

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
at Santa Fe, NM

AUG 23 1995

ROBERT M. MARCH, Clerk
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**JIMMY (BILLY) MCCLENDON,
et. al.,**

Plaintiffs,

vs.

No. CIV 95-0024 MV/DJS

CITY OF ALBUQUERQUE, et. al.,

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiffs' Motion for Preliminary Injunction, filed February 16, 1995. Plaintiffs' complaint seeks declaratory and injunctive relief from alleged unlawful and unconstitutional conditions existing at the Bernalillo County Detention Center (BCDC) in Albuquerque, New Mexico.¹

One of the alleged constitutional violations is the overcrowding at BCDC. Upon agreement of the parties the issue of overcrowding is being given priority consideration and the parties followed an abbreviated discovery schedule on that issue.

¹ The Court has not yet ruled on Plaintiff's Motion for Certification of a Class Action. However, for the purpose only of the issues now before the Court, Defendants have stipulated to certification of a class of "all residents who are presently or will in the future be confined in the Bernalillo County Detention Center, Albuquerque, New Mexico". On the basis of Defendants' stipulation and confined to the issues of excess population and any procedures for reduction, the Court approves certification of the class so defined.

The Defendants have stipulated that the average daily population at the facility exceeds its design capacity and a hearing on August 11, 1995 focused on any potential danger or injury which may arise from such overcrowded conditions without prompt attention and possible remedies to alleviate the overcrowding and its most serious effects on the detained population.²

This opinion is divided in two parts. The first part addresses the propriety of issuing a preliminary injunction in this case. The second part documents the Court's oral ruling of August 11, 1995 which ordered immediate action by Defendants with respect to certain conditions made known to the Court at the hearing on that date.

I. PRELIMINARY INJUNCTION TO REDUCE OVERCROWDED POPULATION

Based on the evidence presented at the hearing of August 11, 1995 and the Court's observations during its unannounced visit to BCDC on August 10, 1995, the Court enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The allocation of responsibility for the operation and maintenance of BCDC is governed by the terms of a Joint Powers Agreement between Defendants City of Albuquerque (hereinafter "the City") and the Board of Commissioners for the County of Bernalillo (hereinafter "the County");

² Defendants, by stipulating to the facts concerning overpopulation and by proposing administrative solutions, have not thereby waived, either directly or constructively, their rights to trial on or proof of the alleged constitutional violations. The Court notes Defendants' position that overpopulation alone does not constitute a violation of the residents' constitutional rights, and that "overcrowding", if defined as simply population in excess of BCDC's design capacity has not resulted in any such violation. The Court leaves that issue for future resolution.

2. Under the said agreement, the City and the County are jointly responsible for providing funds for the operation and maintenance of BCDC;

3. Under the said agreement, the City maintains and operates the BCDC;

4. Under the said agreement, the Mayor of the City appoints the Director of BCDC;
and

5. Under the said agreement, the Director of BCDC submits the budget for BCDC to the City Council.

6. Defendant Martin Chavez is the Mayor of the City of Albuquerque;

7. Defendant John Dantis is the Director of BCDC; and

8. The Director of BCDC is responsible for the supervision, direction, and control of the executive and administrative departments of BCDC.

9. The existing facility of BCDC comprises two (2) buildings, the main facility, including the annex, and the satellite;

10. The main facility of BCDC consists of the North Tower, the South Tower and the annex;

11. The main facility of BCDC was designed to house a resident population of 563, consisting of 253 residents in the North Tower, 288 residents in the South Tower and 22 residents in the annex;

12. The satellite of BCDC was designed to house a resident population of 120; and

13. The existing facility of BCDC was thus designed to house a resident population of 683 (hereinafter referred to as "the design capacity").

14. Over the years, as a consequence of an increase in criminal activity commensurate

with the general population increase in the City of Albuquerque and County of Bernalillo, and in response to the demands of the criminal justice system of the City, the County, and the State of New Mexico, the number of individuals arrested has increased and additional beds, stack-a-bunks and mattresses have been installed in the existing facility of BCDC in order to house a resident population in excess of the design capacity;

15. Fifty-eight (58) additional beds have been installed in the existing facility of BCDC;

16. The total number of design capacity and additional beds at the existing facility of BCDC allows BCDC to provide beds to 752 residents (hereinafter referred to as "the bed capacity").

17. When the population at BCDC exceeds 752, inmates sleep on stack-a-bunks as available and when not available on mattresses on the concrete floor.

18. When BCDC runs out of mattresses some inmates are required to sleep directly on the concrete floor.

19. On Thursday, August 10, 1995, during its unannounced visit to the jail, the Court toured most portions of the North Tower and the South Tower of the main facility and made the following observations:

(a) On that date there were 985 inmates being housed at BCDC, 302 inmates more than the design capacity of 683;

(b) A number of inmates in both male and female sections of the facility were sleeping on mattresses on the floor due to the lack of bunks and/or stack-a-bunks. Mattresses were either on the floor of individual cells, pods or day rooms.

(c) A strong odor of urine emanated from some of the cells.

20. Upon stipulation of Defendants:

(a) The present average daily resident population of BCDC is approximately 990 residents;

(b) The resident population has been as high as approximately 1,100; and

(c) The resident population of the satellite has never exceeded its design capacity of 120 residents.

21. Overpopulation taxes the services and staff at BCDC.

22. Prior to the filing of this cause, the Defendants have demonstrated their concern about the excess population and have taken the following action to address the problem of overpopulation:

(a) Since on or about 1986, Defendants have commissioned 18 reports or studies addressing, inter alia, the issue of overpopulation at BCDC;

(b) Since on or about 1993, Defendants have increased the budget for BCDC by over \$5 million;

(c) Defendants have provided funding to the Pre-Trial Services Program operated by the Metropolitan Court and the District Court for the Second Judicial District to identify persons who have been arrested who are appropriate for release on their own recognizance (ROR) and other alternatives to detention in BCDC;

(d) Defendants have established, and since approximately February 1995, have put into full operation a community custody program, the Alternatives to Secure Detention Project (hereinafter referred to as "ASDP"), which replaces detention in BCDC with electronic

monitoring, day reporting, community trackers and other forms of supervision in the community;

(e) In 1994, Defendants developed a task force to mediate on issues of Pre-Trial Release and bonding;

(f) In 1994, Defendants introduced new procedures to reduce the period of time between conviction and sentencing so as to reduce the time spent in BCDC awaiting sentence and, where applicable, to accelerate the residents' transfer to the custody of the Corrections Department for the State of New Mexico;

(g) In June 1994, Defendants have examined the possibility of introducing a Matrix Release System, a system of grading residents to facilitate the controlled release of eligible residents from BCDC under continuing supervision within the community from the ASDP program; and

(h) Defendant City has placed on the ballot for a special vote in October 1995 a proposal that will enable the voters of the City to state whether they are prepared to support the efforts of the City corrections department by diverting a portion of the present Quality of Life tax to provide additional funding for public safety including BCDC, a portion of which additional funding will be used to build a special detoxification unit, to house 300 to 350 residents, many of whom would otherwise be detained in BCDC.

23. In addition, the Defendants have taken the following action which indirectly addresses the problem of overcrowding by seeking and introducing initiatives to reduce the effects of excess population:

(a) Defendants have replaced BCDC's previous system of management with a direct supervision/unit management model, improving the responsiveness and accountability

of BCDC personnel;

(b) Defendants have introduced a policy of permanent post assignments for corrections officers to increase "ownership of operation" and improve consistency;

(c) Since on or about 1994, Defendants City and County have provided funding for thirty-three (33) additional corrections officer positions, including twenty (20) additional corrections officer positions for Financial Year 1995/96;

(d) Defendants have employed ten (10) civilian booking clerks to release corrections officers from administrative booking duties;

(e) Defendants have increased the experience and educational requirements for hiring BCDC personnel;

(f) Defendants have established the position of Recruitment/Training officer at lieutenant level;

(g) Defendants have increased BCDC training academies to five (5) per year, training approximately 100 new corrections officers;

(h) Defendants have introduced work schedule adjustments to provide for between 60 and 80 hours staff training per year, resulting in over 10,000 hours of in-service training for BCDC personnel in Financial Year 1994/95;

(i) Defendants have determined to seek to renew BCDC's former accreditation by the American Corrections Association and have employed a lieutenant level corrections officer as a compliance officer to ensure compliance with the standards required for renewal of accreditation, including but not limited to population control and management;

(j) Defendants have established twenty (20) new sergeant level positions as

part of the revisions to BCDC's system of management;

(k) Defendants have created two (2) new positions for Records Clerks;

(l) Defendants have added three (3) new maintenance positions, a plumber, an electrician and a painter to the Operation staff; and

(m) Defendants have introduced an increased and more readily accessible resident phone system.

24. Defendants have prepared and placed before the Court for its consideration the following additional proposals for reducing the resident population of the existing facility of BCDC:

(a) Defendants City and County have deliberated on three (3) proposed sites and three (3) possible forms of structure for the establishment of additional temporary detention housing for minimum security residents and the County is considering making available a site at Lomas and Fifth in Albuquerque for housing 320 residents, which additional facility can be operational in less than one (1) year, at a cost of approximately \$2 million for construction and the first year of operation;

(b) Discussions are taking place between the City and the County concerning the expansion of BCDC into additional permanent facilities; and

(c) Defendants have developed in detail a proposed Matrix Release System, similar to that referred to at ¶ 22(g) above, details of which are attached to this Order as Attachment Number 1.

CONCLUSIONS OF LAW

From the foregoing facts the Court concludes:

1. That, by stipulation of Defendants, the Court has jurisdiction to hear and determine Plaintiffs' Motion for Preliminary Injunction under 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983.

2. In accordance with Fed. R. Civ. P. 65, to obtain injunctive relief a movant must show: (1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest. Lundgrin v. Claytor, 619 F.2d 61, 63 (10th Cir. 1980).

3. Where, as at BCDC, pre-trial detainees and convicted prisoners are housed together, the Court must examine the conditions of confinement against the detainees' right to be free from punishment under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution and inquire whether those conditions amount to punishment of the detainees. See Bell v. Wolfish, 441 U.S. 520 (1979); Reece v. Gragg, 650 F.Supp. 1297, (D.Kan. 1986).

4. Without deciding whether overpopulation alone can amount to punishment sufficient to constitute a violation of the Due Process Clause, from the stipulated fact of overpopulation in relation to BCDC's design capacity, the Court concludes there is a substantial likelihood that, unless the Court intervenes, the unabated continuation of a population in excess of design capacity places such additional burdens on all aspects of BCDC, its staff, its residents, its services and its systems as to substantially increase the likelihood that irreparable harm, whether it rises to the level of a constitutional violation or not, will occur between now and the

trial in this matter.

5. Plaintiffs have demonstrated the threat of irreparable harm, a reasonable probability of succeeding in proving the occurrence of constitutional violations, lack of an adequate remedy at law, and a balance of the hardship tips in their favor. See Lundgrin, 619 F.2d at 63.

6. Given the need for immediate action and the delay that would be caused by waiting for the completion of necessary discovery on the constitutional issues in this case, combined with the parties' stipulation that the facility is overcrowded, and demonstrated effort to implement a plan to reduce the population³, the Court makes no constitutional findings with respect to the overcrowded conditions at this time and defers such adjudication until the trial on the merits.⁴

Based on the foregoing, the Court will enjoin Defendants from housing residents at BCDC in excess of its design capacity but will stay enforcement of the injunction until August 23, 1996 to enable Defendants to immediately implement their proposals for reducing the

³ This case is unique from most "overcrowded jail cases" in that the Court is receiving cooperation, not resistance from defendants in solving the problem. See Procunier v. Martinez, 416 U.S. 396 (1974) (recognizing a federal court is ill equipped to make decisions regarding jail administration but acknowledging that Court action required where persons responsible for operation of jail refuse to act).

⁴ As indicated above, Defendants' rights to challenge each and every factual allegation other than the fact of present overpopulation are preserved. Nor have Defendants waived their rights to the restraints of comity in the selection of equitable remedies. Likewise, Plaintiffs' claims of specific constitutional violations, remain unaffected by this hearing and the ensuing order.

population at BCDC to its design capacity of 683 residents.⁵

In addition, the Court will enjoin BCDC from housing more than 535 residents (95% design capacity) in its main facility and 112 residents (95% design capacity) in its satellite facility after January 1, 1997.

The purpose of this preliminary injunction is to preserve as far as possible the rights and interests of the parties while preventing any deterioration of those rights and interests in the interim while the parties prepare for the trial on the numerous alleged constitutional violations.

The Court is mindful of both the general policy of minimum intrusion into the affairs of state prison administration that the Supreme Court has articulated for the federal courts and the Court's specific recognition that the problem of overpopulation is one "not readily susceptible of resolution by decree." Procunier v. Martinez, 416 U.S. 396, 404 (1974)[footnote omitted].

Under the Direction of Mr. Dantis considerable effort has been made to reduce overcrowding and to improve the deplorable living conditions that result from housing too many people in a facility that is not equipped to handle such numbers. The United States Supreme Court has recognized that the core problem of administering prisons within proper standards is the lack of resources allocated to prisons. See Rhodes v. Chapman, 452 U.S. 337 (1981); Procunier v. Martinez, 416 U.S. 396, 404-05.

The serious overcrowded conditions at BCDC exist because the public has demanded tougher criminal laws, but neglected to authorize public expenditure for additional jail cells. As

⁵ As demonstrated below, under Defendants' proposed plan of reduction, inmate population should be under design capacity by that date and will be continually reduced to 95% of design capacity within 16 months.

tougher criminal laws are passed more people are arrested and more space is required to house them; more staff is required to process and supervise them; more money is needed to feed them and provide medical care. When as a society we decide to get tough on crime, we must be willing to pay for jails and their operation.

The majority of inmates living in the overcrowded conditions at BCDC are misdemeanor offenders and pretrial detainees who have not been convicted of any crime and are thus, cloaked with the presumption of innocence.

Wherefore,

IT IS ORDERED, ADJUDGED AND DECREED that Defendants City and County shall be enjoined from housing more than 563 residents (design capacity) in BCDC's existing main facility, i.e. 253 residents in the North Tower, 288 residents in the South Tower and 22 residents in the annex, (hereinafter "main facility") and from housing more than 120 (design capacity) in BCDC's existing satellite facility (hereinafter "satellite") after August 23, 1996.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants City and County shall be enjoined from housing more than 535 residents (95% of design capacity) in BCDC's existing main facility, i.e. the North Tower, South Tower and annex, (hereinafter "main facility") and from housing more than 112 (95% of design capacity) in BCDC's existing satellite facility (hereinafter "satellite") after January 1, 1997.

IT IS FURTHER ORDERED that enforcement and execution of the said preliminary injunction shall be stayed on the following conditions:

- 1) Defendants City and County will institute and must thereafter proceed with reasonable speed to implement and operate the Matrix Release System set out in Attachment 1

to this Order;

2) For the purposes of this Order, (i) a count of residents shall be taken each day at 4.00 a.m., which shall establish for the purposes of this Order the population count for the succeeding 24 hours; (ii) a record of the daily resident population shall be regularly kept and retained; (iii) the Director of BCDC is hereby authorized and directed to make the necessary releases from BCDC as required to enforce the population limits set by this Order; (iv) the Director's authority shall include authority to commence releasing residents under the Matrix Release System when the population at BCDC reaches 90% of either the interim population limits set out hereinafter or the maximum population limit set out above; and (v) upon reporting to the Court as directed below, defendants shall inform the Court whether the pre-established deadlines for the controlled reduction can reasonably be met earlier.

3) Defendants City and County will be enjoined from housing more than 820 residents in BCDC's existing main facility after November 24, 1995;

4) Defendants City and County shall report to the Court on the progress in implementing the Matrix Release System and any other initiatives or proposals for reducing the population of BCDC on December 8, 1995;

5) Defendants City and County will be enjoined from housing more than 763 residents in BCDC's existing main facility after February 23, 1996;

6) Defendants City and County shall report to the Court on March 8, 1996 on the progress in implementing the Matrix Release System and any other initiatives or proposals for reducing the population of BCDC;

7) Defendants City and County will be enjoined from housing more than 706

residents in BCDC's existing main facility after May 24, 1996;

8) Defendants City and County shall report to the Court on June 7, 1996 on the progress in implementing the Matrix Release System and any other initiatives or proposals for reducing the population of BCDC;

9) Defendants City and County will be enjoined from housing more than 649 residents in BCDC's existing main facility after August 23, 1996;

10) Defendants City and County shall report to the Court on September 6, 1996 on the progress in implementing the Matrix Release System and any other initiatives or proposals for reducing the population of BCDC;

11) Defendants City and County will be enjoined from housing more than 592 residents in BCDC's existing main facility after November 22, 1996;

12) Defendants City and County shall report to the Court on December 6, 1996 on the progress in implementing the Matrix Release System and any other initiatives or proposals for reducing the population of BCDC; and

13) Defendants City and County shall report to the Court one final time on January 10, 1997.

IT IS FURTHER ORDERED that the Court retains jurisdiction to review and modify its Order herein.

In addition to the foregoing, an oral ruling was issued immediately following the hearing of August 11, 1995 ordering Defendants to take immediate action on certain areas in the interim between the hearing and the issuance of this Order. The oral ruling and Defendants subsequent action is outlined below.

II. PRELIMINARY RULINGS FOLLOWING AUGUST 11, 1995 HEARING

At the close of the hearing on August 11, 1995, the Court found that certain conditions flowing from the overcrowded conditions at BCDC required immediate attention insofar as they may lead to violence or pose health and safety hazards, and ruled that immediate action be taken as follows:

(1) Classification.

(a) Violent offenders shall not be housed with non-violent offenders.

To ensure, so far as practicable, that BCDC residents are appropriately housed in a safe and secure environment, Defendants shall separate violent offenders from non-violent offenders with such classification based on the inmate's offense and behavioral tendencies.

Defendants shall continue to develop the classification system integral to the proposed Matrix Release System (MRS) and, once the MRS is operational, shall modify the classification policies and procedures to use the information gathered by the MRS to assist in classification and assignment of housing.

(b) Inmates diagnosed as psychologically impaired shall not be housed in BCDC's general population without a written evaluation.

Defendants shall not reassign a resident who has been assigned by Psychiatric Services Unit (PSU) to the Psychiatric Unit to the general population of BCDC without a written evaluation from PSU confirming that such resident does not present an immediate danger to himself to BCDC staff or to fellow inmates. The written evaluation must be placed in the inmate's file.

(2) Physical Examinations

Defendants shall conduct and complete a physical exam of each resident of BCDC who

is incarcerated over 14 days.

(3) Medical Requests

An inmate who complains of serious acute illness or serious injury shall be given immediate attention. Oral requests for such medical care by an inmate shall be immediately communicated to medical personnel for their medical assessment. These requests shall not be screened by non-medical prison staff as to their severity or need for immediate attention. All requests for emergency care without exception shall be immediately communicated to BCDC medical staff for appropriate treatment.

The Court was informed that procedures are in place at BCDC to provide an inmate with medical care within 24 hours after making a written request. The written requests are placed in predesignated boxes located on each housing section of BCDC and picked up daily. The Court heard testimony from individuals who were detained at BCDC that establish this procedure is not always followed. These individuals testified that they went days without receiving medical attention despite their constant requests and obvious injuries. In addition to insuring immediate response to oral requests for emergency medical care, Defendants shall tighten their existing procedures for providing medical care and scrupulously abide by them.

(4) Basic Accommodations

The overcrowded conditions at BCDC have resulted in obvious shortage of bunks, mattresses and other basic needs. The Court heard testimony that the limited supply of these necessities and the lack of secure storage space for inmates' personal supplies of hygiene products often leads to violence and/or theft. In addition, the evidence presented indicated that the overpopulation has required that detainees sleep on mattresses on the floor or sometimes the

bare concrete floor without a mattress or blanket. Floor space becomes very crowded within individual cells requiring some inmates to sleep right next to toilets, which are used by many more detainees than intended and, therefore, pose unsanitary hazards.

a. Stack-A-Bunks.

Defendants shall obtain a sufficient amount of stack-a-bunks so that no inmate will have to sleep on the floor. Defendants have since informed the Court that 150 stack-a-bunks have been ordered and should arrive before September 1, 1995. The stack-a-bunks shall first be used in the Psychological Services Unit and intake as available. Insofar as this number proves insufficient to accommodate the number of inmates at the facility, additional quantities shall be immediately ordered.

b. Mattresses.

BCDC shall obtain a sufficient amount of mattresses so that no inmate at BCDC will be required to sleep on the bare concrete floor without a mattress. Defendants have informed the Court that 100 new mattresses have been ordered and will arrive before September 1, 1995.

In addition, prior to being re-issued, all mattresses must be sanitized after every use.

c. Linens.

Defendants shall insure that they have an adequate supply of blankets and pillows in stock and in reasonable condition, to provide every detainee with linen and a blanket.

d. Storage for Inmates Personal Necessities.

Defendants shall submit to the Court within two weeks from this date, a proposal or method of storing inmates' personal necessities such as hygiene products.

e. Feminine Hygiene Items.

Defendants shall at all times store in the control unit of 6 West sufficient supplies of tampons and/or sanitary pads for the female resident population of BCDC and shall issue the same on request by any female inmate.

At the time of its oral ruling, the Court was informed that many of the procedures ordered are in accordance with BCDC's existing policies and procedures, however, to the extent that those policies have not been strictly adhered to in the past, the Court orders strict adherence in the future beginning immediately.⁶


UNITED STATES DISTRICT JUDGE

⁶ Defendants attached to their proposed Interim Order the policies and procedures in question but those items were not introduced into evidence at the hearing and therefore cannot be identified in this order.



**BERNALILLO COUNTY DETENTION CENTER
MATRIX RELEASE SYSTEM**

POLICIES AND PROCEDURES

1. POLICY

1. The Bernalillo County Detention Center's (BCDC) Matrix Release System (MRS) has been developed to provide for the systematic release of residents from BCDC, if required, a) to reduce the resident population of the Main Facility (composed of the North and South Towers and the annex) to comply with the maximum population limit of 535 residents established by the Order of the United States District Court (Judge Vazquez) dated August , 1995 (hereinafter "the Order"); and b) to enable BCDC to maintain its Main Facility population within that maximum population limit.

2. The MRS will enable BCDC to determine which residents are eligible for release and to establish the priority of their release. The MRS uses a point system, assigning a point score to each individual resident, derived from a number of relevant factors, including, but not limited to, the criminal charges resulting in detention at BCDC, past and current offenses, court attendance, psychiatric and behavioral history, and any additional relevant information.

3. Residents who are released through the MRS will not be released unsupervised into the community but will be transferred to the Alternatives to Secure Detention Project (ASDP). The MRS residents will be supervised using one or more of the components within the ASDP, to ensure compliance with court-imposed requirements.

2. MAXIMUM BCDC POPULATION

1. Having found BCDC's Main Facility to be over-populated, the United States District Court has established a population cap on BCDC's Main Facility consistent with its design capacity. Therefore, the population of BCDC's main facility must be no more than 535 residents by January 1, 1997 and must be maintained at or below that level thereafter.

2. To effect that reduction, the Court has ordered a series of interim caps to be achieved by the dates specified in the Order. The Court retains jurisdiction to review and modify its Order, including the interim and maximum population caps themselves.

3. **MATRIX RELEASE SYSTEM**

1. To ensure compliance with the Order of the Court, a count shall be taken each day at 4.00 a.m., which shall establish for the purposes of the Order the population count for the succeeding 24 hours. A record of the daily inmate population shall be regularly kept and retained.
2. The Director of BCDC is authorized and directed by the Court to make the necessary releases from BCDC as required to enforce the cap set by the Order. This authority includes authority to commence releasing residents when the population at BCDC reaches 90% of the cap then in effect.
3. Pursuant to the Order, and these policies and procedures, the Director or his designee will determine if any residents are to be released through the Matrix Release System (MRS).
4. BCDC will use the MRS to determine which residents are eligible for release from BCDC and in what order they are to be released.
5. With the exception of those residents detained in BCDC at the time of introduction of the MRS (as to whom, see "Transitional Provisions" detailed hereinafter), the MRS will assign a matrix score, based on the Criteria detailed below, to each resident on his or her admission to BCDC, the score and its computation being recorded on a MRS Matrix Release Form (See attached Specimen MRS Matrix Release Form).
6. A current list of the matrix scores of all residents in ascending order will be maintained at all times.
7. The number of residents released using the MRS shall be no more than that needed to bring BCDC into compliance with the court-ordered cap.
8. When releases are required to comply with the Order, the resident with the lowest matrix score under the MRS will be the first resident eligible for release.
9. The priority of any additional releases required to be made to comply with the Order will follow the matrix score list referred to in 3.6. above.
10. Where two or more residents are computed to have identical matrix scores, priority for release will be established by reference to the date of admission to BCDC and the length of time each resident has been detained in BCDC on a first in, first out basis.

PRIMARY RELEASE SCHEDULE
Pre-Trial & Sentenced

11. Generally, the MRS will result in releases of residents that adhere to the following Primary Release Schedule:

Ordinance Violations
Petty Misdemeanor
Misdemeanor
Non-violent
Misdemeanor - Violent
4th Degree Felony
3rd Degree Felony
2nd Degree Felony
1st Degree Felony
Capital Felony

12. Any resident released through the MRS will be released in a manner similar to any other resident (i.e., via the release process in R&D).

4. **MRS STAFFING & MRS STAFF DUTIES**

1. The Director or his designee will determine the number and composition of staff required to operate the MRS.

2. The MRS will be supervised by a BCDC officer of at least the rank of Sergeant, who will be designated the Population Control Officer ("PCO").

3. The PCO will be provided with a copy of each resident's matrix score and will be responsible for maintaining a current list of the matrix scores of all residents in ascending order.

4. The PCO or his designee will be provided with a copy of the daily count as soon as it is completed.

5. The PCO or a staff member of the MRS designated by him will maintain all copies of the matrix score list upon the basis of which any release decision is made.

6. The PCO and the MRS staff will conduct regular reviews of the matrix score list, and in any event at least once per week, to ensure that the matrix score assigned to each resident is accurately scored and recorded.

7. The PCO and the MRS staff will ensure the recording of any restrictions that would render a resident ineligible to be released.

5. **MRS STAFF TRAINING**

1. Staff assigned to the MRS will receive initial training of at least 40 hours and annual refresher training of at least 20 hours per year in the operation of the MRS.

2. Initial and annual training will include learning and review of the MRS policy, use of the guidelines, use of the manual MRS, and any other functions assigned to the MRS staff under the discretion of the Director or his designee.

6. **TRANSITIONAL PROVISIONS**

1. On the date designated for introduction of the MRS, a count will be taken as prescribed by 3.1. above.

2. Within 96 hours of that count, all present residents, excluding new admissions processed in accordance with 3.5. above, will be assigned a score, based on the Criteria detailed below.

7. **PROGRAM DESIGN**

1. BCDC will maintain a written set of guidelines for determining the score of each resident.

2. The guidelines for the MRS, including instructions on operating the system, will be maintained separately from the policy for the MRS.

3. The guidelines will contain:

a) a schedule of all criminal charges for the City of Albuquerque, the County of Bernalillo and the State of New Mexico, as listed in the Metropolitan Court Bond book, specifying the basic point score assigned to each charge;

b) a list of all the variable criteria affecting a resident's MRS total matrix score, specifying the point increases and decreases attributable to those variables; and

c) instructions for staff on how to prepare and operate the MRS on a system.

4. The MRS guidelines will be used to establish and maintain a list of special circumstances and to indicate any additional points given for special circumstances.

5. The Director or his designee has the authority to determine and change both the special circumstances and the point score for any special circumstances. These changes can be made at the discretion and needs of BCDC.

8. MATRIX FORMULA

1. BCDC will maintain a Matrix Formula which will control the point score of all residents considered for Matrix Release.
2. All residents scored for Matrix Release will be scored using the same formula thereby maintaining uniformity in Matrix Release scores.
3. BCDC retains the right to change the formula to suit changing needs of BCDC. Any changes in the formula will require the prior approval of the Director.

9. CONFIDENTIALITY OF MATRIX SCORES

The Matrix Release Score of an individual resident will not be discussed with the resident or any other person without the permission of the Director or his designee.

The Matrix Release Score of an individual resident will not be made available to a staff member of BCDC unless they have a need to know. The need to know will be determined by the Director or his designee.

BCDC will develop a Matrix Release Score threshold. The threshold will determine the point score all unsentenced residents must be above before any sentenced residents are released by the Matrix System. An example of this is a point score of 64. Once the score of all unsentenced residents who are Matrix Release eligible has reached a point score of 64 or above, sentenced residents will then be considered for release starting with the lowest score available.

10. POINT SCORE FOR EACH OFFENSE

1. Every chargeable offense, as defined below, is assigned a point score. (See attached Schedule of MRS Point Values for Chargeable Offenses).
2. A chargeable offense is defined as any charge listed in the Metropolitan Court Bond book.
3. A resident's initial MRS matrix score will be assigned to each resident by reference to the point score for the primary charge.
4. The primary charge will be the charge against the resident carrying the highest point score.
5. Point scores for any additional charges against the resident shall be added to the point score for the primary charge.

6. BCDC retains the right to change the point score of any charges to meet the needs of the department.

11. PAST CRIMINAL HISTORY

1. The past criminal history of a resident may be taken into account in determining the current matrix score of the resident.

2. For the purposes of the MRS, past criminal history that may be taken into account is confined to prior convictions for felonies and misdemeanors recorded against the resident within a period of years, specified below, immediately preceding the date the resident was admitted to BCDC on the charges for which his current Matrix Release score is being calculated.

3. Before taking into account the past criminal history of a resident in determining a matrix score, the resident's criminal history in both the Metropolitan Court and the Second Judicial District Court will be reviewed.

4. The review of a resident's felony history will extend to the three (3) years immediately preceding the date the resident was admitted to BCDC on the charges for which his current Matrix Release score is being calculated.

5. The review of a resident's misdemeanor history will extend to the two (2) years immediately preceding the date the resident was admitted to BCDC on the charges for which his current Matrix Release score is being calculated.

6. Matrix point scores may be increased for each prior conviction(s) in the resident's past criminal history as defined herein.

7. BCDC will seek the approval of the Metropolitan Court to use, and, if such approval is given, will use, the Metropolitan Court's computer system to access information concerning the convictions of residents prior to assigning a Matrix Score.

12. CURRENT CRIMINAL HISTORY

1. The current criminal history of a resident may be taken into account in determining the current matrix score of the resident.

2. For the purposes of the MRS, current criminal history that may be taken into account is confined to outstanding charges for felonies and misdemeanors for which the resident has not been convicted but is awaiting trial or other disposition, but does not include the charges for which the

resident was admitted to BCDC and for which an initial matrix score was assigned in accordance with 10.1. - 10.6 above.

3. Matrix point scores may be increased for any outstanding charge(s) in the resident's current criminal history as defined herein.

4. BCDC will seek the approval of the Metropolitan Court to use, and, if such approval is given, will use, the Metropolitan Court's computer system to access information concerning the outstanding charges of residents prior to assigning a Matrix Score.

13. **FAILURE TO APPEAR/COURT ATTENDANCE HISTORY**

1. The court attendance history of a resident may be taken into account in determining the current matrix score of the resident.

2. For the purposes of the MRS, court attendance history that may be taken into account is confined to any court dates for criminal charges, as comprised in the resident's past or current criminal history as defined in 11.1 - 11.7. and 12.1 - 12.4. above respectively, for which the resident failed to appear without good cause shown and for which a bench warrant was issued to secure the resident's attendance.

3. Matrix point scores may be increased for any failure to appear as defined herein.

4. BCDC will seek the approval of the Metropolitan Court to use, and, if such approval is given, will use, the Metropolitan Court's computer system to access information concerning the court attendance history of residents prior to assigning a Matrix Score.

14. **PSYCHIATRIC & BEHAVIORAL HISTORY**

1. The psychiatric and behavioral history of a resident may be taken into account in determining the current matrix score of the resident.

2. For the purposes of the MRS, psychiatric and behavioral history that may be taken into account is confined to any history of psychiatric illness involving or that may cause violent behavior, or other behavioral problems, excluding the resident's admission charges or past or current criminal history as defined in 10.1. - 10.6., 11.1 - 11.7. and 12.1 - 12.4. above respectively, indicating there is a substantial risk of physical harm to the resident or any other person if the resident is left unsupervised.

3. Additional points may be assigned to the matrix

score of a resident where BCDC has reliable information of the resident's psychiatric and behavioral history as defined in 14.2 above.

4. For the purposes of considering the assignment of a matrix score to a resident based upon psychiatric and behavioral history, BCDC may rely upon any records compiled by or on behalf of BCDC concerning resident during any past period of detention in BCDC or during the resident's present period of detention.

5. In any determination as to the psychiatric classification of a resident for the purposes of the MRS, the Director or his designee and/or the MRS staff shall consult with and be guided by the professional assessment of the Psychiatrist in charge of the PSU.

15. **SENTENCED VS. UNSENTENCED**

1. For the purpose of the MRS, it is reserved to the discretion of the Director or his designee to differentiate between sentenced and unsentenced residents. The total score required to release sentenced and unsentenced residents may be set at different levels.

2. The Director or his designee will determine if the point score required for release of sentenced residents will be different than the score for unsentenced residents for release.

16. **THE "Y" LIST**

BCDC will retain the right to identify an individual or class of individuals who will not be eligible for release regardless of their score.

BCDC also retains the right to classify any type of criminal offense as a non-releasable offense.

1. The "Y" list will be used by BCDC to bar eligibility for the Matrix Release of any resident whose release represents a substantial risk to the physical safety of the resident or others in the community. A resident who is assigned to the "Y" list **will not be eligible for Matrix Release under any circumstances.**

2. The Director or his designee will determine which residents are placed on the "Y" list.

3. Guidelines will be promulgated by MRS Staff, Classification, Caseworkers, PSU, MSU, and other appropriate

staff to decide the criteria for assignment and which residents will be assigned to the "Y" list.

4. Once a resident is assigned to the "Y" list, that resident will remain on the "Y" list until the resident is removed by the Director or his designee.

5. A resident's previous assignment to the "Y" list during any period of detention at BCDC may be taken into account on subsequent admissions in determining the current matrix score of the resident or re-assignment to the "Y" list.

6. The assignment of residents to the "Y" list will be subject to continual review by MRS staff throughout their periods of detention. In the event that it appears to MRS staff that a resident no longer requires such assignment, MRS will then make an immediate recommendation for the resident's reassignment to the Director or his designee.

17. RELEASE AUTHORITY

1. The Director of BCDC is authorized and directed by the Order of the United States District Court to make such releases from BCDC as are required to enforce the population limit set by the Order.

2. This authority includes authority to commence releasing residents when the population at BCDC reaches 90% of the maximum population limit.

3. It shall be the duty of the PCO and the MRS staff to notify the Director or his designee when the population at BCDC reaches 90% of the maximum population limit.

4. It shall be the duty of the PCO and the MRS staff to provide the Director or his designee with a copy of the daily count upon which the assessment referred to in 17.3 above is based.

5. It shall be the duty of the PCO and the MRS staff to provide the Director or his designee with a verified copy of the matrix score list referred to in 3.6. above.

6. The R&D Lieutenant, in consultation with the PCO and the MRS staff, will be responsible for tracking the population of the facility and will make a determination if any reasonably anticipated future booking will cause BCDC to exceed 90 % of the maximum population limit.

7. Under the foregoing authority and in reliance on the foregoing information, the Director is authorized and directed to make such releases from BCDC as are required to enforce the population limit set by the Order.

18. FINAL REVIEW OF MATRIX RELEASES

1. Before any resident is released through the MRS, MRS staff will conduct a final comprehensive review of the resident's current status.
2. MRS staff will check to ensure the resident's score was computed correctly, and, if it is found to have been incorrectly computed, MRS staff will ensure a correct matrix score is assigned to the resident and the current list of matrix scores is amended accordingly.
3. MRS staff will check to ensure that the resident is not being held on any charges which would not allow the resident to be released (e.g., Immigration Hold, Felony Warrant, Out of County Warrants, etc.).
4. MRS staff will signify in writing the person conducting and the date and time of completion of the final review on the resident's Matrix Release Form (attachment ?).
5. MRS staff will provide a copy of the resident's Matrix Release Form completed to signify completion of the Final Review to the R & D Lieutenant

19. PROCEDURE FOR MATRIX RELEASE

1. In the absence of staff member assigned to the MRS, the R&D Lieutenant will assign a staff member to complete all paperwork required for a Matrix Release.
2. A resident released through the MRS will be released in a manner similar to any other resident (i.e., via the release process in R&D), with the following additional pre-release requirements:
 - (a) each resident released through the MRS will be required to sign a copy of the Community Release Agreement;
 - (b) each resident released through the MRS will be provided with an appointment time for the next working day with a representative of ASDP;
 - (c) each resident released through the MRS will be provided with information regarding the date, time and place of the resident's next court appearance set by the Jurisdiction holding the resident; and
 - (d) if the Jurisdiction holding the resident has not set future court date(s) but such date(s) is/are "To Be Announced" (TBA), the resident's address will be reverified and the resident will be informed he/she will receive the court date through normal court procedures.
3. Before a resident is Matrix Released, the R&D Lieutenant will provide the Metropolitan Court Bonding person either at BCDC or at Metropolitan Court with a copy of all the resident's MRS paperwork.

4. Once all paperwork has been completed for a resident to be released by the MRS, the Releasing Officer will release the resident.

20. RELEASE OF MATRIX RELEASED RESIDENTS INTO THE ASDP

1. Residents released on the MRS will be required to report to and accepted into the Alternatives to Secure Detention Project (ASDP) for inclusion into one or more of the ASDP programs.

2. Residents released through the MRS will be required to report to the ASDP on the next working day following their release from BCDC.

3. An ASDP Caseworker will interview the resident to fully explain the program and review the Community Release Agreement.

4. Following caseworker assessment, ASDP staff will develop a supervision plan (PLEASE REFER TO ASDP POLICIES FOR FURTHER INFORMATION).

21. TRACKING MATRIX RELEASES

1. To enable BCDC to track residents released through the MRS, a code will be developed to identify such residents.

2. Any resident released through the MRS will be indicated as "MTX" as to the type of release.

3. This must be indicated by the R & D Lieutenant or his designee and recorded in the resident's computer/paper file by records personnel at the time of release.

22. COMPUTER VS. MANUAL SYSTEMS FOR MATRIX RELEASE SYSTEM

1. To assist in administering the MRS, a computer system will be developed and maintained to establish, record and update the scores of all residents in custody in BCDC.

2. A computer system will be used to determine the score of each resident based on the MRS guidelines.

3. MRS staff will be required to supply data via manual entry to the system, especially concerning a resident's past criminal history and behavior during current incarceration at BCDC.

4. The Matrix Release System will also be maintained in a manual form for use during any period when MRS scores cannot be accessed by or derived from the computer system.

5. At all times, MRS staff will maintain a supply of manual release work sheets, which will allow staff to manually determine the Matrix Release score of residents.

23. MATRIX RELEASE SYSTEM AND THE COURTS

1. When a resident is released through the MRS, BCDC will make every attempt to coordinate the release with the respective Court.

2. If it is determined the resident has a specifically set future court date, prior to the resident's release, the resident will be issued the court date from the respective court.

3. All residents prior to release will be required to sign a form indicating the resident is still bound to appear at any and all future court dates, including both specific court dates and "TBA" court dates, and that failure to appear will constitute an offense for which a bench warrant will be issued and for which they may be returned to BCDC.