



## Administrative Office of the Courts

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### **New study finds proposed pretrial detention changes would have little impact on crime and would unnecessarily detain many people**

SANTA FE – Proposals to make it easier to jail people awaiting trial will do little to reduce crime because they fail to accurately identify the individuals most likely to be arrested for a new offense if released pretrial, according to a new study.

Creating “rebuttable presumptions” in the law for pretrial detention would instead jail many people who would not be re-arrested if allowed to remain free before trial when they are legally presumed innocent of a crime, researchers found. [Click here](#) to view the study, which also is available at this [website](#).

Proponents of rebuttable presumptions “argue that they prevent a large amount of crime with minimal impact on civil liberties. We have shown that this is not the case, both because a small fraction of crime is committed by pretrial defendants, and because presumptions detain many defendants for each crime they prevent,” according to the study by the University of New Mexico (Institute for Social Research, Center for Applied Research and Analysis) and the Santa Fe Institute.

“We have shown that a wide variety of criteria for rebuttable presumptions have poor accuracy and a high false positive rate,” the study stated. “Despite the presumed intentions of policymakers, these proposals do not accurately target the small fraction of defendants who will be charged with new serious crimes if released pretrial. Instead, they cast a wide net, recommending detention for a large number of defendants who would not receive any new charges during the pretrial period.”

The researchers found that recent legislative proposals would jail at least 20 presumed innocent people to potentially prevent one individual from being arrested on a violent felony charge while awaiting trial.

“The study shows that the use of rebuttable presumptions would not substantially reduce crime but would lead over time to the unnecessary jailing of thousands of defendants who are legally

presumed innocent and otherwise would remain arrest-free while awaiting trial,” said Artie Pepin, director of the Administrative Office of the Courts.

Unnecessarily jailing people may cause them to lose their families, housing or jobs. It also makes it harder to mount an effective defense, and adds pressure for people to accept a plea deal even if they did not commit the crime. Some previous studies also have concluded that unnecessary detention makes it more likely that the defendant will commit a crime in the future.

With rebuttable presumptions, certain classes of individuals would automatically be considered so dangerous as to require detention based solely on the charge brought by the prosecutor. The exact framework would vary depending on the criteria established by lawmakers.

Currently, people charged with a felony can be held in jail before trial if prosecutors prove to a judge that is the only way to protect the public. Prosecutors must show that no restrictions or conditions, such as a curfew or home confinement, will reasonably assure public safety if someone is released. Rebuttable presumptions would instead require defendants to prove to a judge they can be safely released before trial. Otherwise, they would be held in jail while awaiting trial and a determination of whether they are guilty of the charged offense.

The study was based on 15,134 people charged with felonies from July 2017 through June 2021, who were released from custody pending trial and whose cases were closed during the four-year period. Researchers analyzed how many of the defendants would have been detained with presumptions based on various criteria and what portion of them were actually charged with a new offense while on pretrial release.

The study considered presumptions based on a person’s current charge, past convictions, failures to appear at court hearings and previous violations of conditions of release. Recent legislative bills also were analyzed, including one that would have created a presumption for detention of people charged with any of more than a dozen serious violent offenses or if they fired or brandished a firearm while committing a crime.

“We find that for all these criteria, at most 8% of the defendants they identify are charged pretrial with a new violent crime (felony or misdemeanor) and at most 5% are charged with a new violent felony,” the study found. “The false positive rate, i.e., the fraction of defendants these policies would detain who are not charged with any new crime pretrial, ranges from 71% to 90%.”

Researchers found that under the current system about four out of five defendants remained arrest-free during pretrial release.

Voters approved a constitutional amendment in 2016 to reform the state’s bail system. The change in law allows for the pretrial detention of felony defendants in limited instances and it protects presumed innocent people from remaining in jail before trial solely because they cannot afford a money bail bond. Since the change in law, the Judiciary has been building a network of pretrial services programs to help people comply with their release conditions and return to court for future hearings.

“Pretrial improvements are working and New Mexico is moving in the right direction with a stronger justice system,” said Pepin.

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