

# New Mexico Statistical Analysis Center

## •FAST FACTS•

### Felony Case Initiation type: The Use of Grand Jury vs. Preliminary Examination in New Mexico

4/7/2023

#### Background

The New Mexico Constitution (Article II, Section 14) establishes two primary options for prosecutors to initiate cases in district court: 1) through a preliminary examination, heard by a judge (which results in the filing of a criminal information in district court) or 2) by a grand jury convened by the district court (which results in the filing of a grand jury indictment); defendants have the option to waive both of these formal proceedings. While the New Mexico constitution allows prosecutors the discretion to pursue felony charges via a grand jury indictment or preliminary examination hearing, in practice, not all districts in New Mexico use the grand jury system.

National and local stakeholders have raised concerns about case initiation type. Some argue against preliminary examination hearings, citing that the method is subject to frequent rescheduling. Most, however, argue against the use of grand juries, which prosecutors may use as an alternative to preliminary examinations. Opponents maintain that grand juries do not protect innocent defendants, that they are neither cost nor time-effective, and may be less likely to result in a conviction. New Mexico, however, has limited data on the effectiveness of either process, leaving a gap in knowledge this study aims to help fill.

The purpose of this document is to summarize the findings of our study examining the use of grand juries versus preliminary examination hearings to initiate felony criminal cases in New Mexico. Besides examining how case initiation influences felony case processing (Part 1), the study also examined the rescheduling of preliminary hearings and whether case characteristics, location, and the onset of COVID-19 restrictions are associated with any of these processes (Part 2). The study includes a stratified random sample of 410 cases filed between 2017 and 2020 across the state.

#### Preliminary examination versus Grand Jury in New Mexico

##### **Preliminary Examination Hearing**

- Public proceedings
- Defendant present
- Both defense and prosecuting attorneys present their cases
- Defense attorney can cross examine witnesses
- Rules of evidence apply (some exceptions)
- A judge determines probable cause

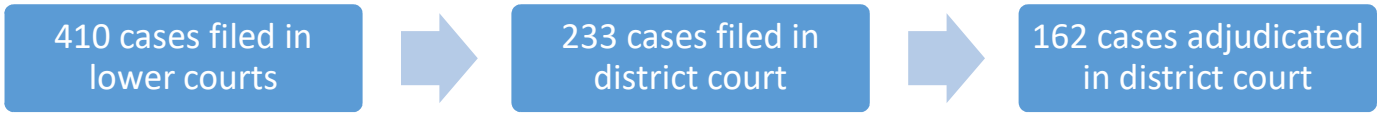
##### **Grand Jury**

- Private proceedings
- Defendant typically not present
- Prosecutor presents case
- Defense cannot call or cross-examine witnesses
- Rules of evidence do not apply
- In NM, at least 8 of 12 grand jury members must agree there is probable cause to indict

\*Although preliminary examination hearings and grand juries are the primary methods prosecutors use to initiate felony cases in district court, they may also file a criminal information directly in district court for a preliminary hearing in front of a district court judge, or file a criminal information after a waiver of preliminary hearing.

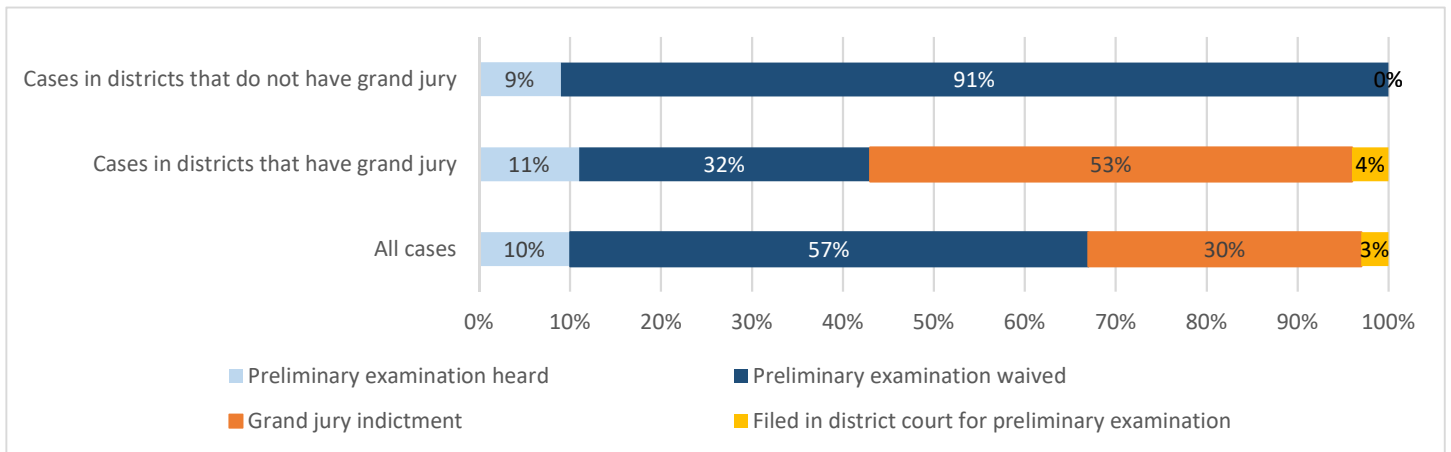
# Part 1: Case Initiation Types and Their Outcomes

## Flow of felony cases in this study



- 410 cases were filed the lower court (magistrate or metropolitan court) after an arrest or warrant for an arrest.
- Over half of the cases (233) in this sample proceeded to district court, 177 ended in lower court.
- In district court, 162 of the district court cases resulted in some sort of sanction and 56 cases were dismissed.

## Case initiation type



- In districts without grand juries, prosecutors initiated the majority of cases (91%) after a waiver of preliminary examination hearing
- In districts with grand juries, the most frequent method of case initiation was grand jury indictment (53%), followed by a waiver of preliminary examination hearing (32%)
- Overall, prosecutors initiated most cases (57%) after a waiver of preliminary examination.
- Regardless of whether a grand jury option is available, only about 10% of cases proceed to district court after a judge hears the evidence at a preliminary examination.

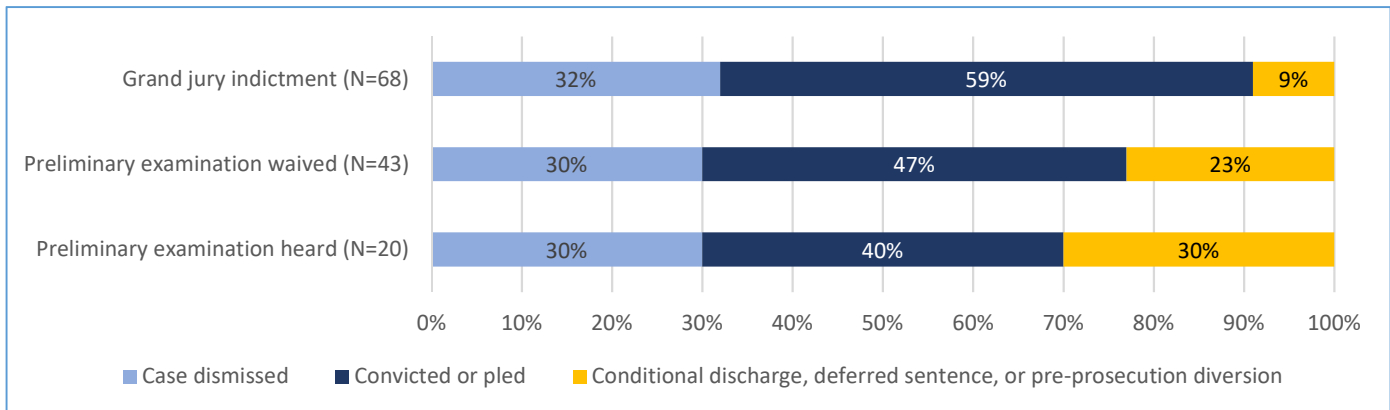
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## Characteristics associated with case initiation type

- Only some districts offer grand juries, primarily urban districts including those in the central and north central regions of New Mexico
- Districts that are purely rural never used grand juries.
- Prosecutors pursued grand jury indictment slightly more often in cases involving a property or violent offense
- Prosecutors pursued grand jury indictment in cases involving more serious offenses as measured by the degree of the offense
- There were statistically significant differences in case initiation type after the governor ordered COVID-19 restrictions:
  - The proportion of cases initiated by preliminary examination tripled from 8% to 24%
  - The proportion of cases initiated by grand jury decreased from 34% to 14%
  - Cases initiated after a waiver of preliminary examination changed slightly from 56% to 60%

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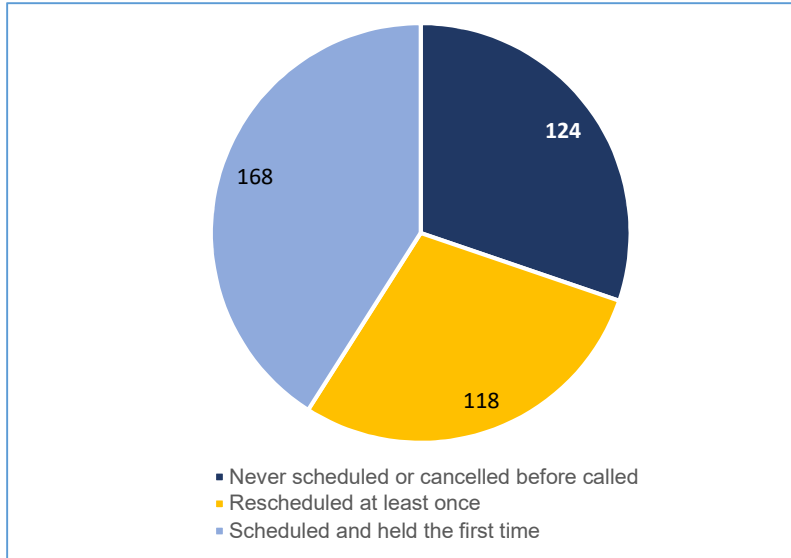
## Case outcomes by case initiation type in districts that use grand juries



- Once a case is initiated in district court in districts that use grand juries, there is virtually no difference in the rate of dismissals by case initiation type: approximately one-third of cases are dismissed.
  - Only one characteristic was found to be significantly related to case outcomes: whether the district is comprised of counties that are rural, urban, or mixed (not illustrated in graph). Cases are significantly more likely to be dismissed in districts that are purely urban (35%) or mixed (28%), than purely rural (16%).
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## Part 2: Preliminary Examinations

### How often are preliminary examinations rescheduled?



- 124 cases filed in lower courts never had a preliminary examination scheduled or it was cancelled before it was called
- 41% (N=118) of scheduled preliminary hearings (N=286) had to be rescheduled
- Among cases with at least one failed hearing, the average number of failed hearings was 1.6

### Reasons preliminary examinations are rescheduled

- There were three main reasons hearings were rescheduled: a key person was did not appear at the hearing (44%); the hearing was called and reset but the reason was not clearly documented (55%); or there was a procedural problem (1%).
  - In 44% of rescheduled hearings, there was clear documentation to indicate that one or more key people were not present; most often, the defendant failed to appear (n=66, 34%).
  - In 55% of rescheduled hearings, the case was called and reset
    - In 16% of these cases, one or both attorneys were excluded from the list of parties present
  - One or both attorneys failed to appear in at least 10% of cases
  - Cases were called and reset with all parties present in 39% of cases, suggesting an attorney requested a continuance

### Characteristics associated with the rescheduling of preliminary hearings

- Preliminary examination hearings were significantly less likely to be rescheduled in urban districts (19%) compared to those in rural (31%) or districts comprised of both rural and urban (mixed) counties (59%).
- Cases were slightly less likely to be rescheduled after the COVID-19 restrictions were implemented (44% prior to COVID-19 versus 33% afterwards).

## Rescheduled hearings and case progression

- A significantly greater proportion of cases in which a preliminary examination was scheduled and held (69%) progressed to district court than cases that had at least one failed preliminary examination hearing (46%) or those in which a hearing was never scheduled or cancelled before called (30%).

## Rescheduled hearings and case outcomes

	Scheduled and held first time	At least one failed hearing	Never scheduled or cancelled before called
<b>Dismissed without prejudice or unknown type, nolle prosequi*</b>			
<b>Lower court</b>	19%	39%	53%
<b>District court</b>	9%	9%	11%
<b>Total</b>	<b>28%</b>	<b>48%</b>	<b>64%</b>
<b>Pre-prosecution diversion, conditional discharge, deferred sentence, or conviction</b>			
<b>Lower court</b>	7%	5%	6%
<b>District court</b>	61%	38%	26%
<b>Total</b>	<b>68%</b>	<b>43%</b>	<b>32%</b>
<b>Dismissed with prejudice, discharged, or acquitted</b>			
<b>Lower court</b>	2%	3%	1%
<b>District court</b>	1%	2%	2%
<b>Total</b>	<b>3%</b>	<b>5%</b>	<b>3%</b>
<b>Pending disposition</b>			
<b>District court</b>	2%	3%	2%
<b>Total</b>	<b>168</b>	<b>118</b>	<b>124</b>

N=410, p<.001 \*includes the one case that was never filed in district court

- There was significant relationship between case outcome and preliminary examination status when cases were in the lower court (magistrate or metropolitan court):
  - Prosecutors dismissed more cases involving a rescheduled preliminary examination (39%) than those that were not rescheduled (19%).
  - Prosecutors dismissed 53% of cases that were never scheduled for a preliminary hearing or were cancelled before called
- There was also a significant relationship between case outcome and preliminary examination status among cases that moved to district court
  - Cases that progressed to district court were significantly less likely to result in some sort of sanction (Pre-prosecution diversion, conditional discharge, deferred sentence, or conviction) if a preliminary examination was rescheduled (38%) than if it was scheduled and held (61%)

More information is available in the full-length version of this report.

The full report can be obtained by contacting:

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