

# NEW MEXICO SENTENCING COMMISSION

NM SENTENCING COMMISSION STAFF

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## Specifics

**In this brief:** is a summary of an assessment of the NM 2nd Judicial District Court Pretrial Services Office. This brief includes a description of the full study including the methodology, results, and conclusion.

**The full report titled:**  
*Assessment of the Second Judicial District Court Pretrial Services Office: Final Report* with complete citations and references can be found at: <http://nmssc.unm.edu>.

## Study Highlights

- Properly implemented pretrial service programs that adhere to best practices have been shown to be beneficial to the criminal justice system and improve public safety.
- This study compared FY13 SJDC-PTS processes to best practices. Work on the study began in late 2012.
- Well designed and properly implemented pretrial services program can be an effective jail population management tool.
- In early February 2014, the SJDC-PTS began using the COMPAS risk and needs assessment instrument. This is a best practice.
- SJDC-PTS reviews felony cases just before the felony arraignment in district court, this is not a best practice.

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## Assessment of the Second Judicial District Court Pretrial Services Office: *Report in Brief*

Properly implemented pretrial service programs that adhere to best practices have been shown to be beneficial to the criminal justice system and improve public safety.

This study was undertaken to evaluate the implementation of the expanded SJDC pretrial services division. The study was performed in two parts. First, we reviewed the SJDC-PTS and compared processes during FY13 to best practices found in the literature. Second, we analyzed the type and amount of services provided to PTS clients before and during FY13. Work began the study in late 2012 and concluded at the end of 2013. This report was completed in early February 2014. During this period SJDC-PTS made changes to the office location, the staff, data collection, the management and supervision, and procedural changes. Because these changes were being made as the study was occurring and this report was being written, our description of the SJDC-PTS does not always concur with recent and on-going SJDC-PTS policies and procedures. This fact did not effect our study to a great degree or alter our conclusions.

### Description of the SJDC-PTS Division

According to the program's Business Practices, the purpose of the Pretrial Division is to: provide a comprehensive continuum of services and supervision to adult defendants charged with felony offenses based on NMSA Rules of Criminal Procedure for the District Courts, Article 4 Release Provisions, Rule 5-401 and the Northpointe COMPAS risk and needs assessment, to ensure court appearances, reduce involvement with the criminal justice system, reduce recidivism, and protect the community.

The SJDC-PTS Division has existed for more than 10 years. The primary target population is adults indicted by the grand jury on a felony charge and awaiting arraignment in the District Court. Bernalillo County Metropolitan Court (BMC) PTS makes condition of release recommendations on felony defendants to the BMC judge during BMC felony first appearance hearings. SJDC background investigators collect and report criminal history information on the individual and make a recommendation for conditions of release to the District Judge at arraignment. At arraignment, the judge imposes conditions of release and may order the defendant to SJDC-PTS as a condition. A risk assessment instrument has historically not been used in the referral and eligibility process. On February 13, 2014 the SJDC-PTS formally began using the COMPAS 15-question risk assessment to assess defendants in jail and using the results in its

The NM Second Judicial District Court provided the following response to this analysis:

*"On March 17, 2014 SJDC submitted a comprehensive response to the preliminary NMSC assessment of Pretrial Services in the form of a letter, response summary and comments on the assessment document that indicated the Court's disagreement with the findings and conclusions of the report. We believe the evaluation plan was not clearly delineated and brought up several questions about the process, the limitations of the assessment and methodologies. The 25 month time frame served to secure an unbalanced approach given the newness of the expansion and based on criteria that was not under the control of PTS. The conclusion that Pretrial Services is not a best practice program is simply unfounded."*

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- The program's primary target population is adults indicted by the grand jury on a felony charge and awaiting arraignment in the District Court.
- Subsequent to this report and our review, a manual court notification system was added to the database and PTS Officer's procedures. This system was put into place in October 2013. This is a best practice.
- SJDC-PTS implemented an electronic database in March 2013.
- The American Bar Assoc. and National Assoc. of Pretrial Services Agencies recommend courts should first consider releasing defendants on an unsecured bond. In our review of PTS files we found that judges most frequently require financial bonds. This is not a best practice.
- Goals and objectives are a fundamental part of any program and ABA and NAPSA standards recommend their creation. We were not able to find published goals or measureable objectives for the SJDC-PTS Division.

## Target Audience

Bernalillo County Commission, Bernalillo County citizens, Second Judicial District Court, New Mexico Administrative Office of the Courts, government officials, and criminal justice practitioners and researchers.

recommendations to the judge. Defendants are supervised by SJDC-PTS officers.

The 2011 version of the SJDC-PTS Business Practices discusses four graduated levels of supervision. The 2013 version describes the use of the COMPAS risk assessment instrument to place clients at varying levels of supervision.

During our review of the SJDC-PTS process, the Division did not have a proactive notification system. Subsequent to our review a manual notification system was added to the database and PTS Officer's procedures. This system was put into place in October 2013.

An electronic database was implemented in March 2013. The Division includes several initiatives: a component to take referrals at the Bernalillo County Metropolitan Court felony first appearance; PTS supervision; and four jail diversion programs (i.e., Judicial Supervision Program, Intensive Outpatient Substance Abuse Treatment, Veterans Court, and Electronic Monitoring).

During FY13, SJDC entered into two contracts with Bernalillo County totaling more than \$2million. The contracts paid for basic pretrial services plus additional services, i.e., a global positioning system (GPS or EM), and client services at the BCMC felony first appearance. Additionally, SJDC supports the PTS division from its general fund and additional grant funds.

## Findings

The use of a validated risk assessment instrument is useful for a number of reasons (Dressel & Mahoney, 2013; PJI, 2010). Risk instruments are important to measure the likelihood of future criminal behavior, improve public safety, and help judges and PTS to better identify individuals at high risk of reoffending, while also identifying the types of supervision and services that are likely to reduce recidivism. Specifically judges can use the risk assessment to make bail and

release decisions, sentencing and revocation decisions, set supervision conditions, and determine services.

On February 13, 2014, the SJDC-PTS began using the COMPAS risk and needs assessment instrument. This meant that a number of standard output and performance measures -- recognized as best practices and PTS guidelines -- could not be completed for this study. In the future the Division should be able to calculate output and performance measures that at least partly rely on the use of a risk assessment instrument.

The American Bar Assoc. and National Assoc. of Pretrial Services Agencies are clear that pretrial services programs should interview all defendants who are in custody before the initial court appearance. SJDC-PTS reviews felony cases just before the felony arraignment in district court and after the BCMC felony first appearance hearing. This is not a best practice.

New Mexico allows a variety of bond types. Research has shown and best practices support the use of unsecured bonds. These bonds are as effective at achieving public safety and the defendant's appearance in court as are financially secured bonds and when coupled with a risk assessment and supervision by PTS serve as a reliable and valid means of safeguarding the community and appropriately classifying and serving the risk and needs of individuals (Jones, 2013). Both the ABA and NAPSA recommend courts should first consider releasing the defendant on an unsecured bond (ABA Standards, 2007; NAPSA Standards, 2004). In our review of PTS files we found that judges most frequently require financial bonds.

Another ABA and NAPSA best practice focuses on the periodic review of pretrial detainees to determine if factors associated with the initial detention decision still apply and, when appropriate, report new findings to the court. SJDC-PTS prioritizes their efforts on individuals that are scheduled for

Table 1 Summary Comparison of SJDC-PTS Practices to Six Core Functions

Core Function	SJDC-PTS	National Standards/Best Practices
Impartial universal screening of all defendants, regardless of charge.	Practice is to interview defendants after the felony first appearance and grand jury indictment.	Programs should interview defendants prior to an initial appearance before a judge.
Verification of interview information and criminal history checks.	Background Investigator "turn around" time to verify defendant's information before arraignment is limited.	Collecting, verifying, and documenting information about the defendant's background and current circumstances are important to the court's decision concerning release or detention for the defendant.
Assessment of risk of pretrial misconduct through objective means and presentation of recommendations to the court based upon the risk level.	In February 2014, SJDC-PTS began using a risk assessment instrument in the eligibility process.	Pretrial services program should continue to use a risk assessment scheme that in a consistent and equitable fashion assesses the defendant's risks of failing to appear at future court hearings and posing a risk to community safety.
Follow up reviews of defendants unable to meet the conditions of release.	The three SJDC-PTS Background Investigators prioritize their investigation efforts on targets of the grand jury. They are beginning to focus some investigative resources on potential clients who were not able to pay to get out of jail.	A pretrial services program should review the case of each pretrial detainee periodically to determine if factors associated with the initial detention decision still apply and report new findings to the court.
Accountable and appropriate supervision of those released, to include proactive court date reminders.	In our test sample it appeared clients were routinely categorized at the Intensive Supervision Level and there was no form in the files describing any change in the client's supervision level. SJDC-PTS staff advised that clients are supervised at one level. Via our review of client files we were unable to determine if clients are supervised using a graduated level of supervision, but it appeared they were not.	Conditions of release and supervision should be related to the risk identified by the risk assessment tool in each individual case, and should be the least restrictive necessary to reasonably assure the defendant's appearance and community safety. A pretrial program should proactively remind client's of their court hearing dates a day or two before the hearing.
Reporting on process and outcome measures to stakeholders.	Client files and program databases do not contain all the data variables necessary to calculate process and outcome measures.	Establish procedures for regularly measuring the performance of the program. Performance and outcome or output measures and also data that is deemed critical to the mission of any pretrial program.

arraignment. Efforts should continue to be made to interview or investigate unsentenced defendants detained in MDC that have not been able to pay a financial bond.

Client supervision includes the PTS caseworker contacting the client and providing supervision. Supervision should be individualized and based on a scheme of graduated contacts and level of supervision dependent on conditions imposed (NAPSA Standards, 2008; PJI, 2010). Our analysis of the number of SJDC-PTS client contacts and supervision information in client files was inconclusive. It appears that clients are categorized at one supervision level and this does not change while the client is on pretrial supervision. Additionally, in October 2013 SJDC-PTS began a manual system to notify clients of court hearings. According to NAPSA Standards (2004) a pretrial program should have procedures for regularly

measuring the performance of the program. NIC has a monograph describing various measures and the formulas for the calculations. Using data in our sample we were able to only calculate 6 of the 14 standard measures. These measures rely on risk assessment data. In the future with data from the risk assessment tool the SJDC-PTS should be able to perform more standard measures.

Goals and objectives are a fundamental part of any program and NAPSA standards recommend their creation to guide a pretrial program (NAPSA Standards, 2004). We were not able to find published goals or measureable objectives for SJDC-PTS.

During this study SJDC-PTS made changes which if continued should move it closer to becoming a best practice program. These changes include the February 2014 implementation of the COMPAS risk and needs assessment

instrument and the beginning of a process in October 2013 to notify clients of upcoming court hearings.

### Conclusion

In this section, we provide recommendations that would move the Division closer to being in line with best practices and recommendations for further study.

1. SJDC-PTS should continue using a risk assessment tool as the basis for recommendations of the conditions of release at the earliest possible hearing. The ABA and NAPSA are clear that pretrial programs should interview all defendants who are in custody before the initial court appearance. The SJDC-PTS should interview, investigate, verify the background, and assess the risk of individuals before the felony first appearance hearing. SJDC-PTS should use the results of the COMPAS risk and needs assessment tool to help place the client in supervision. When supervision levels

## Methodology

Our methodology was two fold. One, to compare client data to differences before and after the funding increase, and two, to compare SJDC-PTS division policies and processes before and following the funding increase and expansion to best practices.

We began this project by conducting a literature review of the evidence based best practices, including standards, outcome and performance measurements, specific elements of pretrial risk assessments, supervision practices, and information from other pretrial services programs. The literature was used to guide the study within the parameters set by HJM 20.

To determine the policies and processes we talked with SJDC administration and the SJDC-PTS Director. The Director told us his view of the past and future of the PTS division. We also reviewed the 2011 and 2013 versions of the SJDC-PTS Business Practices. From these documents and discussions we compared procedures and policies to six core functions

and best practice standards advocated by the NIC, PJI, ABA, and NAPSA. (See Table 1 for the six core functions and best practices).

We collected data from a 25-month period (i.e., July 1 2011 and August 31, 2013). This provided a sample of clients in the SJDC-PTS division prior to the division expansion and clients during the expenditure of County expansion funds. Of the possible 4,528 referrals to SJDC-PTS we created a random sample of 812 study group members and were able to collect information from 675 (83.1%) of this group. Since there were more months before the SJDC-PTS division expansion than months after the expansion, we oversampled clients from those months after the expansion.

We also used court data provided by the NM Judicial Information Division (JID). We matched the JID data to 440 of our 675 PTS referrals. The JID data gave us two datasets to compare SJDC-PTS activities.

change the change should be documented in the new database.

2. SJDC-PTS should reevaluate the risk conditions of felony detainees in the jail on a regular basis and present changes to the district judge for a reconsideration of conditions of release.

3. SJDC-PTS should complete a "status at discharge form" at the closing of the case, indicating changes in social stability, i.e., employment, education, mental health, legal status, etc. and use these data to measure best practices, e.g., success rate, pretrial intervention rate, employment status at discharge, etc. A method should be developed to routinely and consistently report the process, outcome, and mission critical measures described in this report. This information is useful to track the performance of the division and progress towards meeting best practices.

4. Research should be done to determine the pace of felony case adjudication involving PTS clients in the District Court. This would perhaps address pressure the District judges feel in managing their docket. The impact of the SJDC-PTS division should be further studied to understand the

impact of the division on the criminal justice system. This study focused on the process implementation of the Division and did not focus on outcomes or cost. From our sample of PTS and JID data we were able to make observations about the use of warrants, compliance, and changes in activities before and after the \$1.5 million expansion contract. These analyses should continue to be performed, to show the impact of incorporating the ABA and NAPSA best practices into the SJDC-PTS division. Additionally, it is important to track the implementation of the risk instrument as well as other division pieces including the timing of division referrals, a court hearing notification program, and differentiated services for clients.

Overall, when compared to ABA and NAPSA standards and best practices, the SJDC-PTS Division is not currently a best practice pretrial services program. The SJDC-PTS has made progress in some best practice areas since the expansion funding and during the time of our study. While SJDC-PTS can make changes on it's own to increase it's effectiveness, SJDC-PTS does not exist in a vacuum. The SJDC-PTS division will need the collaboration of other criminal justice agencies to

become a best practice program. Further other agencies in the local criminal justice system in Bernalillo County can make strides toward best practices in their own operations. ■

## *The New Mexico Sentencing Commission*

The New Mexico Sentencing Commission serves as a criminal and juvenile justice policy resource to the State of New Mexico. Its mission is to provide information, analysis, recommendations, and assistance from a coordinated cross-agency perspective to the three branches of government and interested citizens so that they have the resources they need to make policy decisions that benefit the criminal and juvenile justice systems. The Commission is made up of members from diverse parts of the criminal justice system, including members of the Executive and Judicial branches, representatives of lawmakers, law enforcement officials, criminal defense attorneys, and members of citizens' interest groups.

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