New Mexico Statistical Analysis Center

Impact of Bail Reform in Six New Mexico Counties

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Notes and Disclaimers

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Contents

Acknowledgements ... 3
Introduction ... 4
Literature Review ... 4
History of Bail Reform in New Mexico ... 5
Prior NMSAC Studies on Bail Reform ... 7
Current Study ... 7
Methods ... 9
Data Sources ... 9
Sample ... 9
Variables ... 10
Analysis of Data ... 11
Results ... 12
Part 1: Global Impact of Bail Reform ... 12
Release Decisions and Use of Bond ... 12
Release Decisions by County ... 15
Part 2: Impact of Bail Reform on New Felony Cases ... 20
Days and Rates of Detention ... 20
Pretrial Performance ... 31
Court Efficiency ... 37
Summary and Conclusions ... 40
Use of Bond, Rates of Detention, and Length of Detention ... 40
Use of Bond ... 40
Rate and Length of Detention ... 41
Pretrial Success and Failure ... 42
Court Efficiency ... 44
Study Limitations ... 44
Data limitations ... 45
Methodological Limitations ... 46

Recommendations 46
Policy Recommendations 46
Areas for Future Research 48
Conclusion 49
References 50
Appendices 52
Appendix A: Sample Description 53
Appendix B: Variable Construction 55

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Introduction

New Mexico constituents passed an amendment to reform bail practices in November of 2016. This was effective as of January, 2017. The aim is to ensure that low-risk defendants are not detained pretrial simply because they cannot afford to pay bail, while also ensuring that high-risk defendants who pose a danger to and individual or the community are not released pretrial simply because they can afford to post bail. The New Mexico Supreme court issued initial rules to guide bail reform practices in July of 2017; the rules and policies guiding pretrial detention and release have evolved since then (see the New Mexico Courts' Website to view the rules on pretrial detention and release).

Currently, prosecutors may motion for preventative detention on felony cases which they deem appropriate. Prosecutors are expected to demonstrate that a defendant poses a danger to the community or any individual. Upon the motion of a prosecutor, a defendant is detained pending a preventative detention hearing, but must not be held longer than three days (N. M. R. Crim. P. Dist. Ct. 5-401(A)(1)(a)). When the preventative detention hearing is held, the judge must decide whether to rule in favor of preventative detention or against it. Judges may rule in favor of preventative detention if the prosecution convinces the judge that (a) the defendant poses a danger to the community or any individual and (b) no available conditions of release can mitigate that danger.

If the judge denies the motion, they may impose conditions of release, which may or may not include a monetary bail. The conditions set depend on the criminal history of the defendant, characteristics of the case, the judge's discretion, and the availability of pretrial monitoring options in that judicial district. For instance, not all districts have the ability to utilize electronic monitoring. If the judge finds the defendant poses a considerable flight risk, they may set a bond. Bond, however, should not be set at a cost that is unaffordable for a given defendant. If a defendant is held for more than 24 hours on a bond or non-monetary conditions of release because they are unable to secure bond or meet conditions of release, the defendant is entitled to a hearing to review the conditions of release upon a motion by the defendant or the court (N.M. R. Crim. P. Dist. Ct. 5-401(H)(1)).

The New Mexico Statistical Analysis Center is undertaking a multi-phase evaluation of the bail reform amendment to better understand the reform's impact on public safety and pretrial practices. In the current report, we use court and detention center data to compare the pre-reform to post-reform practices. Below, we explain how New Mexico's amendment fits into broader national trends towards rethinking bail practices.

Literature Review

When a defendant is charged with a crime, one of the first decisions a judge makes is whether to release the defendant, and if so, under what conditions. Historically, judges used bail as a means to ensure defendants' appearance in court. Critics argue that this practice resulted in great inequities. Those who could post bond did so, and those who could not remained in jail. Thus, dangerous individuals were released while non-dangerous defendants were detained. In response to these inequities, bail reform began at the federal level. Two notable revisions to bail procedures occurred at the federal level through the Bail Reform Act of 1966 and the Bail Reform Act of 1984. Together, these Acts were intended to decrease the dependence on money bail and increase the use of other methods of release,

while ensuring the defendant appeared at court and the safety of the community (Schnake, Jones and Brooker, 2010).[1]

Increasingly, states have made efforts to improve their bail procedures. Consistent with the arguments that prompted bail reform at the federal level, states are concerned that the use of bail disproportionately punishes poor people. Some jail inmates may be held only because they cannot afford bail (Pretrial Justice Institute, 2014). Eliminating unnecessary detention is important because research has illustrated that pretrial detention can be harmful to both defendants and, ultimately, to the community. Even short-term detention can lead to lower pretrial success and increased subsequent offending (Digard & Swavola, 2019; Heaton et al., 2017; Lowenkamp et al., 2013). Studies indicate that these outcomes worsen with each successive day, and are particularly detrimental to low-risk defendants but impact others as well (ibid).

History of Bail Reform in New Mexico

Prior to bail reform, studies (e.g. see Steelman et al, 2009) conducted in New Mexico indicated that judges set high bonds to keep dangerous individuals detained. Although common, this practice was ruled unconstitutional in 2014. In an appeal filed in New Mexico v. Brown (*State v. Brown*, 2014-NMSC-038, 338 P.3d 918), the New Mexico Supreme Court ruled that judges could not set high bonds to prevent pretrial release. The Court found the defendant in the Brown case successfully argued that bail was unnecessary to ensure his appearance in court and the safety of the community, and that he was an appropriate candidate for supervised pretrial release. Further, the Court found that the bail required in the case was based only on the nature and seriousness of the offense as was excessive.

Not long after this decision, the legislature passed a joint resolution to amend the New Mexico Constitution, which was included in the November 2016 ballot and approved by voters. The amendment expands the conditions under which an individual can be denied bail, without any time limitations. Prior to the amendment, only individuals accused of a capital offense where the proof is evident or presumption great some could be denied bail. Bail could be also denied for sixty days for certain felons. The amendment allows anyone accused of a felony to be subject to the denial of bail if the prosecuting attorney can prove the person is a danger to the community, and there are no conditions that will ensure the safety of an individual or the community. The amendment also indicates that individuals who pose a flight risk may be detained without bail. Further, the amendment includes language intended to ensure that individuals who do not meet these criteria (dangerous or flight risk) are not detained solely because they cannot post bond. It continues to require that defendants be released under the least restrictive conditions necessary to ensure court appearance and public safety.

The New Mexico Supreme Court revised relevant rules to guide release decisions reflecting the amendment (see the New Mexico Courts' Website); these were released in June/July 2017. Since initial implementation, the rules and policies guiding bail reform have evolved. In 2020, the New Mexico Supreme Court created an Ad Hoc Pretrial Detention Committee to consider alterations to the procedures for pretrial detention and release. The New Mexico Supreme Court adopted some of these changes on October 9, 2020 which went into effect on November 23, 2020.

Despite the intentions of the amendment, judges in New Mexico still order secured bonds (Siegrist et al., 2020). As in other parts of the country, defendants in New Mexico may be released on cash bond,

[1] The Bail Act of 1984 expanded the conditions under which a defendant could be preventatively detained by establishing rebuttable presumptions.

property bond, or surety bonds. Less restrictive conditions of release, including release on personal recognizance and unsecured appearance bond are also available. In addition, the court is allowed to impose other conditions of release which allow the court to limit and monitor the defendant's behavior while on pretrial release.

Since the implementation of the reform, some stakeholders have criticized bail reform efforts as leading to a system of "catch and release" (Siegrist et al., 2020). Those stakeholders are worried about people being released pretrial without adequate protections to deter crime and protect community safety. Perhaps most vocal among suggestions to ameliorate this perceived problem include implementing rebuttable presumptions. Like in the federal system, this would define a set of cases automatically flagged for pretrial detention on the basis of severity and dangerousness. Unlike the current pretrial process whereby prosecutors must prove that a defendant poses a danger, this would shift the burden to the defense attorney to show the defendant is not a danger for specific offenses. Other states, including California and New Jersey, as well as federal courts have implemented rebuttable presumptions, though the practice is not without critiques (see Siegrist et al., 2020, for a discussion).

Accurately determining who is at risk for committing a new offense or who is unlikely to appear at court is the crux of the new amendment. In New Mexico, while the court is statutorily required (Rule 5-401 §C NMRA) to consider various factors when determining conditions of release (e. g., the nature of the crime, character history, potential harm to the community if released, likelihood to appear), most jurisdictions do not administer a standardized risk assessment, as is the case in many jurisdictions across the nation (Pretrial Justice Institute, 2014).

Among those who are released pretrial, studies have found relatively high rates of failure to appear (Steelman et al., 2009) and new arrests (Denman, 2016). These findings reiterate the importance of using a validated risk assessment when making release decisions. However, risk tools are not without limitations: evidence exists of entrenched racial and class bias in risk assessment tools (e.g. Booker, 2017; Doyle et al., 2019). Any tool should be holistically and carefully evaluated.

We would expect that over time, jurisdictions throughout New Mexico will use a pretrial risk tool which, along with rules defined by Supreme Court regarding dangerousness and flight risk, should lead to increased standardization in pretrial release decisions across jurisdictions. Indeed, Bernalillo County piloted a pretrial risk assessment tool developed by the Laura and Arnold Johnson Foundation (often referred to as the "Arnold Tool") that is now being piloted in other jurisdictions in the State. This tool is considered cost-effective and does not require interviewing defendants; moreover, it is touted as being racially unbiased. However, one criticism of the Arnold Tool is that it may not effectively assess risk for first-time offenders. Moreover, at least in Bernalillo County, the tool is not intended to guide judges' decisions about whether to detain a defendant, but what conditions to impose if the defendant is released.

If successful, bail reform should result in a reduction or at least no change in the proportion of individuals who commit a new crime, or new violent crime, during the pretrial period; and a reduction, or at least no difference in, rates of failure to appear. Further, we should see reduced reliance on bail as a means of ensuring that dangerous individuals are detained. Finally, the bail reform amendment should result in an increase in the proportion of individuals who post bail among those who are still ordered to do so. This is likely to manifest as a decrease in the average amount of bail ordered, a decrease in the use of secured bond, and a decrease in pretrial detention overall as only dangerous defendants should be detained. There may be unintended consequences as well. For instance, because the amendment expands who can be denied bail, the number of defendants held for the entire pretrial period could increase.

Prior NMSAC Studies on Bail Reform

The current study is one part of the New Mexico Statistical Analysis Center's (NMSAC) multi-phase effort to examine bail reform in New Mexico. The first phase created and assessed baseline performance measures to assess pre-amendment practices (Dole et al., 2019). That study included fewer counties than the current study, but laid the foundation for the methods used in the current study.

The second phase of the study focused on the implementation of the new constitutional amendment (Siegrist et al., 2020). That study explored the decisions prosecutors and judges make regarding filing for and approving detention; the process used to learn about and respond to pretrial violations; and the perceived impact of bail reform on the criminal justice system, defendants, and to a lesser extent, victims. Finally, the report detailed factors that facilitate and challenge implementation. That report reflects a snapshot in time during the course of the implementation of bail reform.

Some of the key findings from our implementation report are that stakeholders felt that fewer defendants were being detained pretrial; that bond was ordered less frequently and that the amount of bond ordered was lower; and that the pretrial hearing process had altered practices, particularly for prosecutors. The stakeholders we interviewed had divergent opinions about the benefits and drawbacks of these impacts, with some celebrating lower rates of pretrial detention and some expressing concern about the impact on community safety. Interviewees also noted difficulties and supports in the process of implementation. They cited differences in office- or district- specific polices to guide the pretrial process; differences in access to pretrial services, risk assessments, and relevant information to support pretrial decision-making; and differences in community services available in a given county to support pretrial success. These supports (or, in some cases, their absence) shaped the way that stakeholders had experienced the implementation of bail reform. (Siegrist et al., 2020)

Some of the concerns and recommendations regarding implementation noted in Siegrist et al., 2020, were addressed with the rule modifications that occurred in 2020; however, not all concerns have been resolved. For instance, debate remains about whether to implement rebuttable presumptions in order to address concerns about dangerous individuals reentering the community pretrial.

Additionally, the NMSAC explored the use of pretrial detention among cases disposed between 2017 and 2020 (Denman et al., 2021). This report examined a statewide sample of cases to assess the frequency with which prosecutors file for preventative detention and judges rule in favor of pretrial detention. We found that, statewide, prosecutors file for detention in approximately 7% to 9% of felony cases initiated in magistrate or metropolitan court; judges agreed to detain defendants in just under half of those cases. Judges approved pretrial detention at a much higher rate in 2019 than in prior years.

As part of this assessment, we outlined the factors that prosecutors present when requesting preventative detention, and that judges cite when they rule for preventative detention. This study, along with the Siegrist et al. (2020) study, indicate that when prosecutors file for detention, they focus first on the danger the defendant poses, but sometimes also cite flight risk. Judges rule for detention more often when prosecutors cite only danger, but are more likely to set a bond when the defendant poses a flight risk (Denman et al., 2021).

Current Study

The current report is the fourth report from our multi-phase study of bail reform. This report compares baseline measures of pretrial release and detention practices to post-reform performance measures. This comparative examination evaluates to what extent bail reform is associated with the intended goals

of pretrial justice and public safety. In subsequent years, we will explore the impact of bail reform on misdemeanants and whether Covid-19 impacted bail reform.

The current study begins by examining the universe of court cases with conditions of release filed between 2015 and 2019 in six New Mexico counties. The analysis in this section includes all court cases: misdemeanors and felonies, regardless of whether it is pretrial or post-disposition. We explore two research questions to assess bond practices globally:

1. Overall, have bond practices changed post-reform, and if so, how?
2. Overall, has the average amount of bond ordered changed post-reform?

The remaining research questions focus specifically on felony cases during the pretrial period. Here, we include a sample of new felony cases involving individuals booked into one of six county detention centers between 2015 and 2019. This allows us to examine the impact of bail reform on pretrial practices among felony defendants—the target of New Mexico's constitutional amendment on bail reform. We examine five key questions focused on felony cases:

3. Have pretrial detention practices changed for felony cases, and if so, how?
4. Has the use of bond as a condition of pretrial release changed among felony cases, and if so, how?
5. Among those released pretrial, what are the failure/success rates and have these changed over time?
6. What factors are associated with pretrial failure and has this changed over time?
7. Has time to case disposition changed over time and does this vary by whether or not a defendant is detained pretrial?

Broadly, the first set of questions address the apparent impact of bail reform on the use and amount of bond in general. The second assess the apparent impact of bail reform on pretrial practices for those accused of a felony. Specifically, we look at detention; the use of bond; pretrial performance; and time to disposition. The second set of questions focuses only on felony-level cases, whereas the first includes all case types, including misdemeanors and traffic offenses.

Throughout the report, we use the terms "bail" and "bond" interchangeably. However, there are notable differences between the two. Bail refers to the amount of money the judge orders a defendant to pay in order to secure their release from jail; this is the full amount ordered. On the other hand, bond indicates that a third party has posted money on behalf of the defendant to secure their release. Often this is posted by a bail bond company and the defendant pays some percentage of the bond to the bondsman. Despite these key differences, both terms refer to the amount of money that the judge orders the defendant to pay for release and to ensure their return to court. We use the terms interchangeably as a matter of convenience.

Another term frequently used is "no bond hold." This reflects the judge's decision to detain a defendant for some period of time without the option of posting bond. In other words, the defendant cannot be released from the detention center unless the judge orders the defendant's release or changes the conditions to allow release on a bond. This is frequently a temporary detention, but could be longer term.

Methods

Data Sources

The data for the current report comes from two sources: county detention centers and the Administrative Office of the Courts (AOC). Data from county detention centers include information about individuals (names, demographics) booked into those facilities, their charges, and other relevant information including booking and release dates, reason for the booking, the arresting agency, and the method of release. Some facilities also record the amount of bail ordered by the judge. AOC data includes all criminal court cases disposed in a calendar year at the metropolitan/magistrate to district court level.[2] Additionally, we received data with conditions of release (e.g., whether the judge ordered bond) and violations of conditions of release. When needed, we verified data using Odyssey, New Mexico's online court database.

Sample

In order to address the first two questions, we examined release types using all data provided from the Administrative Office of the Courts (AOC) between 2015 and 2019 (N=314,628). These data include all "conditions" information; that is, data describing the conditions of release. From this, we coded the release type: secured bond, no bond hold (the judge ordered the defendant to be detained without the option to post bond), or neither (e.g., release on recognizance, unsecured bond). There are two circumstances in which conditions are set: when a judge orders a warrant, and when a judge sets the conditions in a courtroom. The former includes the conditions the judge requires when they issue a warrant for an individual's arrest. These release types are temporary, meaning that this is how the individual will be held or released until they come before a judge. The second circumstance (which we call "hearing") indicates the release type ordered after the individual comes before a judge and a release decision is made. Defendants may have multiple release types over the course of a case. For this analysis, we compare all "warrant" release types and "hearing" release types over time and across counties. This analysis allows us to examine trends in the use of bond and no bond holds, regardless of the type of court case (felony or misdemeanor). This allows a picture of what is happening statewide with respect to the ordering of bonds.

To address the remaining questions, we identified individuals booked into one of six New Mexico county detention centers for a new felony offense between 2015 and 2019. We exclude defendants booked to serve a sentence for a previous change; detained on federal charges or a tribal warrant; slated for extradition to another county or state; held for another jurisdiction; or detained for a parole/probation violation. Some individuals may be booked multiple times for new incidents over the course of the study period; we limited the analysis to the first incident during the study period. For instance, when a defendant picked up a new charge while their case was being processed, we did not include that as a new case to track. However, if the individual had a new case *after* the disposition of the initial case in

[2] Most cases are initiated in metropolitan (Bernalillo County only) or magistrate court (all other counties in New Mexico). The initial decision to release or detain someone is typically made at this point. Felony cases may progress (be "bound over") to the district court level at the initiation of the prosecuting attorney, and some felony cases are initiated in district court. If bound over, decisions about release are revisited at this point. If initiated in district court, the judge makes the initial decision about release at arraignment.

our sample, we included that case as that was a new offense that occurred after the prior case was resolved. We included cases with bookings on or before December 31st, 2019, to allow time for the cases to be resolved. The final sample includes 20,112 cases.

The detention centers included in this phase of the study are in Doña Ana, Santa Fe, Chaves, Luna, San Juan and San Miguel Counties.[3] Each of these counties provides valuable information about bail reform across the State. San Juan, Doña Ana and Santa Fe counties hold the second, third and fourth highest number of detainees in the state. Doña Ana, Santa Fe, and Chaves contain three of the five most populous New Mexico cities (Las Cruces, Santa Fe, and Roswell). Luna and San Miguel are relatively small facilities in less populated areas. Luna and Doña Ana counties are located on the southern border of New Mexico. In contrast, Santa Fe and San Miguel Counties are in the center of the state; San Juan County is in the northwest corner of the state; and Chaves County is in the southeast. The counties sampled include a mix of rural and urban areas, and represent six of the 13 judicial districts across the state. Most studies examining court outcomes in New Mexico have focused primarily on Bernalillo County (e.g., Kalmanoff, 2014; Steelman, 2009), leaving out important areas of our state despite the need and desire to understand pretrial detention and court decision-making. While it would be ideal to include all counties for all analyses, there are resource limitations that prevent us from doing so. Thus, we have chosen to focus on counties representing various areas of the state.

We followed this sample of detainees through February, 2021 (see Appendix A for demographic and other information about the sample of detainees). This time frame allows most cases to reach disposition. This is important in order to measure short-term outcomes, such as pretrial success and failure rates. When calculating the pretrial period, we used the filing date as the beginning unless the individual was arrested/booked after the case was filed, in which case we used the booking date. We did so in order to ensure that we did not include new offenses or failures to appear that occurred before the court made a ruling about detention, essentially, prior to arraignment. Notably, the initial decision about detention is typically made in the magistrate court, before the case proceeds to district court. The criminal case moves to district court following a preliminary examination or grand jury indictment, if probable cause is established and the prosecutor then files in district court, as magistrate and metropolitan courts do not have jurisdiction over felony offenses. If the prosecutor files for detention while the case is in magistrate or metropolitan court, however, a new case is initiated in the district court solely to rule on detention.

Variables

Pulling from these data sources, we created two datasets. For a more thorough explanation of variable construction, see Appendix B. Using all court cases (informing the first results section, "Global Impact of Bail Reform"), we determined *bond* release or *no bond hold.* We determined *bond amount* for those ordered to pay a bond.

Using just new felony cases (for the second results section, "Impact of Bail Reform on New Felony Cases"), we determined whether *bond was ever ordered* and whether the individual was *released on bond.* We constructed a variable reflecting *pretrial detention* and constructed *length of detention* by calculating the days between booking date and release date. We also constructed variables measuring *pretrial failure:* these variables included *failure to appear* (FTA), *new offense,* and *new violent offense.*

[3] We completed a baseline study in 2019 (Dole et al., 2019) which did not include San Miguel and San Juan counties. Thus, the data reported here are different from that study.

We expected that some outcomes may vary by other factors, including current offense, county of jurisdiction, and demographics. We constructed *current offense* from the AOC data. Current offense reflects the most serious offense charged in the focal court case. This scheme prioritizes violent offenses, then property, drug, DWI, and all other offenses. We also identified the *county* in which the current offense was booked and tried. Demographic information includes *sex* and *age at booking*.

Finally, we include measures of time: *pre and post-bail reform*. Pre-bail reform includes any cases with booking dates between January 1, 2015 and December 31, 2016; post-bail reform includes cases with booking dates between January 1, 2017 and December 31, 2019. In some cases, there were meaningful differences in the *transition* year of 2017; we include this in some analyses.

Analysis of Data

Analyses include univariate and bivariate models. First, we used univariate descriptive statistics to assess performance measures such as release type, bail amounts, pretrial detention, and failure rates and to describe the sample. Next, we used bivariate analyses to assess the relationship between these key outcomes and other variables. When reporting results, we use several statistical terms: mean/average, median, standard deviation, and statistically significant. The mean indicates the arithmetic average of all cases included for that variable, and may also be referred to throughout the report as the "average." The median indicates the midpoint of all cases when values for the variable are listed from smallest to largest. In other words, the median indicates the point at which half of the values are larger and half of the values are smaller. An outlier is a case that has a much greater or much smaller value than the others. While outliers can increase or decrease the mean in ways that do not represent the full sample, outliers do not affect the median in this way. Standard deviation refers to the average distance from the mean. When a standard deviation is smaller, values tend to aggregate closer to the average. For larger deviations, the range in values is much larger. Finally, all measures of significance are reported with p-values. The lower the p-value, the more confident one can be that the observed difference is not due to chance. We use the standard threshold of .05 and consider anything at or below that level to be statistically significant. Statistical significance is noted both in the text and in or below tables and figures throughout the report. We use chi-square to assess the statistical significance between nominal variables and t-tests to assess differences between means.

Results

The results section is separated into two parts. The first part, "Global Impact of Bail Reform," explores the use of bond and holds without bond among all court cases in the six counties between 2015 and 2019. This section examines how the use of bond and the amount of bond ordered has changed since bail reform was implemented. The second part, "Impact of Bail Reform on New Felony Cases," explores felony cases in depth for those detained between 2015 and 2019. We analyze pretrial detention rates, followed by use of bond both pre- and post-reform. Next, we examine pretrial success and failure. With this data, we compare rates of pretrial failure to examine whether there have been significant changes in pretrial behavior since the bail reform amendment was passed. Finally, we examine time of case processing to assess court efficiency. For some analyses, we further separate the data to include the transition period, the year in which bail reform was first being implemented (2017).

Part 1: Global Impact of Bail Reform

When a defendant is accused of a crime, the judge (or their designee) must decide whether the defendant should be detained or released. If released, the judge may require the defendant meet certain conditions to secure their release, including ordering the defendant to pay bond. This section examines whether bail reform altered pretrial release decisions in all cases that had a condition set between 2015 and 2019. First, we examine the use of bond and no bond holds (detention without bond) over time using all data available from the courts for the six selected counties. We then examine bond amounts to understand how courts have altered these practices since the bail reform amendment was passed. We analyze how these release decisions vary over time and across counties.

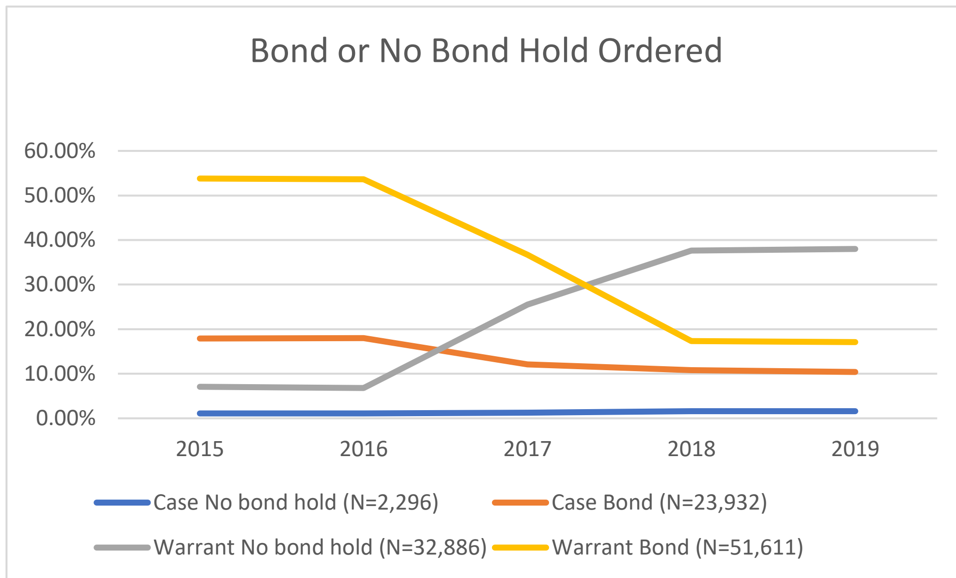
The data allow us to examine the use of bond and bond amount as ordered in conjunction with a warrant separately from those ordered during a court hearing. Conditions ordered in conjunction with a warrant are short-term. When a judge issues a warrant for someone's arrest, they typically specify a condition for release (e.g., release with bond, release on unsecured bond, no bond hold). Conditions issued in conjunction with a warrant are applicable only until the defendant appears in court, at which time new conditions could be imposed. While conditions of release can be revisited at a later time, conditions ordered at a hearing are more long-term.

Release Decisions and Use of Bond

The intention of bail reform was to decrease the number of people detained pretrial, and particularly to reduce the number of people being detained on bond. Therefore, we would expect that the rate at which judges order bond would decrease over time.

Figure 1. below displays the proportion of cases in which the judge ordered the defendant to pay bond to secure their release (bond), the proportion ordered to be held without any bond (no bond hold), and how this differs by whether the order was issued in connection with a warrant (warrant) or the order was set when the individual appeared at a court hearing (hearing).

Figure 1. Bond or No Bond Hold by Year Among Those for Whom the Judge Ordered Conditions



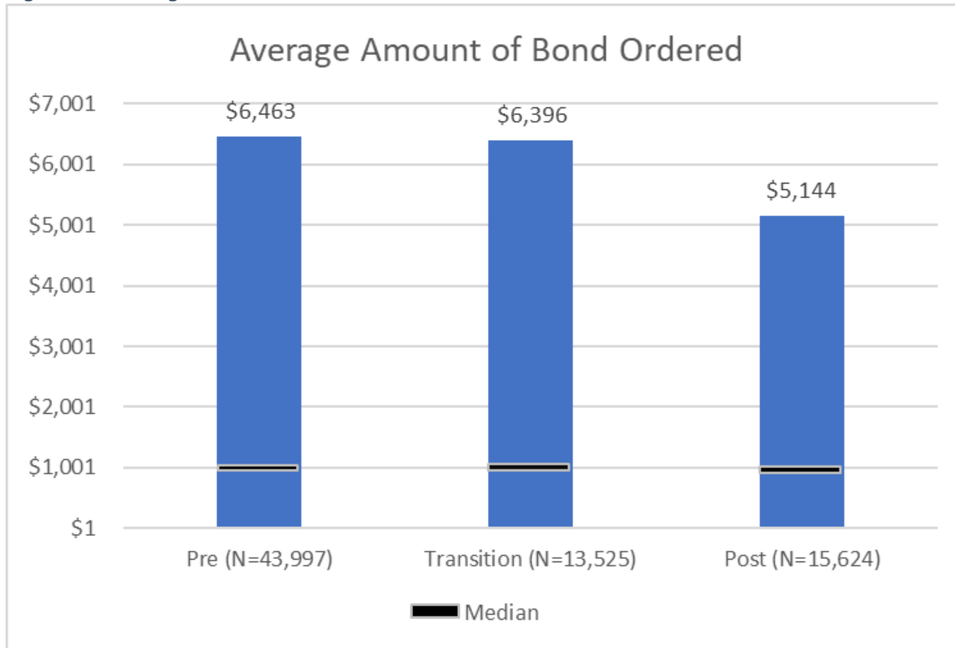
p <.001 Total N of hearings with conditions set: 170,570; Total N of warrants with conditions set: 144,058

As illustrated in Figure 1, when judges determined conditions of release in the courtroom at a hearing, there was a slight increase in the proportion of individuals detained without bond over time from 1.1% to 1.6%. This suggests that judges opt to use no bond holds in only a small number of cases, presumably those involving defendants who are deemed the most dangerous. While this change is statistically significant, it is not substantively significant. No bond holds increased dramatically, however, when judges issued warrants for arrest. This suggests that after bail reform, judges increasingly determined that defendants should be temporarily detained without the option to post bond until they could be seen by a judge.

Conversely, the use of bond significantly decreased over time, both when judges ordered conditions in conjunction with a warrant as well as when the defendant appeared in court. The decrease in bonds over time suggests that bail reform has been effective at lowering the number of defendants who are held pretrial on a bond they cannot pay. Further, this suggests that the use of no-bond holds has not dramatically increased when a defendant appears in front of a judge. In other words, prior to bail reform, judges were likely using no-bond holds for the individuals they thought posed the most extreme risk to public safety. This did not change much after bail reform, suggesting that bond was previously used for defendants who posed some sort of risk (danger or flight risk), but were not perceived as the most dangerous.

The next section examines whether the amount of bond set has changed with bail reform. Figure 2 below displays average bail amount prior to, during, and following the implementation of bail reform.

Figure 2. Average Bond Amount Over Time

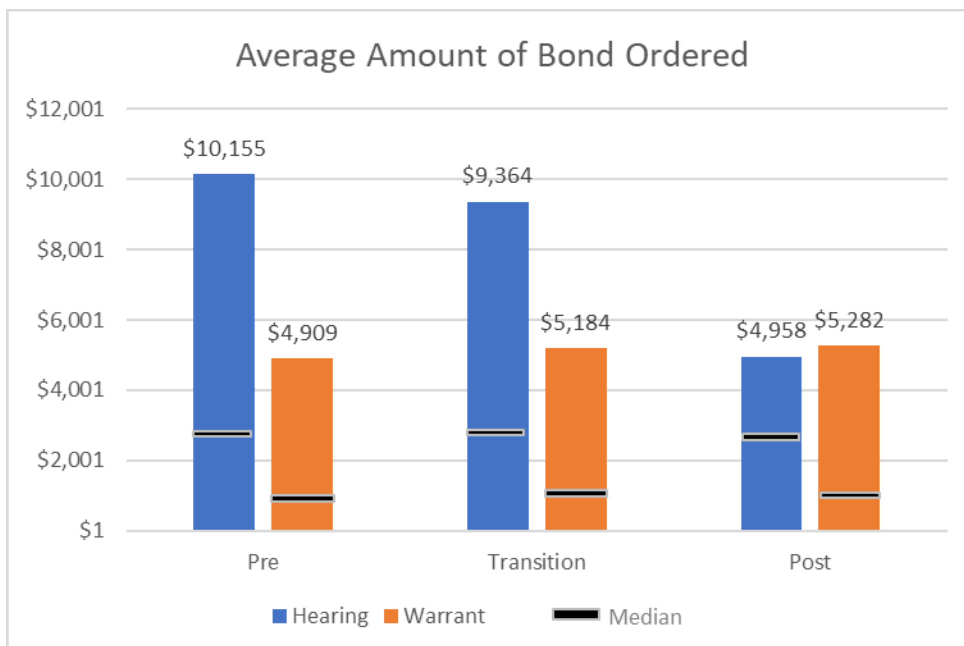


$p < .001$

The average amount of bond judges ordered prior to bail reform (2015-2016) was similar to that ordered during the transition period (2017): a little less than $6,500. Between 2018 and 2019, the amount of bond significantly decreased to $5,144. This indicates that prior to bail reform and during the transition period, the amount of bond ordered in some cases was much higher than after reform. The median bond amount is visible in black on the figure above. The median bond amount stayed stable over time, right at $1,000. This indicates that although the maximum amount of bond ordered decreased, judges consistently ordered a bond of $1,000 or less in half of the cases.

The amount of bond varies significantly by whether the conditions are set in conjunction with a warrant or during a hearing. This is visualized in Figure 3 below.

Figure 3. Average Bond Amount Over Time (Warrant vs. Hearing)



$p < .001$

As shown above in Figure 3, the average bond amount remained relatively constant when bond was ordered in conjunction with a warrant, with just a slight increase from $4,909 (N=30,962) to $5,184 (N=9,605) during the transition and increasing slightly again to $5,282 (N=8,970) after 2017. However, the average bond ordered by judges in the courtroom decreased substantially. The average bond ordered prior to bail reform was similar to that ordered during the transition period with a decrease from $10,155 (N=13,035) to $9,364 (N=3,920), when bail reform efforts were just beginning. When comparing pre- and post- bail reform bond amounts, however, the average ordered in court decreased more than half: $10,155 to $4,958 (N=6,654) indicating judges ordered fewer defendants to pay very large bond amounts over time.

Moreover, disaggregating the data reveals that the median amounts remain relatively stable over time, with some slight changes. Median amounts are not influenced by outliers. The median bond amount ordered in conjunction with a hearing stayed stable at $2,500, prior to the reform, during the transition, and in the post-transition period. The median bond amount judges ordered in conjunction with a warrant, was also relatively stable. Prior to bail reform, the median amount of bond judges ordered when issuing a warrant was $800; this increased to $1,000 during the transition period and remained at $1,000 post-reform.

Release Decisions by County

The use of bond and the amount of bond ordered may differ over time by county. Although bail reform has been implemented statewide, the ways in which it has been implemented has varied by county

(Siegrist et al., 2020).[4] This analysis seeks to understand whether this has resulted in differences in the use of bond and amount of bond judges order. Table 1 summarizes the proportion of cases involving a bond or no bond hold across counties, both prior to and after bail reform.

The trends in the use of bond among all cases are similar by county, with some exceptions. In general, judges were less likely to order bond after bail reform, particularly when they determined conditions of release in the courtroom. However, in San Miguel County, judges were only slightly less likely to order bond when a defendant appeared before them in a courtroom after bail reform relative to pre-reform. Judges in Luna County almost never ordered defendants to pay bond when determining release conditions in a hearing, regardless of whether it was prior to or after reform. Regardless of the county, judges ordered bond more often when issuing a warrant than when setting conditions in a hearing. Across all counties, there was a statistically significant decrease in the use of bond over time whether set in conjunction with a warrant or during a hearing, with the exception of Luna as noted above.

When comparing the proportion of cases involving a bond, there are notable differences both across counties and over time. Both prior to and after bail reform, judges in Chaves and San Juan counties ordered defendants to pay a bond during a hearing at rates that exceeded other counties. Despite this, both counties experienced a decrease in the use of bond in a hearing of 8% to 9%. The most notable difference in the ordering of bond pre- and post-bail reform, however, occurred in Santa Fe County. After bail reform, judges only ordered 7% of defendants to pay a bond during a hearing, a decrease of 13 percentage points from pre-bail reform (20%), which is the greatest decrease observed.

Post-bail reform, judges in Luna County ordered bond at a higher rate (38%) than judges in all other counties except Chaves (48%) when issuing a warrant. This is notable since judges in Luna County almost never ordered bond more longer-term (when the defendant appeared for a hearing) and ordered bond least often in conjunction with a warrant prior to bail reform, relative to the other counties. Overall, judges in Chaves County ordered bond most often, both pre and post-reform though the rate at which they did so did decrease.

Similar to what was found across all counties in the sample, the proportion of individuals detained without bond changed little when judges determined conditions of release in the courtroom, but dramatically increased when judges issued warrants for arrest. In Doña Ana, Santa Fe, and San Miguel counties, there were sizeable increases in the use of no bond holds for warrants (41%, 39%, and 35% higher, respectively). San Juan had the smallest change in the proportion of no bond holds issued in conjunction with a warrant, but still increased by 4%.

[4] For more information on implementation, see the second phase of our bail reform evaluation, *Implementing Bail Reform in New Mexico* (Siegrist et al., 2020).

Table 1. Bond or No Bond Hold by County

		Hearing		Warrant ***		Overall	
		Pre	Post	Pre	Post	Pre	Post
Chaves * **	*Bond*	24%	15%	54%	48%	38%	30%
	Hold ǂ	2%	5%	18%	25%	9%	14%
	N	7,580	10,327	6,408	8,507	13,988	18,834
Doña Ana * **	*Bond*	13%	7%	55%	20%	33%	13%
	Hold	0.3%	0.8%	1%	42%	1%	21%
	N	22,660	29,379	21,150	27,698	43,810	57,077
Luna	*Bond*	1%	1%	51%	38%	31%	24%
	Hold	0%	0%	2%	19%	1%	12%
	N	2,096	3,232	3,085	5,214	5,181	8,446
San Juan * **	*Bond*	24%	16%	52%	21%	37%	20%
	Hold	3%	3%	14%	18%	8%	10%
	N	14,224	21,206	12,164	20,353	26,388	41,559
San Miguel * **	*Bond*	15%	13%	58%	24%	28%	17%
	Hold	0.1%	0.5%	4%	39%	1%	16%
	N	8,068	8,927	3,596	5,744	11,664	14,671
Santa Fe * **	*Bond*	20%	7%	52%	17%	33%	11%
	Hold	0.4%	0.6%	7%	46%	3%	20%
	N	18,851	24,020	12,504	17,635	31,355	41,655
All counties* **	*Bond*	18%	11%	54%	24%	34%	17%
	Hold	2%	2%	7%	35%	4%	17%
	N	52,690	112,187	58,874	108,257	111,564	220,444

ǂ 'Hold' indicates detention without a set bond.
***$p < .001$

In addition to differences in the frequency with which bond and no-bond holds were used, this section also explores the average bond amounts by county. Table 2 below shows the average bond amount ordered by county and condition type pre- and post-bail reform implementation.

Table 2. Average and Median Bond by County and Pre/Post Reform

		Hearing		Warrant		Overall	
		Pre	Post	Pre	Post	Pre	Post
Chaves	Mean	$8,934	$9,168	$7,582	$9,122	$8,054	$9,135
	Median	$2,000	$3,000	$1,500	$1,500	$1,500	$2,000
Doña Ana	Mean	$8,264	$4,451***	$2,981	$5,800***	$4,076	$5,363
	Median	$2,000	$2,000	$500	$1,000	$650	$1,000
Luna	Mean	$10,308	$7,988	$2,072	$903***	$2,192	$992
	Median	$1,977	$7,000	$481	$361	$481	$367
San Juan	Mean	$16,866	$6,227***	$8,305	$4,874***	$11,271	$5,545
	Median	$5,000	$1,500	$1,000	$1,000	$1,400	$1,000
San Miguel	Mean	$6,561	$9,394***	$2,365	$2,587***	$3,829	$5,725
	Median	$5,000	$5,000	$300	$352.50	$1,000	$2,000
Santa Fe	Mean	$7,289	$5,929	$5,021	$3,663**	$5,866	$4,533
	Median	$2,500	$2,500	$1,223	$1,600	$1,600	$2,500
All Counties	Mean	$10,155	$6,591***	$4,909	$5,232	$6,463	$5,725
	Median	$2,500	$2,500	$800	$1,000	$900	$1,000

***p < .001; ** p<.01

Average amount of bond ordered varied by the circumstance in which conditions were set (warrant vs. hearing), and we also observed variations by county. In most counties the average bond ordered by judges decreased after bail reform when bond was ordered at a hearing, with the exception of Chaves and San Miguel. The most notable decreases occurred in Doña Ana and San Juan Counties; the average amount of bond judges ordered in these counties decreased by $3,813 and $10,639, respectively.

The average amount of bond judges ordered in conjunction with a warrant significantly decreased in three counties. This was most notable in San Juan County, where it changed from an average of $8,305 to $4,874. This was different than the overall trends which showed that the average bond amounts remained relatively constant before and following bail reform when bond was ordered through a warrant.

Since the average amount of bond can be largely influenced by outliers, we also analyzed the median amount of bond judges ordered by county, both pre- and post- reform. These values are also displayed in Table 2.

As observed for the average bond amounts, the median bond amount issued during a hearing decreased or remained the same in most counties. It did, however, increase in two: Chaves and Luna counties. Note that the average bond amount increased in Chaves County, but not Luna. Luna County has a very small number of cases: judges ordered just 23 defendants to pay bond prior to bail reform, and just 25 afterwards. While the average bond amount increased in San Miguel County, the median amount did not; thus, the average was influenced by one or more outliers.

The median amount of bond judges ordered in conjunction with a warrant varied by county. The median amount ranged from about $300 to $1,600 both pre and post-reform. The median amount ordered remained the same or nearly the same in most counties, with a few exceptions. The median amount notably increased in Doña Ana and Santa Fe counties, while Luna decreased. Across all counties, the median amount ordered in conjunction with a warrant increased slightly from $900 to $1,000.

The analysis in this section includes all court cases: misdemeanors and felonies, regardless of whether it is pre-trial or post-disposition. Thus, this provides an overview of court practices generally, but does not assess what happens pretrial for felony cases. The remainder of the report examines the impact of bail reform on new felony cases during the pretrial period.

Part 2: Impact of Bail Reform on New Felony Cases

The remaining sections of this report examine a sample of cases involving individuals booked for a new felony offense in one of the participating county detention centers between 2015 and 2019. This portion of the report begins by examining the overall number of days defendants remained in pretrial detention. Next is an assessment of rates of detention, measuring how frequently defendants are detained for part of or the entire pretrial period. In a subsequent section, we explore the use of bond pretrial. This includes the use of bond to secure release and how frequently judges set bonds at some point during the pretrial process, regardless of whether or not they are used to secure a defendant's release. The next section focuses on rates of pretrial failure and success. Key outcome variables include new offenses, new violent offenses, and failures to appear. The final section examines court efficiency by looking at days to disposition across the board as well as by detention category, county, and offense type.

Days and Rates of Detention

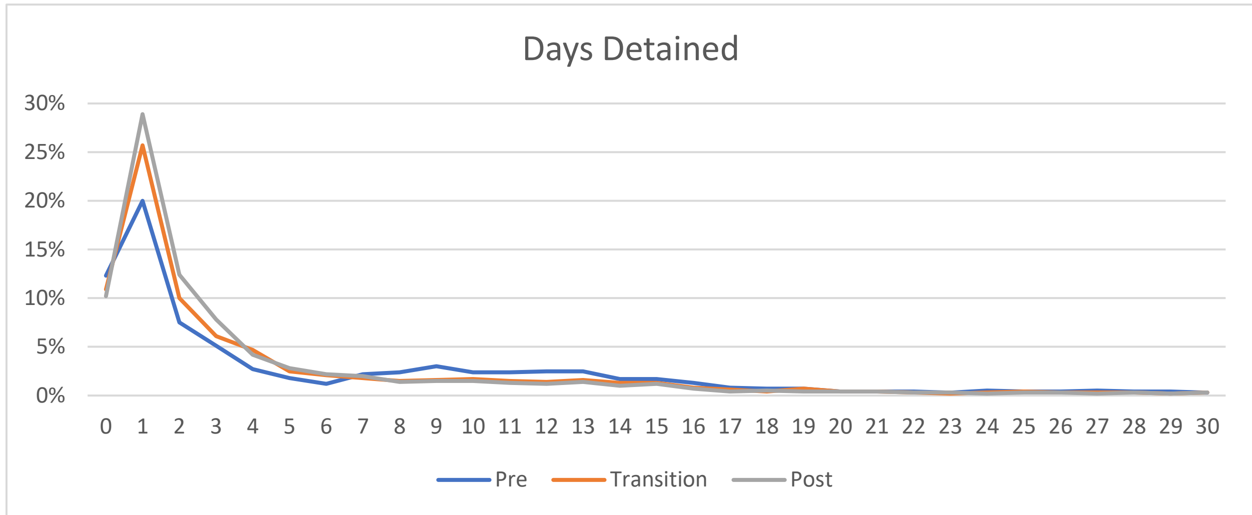
In terms of detention, bail reform will be working as intended if, overall, the frequency and length of pretrial detention has decreased. We look at this in multiple ways among this sample. We examine the distribution of average days detained to understand whether time detained has increased, decreased, or remained the same since bail reform was implemented. Categorically, we determine if a defendant was (a) detained for the entire pretrial period, (b) detained for some period of time, or (c) not detained at all. We explore length of detention across these different categories.

Days Detained

When defendants are held for a portion of the pretrial period, the length of detention could range from one day to a year or more. Detention can have significant impacts on the lives of defendants, and can be detrimental to them, their families, and the community.

Figure 4 below displays the number of days detained (x-axis) by the percent of all cases with that length of pretrial detention (y-axis) up to 30 days. The blue line represents pre-reform values; the orange line displays transition-year (2017) values, and the grey line shows cases post-reform, individuals booked after 2017. As can be observed there, regardless of the time period, the most frequent number of days detained is one. The proportion of cases detained for just one day, however, greatly increased after bail reform. Further, both during the transition period and post-bail reform, the curve of the line drops and steadily declines after about five days of detention. Prior to bail reform, there was a drop followed by an increase in the proportion of days detained; it was not until about 16 days that the line begins to smooth out. This illustrates that a greater proportion of defendants were released earlier with the advent of bail reform.

Figure 4. Days Detained Over Time



Summary measures further illustrate the decrease in the length of detention post-bail reform. Specifically, the average number of days detained prior to bail reform was 36; this decreased to 34 days during the transition period and 24 days post-bail reform. Likewise, the median days detained declined from six days to three days during the transition and to two days post-implementation. The maximum of days detained also decreased from 1,198 pre-bail reform to 1,185 post-bail reform. Overall, this indicates that the majority of defendants are experiencing less pretrial detention time with the implementation of bail reform.

Table 3. Average, Median and Maximum Days Detained Over Time

Days Detained	Pre	Transition	Post
Average (sd) days detained	36 (93)	34 (94)	24 (70)
Median days detained	6	3	2
Maximum days detained	1198	1318	1185
N	1,048	4,245	8,504

p < .001

Rate of Detention

Besides examining the overall time detained, we explored length of detention by three categories of detention: detained the entire pretrial period, detained part of the pretrial period, or not detained at all. Pre-bail reform, many defendants were held pretrial if they were unable to post bond. Post-bail reform, only those defendants deemed dangerous should be detained for the entire pretrial period. If reform is successful, we would expect that the proportion detained would decline over time. These results are summarized in Table 4.

Table 4. Length of Pretrial Detention, Days

Proportion of Pretrial Period Spent in Detention		%	Mean Days Detained (Standard Deviation)***	Median Days Detained	N
Detained entire pretrial period	*Pre*	17%	128 (170)	65	1,238
	Transition	14%	154 (175)	89	602
	Post	11%	125 (140)	74.5	944
Detained some period of time	*Pre*	71%	21 (54)	5	5,217
	Transition	75%	16 (53)	3	3,181
	Post	79%	12 (43)	2	6,689
Not detained	*Pre*	12%	0 (0)	0	908
	Transition	11%	0 (0)	0	462
	Post	10%	0 (0)	0	871

***$p < .001$

Before the bail reform amendment went into effect, about 17% of defendants were held for the entire pretrial period. During the transition period (defendants booked in 2017), this proportion shrank to 14%. In subsequent years, including 2018 and after, about 11% of defendants were held for the entire pretrial period. The average number of days detained varies over time. Prior to bail reform, defendants detained during the entire pretrial period spent an average of 128 days in detention, with a median of 65 days. During the transition period, this increased to 154 days, with a median of 89 days. While the average number of days of detention decreased post-bail reform to 125, the median was 74.5 days: lower than the transition period but higher than prior to bail reform. Thus, while fewer defendants are detained the entire pretrial period, they are detained for a longer period of time.

The proportion of cases involving defendants who were detained for some period of time increased substantially. Pre-bail reform, about 71% were held for some period of time. In the 2017 transition year, this increased to almost 75%; in the following years, to 79%. Although there was an increase in the proportion of defendants detained, the average and median number of days detained decreased post-reform. The average number of days a defendant was detained prior to bail reform, if they spent some time in the detention center, was 21, with a median of five days. Conversely, the average number of days detained during the transition period was 16, with a median of three; this decreased to an average of 12 days with a median of two days. This indicates that half of those detained for some period of time after full implementation were released within two days of booking.

As seen previously, the proportion of defendants who were not detained at all declined slightly. Prior to bail reform, 12% were not detained at all, this decreased to 11% during the transition year and about 10% of cases in the years after bail reform.

Length of detention varied by county, both prior to and after bail reform. Table 5 displays the average and median days detained by county.

Table 5. Length of Detention by County

	Mean (SD) Days Detained			Median Days Detained			N		
	Pre	Transition	Post	Pre	Transition	Post	Pre	Transition	Post
All counties*	36 (93)	34 (94)	24 (70)	6	3	2	7,363	4,245	8,504
Chaves	48 (125)	47 (114)	33 (97)	4	3	1	823	592	1,127
Doña Ana*	33 (84)	43 (110)	27 (80)	3	4	2	1,558	1,000	1,882
Luna*	100 (138)	46 (72)	29 (82)	31	14.5	2	203	148	288
Santa Fe	15 (54)	20 (76)	20 (54)	2	2	2	1,730	986	2,023
San Juan*	45 (103)	32 (87)	20 (60)	9	3	3	2,580	1,300	2,765
San Miguel	26 (63)	29 (68)	21 (54)	7	6	4	469	219	419

** p < .01, ***p < .001

Across all counties, the average length of detention decreased from 36 days pre-reform to 24 days post-reform (and post-transition), with a decrease in median days from 6 to 2. Decreases in days detained occurred in most counties. However, these decreases were particularly concentrated in some counties, while other counties did not experience statistically significant changes in length of detention.

Prior to bail reform, the average length of stay was highest in Luna, Chaves, and San Juan Counties. By far, the largest decrease in detention length was observed in Luna County, where the average number of days detained dropped from 100 pre-reform to 29 post-reform (with a corresponding decrease in median days of detention from 31 to 2). San Juan, Chaves, and Doña Ana counties also saw statistically significant decreases in average days of detention. Though length of detention did decline in San Miguel County, that change was not statistically significant. One county, Santa Fe, realized an increase in the average days of detention with the onset of bail reform, though the median days remained the same. This change in the average days, however, was not statistically significant.

Interestingly, while there was wide variation in the median length of detention prior to bail reform, ranging from two days in Santa Fe to 31 in Luna, the median length of stay was much more similar during the post-reform period. Post-bail reform, the median number of days detained varied from a low of one day in Chaves to a high of four days in San Miguel. Luna County, which had the highest median days of detention prior to bail reform (31) and during the transition period (14.5), dropped to just two days during the post-reform period.

Table 6 explores the rates of pretrial detention across counties over time and median days detained within each category. The table includes the percent of individuals detained, followed by median days detained in parentheses.

Table 6. Pretrial Detention Rates and Median Days Detained by County

		% Detained (Median days detained)						
		Chaves	Doña Ana*	Luna***	Santa Fe	San Juan***	San Miguel	Total***
Detained Entire Pretrial Period	*Pre*	18% (71)	11% (122)	31% (122)	9% (17)	24% (61.5)	13% (46)	17% (65)
	Post	17% (102)	11% (132)	17% (87)	10% (68)	13% (55)	10% (80)	12% (82)
Detained Some Period of Time	*Pre*	62% (4)	75% (3)	62% (24)	80% (2)	64% (8)	78% (7)	71% (5)
	Post	65% (2)	79% (3)	74% (3)	79% (2)	80% (3)	82% (4)	77% (2)
Not Detained	*Pre*	20%	13%	7%	11%	11%	9%	12%
	Post	18%	11%	10%	11%	7%	8%	11%
Total N	*Pre*	823	1,558	203	1,730	2,580	469	7,363
	Post	1,719	2,882	436	3,009	4,065	638	12,749

*p < .05, *** p < .001. Median days detained in parentheses.

The proportion of individuals detained for the entire pretrial period decreased in most counties, except Doña Ana and Santa Fe. The median number of days detained (shown in parentheses in the table above) for this group increased in most counties, except Luna and San Juan Counties. Among those detained for some portion of the pretrial period, but not the entire time, rates of detention increased in all counties except Santa Fe. The most notable increases observed are in Luna and San Juan Counties. These counties also experienced larger decreases in the median number of days detained among those detained for some period of time.

Finally, the rates at which judges released defendants the same day as booking were similar in most counties both prior to and after bail reform, or declined slightly. One exception is San Juan County, where the proportion of defendants who were not detained was just 7% after bail reform compared to 11% prior to bail reform. Unlike the other counties, the proportion of defendants released the same day as booking in San Juan increased after bail reform.

The differences in the rates of detention pre- and post-bail reform were not, however, statistically significant for several counties. These include Chaves, Santa Fe, and San Miguel. Further, the differences were only marginally significant in Doña Ana.

Next, we examine how pretrial detention varies across different types of offenses. Table 7 displays the average (mean) and median number of days detained both before and after bail reform.

Table 7. Length of Pretrial Detention by Current Offense

	Mean Days Detained (SD)		Median Days Detained		N	
	Pre	*Post*	*Pre*	*Post*	*Pre*	*Post*
Violent* **	46 (117)	34 (101)	7	3	3,138	5,720
Property* **	28 (74)	20 (50)	6	2	1,711	2,810
Drug	25 (57)	22 (58)	4	3	1,665	2,943
DWI* **	56 (92)	22 (65)	12.5	1	426	852
Other	21 (65)	19 (48)	2	3	361	423

***p < .001

The average length of detention decreases for each offense type, as does the median number of days detained except for those whose current offense was an “other” offense. The decrease in length of detention was concentrated amongst certain types of offenses. Particularly notable were DWI cases, where the median length of detention decreased from 12.5 days to one day, and the average decreased by 34 days. Detention for cases involving violent crime decreased from a median of seven days pre-reform to three days post-reform, while the median length of detention for property crime cases decreased from six to two days. For “other” crimes, the median length of detention increased from two to three days, though on average, pretrial detention for “other” crime cases decreased from 21 to 19 days. Most decreases were statistically significant; the exceptions were drug and “other” offenses.

Table 8 below illustrates the variation in proportion of individuals detained by category—detained for the entire pretrial period, for some period of time, or not detained at all—across different types of current offenses. Included in parentheses is the median number of days detained by current offense and time.

Table 8. Pretrial Detention by Current Offense

		% Detained (Median days detained)					
		Violent***	Property***	Drug***	DWI***	Other***	Total***
Detained Entire Pretrial Period	*Pre*	18% (81)	15% (55)	13% (57)	30% (123.5)	16% (18)	17% (66)
	Post	13% (120)	11% (68.5)	12% (66)	10% (133)	14% (48)	12% (82)
Detained Some Period of Time	*Pre*	71% (5)	73% (5)	72% (4)	64% (9)	64% (3)	71% (5)
	Post	78% (3)	79% (2)	78% (3)	67% (2)	76% (2)	77% (2)
Not Detained	*Pre*	11%	12%	15%	6%	20%	12%
	Post	9%	10%	10%	23%	11%	11%
Total	*Pre*	3,138	1,711	1,665	426	361	7,301
	Post	5,720	2,810	2,943	852	423	12,748

***p < .001. Median days detained in parentheses.

Overall, the percentage of defendants detained the entire pretrial period decreased while the percentage of defendants detained some period of time increased, regardless of offense category. The percentage of defendants released the same day they were booked decreased for most, but not all, offense types. As expected, the median number of days detained varies by both the proportion of the pretrial period spent in detention and across offense types, both pre and post-bail reform.

While the proportion of those detained for the entire pretrial period decreased for each offense, the magnitude of that change varies. Most notable is the decrease from 30% to 10% for individuals with a DWI offense. The next greatest change occurred among those with a violent offense, from 18% to 13%. The differences in the remaining categories were smaller. The smallest decrease is among those with a drug offense, which changed from 13% to 12%; this difference was not statistically significant. Although defendants with a DWI charge were less likely to be detained throughout the pretrial period post bail reform, the median length of time detained remained highest for these defendants (133 days). Defendants with a violent offense remained in detention for a median of 120 days if they were detained throughout the entire pretrial period. Among those detained the entire pretrial period, the median number of days detained increases after bail reform and the amount differs by offense type. Post-bail reform, however, the *proportion* of defendants detained the entire pretrial period is more similar by offense type.

The percentage of defendants detained for some period of time increased across all offense types. These increases ranged from about 3% for DWI offenses to about 12% for "other" offenses. The median number of days detained decreased in each category. Prior to bail reform, those detained for some period of time ranged from a median of three days up to nine days. Post-bail reform, the median number of those detained for some period of time ranged from two to three days. The median number of days detained some period of time post-bail reform is highest for those with a violent or drug offense.

The proportion of those not detained decreased for every offense type except DWI. Prior to bail reform, judges or their designee released about 6% of DWI defendants the same day they were booked; this increased to 23% of DWI cases following reform.

Detention can also vary by other variables, such as demographics. Table 9 below shows the average and mean number of days detained by age and sex.

Table 9. Length of Pretrial Detention by Demographics, in Days

		Mean (SD) Days Detained		Median Days Detained		N	
		Pre	*Post*	*Pre*	*Post*	*Pre*	*Post*
All cases		36 (93)	27 (79)	6	3	7,363	12,748
Age* **	18-24	29 (84)	25 (80)	3	2	1,716	2,640
	25-34	38 (99)	26 (70)	7	3	2,768	4,862
	35-44	36 (83)	30 (86)	8	3	1,597	3,050
	45-54	44 (105)	30 (89)	8	2	865	1,377
	55+	34 (90)	22 (78)	4	2	417	819
Sex* **	Female	21 (62)	15 (54)	3	2	1,823	3,191
	Male	41 (100)	31 (85)	8	3	5,540	9,558

***p < .001

Length of detention decreased for every age group and by sex with the advent of bail reform. Prior to bail reform (between the years 2015 and 2016), the average and median length of detention differed by age group. Prior to bail reform, those between the ages of 18 and 24 spent an average of 29 days detained, with a median of 3 days; this was the fewest number of days detained by age group. The longest number of days detained prior to bail reform occurred for those between the ages of 45 and 54. These defendants spent an average of 44 days detained with a median of 8 days in detention. Post bail reform (between the years 2017 and 2019), the number of days detained were more similar across age groups. The average number of days detained varied from 22 to 30; a difference of just eight days compared to 15 pre-reform. Further, the median number of days detained is much more similar, ranging from 2 to 3 days. By age group, those age 45-54 experienced the biggest reduction in both average and median days detained (44 to 30 days on average, and 8 to 2 median days).

Both males as well as females experienced a statistically significant reduction in days detained, though this was particularly pronounced amongst males. On average, females spent about six days less in jail after bail reform, whereas men spent ten fewer days detained. Notably, the median number of days detained dropped from 8 pre-reform to 3 post-reform for males. Males still spent more time in jail than females, however.

Finally, we explored rates of detention by sex and age groups, displayed in Table 10 below. As in prior tables, the median number of days detained is displayed in the parentheses.

Table 10. Detention Rates and Length by Age and Sex

		% Detained (Median days detained)						
		Age Group					Sex	
		18-24	**25-34**	**35-44**	**45-54**	**55+**	**Female**	**Male**
Detained Entire Pretrial Period	*Pre*	16% (55)	17% (65)	17% (59)	18% (90)	15% (73.5)	12% (35)	18% (74)
	Post	10% (82)	13% (74)	13% (88)	11% (109)	9% (70.5)	7% (64)	14% (88)
Detained Some Period of Time	*Pre*	68% (3)	72% (6)	71% (7)	72% (6.5)	71% (4)	73% (3)	70% (6)
	Post	77% (2)	77% (3)	77% (3)	78% (2)	79% (2)	81% (2)	76% (3)
Not Detained	*Pre*	16% (0)	11% (0)	11% (0)	10% (0)	14% (0)	15% (0)	11% (0)
	Post	12% (0)	10% (0)	10% (0)	10% (0)	13% (0)	12% (0)	10% (0)

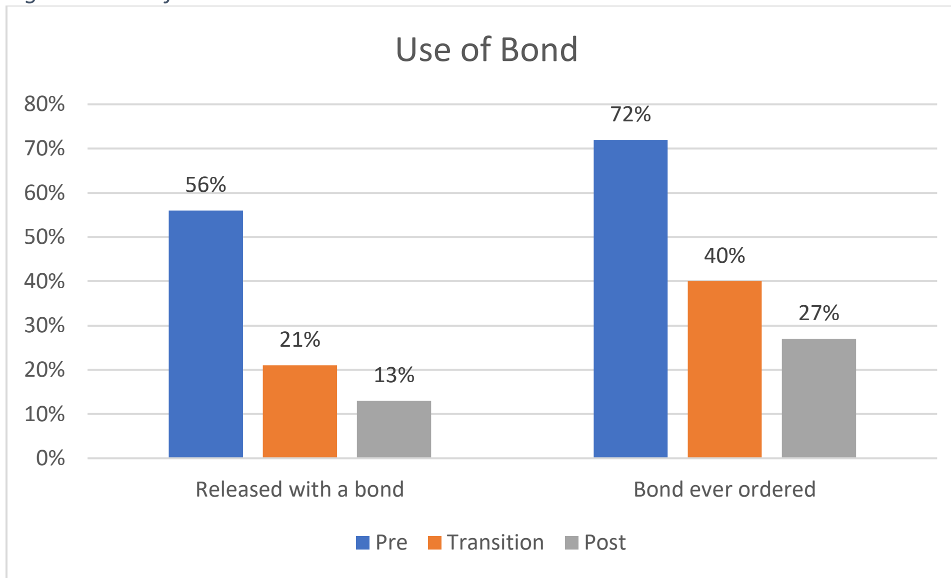
The trends for rates of detention by sex and age reflect overall trends. That is, the proportion of defendants detained the entire pretrial period declined as did the number of those not detained at all, while the proportion detained some period of time increased Moreover, among those detained for just some period of time, the median number of days is more similar across groups, ranging from two to three days compared to three to seven days prior to bail reform. We still observe differences in the median number of days detained among those detained the entire pretrial period, by both age group and gender. In general, males who were detained the entire pretrial period were detained longer than females, both prior to and after bail reform. The age group with the longest detention periods were those aged 45-54 at the time of booking. Interestingly, among those detained the entire pretrial period, the median number of days detained for individuals age 55 or older decreased slightly, while it increased for all other age groups.

Use of Bond

This section explores the use of bond among those with a new felony case. It includes two measures of bond. First, we include whether the defendant posted bond when released from the detention center. Importantly, some defendants may have been ordered to pay a bond to secure release but ultimately were released on other conditions or were released after the case was disposed. This measure only reflects whether they were released on bond. The second measure indicates whether the defendant was ever ordered to pay a bond during the pretrial period. This measure captures both whether release conditions changed initially as well as whether the defendant was released and then subsequently re-arrested/detained and ordered to pay bond.

Figure 5 illustrates the use of bond among all new felony cases in our sample.

Figure 5. Use of Bond



Regardless of which measure is included, the proportion of cases in which bond is required to secure release decreased with bail reform. Prior to bail reform, over half of the defendants in our sample were released from detention by posting bond. During the transition period, this decreased to 21% and further decreased to just 13% after 2017. Prior to bail reform, judges ordered defendants to pay a bond at some point during the pretrial period in the vast majority of cases (72%). During the transition period, this dropped to 40% and then to just 27% after 2017. These data suggest that bail reform is effectively lowering the frequency with which bond is set, in line with the intention of the bail reform amendment.

Table 11 illustrates release with bond and bond ordered by county, both before and after bail reform.

Table 11. Use of Bond by County Among New Felony Cases

		Chaves	Doña Ana	Luna	Santa Fe	San Juan	San Miguel	Total
Released with bond* **	*Pre*	74%	70%	58%	56%	42%	46%	56%
	Post	12%	26%	11%	8%	16%	24%	16%
Ever ordered to pay bond* **	*Pre*	75%	75%	59%	65%	75%	73%	72%
	Post	30%	38%	13%	23%	34%	46%	31%
Total N	*Pre*	823	1,558	203	1,730	2,580	469	7,363
	Post	1,719	2,882	436	3,009	4,065	638	12,749

***p < .001

Regardless of county or measure used, the proportion of cases involving bond decreased significantly with the onset of bail reform. The use of bond, however, still varies notably across counties. Prior to bail reform, the greatest proportion of defendants released with bond were from Chaves County (74%) and the fewest from San Juan County (42%). After bail reform just 12% of defendants released from

Chaves County posted bond, while the highest was in Doña Ana County, at 26%. These proportions change when we include whether a bond was ever ordered in the case. Prior to bail reform, over half of the cases in our sample involved a bond, with the fewest ordered in Luna County (59%). In most of the other counties, 73% of cases or more involved at least one bond order. After bail reform, judges in San Miguel County ordered the greatest proportion of bonds, at 46%, while the fewest ordered continued to be in Luna County (13%).

Table 12 illustrates the use of bond pre- and post-reform by current offense type.

Table 12. Use of Bond by Offense Type

		Violent	Property	Drug	DWI	Other	Total
Released with bond* **	*Pre*	60%	49%	59%	46%	48%	56%
	Post	17%	13%	17%	13%	16%	16%
Ever ordered to pay bond* **	*Pre*	76%	66%	71%	81%	60%	72%
	Post	32%	31%	33%	23%	31%	31%
Total N	*Pre*	3,138	1,711	1,665	426	361	7,301
	Post	5,720	2,810	2,943	852	423	12,748

***p < .001

The proportion of cases in which a judge ordered the defendant to pay bond decreased across the board. Notably, while there was more variation in the proportion of defendants released on bond or ever ordered to pay bond by offense type prior to the bail amendment, those differences diminished after bail reform. Defendants with a violent or drug offense, however, have the highest rates of posting bond upon release regardless of whether pre or post reform. When examining whether the case ever involved a bond, the rates prior to bail reform varied from a low of 60% for those with "other" offenses up to 81% for those with a DWI. Interestingly, post-reform, the rates are close to 30% for all offense types except DWI, where there was a dramatic decrease to 23%.

Table 13 explores how and whether the posting and issuance of bond varies by age and/or sex.

Table 13. Use of Bond by Age and Sex

		Age Group***					Sex***	
		18-24	25-34	35-44	45-54	55+	Female	Male
Released with bond* **	*Pre*	56%	55%	57%	56%	56%	53%	57%
	Post	15%	17%	16%	16%	14%	15%	16%
Ever ordered to pay bond* **	*Pre*	68%	73%	74%	73%	72%	66%	74%
	Post	29%	34%	32%	29%	24%	27%	33%
Total N	*Pre*	1,716	2,768	1,597	865	417	1,823	5,540
	Post	2,640	4,862	3,050	1,377	819	3,191	9,558

***p < .001

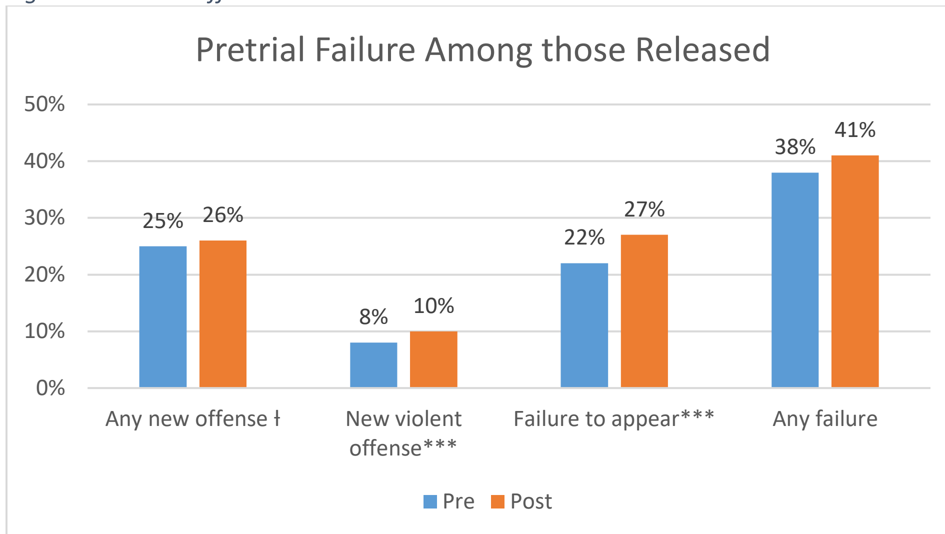
Prior to bail reform, females posted bond slightly less often than males (53% vs 57%), but release with bond was similar across age group (ranging from 55% to 57%). Following the amendment, rates of release with bond dropped significantly for all age and sex groups. Between 14-17% of defendants were released with a bond across each age and sex category.

There was slightly more variation by sex and age when looking at whether defendants were ever ordered to pay bond. Prior to bail reform, females as well as those aged 18-24 were slightly less likely to have a set bond than the other groups observed. Following the implementation of bail reform, the rate at which bond was set decreased for all age groups and sex. Post-reform, judges still ordered females to pay bond less frequently than males. There was a drastic decrease in the rate at which those aged 55 and older had a bond set, however, leading to this group having the lowest rates of bond across age categories. While judges ordered those age 55 or older to pay bond in 24% of cases after bail reform, they ordered bond in 31% to 33% of cases involving individuals in the other age groups.

Pretrial Performance

The next stage of analysis examines pretrial performance. Stakeholders have expressed concern that bail reform would contribute to greater crime due to the increase in the number of people released (New Mexico Legislative Council Service, 2016; Siegrist et al., 2020). Here, we look at four types of pretrial failures: any new offenses during the pretrial period (including violent offenses), any new violent offenses, any failures to appear, and any failure (includes all three categories). We examine at these overall, by demographic factors, by county, and by release type.

Figure 6. Pretrial Offenses



ɫ New offense does not include traffic offenses.

As displayed in Figure 6, the rates of reoffending increased slightly after bail reform. Prior to bail reform (years 2015 to 2016), the rate of new offenses, excluding traffic offenses, was 25.4%; after bail reform (years 2017 to 2019), this increased to 26%, a change of less than 1%. This difference was not statistically significant.

The rate of new violent offenses increased from 8% to 9.7% (rounded to 10% in graph). Some of the increase in new violent offenses may be attributable to overall increases in violent crime rates. The rate of violent crime for the six counties included in the present study, increased pre and post reform. Between 2015 and 2016, the rate of violent crime per 100,000 for these counties was 678.3 people; between 2017 and 2019, the rate was 815.1, an increase of 120% (FBI Crime Data Explorer, 2021).[5] In other words, the post-bail reform window coincided with higher overall violent crime rates.

Data showed that whether bond was ordered or not was correlated with the frequency of pretrial failure. Table 14 below shows pretrial failures by whether the defendant posted bond and whether bond was ever ordered.

[5] This estimate was calculated using data from the FBI's Crime Data Explorer. Their data are compiled from the Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS).

Table 14. Pretrial Failures by Whether Bond Was Ordered Among Those Released

		Any new offense		New violent offense		Failure to appear		Any new failure	
		Pre	Post	Pre	Post	Pre	Post	Pre	Post
Released with bond	***Yes***	24%	29%***	8%	11%***	18%	22%***	35%	40%***
	No	27%	25%	8%	10%	28%	28%	44%	41%**
Ever ordered to pay bond	***Yes***	26%	32%***	8%	11%***	20%	33%**	38%	49%***
	No	24%	23%	7%	9%	27%	24%***	41%	37%

**p < .01, ***p < .001

For those who were released with a bond and those who were ever ordered to pay a bond, the implementation of bail reform coincided with an increase in new offenses, new violent offenses, and failures to appear. Those released on a bond saw an increase in overall failure rate from 35% to 40%. Importantly, those released without a bond were actually slightly *less* likely to fail pretrial after bail reform (from 44% pre-bail reform to 41% post). Similarly, those for whom a bond was never set were less likely to fail pretrial following the amendment (41% pre-bail reform compared to 37% afterwards). Instead, those for whom a bond was ordered drove up overall rates of pretrial failure, with the overall failure rate for those with a bond ever set increasing from 38% pre-reform to 49% post-reform.

Next, we examine whether pretrial failure rates vary by county. Here, we find notable differences as displayed in Table 15.

Table 15. New Offenses, by County

		Any new offense	New violent offense	Failure to Appear	Any type of failure
Chaves	*Pre*	11%	4%	28%	32%
	Post	24%***	7%**	29%	42%***
Doña Ana	*Pre*	23%	10%	21%	36%
	Post	26%*	11%	21%	38%
Luna	*Pre*	11%	3%	21%	27%
	Post	18%	7%	18%	30%
Santa Fe	*Pre*	35%	7%	21%	45%
	Post	28%***	9%*	32%***	44%
San Juan	*Pre*	25%	9%	23%	38%
	Post	26%	11%*	28%***	41%*
San Miguel	*Pre*	27%	10%	16%	34%
	Post	26%	9%	20%	37%
All Counties	*Pre*	25%	8%	22%	38%
	Post	26%	10%***	27%***	41%*

*p < .05, *p < .01, ***p < .001

Rates of new offenses varied across counties. Some counties saw significant increases, while others experienced decreases or no significant change. The rates of any new offense increased considerably in Chaves County, from 11% to 24%--this was accompanied by more modest (but statistically significant) increases in new violent offenses. In Santa Fe County, the rates of new offenses decreased from 35% to 28%; however, there was a small increase in violent offenses from 7% to 9%. For two counties, we did not observe statistically significant changes in the rates of pretrial offenses. While not statistically significant, it is notable that the rate of violent offending increased in Luna County from 3% to 7% and an overall increase in new offenses from 11% to 18%. Finally, while not statistically significant, the rate of new offenses and new violent offenses declined in San Miguel County.

The rate of failures to appear increased overall from 22% to 27%; however, this was largely driven by increases in two counties. Santa Fe and San Juan counties observed statistically significant increases in FTA rates. While no other counties had statistically significant changes, San Miguel, and to a lesser extent, Chaves, both had an increase in FTAs. Importantly, the data from Santa Fe and Doña Ana counties likely consistently underreports failures to appear. This is because some failures to appear in these two counties were entered as “bench warrants” in the Odyssey system, without a comment specifying that the bench warrant was issued for an FTA. This made it impossible to tell which bench

warrants were FTAs without manually checking each case. However, although there is likely underreporting of FTAs in these two counties, we found this pattern (FTAs listed as a bench warrant) across all years. This indicates that we can be fairly confident that the *change* in FTA rates over time is accurate, although readers should interpret the rates themselves with caution. While other counties may also occasionally record an FTA using "bench warrant" only, we did not detect widespread use of this option outside Santa Fe and Doña Ana.

It is also important to understand how pretrial failure varies by the type of offense the defendant is accused of committing. Table 16 illustrates pre and post-bail reform failure rates by current offense.

Table 16. Pretrial Failures, by Offense Type

	Violent		Property		Drug		DWI		Other	
	Pre	*Post*	*Pre*	*Post*	*Pre*	*Post*	*Pre*	*Post*	*Pre*	*Post*
Any new offense	22%	24%	33%	33%	26%	33%***	27%	20%**	21%	22%
Any new violent, excluding weapons	10%	12%*	7%	9%	6%	8%**	7%	5%	6%	8%
New violent and weapons	10%	12%*	8%	9%	6%	9%***	7%	5%	6%	8%
Failure to Appear	15%	19%***	29%	36%***	27%	36%***	20%	20%	23%	19%***
Any type of failure	30%	33%*	49%	50%	42%	50%***	38%	31%*	34%	33%

*p < .05, **p < .01, ***p < .001

New offense rates over time vary by current offense type. Rates increased slightly for those charged with a violent offense, but were highest for those with a drug offense. Rates were nearly the same after bail reform for individuals charged with property or "other" offenses, but declined for those charged with DWI. This is especially notable given that offenders with a DWI charge as the most serious offense were also less likely to be detained after bail reform.

Post-bail reform, there was an increase in cases involving new violent offenses for every current offense type except DWI. These changes were statistically significant, however, only for individuals whose most serious charge included a violent offense or a drug offense. Despite this, the change across offense types was the same: an increase of 2%. The reason some values are statistically significant while others are not is due to the number of cases in each group.

Failures to appear significantly increased for defendants charged with violent, property or drug offenses. The greatest increase is among those with a drug offense, from 27% pre-bail reform to 36% after bail reform. The proportion of failures to appear among defendants charged with DWI remained the same but declined significantly for those charged with "other" offenses.

Overall, defendants charged with a drug offense experienced failure at a significantly higher rate post-bail reform (8% increase), followed by a 3% increase among defendants accused of a violent offense and 1% increase by defendants charged with a property offense. Those charged with a DWI offense experienced a 7% decrease in overall failure rates, followed by those with "other" offenses, with a 1%

decrease. This corresponds with a very small decrease in the detention rates of those charged with drug offenses and a very large decrease in the detention rates of those charged with a DWI. Detention rates decreased more moderately for violent (5% decrease), property (4%), and “other” (2%) offenses.

Finally, we examined pretrial performance by demographics, displayed in Table 17 below.

Table 17. Pretrial Failure by Demographics

		Sex		Age				
		Male	Female	18-24	25-34	35-44	45-54	55+
Any New Offense	*Pre*	27%	22%	25%	29%	27%	19%	15%
	Post	28%	21%	28%	29%	25%	21%	16%
Any new violent, excluding weapons	*Pre*	9%	5%	10%	9%	7%	5%	4%
	Post	11%***	6%	11%	11%*	9%*	7%	5%
Any new violent and weapons	*Pre*	9%	5%	10%	10%	7%	6%	4%
	Post	12%***	6%	12%	12%**	9%*	7%	5%
Failure to Appear	*Pre*	22%	23%	21%	24%	24%	18%	15%
	Post	27%***	28%***	25%***	30%***	26%*	23%**	18%
Any failure of any type	*Pre*	39%	36%	36%	42%	40%	31%	26%
	Post	42%**	38%	41%**	44%**	40%	36%*	28%

*p < .05, **p < .01, ***p < .001

No demographic groups experienced statistically significant changes in the rate new offenses overall post bail reform. Every sex and age group had some increase in new violent offending rates, but the increase was not statistically significant for all groups. Significant differences occurred for males (where the rate increased from 9% to 11%), and for those aged 25-34 and 35-44 at the time of booking. For all other demographic groups, there was not a statistically significant change in new violent offenses before and after bail reform, but all experienced an increase of 1 to 2%.

Failures to appear increased across the population. Failure to appear rates increased for both males and females by 5%; they were similar in their overall FTA rates. By age, the highest rate of FTA occurred among those aged 25-34; this group also had the greatest increase in FTA rates post-bail reform, from 24% to 30%.

Finally, failures of any type post-bail reform were highest among those aged 25-34 and for males. Most age groups, however, experienced some increase in failures, except those between the ages of 35 and 44.

Court Efficiency

The final analyses explore whether court efficiency has improved post-bail reform, by comparing the number of days between booking and disposition over time. This section assesses court efficiency by county, current offense type, and demographics. Of particular concern is whether the cases of defendants detained for the entire pretrial period are disposed of more quickly than they had been prior to bail reform. Thus, we begin by examining overall time to disposition and by detention type. Note that these analyses exclude cases not yet detained at the end of the study period.

Table 18 illustrates time to disposition overall and across detention categories, pre- and post- reform. Included here are both average (mean) number of days to disposition as well as median number of days to disposition.

Table 18. Days to Disposition by Detention Category

	Mean Days to Disposition (SD)		Median Days to Disposition		N	
	Pre	*Post*	*Pre*	*Post*	*Pre*	*Post*
All cases* **	270 (271)	236 (230)	199	169	7,360	12,699
Detained Entire Pretrial Period	127 (168)	136 (155)	65	82	1,237	1,546
Detained Some Period of Time* **	305 (279)	253 (236)	240	188	5,215	9,823
Not Detained* **	265 (275)	229 (225)	188	159	908	1,330

***p < .001

Overall, days between booking and disposition decreased with bail reform. Prior to the amendment, cases on average took 270 days for processing (median: 199 days). After the amendment, the average case processing time was 236 days (median: 169 days).

Table 18 above shows, however, that the decrease in time to case disposition is not consistent across all categories of detention. Importantly, time to disposition increased slightly for cases involving defendants detained the entire pretrial period. For these cases, the mean days to disposition increased from 126 to 136 days, with a median increase from 65 days to 82 days. This corresponds with the trends we found regarding length of detention: while days detained decreased across all cases, the time detained actually increased somewhat for those who were detained the entire pretrial period. The difference in mean days to disposition for those detained the entire pretrial period, however, was not statistically significant.

For those who are detained some period of time, average and median days to disposition decreased considerably (from 305 to 253 days on average, with a median decrease from 240 to 188 days). Time to disposition also decreased for those who were not detained at all (265 to 229 days, on average, with a median decrease from 188 to 159 days). The differences observed for those not detained and those detained for some, but not all, of the pretrial period were statistically significant (p<.001).

Table 19 below illustrates time to disposition overall and across counties.

Table 19. Days to Disposition by County

	Mean (SD) Days to Disposition***		Median Days to Disposition		N	
	Pre	*Post*	*Pre*	*Post*	*Pre*	*Post*
All counties* **	270 (271)	236 (230)	199	169	7,363	12,699
Chaves* **	305 (287)	250 (220)	224	194	823	1717
Doña Ana* **	334 (256)	292 (259)	268	222	1558	2860
Luna* **	279 (210)	189 (160)	240	144	203	429
Santa Fe* **	265 (306)	204 (216)	142.5	110	1730	3002
San Juan	228 (252)	222 (220)	160.5	161	2578	4057
San Miguel	240 (234)	227 (230)	171	155.5	468	634

***p < .001

Average and median case processing time decreased overall, and decreased in almost all counties, though these changes were small in some counties and sizeable in others. We observed the largest average decreases in Luna and Santa Fe Counties. Particularly notable are the differences in Luna County, where the average time to disposition decreased by 90 days and the median time decreased by nearly 100 days. Statistically significant decreases were also found in Chaves and Doña Ana counties. San Juan experienced a slight decrease in average time to disposition, though this difference was not statistically significant; median time to disposition remained about the same Although time to disposition declined in San Miguel County, this difference was not statistically significant.

Table 20 illustrates time to disposition changes across different types of offenses.

Table 20. Days to Disposition by Current Offense

	Mean Days to Disposition (SD)		Median Days to Disposition		N	
	Pre	Post	Pre	Post	Pre	Post
Violent* **	253 (258)	231 (236)	187	158	3137	5695
Property* **	276 (276)	230 (220)	205	163	1710	2803
Drug* **	283 (265)	245 (229)	221	184	1664	2928
DWI	310 (286)	279 (229)	225	215	426	849
Other **	249 (297)	202 (206)	124	141	361	423

**p < .01, ***p < .001

Average days to disposition decreased across all offense types, though the median days increased for those with “other” offense types. The average decrease was particularly substantial for property offenses, where average days to disposition decreased from 276 to 230, and for “other” offenses, where the average days to disposition changed from 249 pre-reform to 202 post-reform. The pre-bail reform average for “other” offenses is likely skewed due to some outliers, inflating the average whereas post-reform, there is less variation as evidenced by the size of the standard deviation relative to the mean and the fact that the median days to disposition increased.

Table 21. Days from Booking to Disposition by Demographics

		Mean (SD) Days to Disposition		Median Days to Disposition		N	
		Pre	*Post*	*Pre*	*Post*	*Pre*	*Post*
Age	18-24	253 (252)	242 (240)	186	174	1,716	2,635
	25-34	270 (274)	234 (225) ***	198	167	2,768	4,836
	35-44	277 (279)	236 (226) ***	211	170	1,597	3,041
	45-54	283 (279)	234 (224) ***	205	170	865	1,372
	55+	286 (283)	240 (240) *	200	165	417	814
Sex	Female	251 (254)	229 (227) **	192	156	1,823	3,179
	Male	276 (277)	239 (231) ***	202	173	5,537	9,520

*p < .05, **p < .01, ***p < .001

All age groups and both males and females experienced a decrease in time to disposition. There was a particularly notable decrease in the median days to disposition for females (from 192 to 156) and for those aged 35-44. Though time to disposition decreased for those aged 18-24, that decrease was not statistically significant.

Summary and Conclusions

Bail reform is a controversial topic in New Mexico. Public opinion, at least as it is often portrayed in the media, is that bail reform has failed (e.g., Madrid, 2022; Santa Fe New Mexican, 2022; Uyttebrouck, 2021). The purpose of this study, including this report and the prior phases of the study, is to understand the impact of bail reform. The key question is, has bail reform been successful? If so, in what ways? In order to answer this question, we revisit the intended outcomes of bail reform. At its crux, if successful, bail reform will result in two key outcomes: dangerous defendants will be detained and non-dangerous defendants will not. In order to realize these outcomes, the following are necessary. First, fewer defendants will be ordered to pay a cash or secured bond for their release and, when bonds are set, the amount will be lower. Second, fewer defendants will be detained during the pretrial period. Third, pretrial failure rates will be no worse than they were prior to bail reform; ideally, pretrial success rates will be higher. Besides these measures, we expect that time detained should decrease and time to disposition among those detained should also decrease, in line with the intentions of bail reform policy. Finally, only the most serious offenders should be detained.

This report examined these key outcomes by looking, first, at cases overall, and second, at a sample of new felony cases. Using these datasets, we examine release and bond practices, length and rate of detention, pretrial success and failure, and court efficiency.

Use of Bond, Rates of Detention, and Length of Detention

Use of Bond

Using all cases initiated between 2015 and 2020, we explored release decisions across two different circumstances: those where the judge ordered release or detention when issuing a warrant, and those where the judge ordered release conditions in a courtroom. The use of bond decreased precipitously, regardless of the circumstance in which it was issued. Most counties experienced a decrease in the percentage of individuals ordered to pay bond, although the magnitude of the decrease varied. When exploring the use of bond among new felony cases, the same trend occurred. That is, defendants were released without bond and/or ordered to pay bond much less often after bail reform than was the case previously. Thus, bail reform has successfully decreased the number of defendants ordered to pay a bond.

We did find some variation in the proportion of felony defendants released with bond by offense type. One interesting finding was that defendants with a violent offense and those with a drug offense were released on bond at higher rates than those with other types of offenses, both pre and post-reform. While we cannot know why that occurs with the data here, it may be that judges still impose bonds on those they deem as dangerous. This would explain the higher rate of bonds among violent offenders. Those charged with a drug offense may be more likely than others to also be viewed as a flight risk (e.g. Goldkamp, Gottfredson, and Weiland, 1990; Gouldin, 2018). Therefore, judges may order bond to mitigate that risk.

Moreover, the average bond amount overall decreased from about $6,500 pre-reform to about $5,500 post-reform, but this varied by circumstance. When set in conjunction with a hearing, the amount was substantially lower, but when set as a condition of a warrant, the amount was nearly the same pre- and post- bail reform. These trends varied across counties. In some counties, the average and median amount of bond ordered actually increased after bail reform; this also varied by the context in which the

judge ordered bond. While there was an overall decrease in the amount of bond ordered, then, the differences are not as pronounced as the decreases we observed in the proportion of cases with a bond set. In other words, bonds are set much less frequently, but only at slightly lower amounts.

Our prior research in New Mexico showed that some stakeholders perceived bail amounts to have decreased considerably (Siegrist et al., 2020). However, even when these amounts were lower, some pointed out that the lack of bondsmen (many of whom have gone out of business with the bail reform amendment) made it impossible for defendants to secure funds to pay these lower amounts. Other interviewees indicated that bonds are still being set without adequate consideration of a defendant's ability to pay, despite the rules guiding bail reform. These observations coupled with the results found here, suggest that ensuring that individuals are not held on a bond they cannot afford may be an area to address to strengthen bail reform, at least in some counties.

Finally, when judges determined release decisions in the courtroom, the rate at which individuals were detained without bond did not drastically increase. However, when judges ordered conditions in cases associated with a warrant, no bond holds increased substantially. Like the use of bond, while the magnitude differed across counties, all counties exhibited an increase in no-bond holds among warrants. This indicates that, following bail reform, judges were more likely to determine that a defendant should be held temporarily without the option to post bail until they could come before a judge in a courtroom, at which point a longer-term decision about release (or detention) could be made. Importantly, it also indicates that judges are not replacing the use of bond with significantly higher rates of no-bond holds in the courtroom: they are ordering no-bond holds at a similar rate, likely limited to those they deem the most dangerous to public safety.

Rate and Length of Detention

In the current study, we found that rates of temporary detention among new felony cases have increased during the pretrial period. Specifically, we found that the proportion of those detained for some period of time increased. There was a slight decrease in the proportion of individuals immediately released. However, the average and median number of days detained decreased after bail reform for those held some period of time. Together with the finding that no-bond holds increased in warrant situations, these results indicate that prior to bail reform, defendants were able to secure their release more quickly, typically by posting a bond. Following bail reform, many of those people are held for 1-3 days prior to their Felony First Appearance (FFA) hearing. This is particularly consequential as pretrial detention, even as brief as 24 hours, can disrupt an individual's personal and professional life—a critique of the bail reform amendment espoused by some stakeholders (Siegrist et al., 2020). This short-term detention can lead to further downstream consequences, including reduced pretrial success and increased subsequent offending (Digard & Swavola, 2019; Heaton et al., 2017; Lowenkamp et al., 2013). Studies indicate that these outcomes worsen with each successive day, and are particularly detrimental to low-risk defendants but impact others as well (ibid). Prior to bail reform, if they had the means to do so, defendants could secure their release, often before their first appearance; now these defendants are more likely to be held for some period of time, and face the collateral consequences of that time detained.

The findings are complex, though. While the proportion of defendants detained the entire pretrial period declined, this group of defendants faced slightly longer detention periods after bail reform. We also find a corresponding increase in time to case disposition among this group of defendants. Conversely, time to disposition decreased among those not detained and those detained for only some

portion of the pretrial period. We know from prior research that cases that are more complex and more serious take a longer time to resolve (Siegrist, et al., 2020). Further, defendants with either a violent offense or "other" offense, which is often a charge like fleeing from an officer or a weapons offense, had the highest rates of detention. Together, these findings suggest that judges are detaining individuals whose cases are more serious; in other words, defendants who likely pose a danger. Future research could help confirm this by including other factors, such as measures of offense severity and defendant criminal history.

The rate and length of detention varied by county, and overall trends may be driven by counties that experienced the greatest changes. For instance, there were notable decreases in the proportion of individuals detained for the entire pretrial period after bail reform in Luna and San Juan counties. The remaining counties experienced less substantial decreases, if any change at all, in the proportion of defendants detained the entire pretrial period. By offense type, the trends regarding rates of detention pre- and post- reform were similar with one exception: DWI. Further, comparing across offense types following bail reform, the distribution of detention categories was similar for all offenses except DWI. Defendants charged with a DWI offense were significantly more likely to be released immediately following reform. While males were less likely to be detained after bail reform, the rate at which they were detained for the entire pretrial period relative to females was still substantially higher after bail reform.

Likewise, the length of detention decreased most substantially in a few counties. Luna County experienced the largest average decrease, whereas Santa Fe County experienced a slight increase in average days of detention. In addition to variation by county, there were differences by the type of current offense. While average days detained decreased most substantially for DWI, average days detained did not significantly change for drug and "other" offenses. Individuals charged with violent offenses were more likely to be detained for at least some time post-reform. However, when examining length of detention, we see less variation in median days detained post-bail reform when comparing across location, offense type, and demographics. This suggests that bail reform has contributed to more homogenous pretrial detention times overall.

Pretrial Success and Failure

A key concern is whether community safety is endangered due to bail reform. This study began by examining new offenses, which include all offenses except traffic offenses, and then examined new violent offenses specifically. When pooled, the rate of both new offenses of any type and new violent offenses increased slightly after bail reform. The increase was only statistically significant for new violent offenses. Disaggregating the data reveal some key differences. While some counties experienced little or no change in rates of new offenses post-reform, the rate of new offenses significantly increased in Doña Ana County and more than doubled in Chaves County. Conversely, rates of new offending overall *decreased* by 7% in Santa Fe.

There were differences by current offense type as well. Rates of any new offense increased significantly post-reform among those whose current offense involved a drug charge, but significantly decreased among defendants with a DWI charge. Similarly, those with a drug offense had a significantly higher rate of new violent offending, as did those whose current charge involved a violent offense; both increased by about 2%. While not statistically significant, rates of new violent offending decreased among those charged with DWI offense. While overall new offense rates did not differ significantly over time by sex or

age, new violent offending did. A statistically significant increase in new violent offending occurred among males and those between the ages of 25 to 44; though, again, this change was slight: 2%.

Contextually, violent crime throughout the state also rose during this time period. For instance, in the six counties included in the present study, occurrences of violent crime were 20% higher between 2017 and 2020 than they were between 2015 and 2016 (FBI Crime Data Explorer, 2021). Therefore, it is difficult to attribute the slight increase in violent offenses observed in this sample to bail reform alone, as it may be related to changes the overall trends in violent crime over the study window. Moreover, while any violent crime perpetrated by someone who is on pretrial release is concerning, the rate of increase is substantially less than the rate of increase in violent crime overall in these counties. This suggest that bail reform is not a key factor in increases in violent offending.

Failures to appear increased by about 5% after bail reform. Increases in these rates were largely driven by two counties: Santa Fe, and San Juan. Moreover, failures to appear increased for individuals accused of every offense type except those accused of DWI, where the rate of FTAs remained the same. FTAs were especially high among those whose current offense is a drug offense or a property offense, while those whose offense was classified as “other” were more successful in terms of FTAs post-reform. Given that defendants are released at greater rates after bail reform, it is perhaps not surprising that we would see some increase in FTAs, particularly among those charged with a drug offense. Research indicates that individuals with a substance use disorder are less likely to be compliant, including with court appearance (e.g. Gehring & van Voorhis 2014; Kopak & Singer, 2022). Property offenders are often also substance users (Bradford & Payne, 2012; Bronson, et al., 2017), which may explain the increase observed here. FTAs were higher for males and females, and for every age category.

When considering all types of failures included in the study together, the overall rate of failures increased by about 3%, but were greatest in Chaves and San Juan counties. Defendants charged with a drug offense had greatest increased failure rate post reform. While property offenders had the same overall failure rate, these rates were nearly identical to those pre-reform. Conversely, success rates among those with a DWI offense improved, indicating that detaining DWI offenders is largely unnecessary unless case characteristics or other factors like criminal history suggest otherwise. Failures increased most significantly amongst males aged between 18 and 34 at the time of booking, though females and those in other age categories except those between the ages of 35 and 44 also had a higher failure rate post-reform.

Interestingly, among those released, increases in any type of failure were higher among those who secured their release by posting bond or who were ever ordered to pay a bond. In other words, the use of bond post-reform does not appear to be an effective means of ensuring success during the pretrial period. This is in direct contrast to trends prior to reform, where posting bond was associated with increased pretrial success, especially in terms of failure to appear, as evidenced here and previously (Dole et al., 2019). One possible reason for this change is that it is likely that judges now order defendants who are more at risk of failure to pay a bond, whereas prior to reform, the vast majority of defendants paid a bond to secure release, regardless of their risk. Indeed, our prior studies revealed that judges ordered bond more frequently when defendants were perceived to be a risk but chose not to detain them (Siegrist et al., 2020; Denman et al., 2021). There may be other reasons as well. For instance, defendants may not be monitored by bail bondsmen to the extent that they were prior to bail reform (Siegrist et al., 2020), though the present study does not have evidence to support or refute that supposition.

Notably, changes in rates of release among this sample of new felony cases does not explain the increased rates of FTAs in Santa Fe County, however. While FTAs increased significantly in Santa Fe post-reform, there was little difference in either the rate of detention/release or the number of days detained. In Santa Fe, the average and median number of days detained amongst defendants with new felony cases was much lower than in other counties. Further, prior to bail reform, Santa Fe had the lowest proportion of defendants detained for the entire pretrial period; this rate did not change post-reform. Finally, relative to other counties, Santa Fe had the lowest rate of defendants who secured their released from the detention center by paying a bond. While not shown in this report, we did explore the failure rates in Santa Fe further; we found no obvious reason for the increased FTAs. For instance, there was no meaningful changes in the defendant population. Further, there were no differences in rates of pre-post FTAs by offense type, use of bond, etc. Future research should further explore possible reasons for the increase in FTAs.

Overall, success rates, as measured here, decreased slightly with the advent of bail reform, though we cannot be certain whether these changes are attributable to bail reform or something else. One of the key takeaways here is that pretrial failure (and success) differs by geographic area, and different counties experience different types of failures. For instance, the data here indicate that while Santa Fe was similar to the overall trend in rates of new violent offending, defendants in that county had significantly lower rates of new offenses in general but much higher rates of failure to appear. Chaves County experienced the greatest increases in both new offenses overall and new violent offenses, but only a slight and non-significant increase in failures to appear. As discussed in this section, there were also some differences by offense type and, to a lesser extent, demographics. However, our data does show that the *overwhelming majority of individuals go through the pretrial period successfully*, without picking up new charges or failing to appear.

Court Efficiency

Finally, we examined court efficiency by measuring the days between booking and disposition across all new felony cases in our sample. Time to case disposition has decreased overall. This trend was generally consistent across demographic categories, offense types and counties, although the magnitude of the decrease varied substantially by county. The largest decreases in days to disposition were in Santa Fe and Luna counties, while there was little change in days to disposition in San Juan County and the median days increased very slightly in this county.

The primary reason for including this measure is to assess whether defendants held without any options for release would languish in jail while their case was being processed. As discussed previously, the days to disposition did increase for those who were detained the entire pretrial period, while time to disposition decreased considerably for those detained some period of time and for those who were not detained at all. Whether these changes in efficiency are related to bail reform is unknown. As noted above, though, we surmise that defendants detained the entire pretrial period have cases that are likely more serious and complex. Future research should explore whether that is the case and whether the defendant was ultimately convicted.

Study Limitations

While this report offers our best estimation of pretrial practices from data provided by the courts and detention centers, the methodology, the data, and the analyses are not without limitations. This section describes those limitations and areas for future research.

Data limitations

There are some data limitations that impact this project. Data used in this report are generated by court clerks and detention center staff for administrative purposes, not for research. Data from the detention centers are maintained in separate systems and the fields available and values recorded in each differ somewhat. Moreover, while the data from the AOC uses a centralized system, it comes from different counties over time. We know that there are differences in the way the data are recorded across counties.

First, when conducting some spot checks of these data, we discovered that the detention centers sometimes recorded release on an unsecured bond as release on bond, without specifying that it was unsecured; in most cases, release on bond indicates release on a secured bond. While we rectified these errors when detected, we did not check every release. Instead, we supplemented with data provided by the court, which indicates whether bond was ever ordered in that case. The absolute rate at which judges ordered bond reported here is subject to some amount of error; however, we have no reason to suspect the trends. That is, the data are consistent in indicating that judges ordered bond less frequently after bail reform, when using either measure.

Second, failures to appear are not always consistently documented. The IT staff at the Justice Information Division of AOC worked diligently to provide us with the most accurate FTA information possible. They provided data by querying "conditions" data, FTA conditions, and FTA warrants. Sometimes FTAs are not recorded as such, and instead, the Odyssey system simply indicate that a "bench warrant" was issued. When this occurred, the data sometimes included a populated "comments" section, noting the reason for the bench warrant; we coded the case as FTA when indicated. In Doña Ana and Santa Fe Counties, however, this was often left blank. When this occurs, there is no way to determine that the bench warrant is for an FTA unless you open the document in Odyssey; it is not feasible to do so with such a large number of cases. While this limits our ability to make conclusions about the FTA rates themselves, we have no reason to believe that the consistency of this reporting error changes over time. Thus, we expect that while the absolute rate of FTAs is underreported, we can be fairly certain about the change in FTA rates over time in these counties. One way to determine FTAs when the court data are missing is to supplement with other data sources. In particular, FTA arrests from the Department of Public Safety would be beneficial.

On the other hand, though, we also know the FTA rates are slightly over-reported. FTAs and warrants for FTAs are sometimes issued in error, and the warrant is subsequently quashed. Including data about quashed warrants, when available, would lead to a more accurate FTA rate. In conjunction with the using DPS FTA arrests, this would allow researchers and others to provide a range of the rate of FTAs which is likely a more accurate representation of FTAs.

Third, like any recidivism data, our data do not include undetected or unreported offenses. Thus, recidivism, whether for new offenses in general or new violent offenses, is likely underreported here.

Fourth, we did not conduct any analyses related to race/ethnicity because the data sources here record race and ethnicity information differently. Specifically, the data that we receive from the courts is frequently missing race and ethnicity, and the data we received from some detention centers was missing ethnicity. In some counties, Hispanic ethnicity is not in the data we received, which is particularly consequential in a state like New Mexico, where nearly half of the population identifies as Hispanic or Latinx. Moreover, when race and ethnicity are recorded, it may not be self-reported, introducing potential bias. With these limitations in mind, we chose to exclude race-ethnicity in the analyses above. This is one notable limitation to our conclusions. Bail reform seeks to increase pretrial

equity by ensuring that people are not held simply for an inability to pay; patterned income and wealth inequality makes this an issue of racial equity (Sawyer, 2019). Therefore, being able to examine whether and how racial and ethnic disparities in pretrial practices have changed with the amendment would be ideal.

Methodological Limitations

In addition to the data limitations, there are some methodological limitations that should be noted. First, days detained is limited to the initial detention period. A defendant may be released but subsequently return to the detention center after their initial release; for instance, if they are re-arrested on a failure to comply. We calculated days detained for the initial detention period only, meaning that we are unable to capture the full period of pretrial detention for some defendants.

Second, violent offense, as defined in this study, is fairly broad We do not distinguish by the type of violent offense, nor the severity. This is a limitation of the study as we cannot assess whether defendants charged with certain types of violent offenses have different rates of success. Furthermore, we cannot classify the severity of the subsequent offense, violent or otherwise. Including one or more measures of severity (e.g., felony vs. misdemeanor or whether the victim sustained an injury) would further improve our understanding of impact of bail reform.

Finally, the current study focuses on six of New Mexico's 33 counties, representing six of the 13 judicial districts in New Mexico. As seen here and as revealed in prior studies (Siegrist et al., 2020), there is variation across counties, in local courts and in community resources making geographic disaggregation important. This variation means that the six counties analyzed here may not accurately represent New Mexico's experience of bail reform as a whole. Importantly, this study does not include Bernalillo County, which has the greatest number of court cases in the state.

Recommendations

Our analyses indicate that bail reform has been successful in many ways. Despite these successes, there are still some areas for improvement. In this section, we suggest some areas to strengthen the implementation of bail reform. Recommendations are targeted to policy makers and researchers in particular. Moreover, as noted above, there are some limitations to the current study and extant research in New Mexico. Therefore, we also note areas where future research would be beneficial to bail reform.

Policy Recommendations

First, this study indicates there are important differences across counties in terms of pretrial failure (and success). This non-uniformity suggests that pretrial failures are contextual, and may be contingent upon the resources and supports available during the pretrial process. It is important to understand the local problems faced by each area. Pretrial resources need to be made available across the state in a more equitable way; but, these resources need to be targeted to the needs of each community. More county-specific analyses would help to better identify the source of problem and possible solutions.

Second, there has been much discussion about revising bail reform in New Mexico. One proposal is to use rebuttable presumptions. This would shift the burden from the prosecutor to prove that a defendant is dangerous, to the defense, to prove the defendant is not a danger. Rebuttable presumptions would be limited to certain violent offenses.

We did not limit the data to the charges frequently included in rebuttable presumptions, but did examine whether individuals charged with a violent offense were subsequently charged with another violent offense. Importantly, while rebuttable presumptions may increase public safety, as proposed, these analyses indicate that this would not eliminate all subsequent violent offending, as we found small increases in violent offending by defendants charged with other offense types as well; most notably, those who had a drug offense. Moreover, in order to realize a decrease in new violent offending, many defendants who would not have engaged in subsequent violence may be unnecessarily detained unless screened appropriately. This is a key consideration for public safety; research indicates that individuals who are detained unnecessarily are at greater risk of subsequent offending (see, e.g., Lowenkamp et al., 2013). In other words, in the long run, short-term detention could be detrimental to community safety. Thus, rebuttable presumptions alone may result in both over-detention (by unnecessarily detaining defendants) and under-detention (by making it more difficult to detain defendants whose current offense is not one that is enumerated but who do pose a danger).

Potential solutions include better screening and more effective, available release conditions to further minimize new offending and FTAs. Risk assessment tools can be helpful in screening individuals for detention, particularly by flagging those at risk for violence or new offending. Currently, the Arnold Foundation's Public Safety Assessment (PSA) is used in some parts of the state, but is not yet available throughout the state. Our implementation report (Siegrist et al. 2021) demonstrated that in the absence of risk assessment tools, judges must rely on other information to assess dangerousness. Judges frequently cited being informed by the circumstances of the current offense; strength of the current case; and the criminal history of the individual, including history of compliance, to guide pretrial decisions. Critics express concern that this level of judicial discretion curtails systemic equality. Making the PSA or a similar tool more widely available could help flag individuals who may be at increased risk for failure. This, in combination with careful assessment of whether the defendant truly poses a danger based on additional relevant factors, may be a reasonable approach. Importantly, whatever approach is considered to minimize pretrial failures and to improve compliance will have pros and cons. It is crucial to clearly identify what those are before adopting a solution (or multiple solutions) in order to proactively identify limitations and address potential unwanted impacts. The extant literature conducted elsewhere explores the impact of different pretrial monitoring options, rebuttable presumptions, etc. which may help to make informed decisions, vet different options, and mitigate potential pitfalls.

Third, this study revealed that there was an increase in temporary detention after bail reform. Some portion of those individuals were likely low-risk, and did not need to be detained. Given the research indicating that even short periods of detention are harmful to both the defendants, and ultimately the community in terms of recidivism, this suggests it would be beneficial to immediately identify defendants who are low risk and release them if appropriate. This would require that each county has access to some sort of risk assessment to quickly identify defendants who should be immediately released until the Felony First Appearance.

Finally, there are stark differences in the way data are recorded in the Odyssey system across counties. This makes it difficult to determine with certainty the extent of differences observed across counties are accurate or are due to data recording practices. Any other studies conducted should supplement with additional data sources when appropriate, such as arrests from the Department of Public Safety, as a cross check to ensure that all data are accurate. In addition, ongoing and comprehensive audits of court data for consistency across counties, along with targeted training based on those audits, could improve the accuracy of performance measures, in particular, measures of pretrial success.

Areas for Future Research

Built into NMSAC's ongoing project evaluating bail reform, the next phase will examine the impact of bail reform on misdemeanants and the impact of COVID-19 restrictions on bail reform. This work will focus on the same counties included in the current study. In addition to our ongoing work, still other questions remain. In order to really understand the impact of bail reform across New Mexico, we recommend conducting similar studies in other counties. While there has been some assessment of aspects of bail reform in other counties, to date, we are not aware of any others that include pre-bail reform measures. Without having pre-reform information, it is impossible to determine whether bail reform has been effective in its mission of both reducing unnecessary detention and ensuring public safety. Therefore, future research should explore the impact of bail reform in New Mexico's other counties and districts, and include both pre- and post- reform differences.

Besides including other counties, future studies may wish to incorporate measures not included here. Ideally, future studies should explore whether bail reform implementation is reducing or exacerbating racial/ethnic disparities in pretrial detention across the state. As noted here, both the court and detention center data have limitations with respect to recording race/ethnicity. Other criminal justice datasets may be useful to supplement these holes.

Subsequent studies should also consider including returns to jail during the pretrial period to get a more complete measure of pretrial detention. Additionally, it may be beneficial to calculate the rate of return to detention as a performance measure in addition to new offense rate and rate of FTA.

The current research does not distinguish between offenders whose current offense is violent from those whose current offense is violent and would be eligible for detention under rebuttable presumptions. Future research should consider including this to determine whether there are significant differences in pretrial performance amongst this group, when comparing pre- and post-reform data. Currently, to our knowledge, studies in New Mexico that have explored pretrial failure/success amongst those fitting these criteria have been limited to Bernalillo County, examine only data post-reform. Future research should expand to include other areas of the state and should include both pre- and post-bail reform to assess pretrial performance among these defendants. This would help policy makers and other stakeholders to better understand whether rebuttable presumptions would be an effective way to ensure community safety, while ensuring that those who should not be detained, are not.

Additionally, future studies should include measures of offense severity and criminal history. For instance, we found here that the proportion of defendants detained the entire time was more similar by offense type after reform than pre-reform. Those charged with a violent offense were detained for the entire period at a slightly higher rate, and were detained for a longer time overall than those charged with other offenses. However, since the current study does not include the seriousness of the offense, we cannot assess whether this plays a role in detention decisions. Furthermore, judges typically also consider the criminal history of the defendant when making decisions about release (Siegrist et al., 2020). Future research should investigate this further, by including measures of offense severity along with the type of offense, as well as other relevant measures like criminal history.

Finally, it is crucial to regularly monitor pretrial performance measures, including use of bond, detention rates, detention length, and pretrial success measures. Only by doing so can we determine whether bail reform is effective in both the short and long-term.

Conclusion

Despite the limitations, the current report is the best approximation of bail reform's impact on pretrial practices. This report—the third phase in a multi-year evaluation—seeks to understand the impacts of bail reform on pretrial practices in six New Mexico counties. We look at the ways in which bail reform has been successful and has fallen short of its intended impacts. Bail reform has successfully decreased the number of people held pretrial and has shortened pretrial detention time overall. The decrease in days detained overall is driven largely by a decrease in time spent detained among those who spend some of, but not the entire, pretrial period in jail. It has also successfully decreased the frequency with which bond is set, both for all cases set at any point during the life of the court case and during the pretrial period among new felony cases. When bonds are set, they are lower on average than they were pre-reform. Finally, days to disposition decreased with bail reform, indicating that pretrial court efficiency may be improving overall, though days to disposition were slightly longer for those detained for the entire pretrial period after the amendment was implemented. However, the reform has coincided with a small increase in new offenses pretrial, including violent new offenses. We also observed a slightly higher rate of failures to appear following the implementation of bail reform, though the vast majority of individuals successfully pass the pretrial period. This varied, though, by county. Those directly involved in the criminal justice system, policymakers, and legislators can continue to improve bail reform in New Mexico, focusing especially on disparities across counties. By addressing access to resources, identifying challenges and successes specific to each community, and continuing research to assess changes over time, bail reform can likely be effectively implemented while prioritizing public safety.

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Appendices

Appendix A: Sample Description

Table A.1 Demographics of the Sample

		Pre-Bail Reform %	Post-Bail Reform %	Total %	N
Age	18-24	23.3%	20.7%	21.7	4356
	25-34	37.6%	38.1%	37.9	7630
	35-44	21.7%	23.9%	23.1	4647
	45-54	11.7%	10.8%	11.1	2242
	55+	5.7%	6.4%	6.1	1236
Sex	Female	24.8%	25.0%	24.9	5014
	Male	75.2%	75.0%	75.1	15098

Table A.2 Distribution of Offense Types

	Pre-Bail Reform %	Post-Bail Reform %	Total %	N
Violent	43.0%	44.9%	44.2	8858
Property	23.4%	22.0%	22.5	4521
Drug	22.8%	23.1%	23.0	4608
DWI	5.8%	6.7%	6.4	1278
Other	4.9%	3.3%	3.9	784

Table A.3 Demographics, by County

		Chaves	Doña Ana	Luna	Santa Fe	San Juan	San Miguel
Age	18-24	23.8%	26.2%	22.1%	19.9%	19.1%	21.3%
	25-34	35.2%	37.6%	37.2%	39.5%	38.8%	34.0%
	35-44	23.5%	21.1%	23.8%	23.3%	24.3%	21.7%
	45-54	11.4%	9.6%	10.0%	11.1%	11.8%	13.3%
	55+	6.1%	5.4%	6.9%	6.2%	5.9%	9.8%
Sex	Female	25.6%	23.1%	20.8%	25.2%	26.6%	21.8%
	Male	74.4%	76.9%	79.2%	74.8%	73.4%	78.2%

Table A.4 Distribution of Offense Types, by County

	Chaves	Doña Ana	Luna	Santa Fe	San Juan	San Miguel
Violent	37.6%	43.9%	35.8%	42.1%	48.4%	48.9%
Property	23.4%	19.4%	25.6%	27.8%	20.5%	21.6%
Drug	20.6%	31.8%	33.4%	21.5%	19.0%	17.2%
DWI	14.2%	2.4%	2.7%	4.6%	7.7%	6.4%
Other	4.2%	2.5%	2.5%	4.1%	4.4%	6.0%

Appendix B: Variable Construction

Using data from the AOC and the detention centers, we created two datasets. The first dataset includes all court cases; these data are used for the first results section, "Global Impact of Bail Reform." We determined *bond* release or *no bond hold* for all court cases (the first dataset) using the condition ordered found in the AOC data. Since conditions can change over the course of a case, this includes whether the judge ever ordered a bond or detained without a bond in the case. Among those ordered to pay bond, we determined the *bond amount* from the AOC data. In cases where there was more than one amount listed, we chose the maximum amount. These data are limited to only those who had a bond and had an amount recorded of at least $1.

The second dataset, limited to new felony cases, also includes measures of release on bond. These are the data that we use in the second results section, "Impact of Bail Reform on New Felony Cases." Like the bond measure in all court cases, we include whether *bond was ever ordered* in that case. This does not mean that the defendant was released on bond. Instead, this indicates that at some point from case initiation to disposition a judge ordered the defendant to pay bond. These data were gathered from the AOC. We also include whether the defendant was initially *released on bond*. These data are gathered from the detention centers, and reflects the release type recorded by them.

We constructed a variable indicating *pretrial detention.* Using three dates—date of booking, date of release, and date of disposition—we determined whether pretrial detention had occurred. This variable has three outcomes: not detained, detained some period, and detained the entire pretrial period. [6] We further measured *length of pretrial detention* by calculating the number of days between the date of booking and the date of release from the detention center or the date of adjudication if the case was disposed before the individual was released. Some cases (n=53) had not yet been disposed by the end of the study. For these cases, we used June 9, 2022, as the end date as this was the last date we manually checked for disposed cases. Note that a defendant may be released but subsequently return to the detention center after their initial release. For instance, a defendant could be re-arrested on a failure to appear and detained for some time. To address this complication, we only consider the initial detention period. This means that for some defendants, we do not capture all of their pretrial detention in a case.

We examined *pretrial failure* with the data from the AOC.[7] We gathered information on *failures to appear* (FTA) amongst those released pretrial. Defendants often have multiple concurrent cases, meaning that an FTA may be in relation to the case we followed or a distinct co-occurring case. Because we include both current and concurrent cases when determining FTAs, the rates of FTA are higher than one would find if they only used failure to appear in the current case. We include only FTAs that are recorded in the data from the AOC. We also identified *new offenses* that occurred during the pretrial period using AOC data. Specifically, we found all court cases filed against the defendant during the pretrial period with offense dates that occurred after booking but before the case we were tracking was disposed. We excluded traffic offenses from the "new offense" variable. We created variables to indicate whether the new offense was *violent.* In order to ensure that the violent offense rate was

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[6] Not detained includes everyone booked and released the same day, including those whose cases were immediately dismissed.

[7] In prior studies, we have used both AOC and criminal history data from the Department of Public Safety. The courts were able create queries that sufficiently captured the FTA data we originally found in DPS that was missing from the initial queries received from AOC.

correct, we manually checked each case, ensuring that the defendant had another case fitting these criteria (i.e., that it was a new case and included at least one violent offense). We found few errors, but we did not do the same for other offense types, as that was not feasible. We did spot check the data for other offense types, but found no indication of a widespread problem.

We expected that some outcomes may vary by other factors, including current offense, county of jurisdiction, and demographics. We constructed *current offense* from the AOC data. Current offense reflects the most serious offense charged in the focal court case. This scheme prioritizes violent offenses, then property, drug, DWI, and all other offenses. "Other offenses" is a catch-all category that includes primarily offenses related to interfering with the administration of justice (e.g., fleeing from a police officer, fugitive or escape, bringing contraband into jail), traffic offenses, as well as other offenses not captured previously (e.g., trespassing, weapons offenses). We also identified the *county* in which the current offense was booked and tried. Demographic information includes *sex* and *age at booking*.

Finally, we include measures of time: *pre and post-bail reform*. Pre-bail reform includes any cases with booking dates before January 1st, 2017—when bail reform went into effect. Post-bail reform cases are those which had booking and/or filing dates on or after January 1st, 2017. Although the amendment went into effect in January 2017, the initial rules were not published until July of 2017 and debates continue around the specific rules of the reform. Therefore, for some analyses we include a *transition period* (January 1 to December 31, 2017). When we found no meaningful differences by separating the transition period from the subsequent years, we opted to combine years 2017 and beyond for readability.