
The Impact of the NMCRA: Initial Findings, Open Questions, and Lessons Learned

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PROVISIONS OF THE NMCRA

- Creates a right to sue for violations of the New Mexico Constitution's Bill of Rights;
- Allows claims solely against public bodies, not individuals;
- Prohibits the use of qualified immunity as a defense;
- Authorizes attorneys' fees for prevailing plaintiffs;
- Permits compensatory damages (capped per occurrence and claimant, including attorneys' fees—currently \$2.51 million, with an annual cost of living adjustment);
- Prohibits punitive damages;
- Allows equitable and injunctive relief;
- Requires indemnification by the relevant public body.

WATCHING THE SKY NOT FALL: A QUANTITATIVE STUDY OF THE IMPACT OF THE NMCRA (WITH JAMES PFANDER AND ALEXANDER REINERT)

METHODOLOGY

- Through public records requests to every local law enforcement agency in four states: Colorado, New Mexico, Utah, and Washington. (Colorado and New Mexico enacted rights to sue under the states' constitutions without qualified immunity; Utah and Washington did not);
- For the years 2017-2023;
- Seeking information about the number of lawsuits filed in state and federal court; how much was paid in settlements and judgments; annual insurance premiums; officer retention.

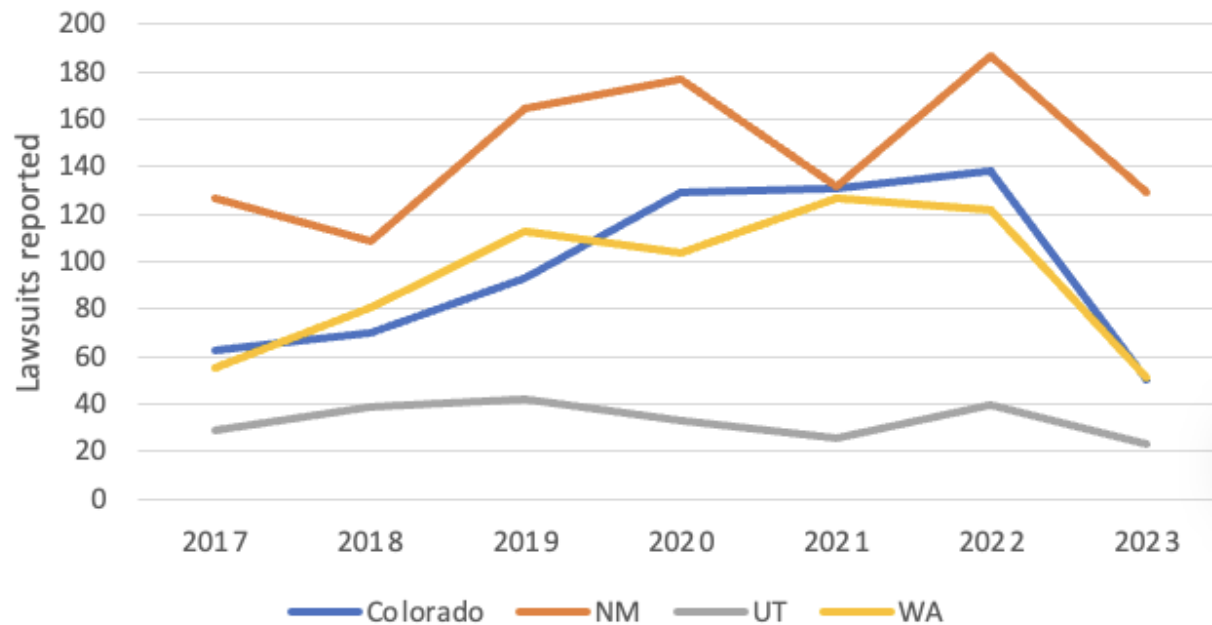
RESPONSE RATE

Among the 111 New Mexico jurisdictions queried, 72 jurisdictions (64.8%) responded to one or more of the requests (for filings, payments, insurance premiums, and officer retention).

- Those 72 jurisdictions police 91.5% of the population in New Mexico
- Those 72 jurisdictions employ 89.6% of the officers in city and county officers in New Mexico

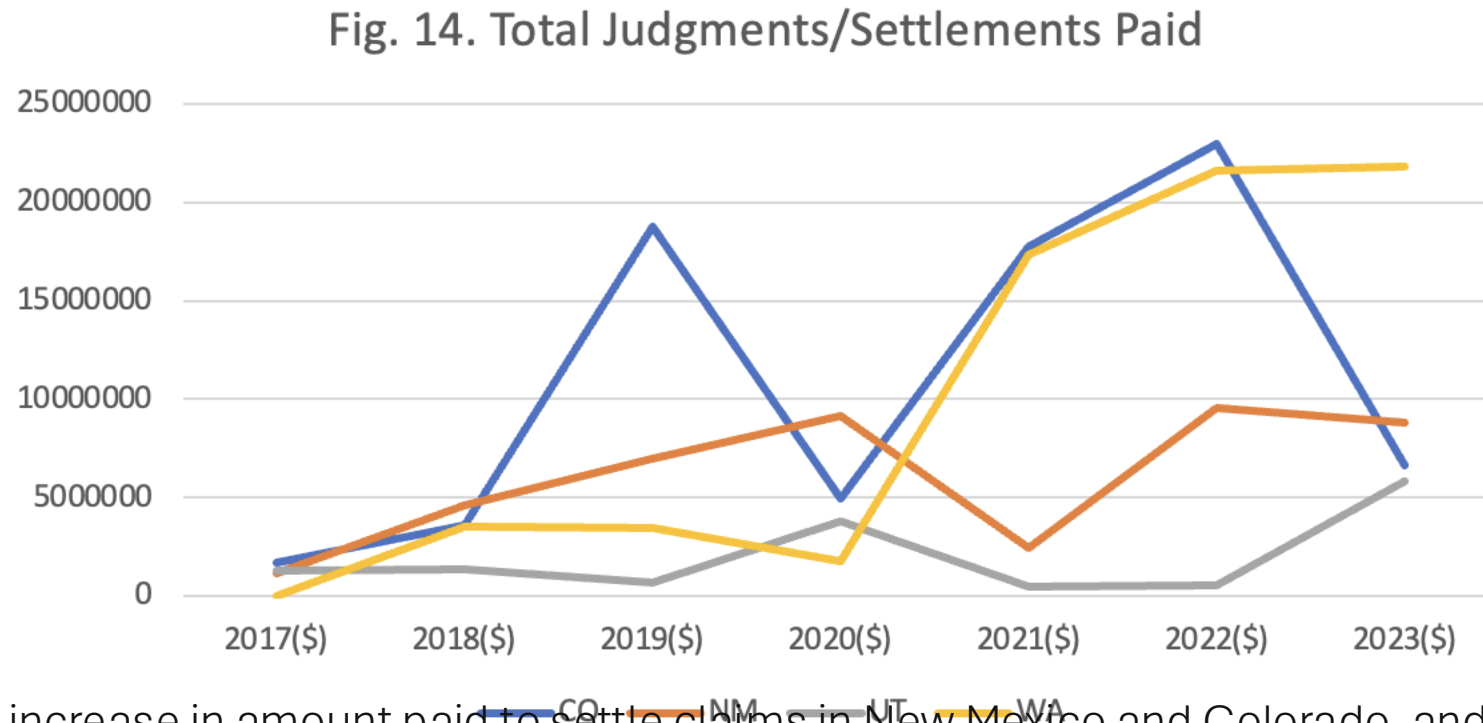
Lawsuit Filings, By Year and By State

Fig. 4. Total Litigation Over Time, By State



No significant increase in the number of lawsuits filed against law enforcement agencies in Colorado and New Mexico, and no indication that the number of filings in New Mexico and Colorado (reform states) differed from Utah and Washington (control states).

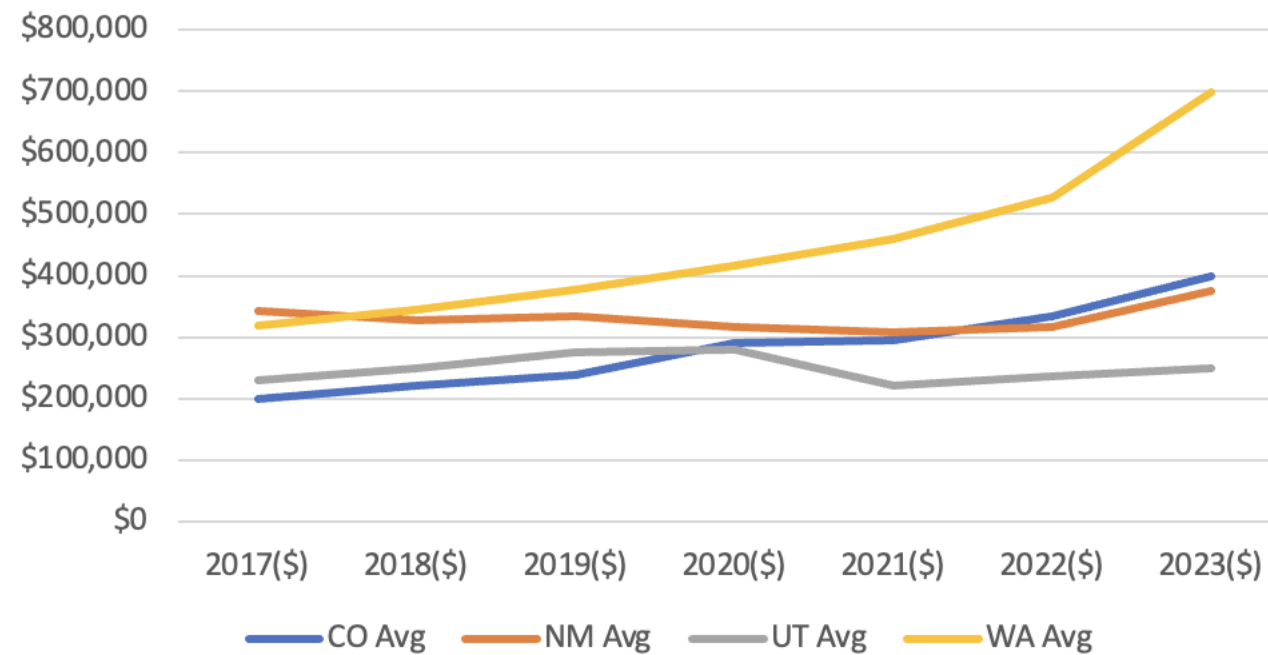
Payouts in Settlements and Judgments, By Year and By State



No significant increase in amount paid to settle claims in New Mexico and Colorado, and no indication that shifts were caused by the new legislation. New Mexico's experience is more similar to Utah, and Colorado's is more similar to Washington.

Insurance Premium Costs

Fig. 16. Insurance Costs Over Time, Avg Premium



Insurance rates increased across all four jurisdictions with no indication that increases were caused by New Mexico and Colorado legislation.

OFFICER RETENTION

Fig. 18. Employee departures, absolute numbers

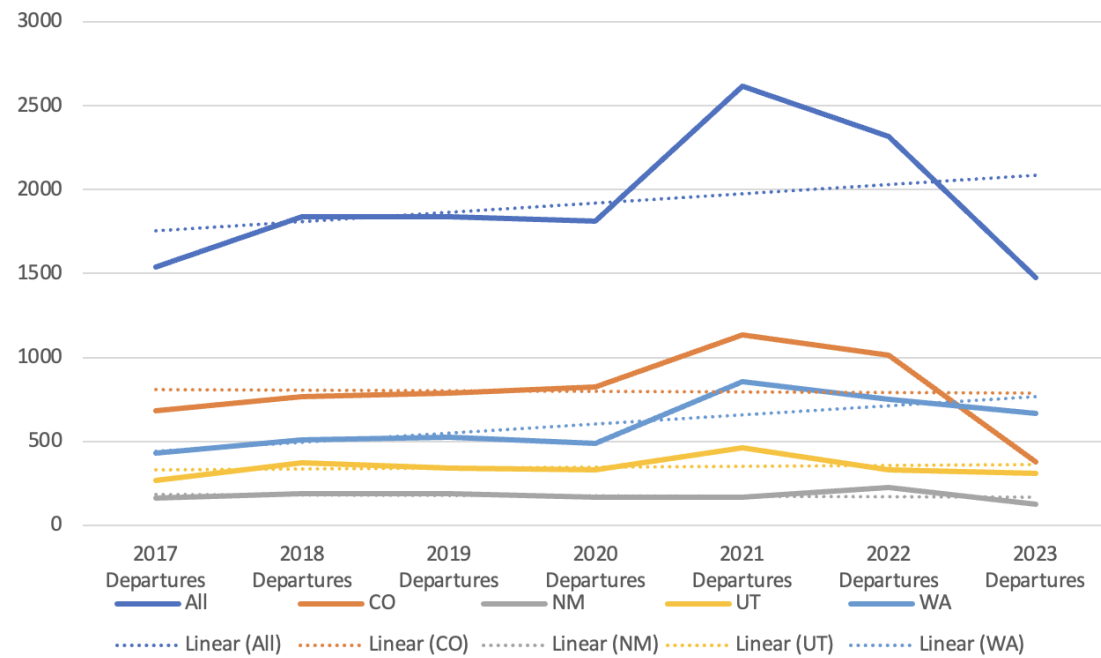
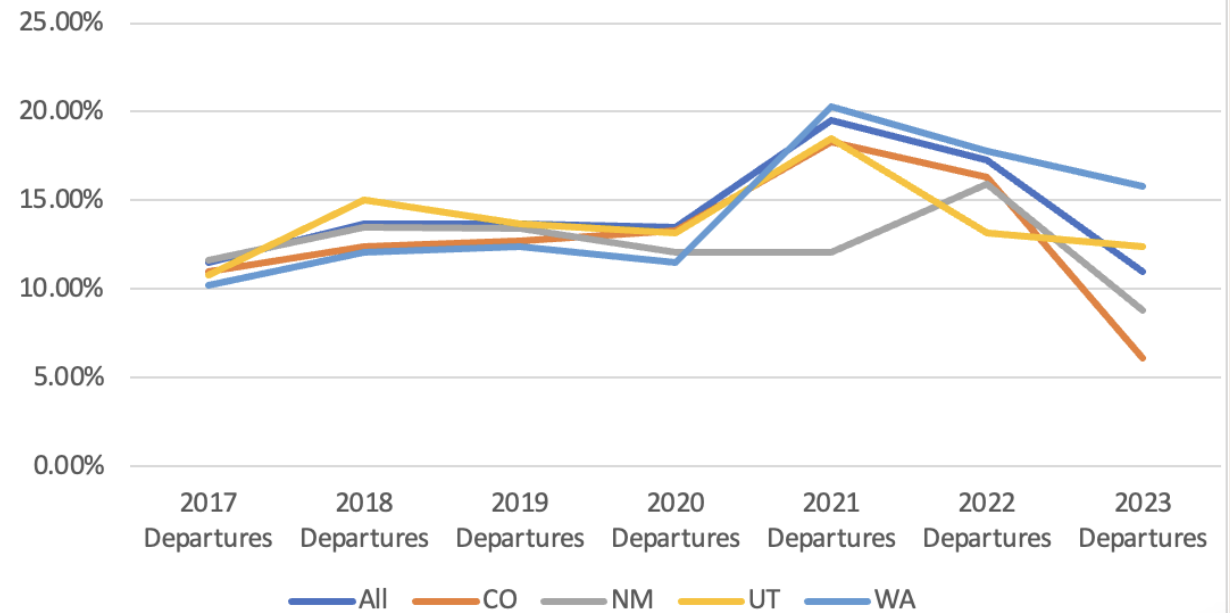


Fig. 19 Employee departures, as % of total departures from law enforcement agency, 2017-2023



No evidence of an increase in employee retirements or resignations in New Mexico and Colorado.

For Further Study:

- Additional years (beyond 2017-2023)
- Particular role of NMCRA in litigation filings/case outcomes
- Better understanding of the experiences of practitioners/risk managers
- Better understanding of the impact of particular provisions in the NMCRA

THE EVOLUTION OF STATE CONSTITUTIONAL ENFORCEMENT: A Qualitative Study of Attorneys, Insurers, and Risk Managers with Allison Freedman

Findings:

- There are multiple open questions about the scope of the NMCRA
- Plaintiffs' attorneys are using the NMCRA to file "state civil rights" and "state tort" claims
- More cases are being litigated in state court, less time is being spent litigating qualified immunity, and more time is spent litigating the scope of constitutional rights
- There is uncertainty about the NMCRA's impact of liability costs and risks
- There is confidence that open questions about the NMCRA will resolve in the coming years.

Takeaways:

- The NMCRA appears to be shifting litigation dynamics – case selection and litigation strategy – without dramatically increasing filings, payouts, and insurance rates.
- The evolution of the NMCRA will take time – as people bring claims, courts resolve open questions about its provisions, and cases are resolved.
- "Any rush to judgment about the impact of the NMCRA...would be both premature and oversimplistic."

LESSONS LEARNED FROM THE FIRST FIVE YEARS OF THE NMCRA

Data from 2017-2023 suggest no shifts in lawsuit filings, payouts, insurance premiums, or officer retirements attributable to the NMCRA.

The evolution of litigation under the NMCRA will take years and occur as lawyers continue bringing and defending NMCRA claims, judges issue rulings, and lawyers educate themselves about shifts in the law.

More quantitative and qualitative study is needed over the next several years to trace the impact of the NMCRA, which will require access to more information.