

BEYOND THE MYTHS

Making Sense of the Public Debate about Crime in New Mexico



ACLU
New Mexico

What is going on?

Here in New Mexico, our criminal justice system is undergoing a series of reforms, aimed at ending unconstitutional policing, jail overcrowding, and wealth-based incarceration to create a justice system that is more accountable, fair, and equitable. Because the reforms are new, it's still too early to assess what is working and what needs changing. Unfortunately, that hasn't stopped some elected officials from telling the public that justice reform is causing crime to rise.

Many New Mexicans are asking, what is really going on? This preliminary report clears up some of the confusion by identifying the major reforms underway and separating myth from reality.



Reforms taking place in New Mexico

Public Safety Assessment Tool

Every day judges must decide whether to release or detain defendants while they await trial. They try to weigh the likelihood that a defendant will fail to appear or even commit a crime while awaiting trial against the defendant's right to be presumed innocent until proven guilty. It can be difficult. The Arnold Foundation's Public Safety Assessment (PSA) tool, which is now being used in Bernalillo County, is meant to help judges in their decisions by providing them with a risk score that is calculated by considering factors like: the offense the defendant is charged with, any prior convictions, the defendant's age, and previous failures to appear in court. The PSA does not factor in race, gender, education, or socioeconomic standing, in an effort to make bail determinations more objective and fair.

Bail reform

In 2016, New Mexico approved a constitutional amendment that prohibits judges from detaining defendants solely because they cannot afford bail. The amendment also allows judges to detain defendants who they believe pose great danger to the community. The New Mexico Supreme Court then set rules that guide how judges make these decisions. Some say the changes don't go far enough in ending a for-profit bail system that disproportionately detains the poor and people of color, while others have blasted the changes, claiming the rules are unfair to prosecutors.

Case Management Order

The CMO addresses two separate but related goals: 1) to reduce overcrowding at the Bernalillo County Metropolitan Detention Center (MDC); and 2) to address significant delays in criminal case resolution in the district court. To address overcrowding, the court adopted measures to expand supervised release and to provide early bond reviews for defendants in pretrial detention. To address delays in case resolution, the court adjusted its rules to ensure a speedy



trial for defendants. These changes were originally adopted by the New Mexico Supreme Court in 2014 and the CMO has been amended twice since its adoption.

Court Approved Settlement Agreement

In early 2014, the United States Department of Justice completed an investigation of the Albuquerque Police Department that identified a pattern and practice of excessive use of force and a culture of aggression within the department. After negotiations with the DOJ, the City of Albuquerque agreed to enter into a Court Approved Settlement Agreement (CASA) to resolve the DOJ's findings. An independent monitor was selected to assess and report on the complex process of implementing the CASA. The United States District Court for the District of New Mexico has jurisdiction over the case and manages the reforms outlined in the CASA.

MYTH OR REALITY?

MYTH

The less people there are in jail, the greater crime rates will be.

In 2016, the City of Albuquerque commissioned a study on rising crime rates. The report was authored by someone who is neither a criminologist nor a statistician, and includes a graph that depicts a declining MDC population set against a rise in crime. While the graph made a splash in local media, anyone that took basic high school math can tell you that correlation does not imply causation. If you eat more apples for a week and there is an increase in car crashes, should we assume that your apple consumption caused those car crashes? No, we should not.

REALITY

Rising crime is caused by a multitude of factors.

Attributing a rise or fall in crime to any one particular phenomenon is unwise. A more meaningful study would compare historical crime rates with additional factors, such as New Mexico's high rate of unemployment, the number of police officers investigating crime, inadequate educational systems, the decimation of New Mexico's behavioral health system, or an influx of new street drugs. Data, rather than just anecdotes, is needed to show whether those specific defendants that were released from MDC were the very same defendants committing new crimes.

MYTH

The bail bond industry keeps the public safe.

The bail bondsmen, district attorneys and legislators opposed to reform argue the bail industry keeps the public safe by ensuring defendants show up for trial. Reform, they say, allows too many people to be released on their own recognizance, free to commit new crimes and with little incentive to show up for trial.

But basing release on wealth, rather than individual risk, is wrongheaded and does nothing to stop crime or enhance public safety. Just because someone can post bond doesn't mean they are any less likely to commit a crime before trial. Places, like New Jersey, that have moved away from money bail have actually experienced drops in crime rates. In the first 10 months of reform, both violent crime and overall crime rates dropped statewide.¹

REALITY

The bail bond system creates wealth-based incarceration.

Our nation's current system of cash bail lets the size of your wallet determine whether you are granted freedom or locked up. Because of this, on any given day in the United States, more than 440,000 people are sitting in jail even though they have not been convicted of a crime.² Thousands of poor and middle class Americans – especially African-Americans – will languish in jail for days, weeks, months, or even years because they cannot afford cash bail. During this time many will lose families, jobs and homes even when they don't pose a danger to their communities.



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MYTH

Risk assessment tools cause judges to release dangerous defendants.

REALITY

Risk assessment tools do not replace judges.

Many opponents of bail reform also oppose risk assessment tools. Bail bondsmen have been particularly critical about the use of the Arnold Foundation's PSA in Bernalillo county, claiming it's creating a "catch and release" system because too many defendants receive scores low enough for release on recognizance. However, judges are not required to follow the PSA's suggestion; ultimately the decision to release or hold a defendant is theirs alone. The real reason bondsmen oppose the PSA is because the tool is designed to help judges make evidence-based decisions about release and detention, rather than wealth-based decisions.

Risk assessment tools do not and should never replace judges, but instead serve only as aids in their pre-trial choices. We still have much to learn about how these tools impact communities. While we are cautiously optimistic about what we've seen in other jurisdictions, we must collect hard data to determine their effects on racial disparities within the criminal justice system and ensure that they do not lead to unnecessary requirements, like excessive drug testing, which may have negative consequences for defendants and public safety. The bottom line is: risk assessment tools are not substitutes for individualized determination of release conditions.



MYTH

The APD's consent decree with the DOJ ties the hands of police and drives up crime.

REALITY

The recent uptick in crime predates the consent decree.

The “Ferguson Effect” is the idea that when police departments come under close scrutiny from the public, the media, the courts, and the Department of Justice, law enforcement officers hesitate on the job, causing an increase in crime. This theory stems from an alleged rise in homicides and other violent crime in major US cities following the killing of Michael Brown and the protests that followed. Since Ferguson, police departments that are resistant to oversight, such as APD, often cite a version of this theory when crime rises. However, to suggest the DOJ reforms are somehow hampering the police from doing their jobs is – pardon the phrase – a cop-out. Consent decrees are needed to not only end patterns of excessive use of force, but to restore trust in the police in communities where it has been eroded. Lack of trust undermines police legitimacy and compromises the ability of police to do their jobs.

“The Ferguson Effect has now been thoroughly debunked...”

The Ferguson Effect has now been thoroughly debunked,³ although many police departments continue to cite a version of that theory when crime rises. What we now know to be true is that violent crime across the country remains at historic lows.⁴ Crime in the United States peaked in 1991 and has fallen steadily for 25 years.⁵ Federal oversight reduces police shootings.⁶ Here in Albuquerque, FBI data shows crime rates began to rise in 2013 and property crime and violent crime has continued to rise.⁷ The APD reform process didn't start until November 2015 when crime rates had already been rising for two years. The story of what is driving up crime in Albuquerque is complex, but pinning it on DOJ oversight is factually inaccurate.

MYTH

Judges are to blame for “catch-and-release” criminals.

REALITY

Our justice system is founded on the principle of innocent until proven guilty.

We hear the media, politicians, and law enforcement officials use the term “catch and release” over and over to refer to people that are repeatedly arrested and released.

These same officials, including Albuquerque’s former police chief, have been quick to blame judges for this phenomenon. If judges were just tougher on crime, the thinking goes, then more people would be held without bail and unable to commit new crimes. Unfortunately, blaming judges is an easy way for community leaders to avoid hard questions about what’s really driving crime in our communities. We need less finger-pointing and more thoughtful analysis to truly understand how to make our neighborhoods safer.

“It’s important to remember that in a free society simply arresting someone does not imply guilt.”

The New Mexico Constitution guarantees a person’s right to a speedy trial. This means a person cannot be accused of a crime and then thrown in jail without ever seeing a judge. Court rules require deadlines for charging a person and providing evidence to the defense. If those deadlines aren’t met, judges must follow the Constitution and dismiss the charges. It’s important to remember that in a free society simply arresting someone does not imply guilt. Moreover, there is no data to support the narrative that because more people are being released to pretrial services, the crime rate is rising. As such, we should remain skeptical of anecdotal stories used to support this narrative and of any proposed policies rooted in this faulty logic.

Where to go next:

To clear up much of the confusion around criminal justice reform in New Mexico, we need data that is specific to communities in our state. Over the next few months, the ACLU of New Mexico will gather and analyze data on the effects of the various reforms taking place in New Mexico. For example, if the Arnold Foundation’s PSA is to be rolled out in the entire state, we must first see how it has performed where it premiered. There are other reform measures that would also benefit from independent research, and we encourage researchers from across our state to step in and take a hard look at the data so that we can have a reality-based conversation around criminal justice reform in New Mexico.

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Katie Hoepfner is a sociocultural anthropologist and Lead Writer at the ACLU of New Mexico.

Paul Haidle is an attorney and the Criminal Justice Advocate with the ACLU of New Mexico.

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