TO ENSURE APPEARANCE IS EXCESSIVE.



SALERNO: DETENTION IS ALLOWED IF INDIVIDUAL POSES A THREAT THAT CONDITIONS CANNOT ADDRESS.

New Mexico's Legal Framework

State of New Mexico Vs. Brown (2014)

- Presumption of release by least restrictive means-moving away from secured money bonds
- Cannot set bail solely on the basis of the charged offense
 - Eliminate jailhouse bond schedules
- Cannot set bail at an amount for the purpose of detaining the defendant

NM Constitutional Amendment (2016)

- Provided Judges the ability to detain defendants if no conditions of release exist to ensure public safety through State's motion and proof that is "clear and convincing"

NM Supreme Court Rules (2017)

- Least restrictive conditions of release to ensure public safety and court appearance
- Conditions should be individualized
- Updated in November 2022 to allow certain defendants held pending the State filing a motion to detain



Goals of Pretrial Justice

The Goals of Pretrial: “The 3 M’s”



Goal:



**Maximize
Court
Appearance**



**Maximize
Public
Safety**



**Maximize
Release**

Differences in Legal Status

Pretrial- Pre Adjudication		Probation- Post Conviction
<ul style="list-style-type: none">• Un-adjudicated defendant		<ul style="list-style-type: none">• Person on community supervision is convicted
<ul style="list-style-type: none">• Officers can not speak to defendant about pretrial charge		<ul style="list-style-type: none">• Officers may speak to the individual on supervision about conviction and can question about condition violations with Miranda Rights
<ul style="list-style-type: none">• The right to not self-incriminate		<ul style="list-style-type: none">• Statutory authority given to probation and parole agents
<ul style="list-style-type: none">• Due Process Rights and Equal Protection		
<ul style="list-style-type: none">• Must be consistent with the rights afforded to defendants pending trial		

Pretrial Supervision is not Probation Supervision

Pretrial- Pre Adjudication		Probation- Post Conviction/Accountability
<ul style="list-style-type: none"> Assess and Supervise a <u>defendant</u> to: 		<ul style="list-style-type: none"> Assess and Supervise an <u>offender</u> to:
<ul style="list-style-type: none"> ✓ Reasonably ensure his/her appearance in court through disposition of case. 		<ul style="list-style-type: none"> ✓ Reduce areas of risk related to future criminal activity: Recidivism and change behavior
<ul style="list-style-type: none"> ✓ Reasonably ensure the safety of community. No new arrests through case disposition. 		<ul style="list-style-type: none"> ✓ Completion of court ordered obligations
		<ul style="list-style-type: none"> ✓ Accountability- Public Safety
<p>Court appearance and no re-arrest <u>during</u> pretrial phase</p>		<p>Recidivism Changing long term behavior</p>

Essential Elements

Pretrial Justice Community Safety Model

The AOC Pretrial Justice Program is implementing a Community Safety which deploys evidence-based practices to:

- Improve decision-making at the pretrial stage of our criminal justice system
- Enhancing the safety of New Mexico communities
- Fostering the fair administration of pretrial release and detention.

Courts that make evidence-based decisions set the following as goals:

1. Protecting community safety;
2. Ensuring a defendant's return to court;
3. Base release and conditions decisions on an individual defendant's risk and the community's norms for liberty;
4. Provide judicial officers with clear, legal options for appropriate pretrial release and conditions of release.

Essential Elements of a Pretrial Justice System

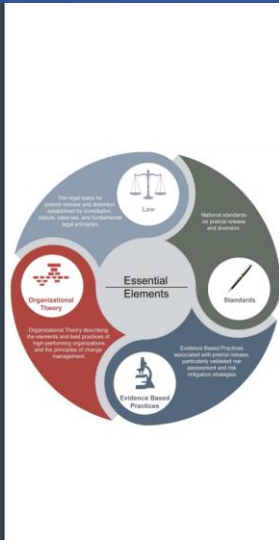
Pretrial System Essential Elements























- Release options following arrest-
 - Citation in lieu of arrest
 - Early Release- Delegated
 - Elimination of bond schedules
- Diversion to non-criminal justice alternatives
- Statutory presumption of nonfinancial release and availability of detention without bail
- Speedy criminal case screening
- Defense counsel and District Attorney at initial appearance
- Pretrial risk assessment- Public Safety Assessment (PSA)
- Sequential review of release/detention eligibility
- Dedicated Pretrial Services Agency -Risk-based supervision
- Performance measurement

A Framework for Pretrial Justice

Essential Elements of an Effective Pretrial System and Agency

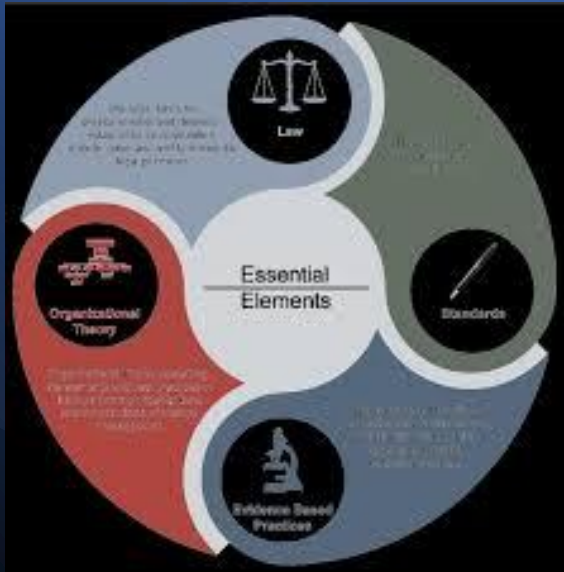


NIC Essential Elements/NM Checklist

NIC Pretrial Essential Elements	New Mexico 2019	New Mexico 2022
<ul style="list-style-type: none"> • Release options following arrest- <ul style="list-style-type: none"> • Citation in lieu of arrest • Early Release- Delegated • Elimination of bond schedules 		
<ul style="list-style-type: none"> • Diversion to non-criminal justice alternatives 		
<ul style="list-style-type: none"> • Statutory presumption of nonfinancial release and availability of detention without bail 		
<ul style="list-style-type: none"> • Speedy criminal case screening 		
<ul style="list-style-type: none"> • Defense counsel and District Attorney at initial appearance 		
<ul style="list-style-type: none"> • Dedicated pretrial program 		
<ul style="list-style-type: none"> • Pretrial risk assessment- Public Safety Assessment 		
<ul style="list-style-type: none"> • Sequential review of release/detention eligibility 		
<ul style="list-style-type: none"> • Pretrial Services Agency -Risk-based supervision 		
<ul style="list-style-type: none"> • Performance Measurement 		

Measuring Pretrial Risk

Measuring and Promoting Success



Defining Risk

A defendant's likelihood of:

- Missing a scheduled court date
- Arrest on a separate criminal offense

We measure risk so we can promote success

Legal and evidence-based pretrial practices:

- Least-restrictive conditions
- “Risk principle”
- Practices shown to be effective

We promote success rather than manage failure



Measuring Risk

Pretrial Risk:

- The likelihood of a defendant making all scheduled court appearances
- Likelihood of no new charges during the pretrial stage of their case.

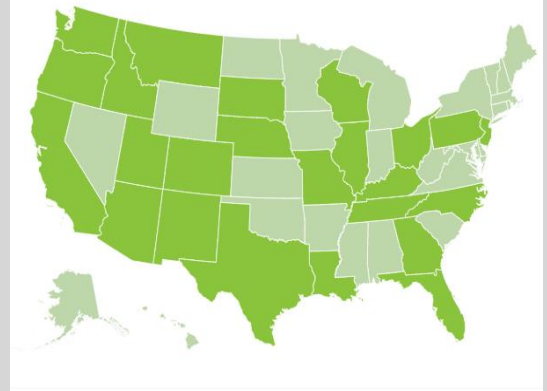
How do we measure pretrial risk?

- Actuarial validated pretrial outcome tool.
- The Public Safety Assessment was developed from the most comprehensive study ever conducted to determine what factors are the most predictive of pretrial success.

Is the PSA predictive?

- Yes, validated in numerous jurisdictions including Bernalillo County. NM AOC is working with UNM on 2 new studies: Revalidation in Bernalillo County and a Statewide Validation Study.

APPR ADVANCING PRETRIAL POLICY & RESEARCH



Jurisdictions PSA has been implemented.

Since 2017, 18 studies have been conducted on the PSA.

<https://advancingpretrial.org/psa/research/>

Measuring and Promoting Success

The Public Safety Assessment

New Mexico uses the Public Safety
Assessment (PSA)

The PSA

- Predicts
 - The likelihood of failure to appear
 - The likelihood of new criminal arrests
- Includes
 - A violence flag

Background Investigation Report

- The AOC Background Investigations and PSA Unit complete a full criminal history report.
- The Report includes information from the national FBI Database (NCIC), Court Case Management System and NMCourts.
- The Unit operates 22/7 to ensure judges have the report at First Appearance Hearing

BACKGROUND INVESTIGATION REPORT

CRIMINAL HISTORY SUMMARY	
Open Cases	1
Currently on PTS	Y
Misdemeanor or Felony PTS	M
Misdemeanor FTA's	2
Felony FTA's	2
Misdemeanor Case Convictions	2
Felony Case Convictions	1
Currently on Probation	Y
Misdemeanor or Felony Probation	F
Probation Violations	1

NAME: Williams, Timothy	NEW CASE#: M-14-MR-2021-99911
DOB: 01/01/01	COURT: Choose an item.
SSN: XXX-XX-0000	
Alias: N/A	
CHARGES:	
1. Disorderly Conduct (M)	
Date of Offense: 5/25/2021	Date of Arrest: 5/27/2021
Completed By: R. McBee	Date Completed: 5/27/2021

<Booked PV BW>

LIST ANY CASES WHICH ARE STILL PENDING, OTHER THAN THE NEW CASE				
DATE	CHARGES	PTS Info	Next Hearing	FTA
04/11/20 M-14-DR-2020-11199	1. Agg DWI (2nd) (M) 2. Speeding (TR)	Placed on PTS 04/27/2020	05/31/21 Jury Trial	04/15/20

LIST ANY CASES IN WHICH THE DEFENDANT IS ON PROBATION			
DATE	CHARGES	Probation Info	Warrants/PV's
12/25/19 M-15-FR-2019-89898	1. Residential Burglary (F)	12/31/2020 Placed on 4 years probation	04/28/20 FTA 05/05/21 PV

CRIMINAL HISTORY

DATE	CHARGES	DISPOSITION	FTA
01/01/11 M-16-FR-2011-77766	1. Trafficking (F)	1. Dismissed	0
07/01/11 M-15-DR-2011-55523	1. DWI 1 st (M) 2. Reckless Driving (M) 3. Leaving the scene of an accident (M)	1. Guilty ^{#14 Days} 2. Dismissed 3. Guilty	09/01/11
11/24/13 NCIC - TX	1. Agg Assault HHM (DW) (F) 2. Child Abuse (F) 3. Batt HHM (M)	1. No Dispo 2. No Dispo 3. No Dispo	0
01/01/15 M-14-VF-2015-11199	1. Agg Batt DV (GBH) (F) Plead to Batt DV (M)	1. Guilty	08/15/15

Public Safety Assessment Report

- The Background Investigations and PSA Unit Completes the PSA based on the Background Investigations Report.
- Both the PSA and Background Investigation Report are available to judges for the First Appearance Hearing.
- PSA provides a recommendation of who may need pretrial supervision and level.

Standard PSA Report

Name: ERNESTO FRIAS	Arrest Date: 6/18/2021	
PID: 5392373	Case Number: M-14-FR-2021-00001	PSA Assessment Date: 6/18/2021

PSA Score

Failure to Appear

New Criminal Activity

New Violent Criminal Activity Flag: Yes

Risk Factors:

1. Age at Current Arrest	23 or older
2. Current Violent Offense	Yes
a. Current Violent Offense & 20 Years Old or Younger	No
3. Pending Charge at the Time of the Offense	Yes
4. Prior Misdemeanor Conviction	Yes
5. Prior Felony Conviction	Yes
a. Prior Conviction	Yes
6. Prior Violent Conviction	1 or 2 Violent Convictions
7. Prior Failure to Appear in Past 2 Years	1
8. Prior Failure to Appear Older than 2 Years	Yes
9. Prior Sentence to Incarceration	Yes

Presumptive Release Level

Based on the Release Conditions Matrix, the defendant's presumptive release level is: **ROR PML4**

JID Data Quality Team
18/06/2021

Applying Risk to Conditions

Example Matrix

New Criminal Activity Scale							
	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	
Failure to Appear Scale	FTA 1	A ROR	B ROR				
	FTA 2	C ROR	D ROR	E PML 1	F PML 2	G PML 3	
	FTA 3		H PML 1	I PML 2	J PML 2	K PML 3	L PML 4
	FTA 4		M PML 1	N PML 2	O PML 3	P PML 3	Q PML 4
	FTA 5		R PML 2	S PML 3	T PML 3	U PML 4	V PML 4
	FTA 6				W PML 4	X PML 4	Y PML 4

- Locally developed Release Matrix. PML- Pretrial Monitoring Level.
- Risk levels are identified by local data.
- PML levels (supervision)- developed using pretrial monitoring best practices and resources available.
- Data collection important to make data driven adjustments later.

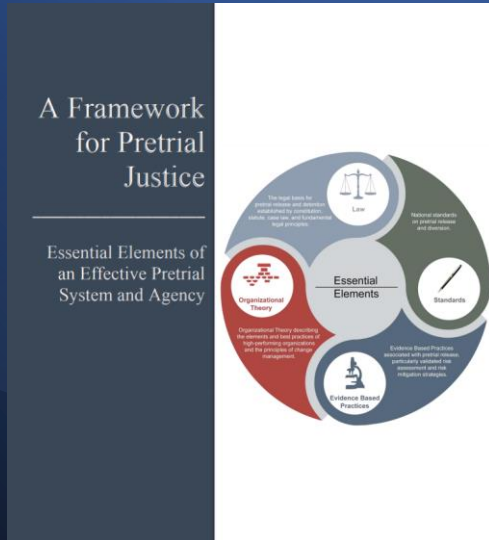
Pretrial Services Agency

Essential Elements

Pretrial Services Agency



- Dedicated Pretrial Program
- Operationalized Mission
- Universal Screening
- Validated Assessment Tool
- Sequential Bail Review
- Risk Based Supervision
- Performance Feedback/Data/Outcomes



Role of Pretrial Services Agency

Risk Assessment

- Background investigation
- Criminal history check
- Validated Risk Assessment
- Recommendations

Risk Management

- Supervision
- Monitoring
- Support

Service Integration

- Connections to Services

Performance Measurement

- Metrics
- Satisfaction
- Feedback/Data

Effective Pretrial Supervision

Using Interventions to
promote court appearance
and community safety

- ▶ **Court Date Reminders**
- ▶ **Regular Meaningful Contact**
- ▶ **Prompt notice to the court and parties of violations**
- ▶ **Matching supervision levels to likelihood of a person's pretrial success**
- ▶ **Responding to compliance and non compliance**
- ▶ **Responses that are certain, swift, proportionate, individualized and fair**
- ▶ **Connections to Community Supportive Services for needs and behavioral health needs.**
- ▶ **Remembering pretrial is not probation**

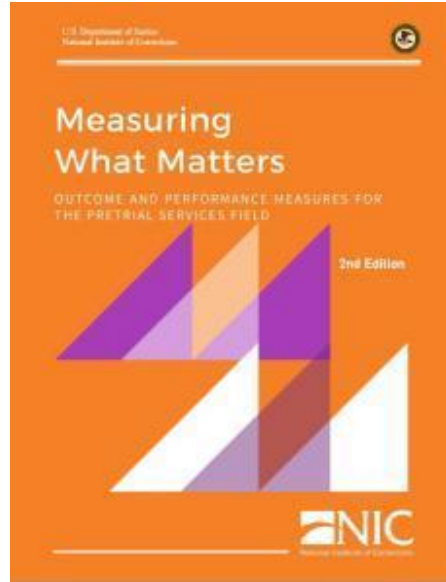
Risk Principle

Data and Performance Outcomes

Pretrial Performance Measures

Measuring for Results

- ▶ Are Implementation efforts making a positive impact on court appearance and public safety?
- ▶ Are there practices that can be implemented, removed, or modified to improve public safety and court appearance?



- **Release Rate**
- **Public Safety Rate**
- **Appearance Rate**
- **New Violent Criminal Activity Rate**

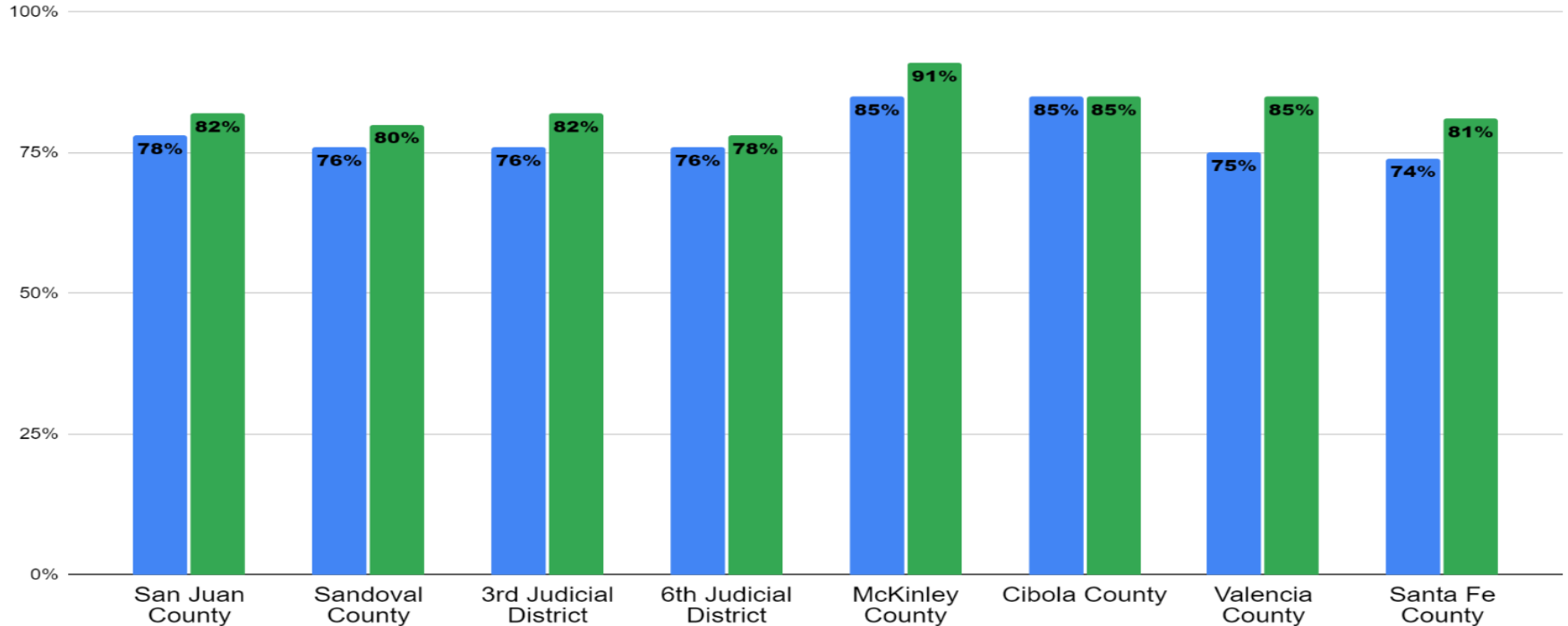
www.nicic.gov/library/025172

New Mexico Outcomes: Pre and Post Implementation

Data from each of the AOC Pretrial implementation sites was pulled to provide a comparison of safety rates prior to implementation and post implementation. The chart below reflects the outcomes.

Pre and Post Implementation Safety Rate

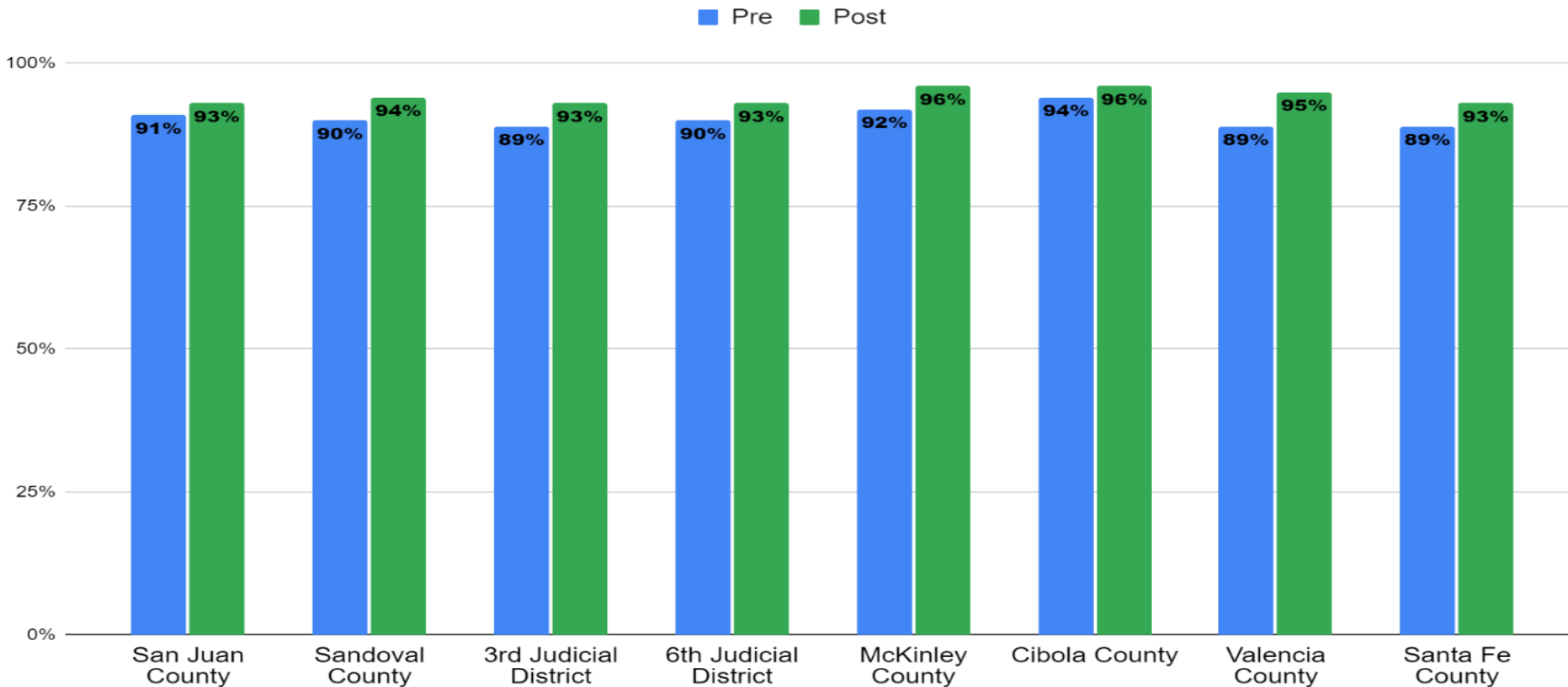
■ Pre ■ Post



New Mexico Outcomes: Pre and Post Implementation

Data from each of the AOC Pretrial implementation sites was pulled to provide a comparison of NVCA rates prior to implementation and post implementation. The chart below reflects the outcomes.

Pre and Post Implementation No NVCA Rate



Pretrial FY23

Outcomes

(Current AOC Pretrial Sites Only)

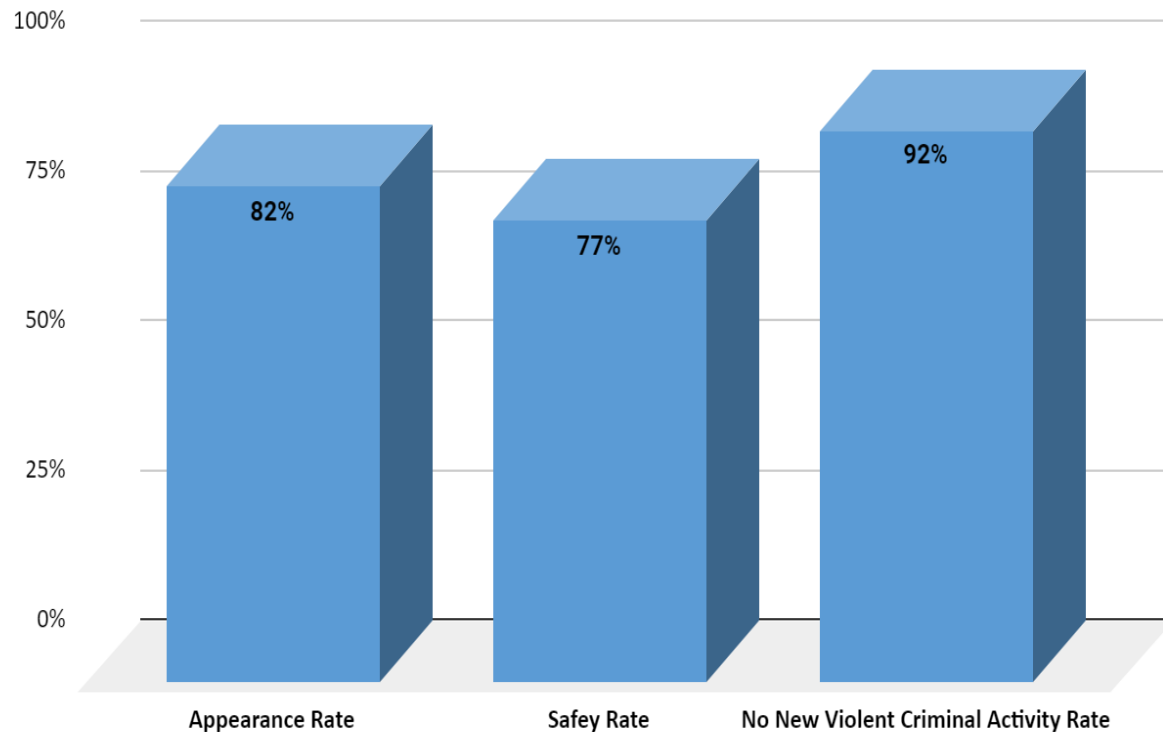
□ **9,079 cases had a PSA, verified release, and closed in FY23.**

□ **7,488 (82%) of defendants appeared for all court hearings** while their case was pending.

□ **6,969 (77%) of defendants were not charged with a new crime** while their case was pending.

□ **8,345 (92%) of defendants were not charged with a new violent crime** while their case was pending.

AOC PTS Statewide Sites Outcomes (N=9,079)



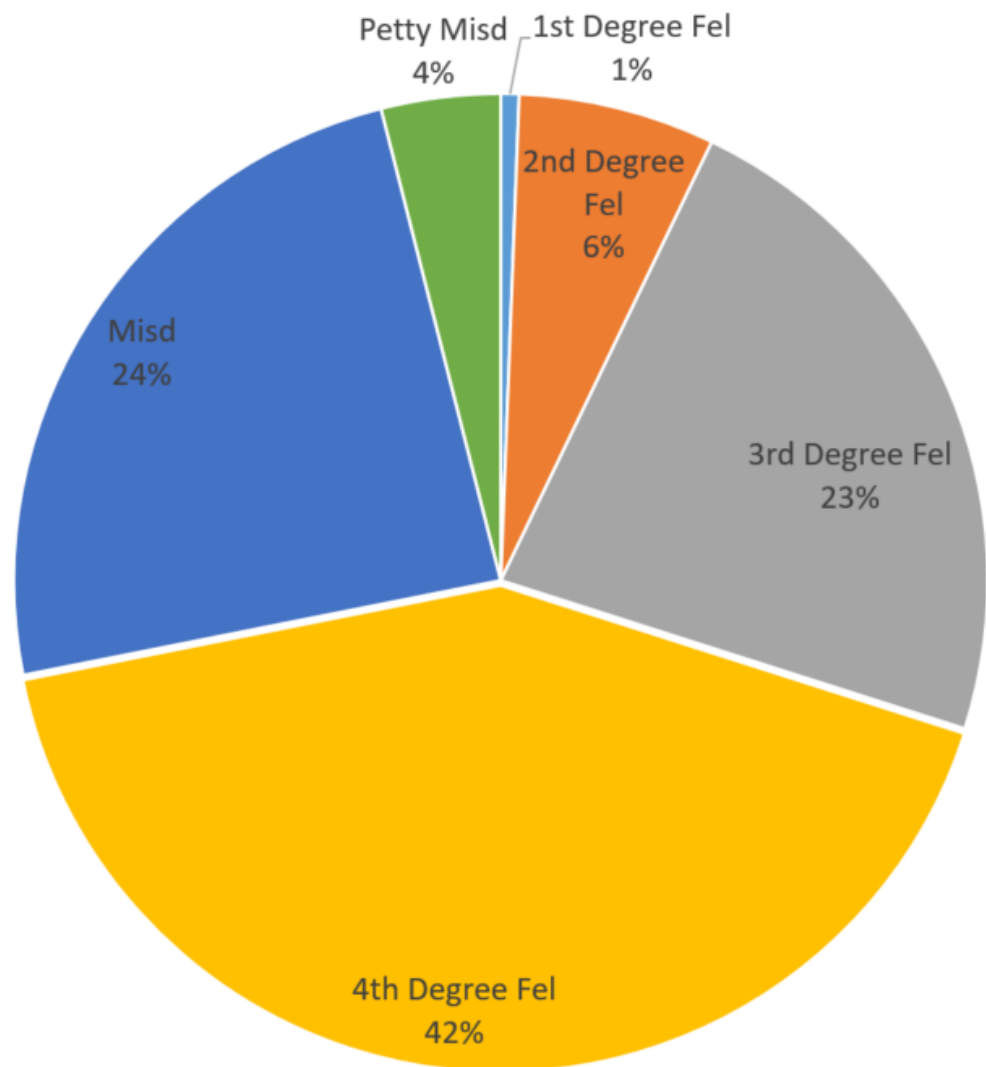
Pretrial FY23 Outcomes

(Current AOC Pretrial Sites Only)

□ 77% of defendants did not have new criminal activity while their case was pending

□ This chart reflects a sample of the 23% that had a new charge filed with the court while their case was pending

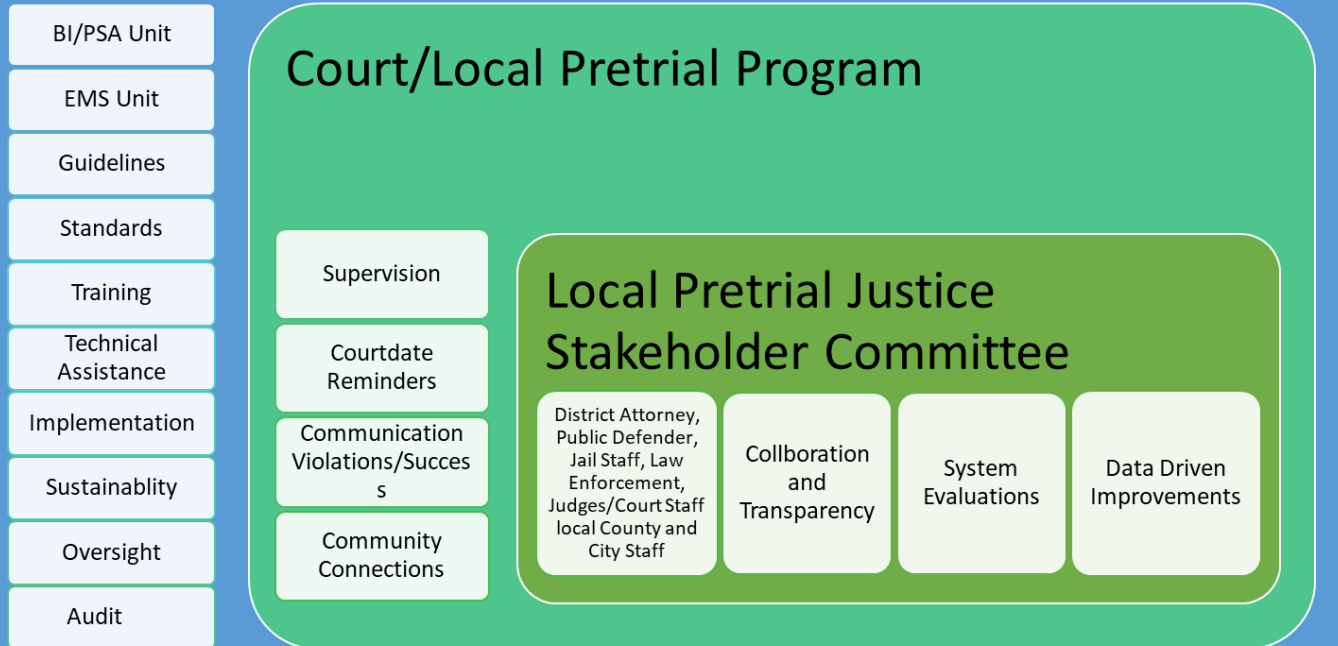
Charge Types		
1st Degree Fel	7	0.6%
2nd Degree Fel	76	6.5%
3rd Degree Fel	265	22.8%
4th Degree Fel	488	42.0%
Misd	281	24.2%
Petty Misd	46	4.0%



Sites and Operational Framework

Operational Structure

AOC Pretrial Justice Program



Process for the Background Investigations Unit

1. Local detention centers send the criminal complaint and booking sheet to the AOC Background Investigations and PSA Unit (BI/PSA Unit) staff.
2. Using NCIC, Odyssey and other resources the BI/PSA Unit staff create a comprehensive Background Investigation Report (BIR).
3. The information from the BIR is used to complete the PSA.
4. The BIR and PSA are uploaded into Odyssey prior to the defendants first court appearance.
5. This process occurs 24/7

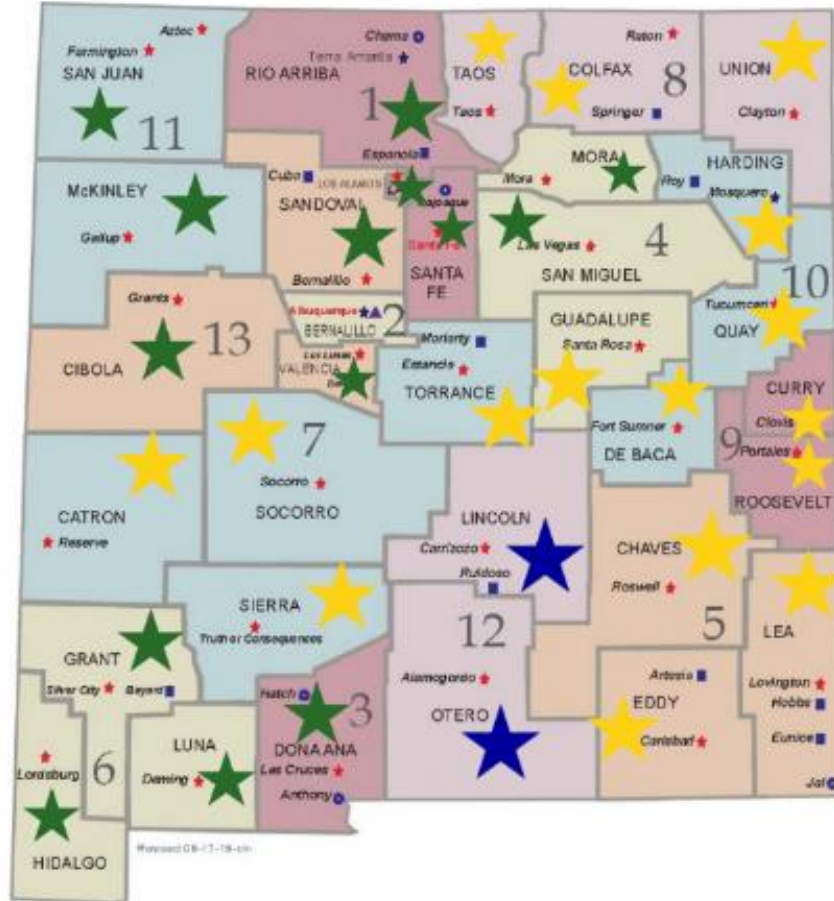


AOC Pretrial Justice Program Sites

★ Implemented-14 Counties

★ In progress- FY24

★ Future Counties- FY25/FY26



AOC Pretrial Justice Program

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