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## Justice System Initiatives and Reforms

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### Review of Criminal Justice System in Bernalillo County (2018, 2022)

- The Legislative Finance Committee conducted a *Review of the Criminal Justice System in Bernalillo County* in 2018 which included a slate of recommendations aimed at improving and maintaining reform efforts and cooperation among the relevant agencies. Recommendations included increasing the use of evidence-based policing strategies, analytical tools, and data-driven staffing policies to reduce violent crime and improve the swiftness and certainty of justice for criminal defendants. Other recommendations included the implementation of pretrial services screening tools, system-wide performance management, and reporting requirements, and procedures to increase the utilization of diversion programs.
- A follow-up progress report in 2022 found:
  - New Mexico's violent crime rate remains well above the national average.
  - Felony arrests, convictions, and prison admissions in the 2<sup>nd</sup> Judicial District have not kept up with crime.
  - Programs to divert low-level offenders from jail to treatment are underutilized.
  - Little evidence exists to suggest that bail reform is driving violent crime trends in Albuquerque.
- 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.
- 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

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convictions is desirable to the extent it is driven by effective use of diversion programs. However, diversion does not appear to be driving the 2nd Judicial District trends.

- 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 2<sup>nd</sup> Judicial District Attorney’s Office.
- Further information from criminal justice partners is needed to assess their progress in implementing the recommendations of the LFC program evaluation and status report, including:
  - Steps taken to improve the collection and timely reporting of accurate crime data.
  - Steps taken to improve collaboration between law enforcement agencies, district attorney, and courts to ensure timely investigation, prosecution, and conviction individuals involved in felony cases, especially violent crimes.
  - Strategic efforts to dispose of cases in a timely manner, use of diversion programs (e.g. drug court), and pretrial services.

## Pretrial Detention

- A 2022 survey of New Mexico residents regarding pretrial detention policy indicates widespread distrust of current practices. Reform efforts during the 2022 and 2023 legislative sessions focused on creating “rebuttable presumptions” against release based on the crime a defendant is charged with (see 2022 introduced version of HB5 and 2023 SB123). Evidence suggests these reforms may have little impact on crime and create significant costs, and, in 2022, the New Mexico Supreme Court ruled that the nature of current charges cannot satisfy the state’s evidentiary burden to detain someone pretrial.
- Criticism of current pretrial practices has also focused on the use of a public safety assessment (PSA) tool in the 2nd Judicial District. Recent changes have removed recommendations to detain or release from the tool, but this may not be sufficient to assuage public concerns. Other states have regulated the use of pretrial tools by requiring validation and regular revalidation, requiring reporting on metrics of success, and passing laws to clarify assessment results cannot be the only consideration in pretrial release decision making. Although data suggest many of the tools used to make pretrial detention decisions are working well, the lack of public trust in the current system poses a significant policy concern.
- The Administrative Office of the Courts collects various data points regarding pretrial detention. Among them are the percent of defendants who commit any crime, specifically a violent crime, and the percent of defendants who make all scheduled court appearances. In 2023, 74 percent of defendants made all court appearances, 81 percent of supervised

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defendants were not charged with a new offense during the pretrial stage, and 95 percent of released pretrial defendants did not commit a new violent charge. These numbers are in line with previous years averages.

## National Incident-Based Reporting System (NIBRS)

- New Mexico lacks timely data on statewide crime trends. All 128 Law Enforcement Agencies (LEAs) are statutorily mandated to provide crime reports to the Department of Public Safety (DPS). Unfortunately, many law enforcement agencies, including NMSP, are not yet reporting through NIBRS. As of mid-May, 72 percent of the state's 116 nontribal law enforcement agencies were reporting to the system and 13 percent testing the system, which takes a minimum of six months. The remaining 15 percent of agencies were not reporting at all. The New Mexico State Police (NMSP) completed its upgrade of its Records Management System in March and has begun collecting data necessary for testing (which will begin in July), meaning NMSP could begin reporting to NIBRS as early as this fall.
- Lack of reporting makes it impossible to accurately understand crime trends in the state because 2021 marked the first year the FBI's national crime statistics relied solely on information provided via NIBRS. Many other states have also struggled to reach NIBRS compliance. Nationally, about 63 percent of law enforcement agencies covering 64 percent of the population provided data through NIBRS for 2021; comparatively, 85 percent of agencies reported data in 2020 using the previous system. In New Mexico, 33 percent of law enforcement agencies covering 61 percent of the state's population submitted 2021 data through NIBRS; in 2020, 95 percent of New Mexico law enforcement agencies reported data.
- DPS has performance measures for crimes reported in NIBRS, which are meant to provide more timely updates on crime trends in the state than FBI reporting, but these are not useful when large law enforcement agencies are not reporting and when fluctuations in the numbers are as likely to be caused by a change in crime as by a change in whether an agency is reporting.
- The 2022 GAA included \$100 thousand in recurring funds for DPS to support other law enforcement agencies' compliance with crime reporting and other statutory reporting requirements.

## Warrant Enforcement

- While warrants are issued by the courts (and put into the court data system, Odyssey), there are numerous different processes by which those warrants are input into the National Crime Information Center (NCIC), which is the database police query to find out if someone has a warrant. These processes can be as inefficient as a sheriff's deputy picking up physical copies of records from the courthouse and then manually entering information into NCIC. The Administrative Office of the Courts (AOC) reported they were working on a project

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with DPS to automatically push warrant data from the court database to DPS’s system (AOC does not have access to NCIC).

**Warrant Types.** Arrest warrants are issued at the request of law enforcement with the goal of arresting an individual believed to have committed a crime. Arrest warrants represent a very small share (9 percent) of active warrants in Bernalillo County, with the remaining 91 percent comprising bench warrants. Bench warrants are issued by a judge based on an individual’s failure to comply with an order of the court, including appearing for hearings, complying with conditions of release, or complying with conditions of probation. About a third (35 percent) of all active felony warrants in Bernalillo County are for failure to appear and 15 percent are for probation violations, while 42 percent are for failures to comply with other orders. AOC reports individuals arrested on bench warrants are typically detained for a short period of time (one to two days) until a hearing can be held, and are usually released after the hearing.

**Case Types.** Bench warrants associated with cases involving property crimes and drug crimes make up the largest share of all active felony warrants in Bernalillo County. A total of 509 active bench warrants, 13 percent of all active felony warrants in the county, are related to cases in which an individual was charged with “simple” possession of a controlled substance (possession without distribution or trafficking or intent to distribute or traffic). As of March 2023, a total of 20 active bench warrants relate to possession or distribution of marijuana.

**Warrant Age.** Most active warrants issued by state courts in Bernalillo County are over two years old, and over a third (37 percent) are over eight years old. The oldest active warrants are from 1971 and are all bench warrants, including one related to a charge of aggravated assault, two related to kidnapping, and two related to murder. The oldest active arrest warrant was issued in 2000; the 403 warrants issued prior to 2000 are all bench warrants. Most active arrest warrants were issued in 2019 (124) and 2018 (61), which together comprise 57 percent of all active arrest warrants.

**Other Sources of Warrants.** Not all warrants are issued by state courts and tracked in AOC’s database. Other entities empowered to issue warrants include magistrate, tribal, and federal courts, as well as adult probation and parole officers. All warrants are entered into the Department of Justice’s National Crime Information Center (NCIC) system, which allows law enforcement to access warrants from all sources. It does not appear possible to pull aggregate reports of all warrants from NCIC.

- Warrant enforcement increases the risk of violence for law enforcement officers and the public. In 2020, about 60 percent of federal law enforcement homicides—when a federal law enforcement officer killed a person justifiably or not—occurred during the enforcement of a warrant.<sup>1</sup> Similarly, about 6 percent of law enforcement officer deaths—when an officer was killed—occurred when serving a felony warrant.<sup>2</sup>

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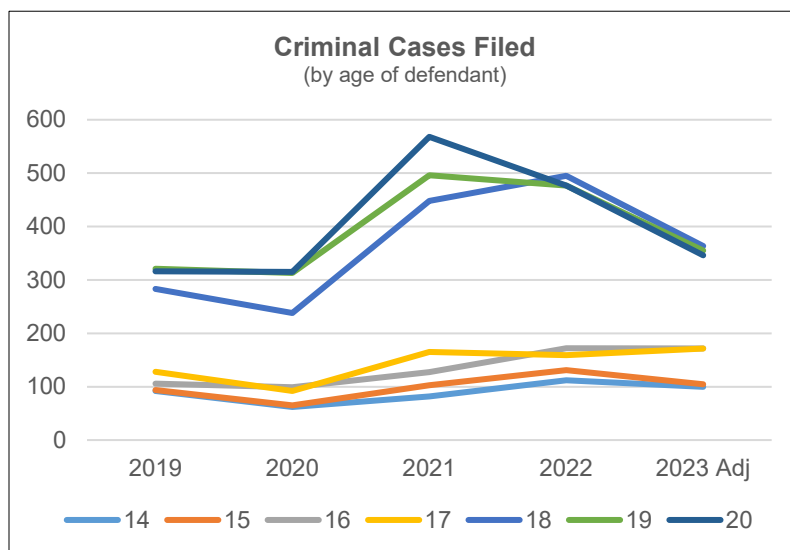
<sup>1</sup> See Bureau of Justice Statistics, Federal Law Enforcement Agency Deaths in Custody Reporting Program, fiscal year 2020.

<sup>2</sup> See the National Law Enforcement Officers Memorial Fund 2022 report.

- During the 2023 Legislative Session, HB2 set aside \$10 million for warrant operations. The Albuquerque Police Department plans to update members on the spending plan, and outcomes for this initiative at the subcommittee hearing. As of July 2023, APD stated publicly its plan was to use the funding to pay detectives overtime, encouraging detectives to dedicate one day each week to serving backlogged warrants.

## Juvenile Gun Crime (Data and Trends)

- The Albuquerque Police Department released five years of homicide data<sup>3</sup> on both victims and suspects. Last year, Albuquerque saw a record 120 homicides. This year, 2023 is on track to have fewer homicides, but there have already been over 50 deaths – and nearly half of the suspects connected to those deaths are under the age of 26. Data shows that 87 percent of the homicide suspects in 2023 are male and 43 percent are between the ages of 18 and 25.
- Courts do not currently capture if a firearm is used during a crime in a data field within their reporting system, however LFC staff worked with analysts from AOC to extrapolate information using court data from NM dataXchange looking at criminal cases filed in the last five years. The resulting analysis shows that while charges for people 18 - 20 appear to be lowering since peaking in 2021 and 2022, people aged 14 to 17 are still being charged with violent offenses at the highest rate in 4 years, with an especially notable spike among 16- and 17-year-olds. (See below)



<sup>3</sup> See: <https://www.cabq.gov/police/documents/2023-homicide-victims-and-suspects-demographics-as-of-02jul2023.pdf>