Administrative Office of the Courts

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Pretrial justice improvements working in New Mexico

SANTA FE – Improvements to New Mexico's pretrial practices are working to promote community safety and honor the constitutional principles of the American justice system, Administrative Office of the Courts Director Artie Pepin said today.

"All New Mexicans share a concern about crime. The evidence from research clearly shows that the great majority of people released pending trial are not committing new crimes," said Pepin.

He pointed to a study by University of New Mexico researchers that analyzed nearly 10,300 cases in Bernalillo County between July 2017 and March 2020 in which defendants charged with felonies were released from custody pending trial.

According to the study recently released by the UNM Institute of Social Research (ISR):

- 95% of felony defendants were not arrested for a violent crime while on pretrial release.
- About one-tenth of one percent of the total number of released defendants were arrested for a first-degree felony – 13 out of the 10,289 felony cases reviewed by researchers.
- Four of five released felony defendants were not arrested for a crime while awaiting trial. Of those who were arrested –1,950 out of 10,289 – misdemeanors, petty misdemeanors and fourth-degree felonies accounted for most of the charged crimes.

"Objective research validates the pretrial justice improvements under way in New Mexico," said Pepin. "Blaming judges and courts for crimes highlighted in news accounts does nothing to make anyone safer. A serious evidence-based discussion among all stakeholders is the best approach to developing ways to reduce crime in Albuquerque and other communities."

The pretrial stage in the criminal justice system starts when a person is accused of a crime – yet presumed innocent under the law – and continues until the charge is resolved, whether by a trial,

a plea or dismissal of the case. The U.S. and state constitutions protect the liberty interests of all people, including those accused of a crime, and favor the release of individuals awaiting trial except in limited circumstances. By allowing defendants to remain free before trial, the state avoids punishing someone before determining whether they are guilty of a crime – a fundamental principle of the American justice system.

"Our state is building a better pretrial justice system that relies on best practices shaped by research," said Pepin.

Today, New Mexico provides judges with better information to make pretrial decisions about people charged with felonies. A research-based tool, known as the Public Safety Assessment (PSA), was implemented in Bernalillo County in 2017 to help judges gauge the likelihood of a defendant's success while released pending trial – meaning that a person returns for future court appearances and remains arrest-free while their case is resolved. The ISR study validated the PSA for providing accurate assessments of defendants regardless of race or gender. Before the PSA, judges usually had very little information about a defendant and were left with the option of setting a money bond amount for a person's release from jail before trial.

A voter-approved constitutional amendment five years lessened the role of money in determining whether defendants remained free pretrial. Before the 2016 amendment, even people charged with the most violent crimes could gain their release before trial if they could afford a bail bond. The money-based system also undermined community well-being through the unnecessary detention of people likely to remain arrest-free if released, but who could not afford a money bond. They faced the harmful possibility of losing their family, housing and job while in jail even for a few days – consequences that can make people more likely to turn to crime, according to research. Under the law today, a person charged with a felony may be held in jail if prosecutors prove there is no other way to reasonably protect the public while the defendant awaits trial.

A centralized operation in the AOC – the first of its kind in the United States – completes a criminal history background check of defendants and the PSA for multiple courts to provide evidence-based information to judges for pretrial decision-making. Those early decisions after a person's arrest focus on public safety and ensuring that released defendants return to court for future hearings. The AOC is developing the capacity to expand pretrial services in more parts of the state and currently assists courts in San Juan, Sandoval, Doña Ana, Grant, Hidalgo and Luna counties.

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