

January 17, 2022

MEMORANDUM

TO: Patricia Lundstrom, Chair, Legislative Finance Committee

FROM: Cally Carswell, Program Evaluator, Legislative Finance Committee
Ryan Tolman, Ph.D., Program Evaluator, Legislative Finance Committee

THRU: David Abbey, Director, Legislative Finance Committee
Jon Courtney, PhD, Deputy Director Legislative Finance Committee

CC: Representative Daymon Ely

RE: Status Update on Bernalillo County Crime, Law Enforcement, and Bail Reform

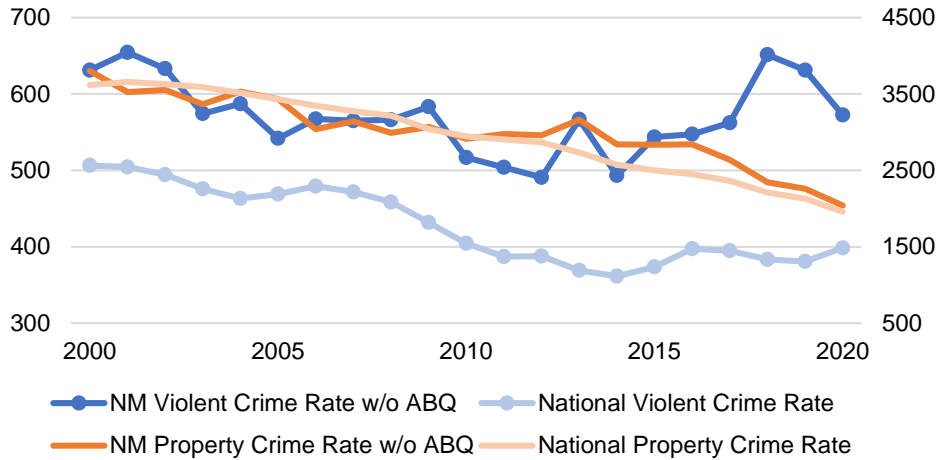
This memo provides a status update on crime trends in Bernalillo County and statewide, on issues concerning law enforcement and the courts highlighted in LFC's 2018 evaluation of the Bernalillo County criminal justice system, and on pretrial release and detention in the 2nd Judicial District. The 2018 evaluation explored the causes of an increase in crime in Albuquerque starting around 2011 and the criminal justice system's response to it. It found that as crime rose, arrests and convictions remained flat or even declined, creating an accountability gap for criminal behavior. Analysis in this memo shows the accountability gap persists today, indicating the system is failing to deliver swift and certain justice and thus to create effective deterrence for crime. Additionally, while local government and law enforcement agencies have made progress in removing barriers to diversion for low-level offenders and in standing up new diversion programs to help address the root causes of crime, many programs remain underutilized. Finally, this memo provides analysis on the outcomes of bail reform in Bernalillo County and the new approach to pretrial release and detention implemented in 2017.

The causes of crime and the solutions to it are complex. There is still some uncertainty around activities that lead to deterrence, but research has shown swiftness and certainty of justice have an impact and that certainty, in particular, is key. While this memo focuses on key measures of performance within the criminal justice system, a successful long-term crime reduction strategy requires sustained effort outside the system as well to identify and address underlying causes.

I. New Mexico's Violent Crime Rate Remains Well Above the National Average

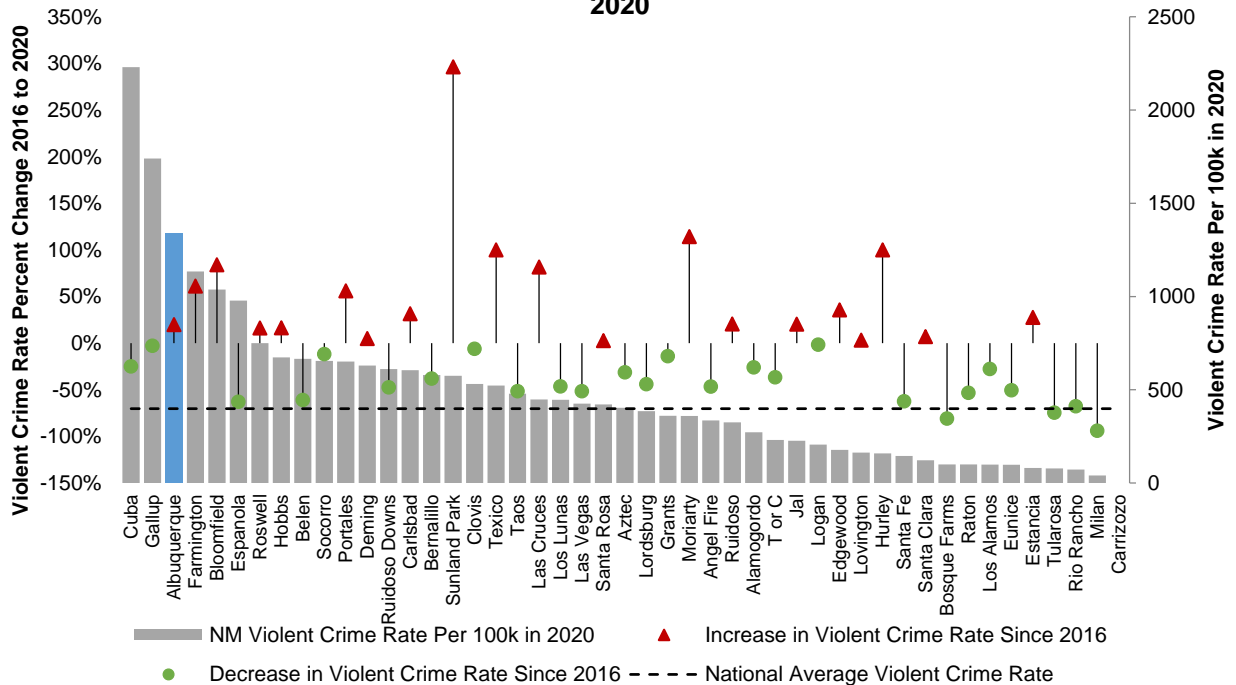
Outside of Albuquerque, violent crime rates in New Mexico rose starting around 2014 and continue to exceed the national average, despite improvements in both 2019 and 2020.

Chart 1. Violent Crime is Worse in New Mexico Than in the Nation as a Whole, Despite Recent Improvements



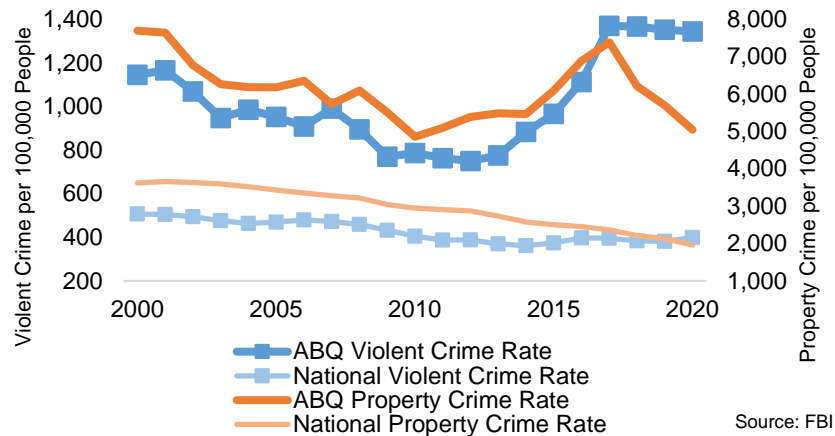
In some parts of the state, however, violent crime worsened. In at least 20 communities, violent crime rates in 2020 were up relative to 2016, when LFC last reported on statewide crime trends. In many of those communities, violent crimes rates exceeded the national average.

Chart 2. At Least 20 Communities Saw Violent Crime Increase from 2016 to 2020



In Albuquerque, violent crime plateaued at its highest level in 20 years in 2017, even as property crime fell and reached one of its lowest levels over the same time period. Both crime rates remain well above national averages. The city did see notable improvements in some areas of high public interest, including auto theft, which declined by 25 percent from 2018 to 2020.

Chart 3. Property Crime in Albuquerque is Falling While Violent Crime Has Plateaued at a High Level



Though statewide crime data is not yet available for 2021, violence appears to have risen in at least some communities. New Mexico State Police investigated 17 homicides in FY21, up from 10 in FY20, and homicide and robbery rose in Albuquerque in 2021. A more complete understanding of statewide crime trends is hampered by existing data collection systems and local law enforcement agency cooperation. Although the Department of Public Safety (DPS) is required to collect and report crime data from all law enforcement agencies to the governor and legislature, it has not done so as it transitions to the National Incident Based Reporting System required by the Federal Bureau of Investigation. However, DPS faced difficulties obtaining data from all agencies even before this transition, and agency failures to report will likely continue after it. LFC’s FY23 budget recommendation includes \$100 thousand for DPS to support law enforcement agencies’ compliance with statutory reporting requirements.

In 2021, Albuquerque recorded 117 homicides—a 46 percent increase over 2020. The city endured an acute rise in homicides in 2021, mirroring a national trend that began during the Covid-19 pandemic.

In 2020, the United States saw its largest single-year increase in homicides—about 30 percent in metro areas—and an overall increase in the violent crime rate of 5 percent. Criminologists have suggested several possible explanations for the abrupt rise in homicides, including a spike in gun sales and the social and economic disruptions brought by the pandemic and killings of civilians

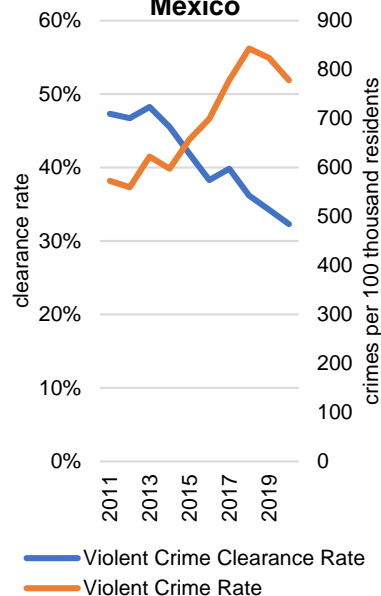
Chart 4. U.S. Metros with Largest Homicide Increases, Mid-Year 2020 to Mid-Year 2021



by police officers, which sparked nationwide protests and appear to have impacted police activities.

While Albuquerque did not see more homicides in 2020 compared to 2019, murders rose dramatically in 2021. As of mid-year, homicides had increased in Albuquerque at the seventh highest rate among 66 metros reporting to the Major Cities Chiefs Association. Nationwide, guns were implicated in 77 percent of murders, more than the previous year, and law enforcement’s clearance rate for murders dropped from 61 percent to 54 percent. Trends in Albuquerque generally moved in the same direction starting in 2021, with a higher percentage of victims losing their lives to gun violence and fewer violent crimes being solved. LFC analysis of 2021 APD data found that guns were involved in 79 percent of homicides, slightly higher than the national average and an increase from historic numbers. In 2010, APD reported guns were involved in 50 percent of homicides. Firearm sales in New Mexico increased 58 percent from February to March of 2020, when the state first issued pandemic-related public health restrictions. Gun sales continued to increase until June 2020, when they reached a high of 24 thousand.

Chart 5. Violent Crime Clearance Rates Fall as Crime Rose in New Mexico



Source: FBI, LFC files

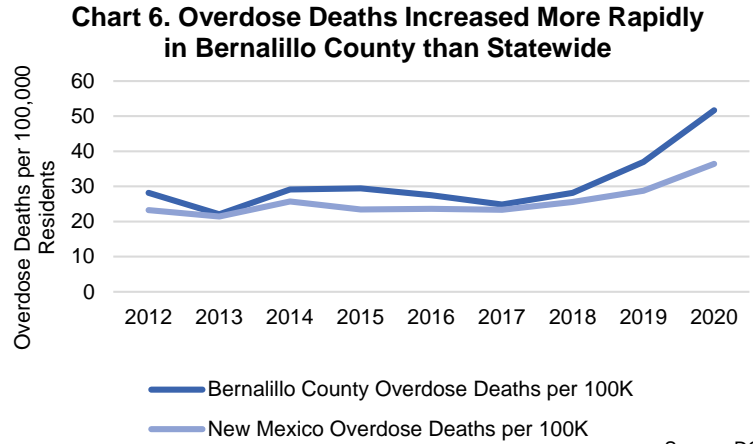
Interpersonal disputes and robbery motivated the majority of homicides in Albuquerque in 2021.

APD officers interviewed by LFC staff pointed to several trends contributing to the homicide surge. One was “drug rips,” where a drug deal would be arranged online through social media and the buyer would shoot the dealer while attempting to rob them. APD officers also observed that personal altercations that might have previously ended in fist fights now more commonly led to shootings, simply because more people have guns. Homicide data provided by the department indicates the majority of homicides in 2021 were motivated either by individual disrespect (37 percent) or robbery (28 percent). In 2019, these motivation classifications only accounted for 15 percent of all homicides, with domestic violence instead driving most homicide.

Some social conditions corresponding with crime cited in the 2018 LFC report have further deteriorated.

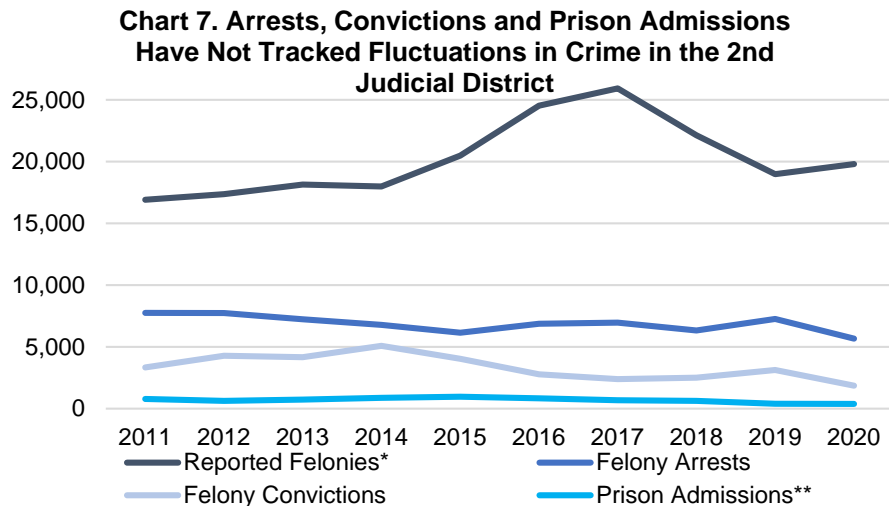
The 2018 LFC evaluation identified extreme poverty, increased use of weapons and shootings, and increased illegal drug use—particularly methamphetamine—as contributing factors to the crime increase from 2011 to 2017. At least some of these trends have continued to negatively impact the city. The number of shootings and shots fired in Albuquerque increased nearly 50 percent from 2017 to 2020 and—as was the case when LFC’s previous report was published—shootings were most concentrated in neighborhoods where residents lived in extreme poverty. The Centers for Disease Control and Prevention has recognized firearm violence as a threat to public safety and suggested solutions can be found by studying the causes of such violence. Colorado recently established an Office of Gun Violence Prevention and LFC’s FY23 budget recommendation includes funding for the establishment of such an office in New Mexico.

Additionally, overdose death rates nearly doubled in Bernalillo County between 2018 and 2020. According to provisional data from the Department of Health, the overdose death rate in Bernalillo County reached 51.7 per 100,000 residents in 2020, an 83 percent increase over 2018. Overdose death rates climbed in New Mexico as a whole too, but at roughly half the rate. Overdose deaths in the U.S. increased by 27 percent in 2020, compared with 26 percent in New Mexico and 40 percent in Bernalillo County. Fentanyl was the drug most commonly implicated in overdose deaths and methamphetamine the next most common.



II. Felony Arrests, Convictions and Prison Admissions in the 2nd Judicial District Have Not Kept Up with Crime

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. For the criminal justice system, this means it is important to prioritize solving crimes and securing convictions, particularly for serious offenses. However, LFC’s 2018 evaluation found that as crime rose in the mid-2010s, arrests and convictions remained flat or declined, creating an accountability gap for criminal behavior. The accountability gap persists today. Neither arrests nor convictions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Trends in prison admissions have also not tracked crime, with 61 percent fewer prison admissions from the 2nd Judicial District in FY20 compared to FY15, when reported felonies were at similar levels. It should be noted that some gap between arrests and convictions is desirable to the extent it is driven by effective use of diversion programs. However, diversion does not appear to be driving 2nd Judicial District trends.

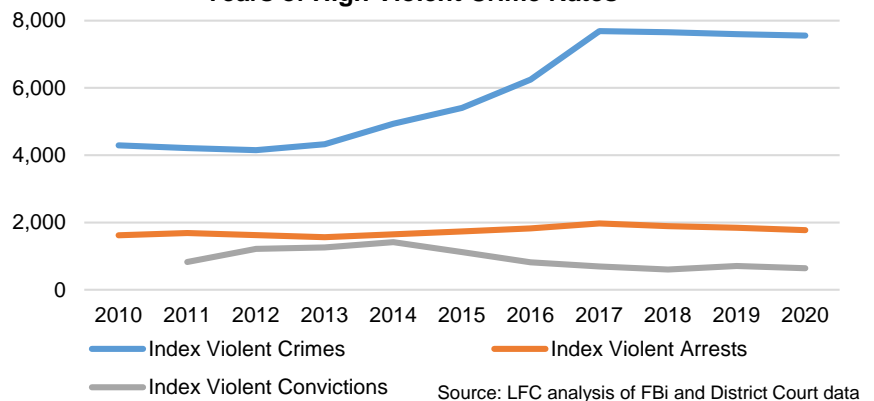


*Part I UCR crimes excluding larceny; **Reported by fiscal year Sources: FBI, 2nd District Court, Metro Court

The Covid-19 pandemic likely exacerbated the accountability gap. Felony arrests and convictions in Albuquerque rose in 2019 but dropped in 2020, when the number of reported felonies tacked back up. The 2020 decline in arrests and convictions likely reflects the impact of Covid-19, which affected policing across the nation. In a survey by the International Association of Chiefs of Police, 61 percent of agencies reported adopting formal policies to reduce or limit proactive traffic or pedestrian stops and 73 percent reduced community-oriented policing activities. Albuquerque officers also appear to have engaged in less proactive policing during the pandemic, though proactive enforcement was a challenge even before the pandemic. For instance, in 2020, arrests by APD for driving under the influence dropped by 36 percent and they did not rebound in 2021. State Police reduced proactive operations as well, with the number of data-driven traffic enforcement projects, DWI saturation patrols, and DWI arrests all falling below performance targets in FY21. Additionally, New Mexico courts were significantly slowed down by the move to remote proceedings, temporary suspension of jury trials, and social distancing measures required to conduct jury trials once they resumed. Thus, fewer cases were initiated and resolved in 2020.

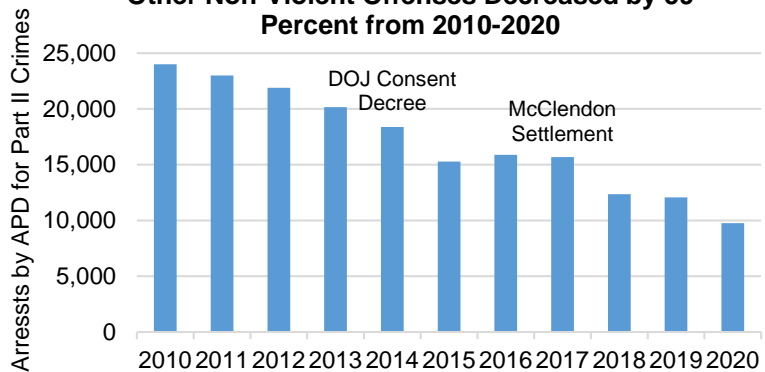
Arrests and convictions for violent offenses have remained relatively flat through at least seven years of rising violent crime. Albuquerque’s violent crime rate rose by 85 percent from 2012 to 2017 and has since remained stuck at a persistently high level. Over the same time period, arrests for violent offenses rose by only 20 percent, resulting in a widening accountability gap for the most serious offenses. Closing this gap should be a key goal for APD and the 2nd Judicial District Attorney’s Office.

Chart 8. Arrests and Convictions for Violent Offenses Remained Relatively Flat or Declined Through Seven Years of High Violent Crime Rates



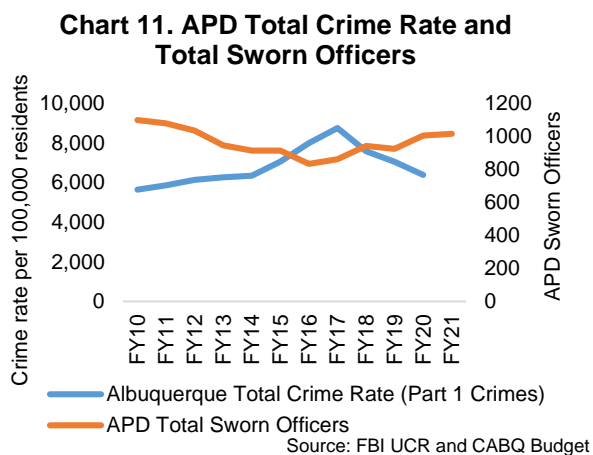
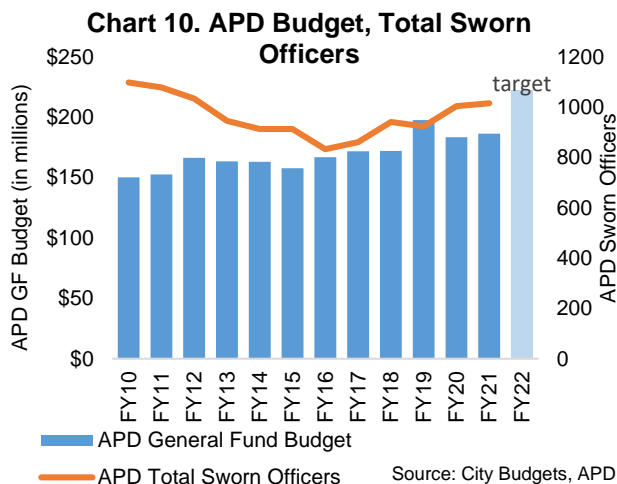
Declines in arrests do not appear to be driven by police staffing. In 2020, APD made less than 10 thousand arrests for minor property crimes and other non-violent offenses, a nearly 60 percent decline since 2010. While the COVID-19 pandemic undoubtedly contributed to this decline, arrests for minor and non-violent offenses had been on a steady, downward trajectory before the pandemic. The trend does not appear to be driven by staffing levels within the department. The total number of sworn officers employed by APD in FY20 was 1,004 compared with 1,098 in FY10, a 9 percent decline, and staffing in its field services department was roughly

Chart 9. Arrests for Minor Property Crimes and Other Non-Violent Offenses Decreased by 59 Percent from 2010-2020



the same. The adoption of the 2014 settlement agreement with the U.S. Department of Justice (DOJ) and the 2017 McClendon Settlement both coincide with some of the most significant declines in arrests for minor offenses, however, indicating efforts within APD to change its response to calls involving behavioral health issues and otherwise shift its policing strategies may have contributed.

That said, properly staffing the police department remains an important goal, and APD has made progress growing its ranks. LFC's 2018 report concluded insufficient staffing limited the department's ability to effectively implement evidence-based policing and recommended APD conduct a staffing study. APD has contracted for but not completed a new staffing study, leaving it unclear exactly how much the department needs to grow. In the meantime, the city has prioritized hiring more officers. APD employed 1,004 sworn officers in FY20, up 17 percent from FY17. The increase corresponds with a 27 percent decrease in the crime rate. Although retirements and resignations have increased since 2017, impacting experience within the department, APD has kept pace by hiring new officers. The Bernalillo County Sheriff's Office, meanwhile, has remained fully staffed with 305 sworn officers, up 6 percent from FY17.



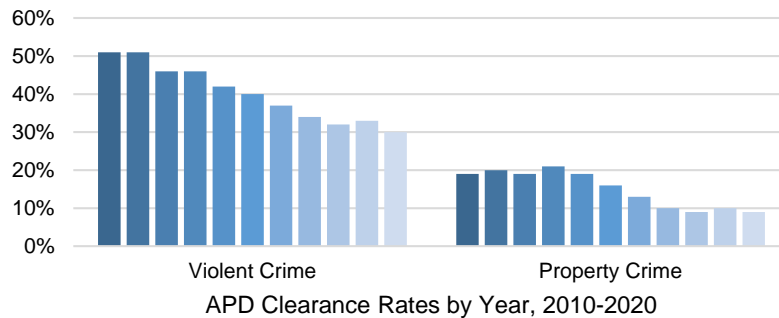
The **2014 DOJ settlement** followed a federal investigation that found APD engaged in practices of excessive force that violated the U.S. Constitution and federal law. It required changes to the department's policies, training, use of force reviews and investigations, and to its approach to calls involving behavioral health issues.

The **2017 McClendon settlement**, resolved a class action lawsuit from the 1990s involving issues with arrest procedures and overcrowding in the county jail. After the McClendon Settlement, the department adopted policies to issue citations and summonses for certain misdemeanors rather than making arrests.

APD has also increased staffing in particular areas to address operational priorities. The 2018 report identified high caseloads in some specialized units, including homicide. Homicide unit staffing increased to 15 detectives in 2021 from 10 in 2019, the department created a Gun Violence Reduction Unit in 2019, and it has established proactive policing teams in each area command, with more officers assigned to higher crime parts of the city. While these are promising developments, they have not yet yielded substantially improved clearance rates. In 2020, APD's homicide clearance rate was just 18 percent, lower than in both 2018 and 2019, despite higher caseloads per detective in the earlier years.

Declining case clearance rates and low conviction rates suggest law enforcement agencies in Albuquerque are not creating effective deterrence. Case clearance rates—or the percent of reported crimes that are solved—are one way to measure certainty of apprehension. The flat trend in arrests is reflected in declining clearance rates for both violent and property crimes in Albuquerque, meaning offenders are less likely to be apprehended now than a decade ago.

Chart 12. Fewer Violent and Property Crimes in Albuquerque Are Solved Than a Decade Ago

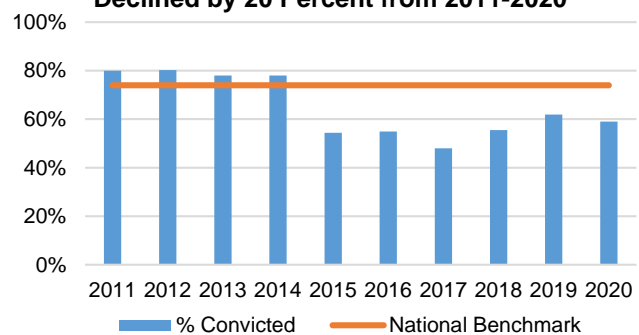


Source: FBI UCR

Justice is not certain for those who are arrested due to low prosecution and conviction rates. The 2nd Judicial District Attorney declines to prosecute over 50 percent of the violent felony cases law enforcement refers to the office, and among the cases it does pursue, 40 percent are dismissed. According to the Administrative Office of District Attorneys (AODA), 54 percent or 2,270 of the violent felony cases referred to the 2nd Judicial District Attorney by law enforcement in FY21 were “screened out” or not pursued, which may occur due to issues with evidence, witnesses, or police procedure. The proportion of violent cases the District Attorney declines to prosecute has remained relatively consistent since at least 2014.

The percentage of cases the District Attorney does pursue that are dismissed has risen, however, suggesting there are multiple obstacles to securing convictions for violent crime. LFC analysis of 2nd District Court data found 80 percent of the violent felony cases disposed in 2011 resulted in convictions compared with 59 percent in 2020. Implementation of the Case Management Order (CMO) in 2015 and bail reform in 2017 likely played a role in the decline. Case disposition data prior to the CMO may be biased toward convictions and does not include open cases prosecutors could have sat on for months or years without final disposition, a practice the CMO largely eliminated. Additionally, bail reform may have reduced defendants’ incentive to plea, as research shows defendants who are held in jail are more likely to accept plea bargains regardless of the strength of the underlying case in an effort to secure release. Bail reform also likely reduced pleas to time served, a somewhat common—but potentially coercive—prosecutorial practice prior to bail reform. Nevertheless,

Chart 13. Conviction Rates for Violent Felony Cases in the 2nd Judicial District Declined by 20 Percent from 2011-2020



Source: NCSC, LFC analysis of District Court data

according to the National Center for State Courts (NCSC), 74 percent of felony cases result in convictions, putting prosecutorial performance in the 2nd District below the national benchmark.

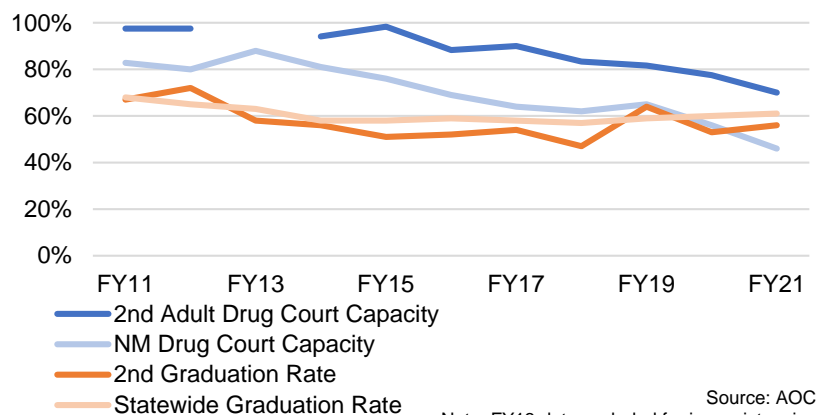
District court data shows most dismissals are made at the behest of the prosecution rather than by a judge. Prosecutors might dismiss a case due to evidence issues, lack of witness cooperation, or to pursue prosecution in federal court. LFC’s 2018 evaluation found problems with evidence to be the most common reason for felony dismissals in the 2nd District, followed by lack of cooperation from victims or witnesses. Low conviction rates compromise the certainty of justice and suggest law enforcement agencies and prosecutors need collaborative strategies to improve communication and to build better cases and bring them to swift resolution.

A promising violence intervention program may provide a model for the rest of the state. In 2020, Albuquerque launched its Violence Intervention Program (VIP) to reduce gun violence by offering services to those most at risk of perpetrating it. A coalition of law enforcement partners conducts a weekly shootings review to identify individuals who have been recent victims of gun violence and who are engaged in criminal activity known to law enforcement. APD also conducts background investigations and utilizes software that allows officers to make connections between cases and identify networks of high-risk individuals. Every week, a list of VIP candidates is generated from this work and the APD officer assigned to the unit and two peer support workers make in-person contact, delivering a message about the consequences of engaging in gun violence and offering support and services, from income and housing support, to education, employment assistance, treatment, and counseling. VIP also works with social workers at Albuquerque hospitals to make program referrals without police involvement. Though the program is new, initial data on its efficacy is promising and it is based on an evidence-based policing strategy called focused deterrence. As of October 2021, 92 percent of the 168 individuals the program had engaged had not again committed or been victims of gun violence. LFC’s FY23 budget recommendation includes \$1 million for a statewide fund for violence intervention grants, which could help launch similar programs elsewhere in the state.

III. Programs to Divert Low-Level Offenders from Jail to Treatment Are Underutilized

Prioritizing treatment over punishment is one of the public safety policy goals of LFC’s FY23 budget recommendation, which includes more than \$80 million in investments in behavioral healthcare. This policy initiative builds on years of LFC research on criminal justice in New Mexico, which has repeatedly noted the promise of evidence-based diversion programs to address underlying causes of crime, such as substance abuse and other untreated behavioral health issues. Going

Chart 14: Drug Court Participation Has Declined



Source: AOC
Note: FY13 data excluded for inconsistencies

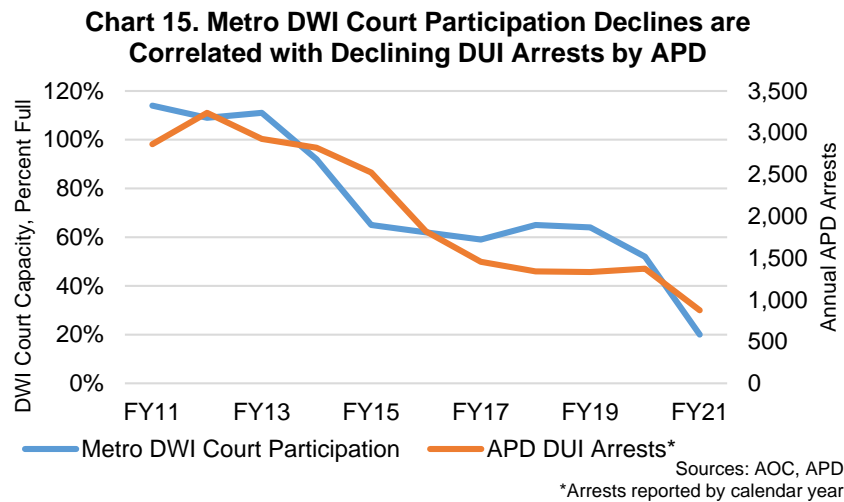
forward, the Legislature and state and local agencies should look for opportunities to improve utilization of existing diversion programs.

In Bernalillo County, local governments and law enforcement have made progress in standing up new diversion programs such as Law Enforcement Assisted Diversion and alternative response initiatives such as APD’s Crisis Intervention Unit and Albuquerque’s Community Safety Department. Additionally, barriers to participation in existing programs have been removed, such as fees for drug court clients and admission of guilt requirements for the pre-prosecution diversion program housed within the 2nd Judicial District Attorney’s Office. Nevertheless, many of these programs remain underutilized. LFC requested data for pre-prosecution diversion from the District Attorney’s office but did not receive it, so it is not reported in this memo.

Participation in drug courts continues to decline. Utilization of diversion programs can reduce crime in the long-term by providing interventions that address root causes of crime and preventing criminal escalation among low-level offenders. However, participation in New Mexico’s adult drug courts has steadily declined. Drug courts statewide were only 46 percent full in FY21, down from 83 percent in FY11. While participation rates in FY21 are likely anomalous due to COVID-19, significant declines had occurred even before the pandemic. Throughout the last 10 years, the 2nd District’s adult court has maintained higher participation rates than the state as a whole but followed the same declining trend. Graduation rates have also declined over the last decade, though less dramatically than participation, while graduate recidivism in the 2nd District has fluctuated between 4 percent and 9 percent in all but one year, significantly better than the statewide average, which has ranged from 6 percent to 15 percent.

Participation declines in the 2nd District’s adult drug court are driven by relatively small drops in the absolute number of individuals served, particularly relative to Bernalillo County’s overall crime and drug problem. At full capacity, the court serves 120 individuals. In FY11, it had 117 active participants on June 30, and in FY20 it had 93.

While drug court stakeholders interviewed by LFC staff have identified reluctance among both prosecutors and defense attorneys to use treatment court as a sanction for criminal offenses, the drop in participation rates is most likely driven by a decline in overall arrests, which shrinks the pool of potential participants. Sharp declines in participation in Metro Court’s DWI treatment court, for instance, began at the same time DWI arrests by the Albuquerque Police Department started to drop off.



Few Bernalillo County police officers opt to divert potential arrestees to the case managers and services available through Law Enforcement Assisted Diversion (LEAD). Bernalillo County’s LEAD program launched in 2019 with the goal of diverting low-level offenders to services and treatment for drug, mental health, or physical health issues rather than arresting and jailing them. As of June 2021, the program’s two case managers were serving only seven active clients and the program had received only 98 referrals since its inception, 74 of which came from APD and primarily from just two officers, according to the department.

Evaluations of LEAD programs elsewhere in the U.S. have found reductions of recidivism among participants as well as improved housing and employment outcomes. The pilot phase of the program in Santa Fe, for instance, found LEAD clients had fewer arrests six months after referral and reported reduced heroin use and gains in securing permanent housing. The Bernalillo County program is a collaborative effort between APD, BCSO, and the Behavioral Health Initiative but has yet to be widely embraced by law enforcement. Leaders of APD’s Crisis Intervention Unit have recently changed their approach to LEAD training to try to increase uptake and they are working to address logistical barriers to utilization, such as the large volume of paperwork required to make a referral. Additionally, APD officials said that because case managers only work regular office hours during the week, the options officers have in the moment they encounter potential clients are still frequently limited to taking them to the hospital emergency department, to jail, or to doing nothing. That means LEAD is often functionally unviable. The Crisis Intervention Unit’s leaders believe the county’s forthcoming crisis treatment center will help close this gap.

IV. Little Evidence Exists to Suggest that Bail Reform is Driving Violent Crime Trends in Albuquerque

In 2016, New Mexico joined a growing national movement to reform cash bail and reduce detention pending trial when voters approved a constitutional amendment that changed the conditions under which defendants could be detained without bond. The amendment effectively shifted pretrial release in New Mexico from a money-based bail system to a risk-based system. Now, defendants are only eligible for detention if they are accused of a felony and if a prosecutor files a motion that they be held. For a judge to grant the motion, the prosecutor must prove by “clear and convincing evidence” that the defendant is dangerous *and* that no conditions of release can ensure the safety of the community or any individual. “Clear and convincing evidence” is a high legal standard. Courts apply the same standard to terminate parental rights, for instance.

Today’s bail reforms seek to base pretrial detention on individual defendants’ risk. In Bernalillo County and elsewhere, these decisions are made by a judge and follow criteria outlined in state statute. Judges consider the nature of the current offense; the strength of evidence against the defendant; the defendant’s criminal history and ability to comply with conditions of release; the likelihood that pretrial supervision can mitigate any public safety risk a defendant poses; and the results of risk assessments, among other factors. In 2017, the 2nd Judicial District became the first district in the state to adopt the Public Safety Assessment (PSA), an empirical risk assessment tool that helps identify defendants at high risk for committing new

Why Bail Reform?

Most jurisdictions that have pursued reform have done so for two primary reasons:

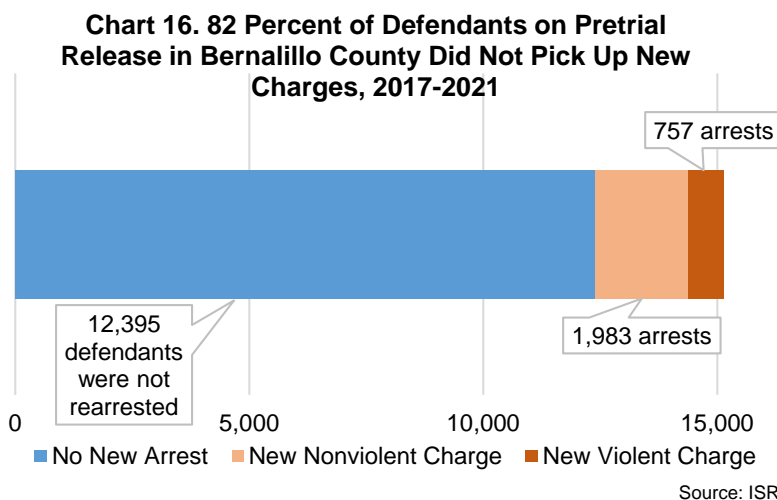
**Cash bail was inherently flawed because it made punishment prior to conviction contingent on wealth, and bonds did not provide effective public safety protection.*

**Empirical research shows jailing criminal defendants prior to trial is often unnecessary to protect public safety because most defendants do not commit new crimes while on pretrial release.*

crimes and missing court dates. Judges use the tool to inform decisions about conditions of release that can mitigate these risks. The Administrative Office of the Courts is now helping other districts incorporate the PSA into pretrial decision making.

Pretrial release systems, no matter the form they take, must balance public safety protection with civil liberties enshrined in the U.S. Constitution. Rulings from the U.S. Supreme Court have held freedom prior to conviction should be the norm. Eliminating all risk from such a system is impossible. Instead, the legal system and society at large accept some level of risk as the cost of presumption of innocence. The conditions of release set by a judge and enforced by pretrial supervision officers attempt to deter additional criminal activity with the threat of sanctions for violations, and higher-risk defendants are subjected to higher levels of supervision. In Bernalillo County, pretrial release effectively gives defendants one second chance. Defendants who pick up new criminal charges while on pretrial supervision are usually remanded to custody for at least some period of time.

Ninety-five percent of defendants in Bernalillo County did not pick up new violent charges while on pretrial release. In December 2021, the Institute for Social Research (ISR) at the University of New Mexico released the results of the largest analysis to date on the outcomes of pretrial release reforms in Bernalillo County. The analysis found 69.6 percent of defendants were released pending trial. In absolute numbers, defendants in 15,134 cases had at least some exposure in the community while awaiting trial over a four-year period. Of that group, 81.9 percent picked up no new charges while on pretrial release, 13.1 percent (1,983) were arrested on a new non-violent charge, and 5 percent (757) were arrested on a new violent charge. Nearly 80 percent of defendants appeared for all court dates. These outcomes are comparable to other jurisdictions using empirical risk assessments to inform pretrial release and supervision. While low clearance rates could mean more crimes than arrests are occurring, the outcomes among pretrial defendants in Bernalillo County have remained consistent across several ISR studies.



The most common new charges defendants picked up were for property crimes (38 percent), followed by drug crimes (24 percent), and assault and battery (22 percent). Serious violent charges, such as robbery, sex offenses, or homicide each represented 1 percent or less of the new criminal activity in the population. Released defendants were charged with seven homicides that occurred during pretrial release over the four-year period.

New arrests of defendants on pretrial release represent a small fraction of overall crime reported in Albuquerque. An LFC analysis of crime and arrest data over a three-year period found arrests for violent crimes among pretrial defendant made up 5 percent of total arrests for violent crimes by APD, meaning pretrial defendants are relatively small contributors to Albuquerque’s overall violent crime problem.

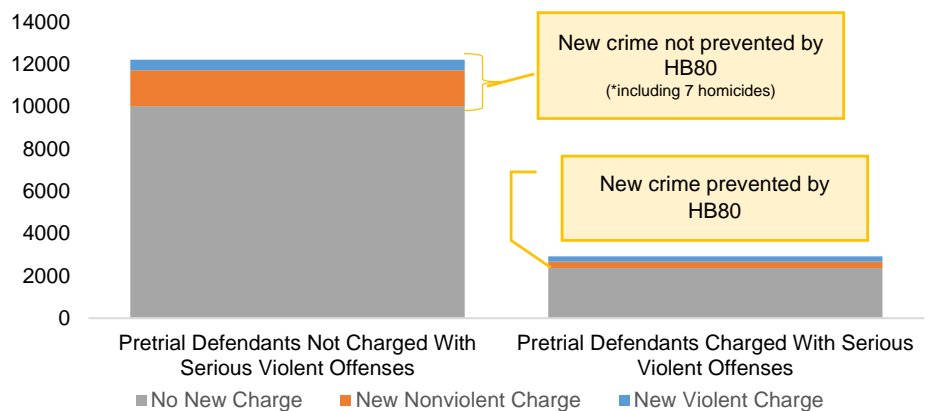
Table 1. Proportion of Overall Yearly Crime Perpetrated by Pretrial Defendants in Albuquerque

2%	1%	1%	22%	1%	1%	1%	1%
Homicide	Robbery	Assault	Drug Offenses	Burglary	Motor Vehicle Theft	Theft and Arson	DWI

Making it easier to detain defendants prior to trial would prevent some crime but is unlikely to have a significant effect on overall crime rates. In 2021, House Bill 80 (HB80) proposed changes to New Mexico’s pretrial release policies that would make it easier to detain defendants with prior felony convictions or prior violations of conditions of release who were now charged with “serious violent offenses,” a broad category under state statute including second degree murder, voluntary manslaughter, third degree aggravated battery, first and second degree robbery, shooting at or from a motor vehicle, and aggravated assault upon a peace officer, among other crimes.

The bill responded to public perception that too many violent criminals were being released pending trial, creating an unacceptable public safety risk. It would have created “rebuttable presumptions” for defendants charged with serious violent crimes, shifting the burden from the prosecution to the defense to prove they should be detained to the defense to prove they should *not* be detained. Prosecutors would still have to move for detention in these cases in order for a judge to consider it.

Chart 17. HB80 Could Have Prevented 253 Violent Arrests Over Four Years While Also Detaining 2,400 Defendants Who Committed No Crime During Pretrial Release



ISR’s December 2021 study included data on the public safety implications of HB80. It found that violent charge-based rebuttable presumptions could have led to the detention of defendants in nearly 3,000 additional cases over a four-year period. Over 80 percent of the defendants in this group committed no new crimes during the pretrial period. Thus, charge-based rebuttable presumptions could have led to the unnecessary detention of roughly 2,400 defendants while preventing 253 violent arrests and 300 non-violent arrests over four years.

Notably, most of the violent crimes that would have been prevented were fourth-degree felonies for aggravated assault, and none of the homicides committed by defendants on pretrial release during the four-year period would have been prevented by the reforms because none were committed by the population the bill targeted. In fact, all seven murders were committed by defendants previously arrested for offenses not involving serious violent charges. While counterintuitive, these findings are consistent with national research on pretrial detention, which has found little empirical support for charge-based detention policies. In other words, using a defendant’s current criminal charge as the primary determinant for detention is a values-based approach, not an evidence-based one.

The cost to taxpayers of additional detention exceeds the savings resulting from the crime prevention achieved by reforms such as HB80. LFC analysis indicates keeping these defendants in jail while they awaited trial would have cost state and local government \$23 million while providing savings of \$15 million due to crime prevention over the four-year period. That amounts to additional costs to the system of roughly \$2 million per year. These figures only account for costs to the public associated with the criminal justice system, such as the cost of jail and court proceedings. Tangible and intangible costs borne by victims of these crimes or the value of life lost are not included in these figures but could be significant. Additional costs to defendants, their families, and the economy from unnecessary detention are difficult to quantify but include loss of employment, loss of housing, and increased recidivism.

Reforms such as HB80 may lead to prolonged detention of defendants who are never convicted of the crimes they are accused of. LFC analysis of 2nd District Court data found prosecutors secured convictions against 59 percent of the defendants they filed pretrial detention motions against and cases were dismissed against 40 percent of defendants. The analysis included 2,785 cases disposed in the 2nd District from FY19 to FY21. Cases with pretrial detention motions are generally those the District Attorney considers most serious, with defendants whom prosecutors argue pose an immediate threat to the community. They are also cases prosecutors must be willing to prioritize resources toward because when detention is granted by the court accelerated timelines apply for securing indictments, producing discovery, and going to trial. Even so, conviction rates in these cases are below national benchmarks. According to the National Center for State Courts, 74 percent of felony cases nationwide end with guilty pleas, with only 18 percent dismissed.

\$23 million

Cost to state and local governments to **detain additional cases** targeted by preventative detention proposals, such as HB80.

Additional cost to individuals and economy:

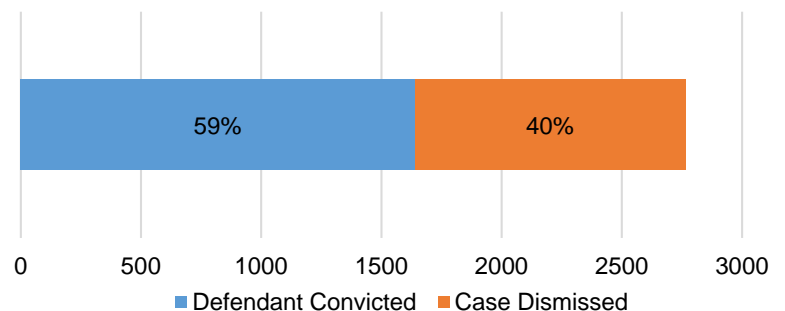
- Increased recidivism
- Loss of employment
- Loss of housing
- Other negative social outcomes

\$15 million

Cost to state and local government of **new crime prevented** by HB80.

Tangible and intangible costs borne by victims of the crimes prevented could be significant.

Chart 18. 40 Percent of Defendants Prosecutors Sought to Detain Pending Trial Were Not Ultimately Convicted, FY19-FY21



Source: LFC analysis of District Court data

