

## OVERVIEW

Overwhelming evidence shows that when we address the social factors driving criminal behavior, we reduce crime and increase public safety. Our current system provides little support to individuals to avoid recidivism and a cycle of incarceration. A better approach would prioritize non-coercive treatment, diversionary programs, and other alternatives to incarceration while providing the leg-up that our communities need.



### Legislative Priorities:

- Non-police First Responders for Behavioral Health Calls
- Community Substance Use and Mental Health Treatment
- Increase Housing Vouchers Generally and for Individuals Reentering After Jail or Prison
- End Driver's License Suspensions for Failure to Appear or Pay
- Automatic Voting Rights Restoration
- Removing Barriers to Occupational Licensing for People with Criminal Records



## Sensible Drug Policy

Substance use disorder has plagued New Mexico families for decades. For years, communities in New Mexico have had some of the highest overdose death rates in the country. At the same time, instead of providing treatment infrastructure, we incarcerate people for simply possessing controlled substances. It's time we treat substance use as a public health issue, not a criminal justice issue.

### Legislative Priorities:

- De-felonize Simple Drug Possession
- Authorize Overdose Prevention Sites

# Individualized Sentencing

New Mexico's prison population has skyrocketed over the last few decades, and the system has shifted away from a rehabilitation model to simply warehousing individuals. We fund the system on the backs of defendants by charging exorbitant fees at every stage of the criminal legal system. Collecting fees costs more than we collect, and we often incarcerate people for failure to pay, resulting in a debtor's prison. We also incarcerate probationers who miss appointments or struggle with addiction. These are not smart or sustainable practices, and they do nothing to improve public safety.



## Legislative Priorities:

- End Debtor's Prisons and Eliminate Criminal Justice System Fees
- Give Judges Discretion on Habitual Offender Enhancements
- Statewide Technical Probation Violation Reform

# Police Accountability

New Mexico has one of the highest rates of police shootings in the country. Our largest municipal police force is under a federal consent decree, and agencies across the state are pushing back against body-worn cameras — despite a new bill signed into law earlier this year. Excessive force erodes community trust, especially when law enforcement aren't held accountable. Legal accountability is crucial to maintaining public safety and public trust.



## Legislative Priorities:

- Limitations on Use of Force
- Prohibit No-Knock Warrants and Quick-Knock Raids
- New Mexico Civil Rights Act
- Repeal Peace Office Employer-Employee Relations Act
- Confront Gender and Racial Disparities

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## Analysis of Anticipated Policy Proposal: 2022 Legislative Session (2021 Interim)

### PUBLIC SAFETY POLICY PROPOSAL: rolling back 2016 constitutional amendment reforming pretrial release and money bail

**SYNOPSIS OF PROPOSAL:** Widespread media reporting forecasts 2022 legislation creating rebuttable presumptions that certain people are ineligible for pretrial release. Specific bill language or basis for a presumption is unknown. However, based on media coverage and public statements by proponents, people would be presumed “dangerous” and thus detained pretrial based on the nature of charges against them and/or prior history without individual review. It is assumed that the presumption would be “rebuttable” by defense evidence.

**WEAKNESSES:** Any statutory approach is likely unconstitutional as presumptions would conflict directly with the 2016 constitutional amendment that places an explicit burden on the State to prove dangerousness in a particular case. The proposed legislation would shift the burden to the defense in direct contravention of the current constitutional language. Thus, a constitutional amendment would be required. Moreover, there are practical concerns with shifting the burden, as during the early charging stage of a criminal case, the State is in exclusive control of all evidence and defendants would have to mount an in-depth investigation on short notice in a vast number of cases. Neither resources nor procedures exist to support such a process.

Furthermore, the proposal is **unnecessary**. The State currently only *seeks* detention in less than half the cases where “presumptive” charges are filed, based on publicly discussed proposals. Meanwhile, New Mexico’s “release rate” is actually lower now than in states that have rebuttable presumption offenses. The NM data shows that people accused of “serious” and even violent offenses comply with conditions of release at extremely high rates and rates of committing new crimes, much less new violent crimes, are extremely low under the current system. While crime rates are on the upswing nationwide, pretrial release simply is not the cause.

Finally, increasing the number of pretrial detainees would have disastrous effects:

1) *Longer periods of detention lead to higher rates of new criminal activity and recidivism.* Under the current system, defendants are detained for a median of 81.5 days, but that number is 212 days when preventatively detained due to dangerousness. Generally, as the length of time in pretrial detention increases, so does the likelihood of recidivism at both the 12-month and 24-month points.<sup>1</sup>

2) *Innocent people are more likely to plead or be found guilty.* Pre-trial release decreases the probability of being found guilty by 15.6 percentage points, a 27.3 percent change from the mean for detained defendants. Many people plead guilty just so they can go home.<sup>2</sup>

3) *Pretrial detention has a significant effect on presumed innocent person's ability to provide for themselves and their family.* Pretrial detainees may lose their jobs, abandon their education, and be evicted from their homes. Their families suffer from these consequences but the ripple effect does not stop there: entire communities marked by the over-use of pretrial detention must absorb its socioeconomic impact.<sup>3</sup>

4) *As the pandemic continues, New Mexico's county jails are drastically unprepared for increased inmate populations.* Jails continue to be hotbeds of Covid-19 outbreaks. Jails are simultaneously struggling with C.O. staffing, giving rise to extremely hostile living conditions, public health concerns, and deadly safety issues. Two inmates have been murdered in county jails in recent weeks in incidents linked to understaffing.<sup>4</sup>

**ADDITIONAL INFO:** The nature of a charge and a defendant's criminal history are already considered by judges when making their dangerousness determination. The Supreme Court Rules are under review for adjustments to improve certain aspects of pretrial release determinations, but the reviewing Committee has found that rebuttable presumptions would have dire consequences for the judiciary, as hearings would have been required in 802 additional cases last year, requiring 401 additional hours (50 full days) of court proceedings.

<u>Safer</u>	<u>Apolitical</u>	<u>Fiscally-Responsible</u>	<u>Evidence Based</u>	<u>Grade</u>
Only 3% of defendants released pretrial are accused of committing a new violent offense. Only 7% are accused of a new crime at all. The vast majority of “pretrial failures” are non-criminal acts, like failing to appear or failing to comply with a condition of release. The proposal will <i>not</i> make communities safer; indeed, by increasing recidivism rates and making jails <i>more dangerous</i> , the overall effect is likely to make New Mexico <i>less safe</i> .	The Rules promulgated to animate the 2016 constitutional amendment are under constant review from all stakeholders. They have been updated repeatedly to address known issues and concerns. The system is <i>working</i> . Unfortunately, there is a misconception that justice reform is causing crime to rise when the evidence decidedly shows otherwise. <sup>5</sup>	If dangerousness presumptions became law, thousands of people would be ineligible for bail on felony charges. This means that county jails would see an explosion in inmate population. In addition to the obvious costs of incarceration, due to jail staffing shortages, the health and safety costs of increased populations cannot be understated, and the costs to defendants and their families are exponential as jobs and economic opportunities are lost. <sup>3</sup>	Longer periods of detention lead to higher rates of new criminal activity and recidivism. <sup>1</sup> Innocent people are more likely to plead or be found guilty. <sup>2</sup> The State currently only seeks detention in less than half the cases where “presumption” charges are filed. New Mexico’s “release rate” is actually lower now than in states that have rebuttable presumption offenses, based on both preventative detention and detention based on violations of conditions of release. The data shows that people accused of the type of offense likely subject to presumptive dangerousness are actually more likely to comply with conditions of release than others.	F

<sup>1</sup> The Arnold Foundation, *The Hidden Costs of Pretrial Detention* (November 2013). Retrieved at:

[https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF\\_Report\\_hidden-costs\\_FNL.pdf](https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf)

<sup>2</sup> National Bureau of Economic Research, *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges* (August 2016). Retrieved at: [https://www.nber.org/system/files/working\\_papers/w22511/w22511.pdf](https://www.nber.org/system/files/working_papers/w22511/w22511.pdf)

<sup>3</sup> The Socioeconomic Impact of Pretrial Detention, 2011. Retrieved at: <https://www.opensocietyfoundations.org/sites/default/files/socioeconomic-impact-pretrial-detention-02012011.pdf>

<sup>4</sup> See [https://www.lasvegasoptic.com/news/crime/murdered-inmate-identified-as-las-vegas-man/article\\_020bd31e-3ce5-11ec-8e40-0f44ab4a9a41.html](https://www.lasvegasoptic.com/news/crime/murdered-inmate-identified-as-las-vegas-man/article_020bd31e-3ce5-11ec-8e40-0f44ab4a9a41.html); <https://www.kob.com/albuquerque-news/authorities-investigating-inmates-death-at-albuquerque-jail/6280457/?cat=500>

<sup>5</sup> ACLU, *Beyond the Myths: Making Sense of the Public Debate About Crime in New Mexico* (January 2018). Retrieved at: [https://www.aclu-nm.org/sites/default/files/field\\_documents/criminal\\_justice\\_reform\\_report\\_draft.pdf](https://www.aclu-nm.org/sites/default/files/field_documents/criminal_justice_reform_report_draft.pdf)

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## Analysis of Anticipated Policy Proposal: 2022 Legislative Session (2021 Interim)

### **PUBLIC SAFETY POLICY PROPOSAL: Massive \$100 million allocation to hire 1,000 more police officers throughout the state**

**SYNOPSIS OF PROPOSAL:** It is anticipated that there will be legislation introduced, in the upcoming 30-day session, calling for a significant financial commitment to hire more sworn police officers throughout the state. Several local and national news outlets have reported the governor's plan to seek \$100 million to hire an additional 1,000 sworn officers. Although details of the proposal have yet to be revealed, the expansion would reportedly not be limited to state police. It will increase patrols in municipalities throughout the state.

**STRENGTHS:** New Mexico is experiencing a precipitous rise in serious violent crime. This proposal is aimed at hiring more police officers to address the serious violent crime plaguing communities throughout the state.

**WEAKNESSES:** Although designed to address the serious violent crime occurring in Albuquerque and other New Mexico communities, committing substantial resources to expanding the state's law enforcement community could have an adverse impact. While studies are mixed on whether adding more police officers will reduce crime, one thing that is clear: adding more police officers could exacerbate existing problems such as over-policing of Black Indigenous and People of Color (BIPOC) communities and increase incidents of excessive force.<sup>i</sup>

New Mexico is the per capita leader when it comes to people killed by police. From 2016 to 2020, between 97 and 108 individuals were killed by state and local police officers. This represents an average rate of 9.3 to 10.3 per million residents. The national average hovers around 3.3 per million residents. The number of people killed by New Mexico police is on par with the number of people killed by police in New York despite the state's population being more than nine times larger than the land of enchantment.<sup>ii</sup> Adding more police officers without considering robust investments in evidence-based initiatives, like the community responder model that is unfolding in the City of Albuquerque, will only result in more deadly encounters between law enforcement officials and the individuals they serve.

In addition to supporting efforts to develop a community responder model that would dispatch unarmed social workers and addiction specialist to some 911 calls, the plan to hire a thousand more police officer should be accompanied by the following policies<sup>iii</sup>:

- Adopt a statewide law enforcement training curriculum that includes, crisis management, implicit bias and use of force training that eliminates chokeholds and other neck restraints.
- Establish a statewide decertification registry to bolster accountability and prevent police officers who engage in misconduct from moving from agency to agency.
- Institute a duty for officers to intervene in excessive force incidents and mandatory reporting policies so that officers monitor each other<sup>iv</sup>.
- Implement a wellness program that promotes trauma informed policing.
- Make law enforcement protection distribution funds contingent on an agency's compliance with annual training requirements.

**ADDITIONAL INFO:** Although the New Mexico Law Enforcement Academy Board is tasked with developing trainings standards for police officers, the Board has no way of ensuring the state's law enforcement agencies fulfill their mandatory obligations. According to a Legislative Finance Committee Fiscal Impact Report, only 47 percent of the state's law enforcement agencies complied with the reporting requirement detailing their department's efforts to adhere to the biannual training requirements. It is unclear if more than half of the state's law enforcement agencies completed the mandatory training. It must also be noted, that the state does not have a training curriculum that specifically addresses de-escalation.

<b>Safer</b>	<b>Apolitical</b>	<b>Fiscally-Responsible</b>	<b>Evidence Based</b>	<b>Grade*</b>
It is unclear if adding more police officers would increase public safety, as there is overwhelming evidence to support both sides of the argument. However, what has become clear is that New Mexico would be better served by community-based responses rather than having to pay the devastating price that comes with a public safety model based entirely on a drastic increase in law-enforcement officers without accountability.	A substantial investment in new police officers, such as this is definitely intended to send a message to voters. However, for public safety results, proactive rather than reactive solutions are more effective. This push for more officers comes at a time when many municipalities are having a hard time recruiting officers to fill the positions that are currently vacant.	According to Albuquerque Police Department Data, an entry-level position salary and benefits add up to \$70,211. Hiring 1,000 based on this figure would run the state more than \$70,211,000 annually that could be invested in community-based addiction specialists and social workers to respond to some 911 calls at a reduced cost.	There is evidence to support both sides of the argument.	C  <small>*assuming the proposal is adopted in isolation without the additional recommended components</small>

<sup>i</sup>[https://www.nber.org/papers/w28202?utm\\_source=npr\\_newsletter&utm\\_medium=email&utm\\_content=20210419&utm\\_term=5326149&utm\\_campaign=money&utm\\_id=49355949&orgid=&utm\\_att1=money](https://www.nber.org/papers/w28202?utm_source=npr_newsletter&utm_medium=email&utm_content=20210419&utm_term=5326149&utm_campaign=money&utm_id=49355949&orgid=&utm_att1=money)

<sup>ii</sup> Data on police killings sourced from the *Washington Post*'s Fatal Force project, which only includes fatal police shootings (<https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>), and Mapping Police Violence ([mappingpoliceviolence.org](http://mappingpoliceviolence.org)), which includes all police killings regardless of the cause of death. Population data to calculate rates of police killings sourced from the U.S. Census Bureau.

<sup>iii</sup> <https://lawenforcementactionpartnership.org/alternatives911/>

<sup>iv</sup> <https://counciloncj.org/wp-content/uploads/2021/09/State-Priorities-FINAL-1.pdf>