PRETRIAL JUSTICE

"In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," Chief Justice William Rehnquist, U.S. v. Salerno (1987)

New Mexico continues to improve pretrial practices to better protect public safety, bring more fairness to the criminal justice system, and promote the efficient use of taxpayer dollars. The judiciary seeks $950,000 in fiscal year 2022 (fy22) to expand data-driven pretrial services to help judges with difficult decisions on whether a criminal defendant should remain free or be detained before trial.

The Benefits

Public Safety: Supports pretrial release and detention decision-making by judges to maximize public safety and court appearances by defendants.

Taxpayer Savings: Promotes the efficient use of taxpayer dollars by reducing costly, unnecessary incarceration of pretrial defendants who can be successful supervised in the community using less expensive pretrial services to while promoting public safety and court appearance.

$108 per day

The average cost per day to detain a person at the Metropolitan Detention Center.

$9.40 per day

The average cost for felony cases in the 2nd Judicial District Court's Pretrial Services Program, funded by Bernalillo County. Estimate includes pretrial staff and drug testing costs; electronic monitoring costs excluded.

Fairness: Lessens discriminatory impacts on arrestees and their families, and increases confidence in the judicial system. The research has shown that when defendants are incarcerated even for a short period of time , it increases the likelihood of new charges.

The Challenge

Many judges lack access to objective, evidence-based tools, such as a risk assessment instrument, for pretrial decisions.

- Judges often must perform their own checks of a criminal defendant's criminal history before initial hearings.
- Judges have a short period of time to make decisions.
- Many courts do not have pretrial programs to provide services once a defendant is released.

The Solution

New Mexico is building a robust pretrial services system — supplying information to judges for release and detention decisions and monitoring defendants to help ensure future court appearances. Pretrial services programs are available in San Juan and Sandoval Counties. During FY21, the initiative is expanding into Doña Ana, Grant, Hidalgo, and Luna counties.

- **Operation Center.** A centralized operation in the Administrative Office of the Court (AOC) - first of its kind in the United States - completes a criminal history background check using state and FBI databases and performs an assessment of a criminal defendant's risks of failing to return to court or new criminal activity if released. The results are available to judges before defendants initially appear in court for a determination of possible conditions of release.
- **FY22 Funding.** With requested funding for FY22, the background investigation unit and AOC's pretrial staff - who provide training and support - can assist more courts. This builds the state's capacity to offer pretrial services in additional counties.

# Building a Better Pretrial Justice System in New Mexico

New Criminal Activity of Released Felony Defendants From UNM, Institute for Social Research – Bernalillo County Public Assessment Review – July 2017 to March 2019

6,400
The number of cases reviewed in the UNM study.

83%
The number of felony defendants who has no criminal activity (NCA) while on pretrial release.
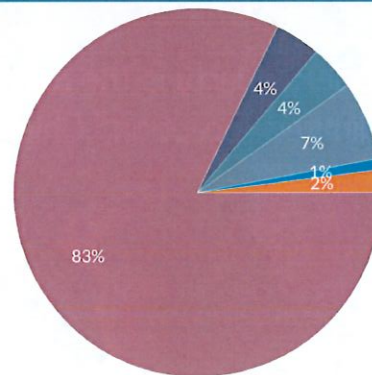
■ No NCA, 5,290	83%	■ Violent, 261	4%	■ Drug, 259	4%	
■ Property, 475	7%	■ DWI, 11	1%	■ Public Order, Other, 96	2%	

How detention and release decisions were made prior to bail reform?

The New Mexico Constitution, since statehood, has guaranteed that people charged with a crime have a right to "bail" — the right to be released pretrial, except in very limited instances. By allowing a person to remain free before trial, the state honors a fundamental principle of the American justice system that an accused person should not be punished before a determination of guilt. In 2016, the New Mexico Legislature (91% in favor) and voters (87% in favor) approved a constitutional amendment that laid the foundation for better pretrial practices (bail reform).

How were detention and release decisions made prior to bail reform?

For decades, decisions about pretrial release largely hinged on whether a criminal defendant could afford a money bail bond. Judges had no authority to deny release to dangerous defendants who could buy a bond or make an installment payment deal with a bail bondsman.

What changed after bail reform?

Today, district court judges may deny pretrial release to the most dangerous defendants, requiring release and detention decisions to be based on evidence about the risks posed by defendants to public safety and the likelihood they will appear at future court hearings.

How do recent rule changes protect the public?

Newly approved rule changes strengthen the reforms and further protect our communities by providing flexibility to prosecutors and judges and helping to identify potentially dangerous defendants who may warrant pretrial detention. New rule changes were recommended in a 107-page report to the Supreme Court by a committee with representatives from all three branches of government.

How are pretrial detention and release rules working now?

Independent research indicates pretrial reforms are working as intended, and that a great majority of defendants are not committing new crimes after their release from jail pending trial.

4 out of 5 were not arrested

A study released last year by the UNM Institute for Social Research found that more than four out of five defendants were not arrested for a crime while on pretrial release, and that 96% were not accused of a violent crime. Researchers analyzed nearly 6,400 cases between July 2017 and March 2019 in which defendants charged with felonies in Bernalillo County were released from custody while awaiting trial.

New Criminal Arrest
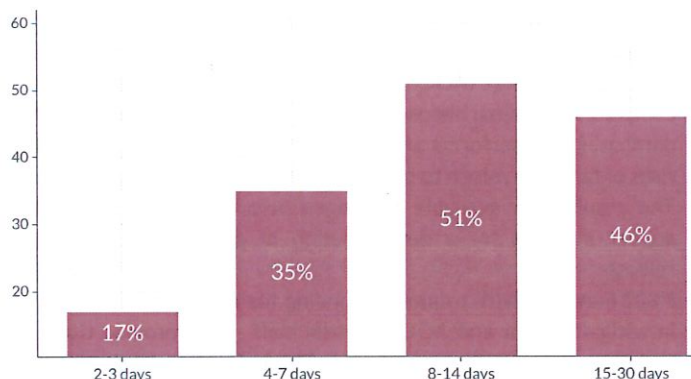
Likelihood of NCA as compared to defendants detained 1 day or less % increased

Research shows the longer low-risk defendants are detained, the higher likelihood they will commit new crimes if released.