Administrative Office of the Courts

FOR IMMEDIATE RELEASE

Nov. 25, 2019

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Bail reform working as intended and is not the cause of crime problem in Albuquerque

SANTA FE – Voter-approved reforms to New Mexico's pretrial justice system are not fueling a crime problem in the state's largest city and instead are working as intended, Administrative Office of the Courts Director Artie Pepin told lawmakers today.

In a progress report about bail reform, Pepin shared new data compiled by the Judiciary about the pretrial detention of defendants and highlighted a study by University of New Mexico researchers that analyzed nearly 6,400 cases between July 2017 and March 2019 in which defendants charged with felonies were released from custody pending trial.

"Contrary to what critics of bail reform would have the public believe, the great majority of defendants are not committing new crimes after being released from jail pending trial," Pepin told the Courts, Corrections and Justice Committee.

A study released last week by the UNM Institute of Social Research found that more than 4 out of 5 defendants were not arrested for a crime while on pretrial release and 96% percent were not accused of a violent crime. Pepin cited data from the report showing that of all 6,392 defendants released, only 12 were arrested for a first-degree felony during their release period — a figure that is less than two-tenths of one percent of those released during the 21 months of the UNM study.

"We all recognize Albuquerque faces a crime problem, but it's clear from the UNM study that our pretrial release system is not the cause of it," Pepin said.

Changes in the pretrial justice system have provided a better safeguard for our communities, Pepin said, because judges can now legally detain the most dangerous defendants and courts no longer rely on money bail to determine who is released or remains in jail before trial. Pepin said judges have detained more than 1,000 defendants in Bernalillo County, about half of the more

than 2,000 defendants statewide who were found to be so dangerous they must stay in jail until trial. All of these defendants would have been eligible for release before the 2016 constitutional amendment.

Pretrial release and detention decisions are based on the risks a defendant poses to public safety and of not appearing in court. Defendants can be held in jail pretrial only if prosecutors file a motion in court and prove an individual is so dangerous that nothing other than detention will protect public safety.

To provide judges in Bernalillo County with more information for pretrial decisions, courts evaluate defendants to assess the risks of whether they will commit a new crime, commit a new violent crime, or fail to appear for court hearings if released before trial. The risk assessment tool, called the Public Safety Assessment (PSA), was developed by Arnold Ventures. It is used by courts in other jurisdictions across the country.

In Bernalillo County, judges granted 47% of the detention requests made by prosecutors from July 2017 through June 2019. Pepin explained that prosecutors often sought detention of defendants with a low PSA risk score, but they did not seek detention of a large majority of defendants rated as the highest risk.

No detention motion was filed 79% of the time when a defendant was rated so risky that the PSA recommended pretrial detention. Without a detention motion by prosecutors, Pepin said, judges had no choice under the law but to release about 2,400 defendants in that highest risk category and impose pretrial supervision requirements on those defendants to try to protect the community.

Risk assessments prepared by the Bernalillo County courts are available to prosecutors and public defenders. Prosecutors also can seek pretrial detention of a defendant at any time, not just at the start of a criminal case after a person is arrested.

Courts outside Bernalillo County granted 55% of detention motion from July 2017 through June 2019.

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