

# Length of Stay in Detention Facilities: Profile of Six New Mexico Counties in 2020

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## Major Findings

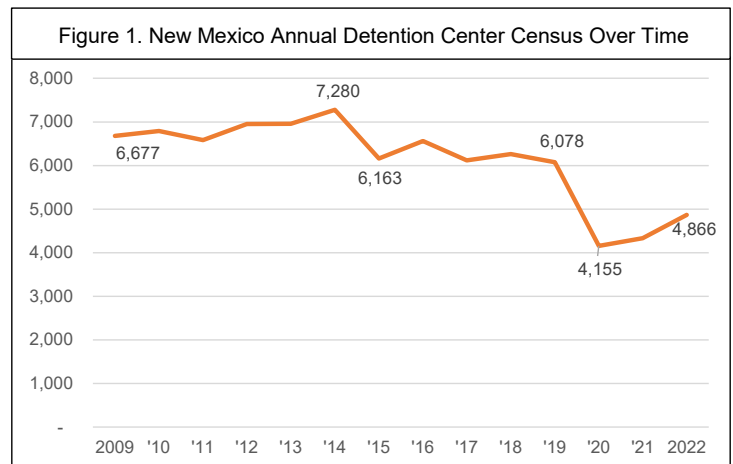
- The median length of stay for detainees charged with felonies is equal to 216 days (7.2 months), representing an increase in every county since 2010 and 2003.
- The median lengths of stay for detainees charged with misdemeanors fell to 56 days from 80 days in 2010.
- The majority of detainees in detention centers have been charged with a felony, 90%, up from 66% in 2010 and 69% in 2003.
- 52% of detainees incarcerated for a new offense were charged with a violent offense as their most serious charge, compared to 32% in 2010.
- Eighty-three detainees (4%) were still in custody on May 18, 2022. Their median length of stay up to that point was 876 days (29.2 months).

This study examines the length of time adult detainees remain in detention centers or jails before they are incarcerated in a state prison, put on probation, released to their home communities, or otherwise released. Who is detained and their length of stay affects public safety, detainees' safety, detainees' families and employers, and county government spending. Whether to detain someone pretrial and for how long are important aspects of 4th Amendment seizure rights and 6th Amendment rights to a speedy trial. In addition, stakeholders may wish to understand how changes in policy and practice may have affected the composition of detention centers as well as length of stay. To understand possible changes in patterns, the New Mexico Sentencing Commission (NMSC) is repeating the analysis of length of stay in detention centers following two prior reports published in 2005 and 2012.

## BACKGROUND

There are many factors that influence length of stay. Most important are the particular facts in a given case – the nature of the offense, the criminal history of the detainee, and any concurrent cases they may have. There are broader influences as well, including changes

in policy and practice as well as a detention center's capacity. Figure 1 shows the June 30th census of adult state detainees in all detention centers from 2009 to 2022. The number of detainees grew slightly from 2009 to 2014, with an average of about 6,850 detainees. That value dropped to a new stable average of about 6,250 from 2015 to 2019. This was followed by a dramatic drop in the census in 2020 and 2021 due to the COVID-19 pandemic. The population seems to be on the rise again in 2022, but it is not clear at this point whether that increase will continue or where it will stabilize. The NMSC hopes to monitor the trend. That information will help researchers and decision-makers understand whether recent changes in policy and practice have had their intended outcomes.



There are several changes in policy or practice that could have affected both the number of people held in pretrial detention and the median length of stay since 2010. Table 1 presents a summary of these events.

| Table 1: Changes in Policy and Practice Affecting Pretrial Detention |  |
|--|--|
| Date   | Event  |
| 2011   | Elimination of six-month rule  |
| 2013   | Beginning work of Bernalillo County Criminal Justice Review Commission             |
| 2014   | Time limits for criminal proceedings (Bernalillo County)                           |
| 2014   | <i>State v. Brown</i>  |
| 2016   | Constitutional amendment to prevent detention solely due to inability to post bond |
| 2020   | COVID pandemic   |
| 2021   | Decriminalization of the possession of cannabis                                    |

The “six month rule” was a standard established in the New Mexico Rules of Criminal Procedure for District Courts and was meant to guarantee defendants the 6th Amendment right to a speedy trial. It required prosecutors to specifically request extensions if they needed more than six months to prepare for trial. In 2011, this rule was eliminated, which may have created longer stays in detention centers for some pretrial detainees in District Court.

On the other hand, in 2013, the Bernalillo County Criminal Justice Review Commission was formed, and began its work to implement policies to decrease the population of the Metropolitan Detention Center (MDC). Overcrowding at MDC had been the subject of a long-standing lawsuit. Over its two-year lifespan, many policies implemented by Bernalillo County’s commission helped to reduce MDC’s population by approximately 1,000 by 2015. In addition to the case management program described in the next paragraph, the commission gave credit to three practices that helped resolve cases more quickly: a new requirement that an Assistant District Attorney appear at misdemeanor defendants’ first appearance in Metropolitan Court, the use of a preliminary hearing rather than a grand jury in many cases, and expansion of the Early Plea Program (Pepin, 2015).

In 2014, the New Mexico Supreme Court imposed a case management program through a pilot local rule (LR2-400) for the Second Judicial District (Bernalillo County) mandating deadlines for motions and processes directed to prosecutors, defense attorneys, and the District Court. Designed to address chronic delays in criminal proceedings, the pilot rule is still in effect. This rule should shorten the length of time detainees spend in pretrial detention, and by extension also lower the number of pretrial detainees in the Second Judicial District on a given day.

The same year, the New Mexico Supreme Court made clear in *State v. Brown* (2014-NMSC-038) that trial courts must honor the New Mexico Rules of Criminal Procedure; defendants must be released from custody on the least restrictive conditions necessary (New Mexico Supreme Court, 2014b). This means that in any case in which the defendant is likely to appear in court, is not a threat to community safety, and is unlikely to commit another crime, he or she ought to be released on their

own recognizance. If there has been any effect from the case, it most likely would appear in earlier releases on recognizance for detainees with low-level and uncomplicated offenses. There might be shorter lengths of stay among pretrial detainees charged with misdemeanors.

Even if *Brown* had little effect, in 2016 the constitutional provision on bail (N.M. Const, Art. II, § 13) was amended to restrict the use of bail and ensure that only those who pose a danger to the community or a flight risk can be detained. The effect of this constitutional change again would likely be earlier releases on recognizance for detainees charged with misdemeanors.

Other than the elimination of the six-month rule, the changes discussed so far would likely shorten the typical length of stay at least for some defendants. More recent changes in policy and practice may work indirectly to lengthen them. If a policy or practice reduces the number of detainees charged with low-level offenses, it may leave a greater percentage of people in detention with the high-level offenses that often necessitate longer lengths of stay. The COVID pandemic has no doubt had this effect. In 2020, nearly all jails in New Mexico reacted to the dangers posed by COVID by releasing detainees whose risk to their communities was deemed less than the risk of the spread of COVID within jails.<sup>1</sup> For the same reason, it is also probable that individuals charged with low or medium-level offenses early in the pandemic (for our purposes, on or before June 30, 2020) were never detained. Thus, the pandemic may have increased the typical length of stay due to an increase in the proportion of detainees with serious and/or violent offenses, even while overall jail populations decreased.

The statewide decriminalization of the possession of personal amounts of cannabis or marijuana may have changed the composition of detainees in jail in a similar way. Although decriminalization did not officially go into effect until June 2021, later than this study’s dataset was drawn, it is possible that some law enforcement officers stopped arresting people for marijuana possession when the bill was passed by the state legislature in 2019. If detention centers were not holding marijuana users—usually short-term detainees—when our dataset was drawn, we might expect longer lengths of stay especially among detainees charged with drug possession.

Finally, an increase or decrease in crime may affect the composition of detainees and lengths of stay among pretrial detainees. Crime reports suggest that property crime dropped in most of the six counties that are the subject of this study since 2010, while violent crime held steady or increased in most of the counties (“United States Federal Bureau of Investigation, 2022.”) Given that detainees charged with violent crimes tend to serve the longest lengths of stay, an increase in lengths of stay could be expected in 2020 if the proportion of detainees charged with violent offenses increased.

Unfortunately, data limitations do not allow us to do more than speculate on the causes of any change in length of stay observed in this study. However, it is important for readers to be familiar with these various possible influences on the time people spend in detention. Future research that addresses

questions of causation would be welcome.

## RESEARCH QUESTIONS

This study seeks to answer the following questions:

1. How long are detainees held in county custody?
2. How does length of stay vary by the booking category (reason for arrest), jurisdiction, and the level of seriousness of a person's charge?
3. How much of detainees' time is unsentenced and how much is sentenced?

The NMSC released two previous reports on the topic of length of stay (Guerin & Freeman, 2005; Freeman, 2012) utilizing information from the same six counties.<sup>2</sup> When available and appropriate, we compare results from the three points in time.

## RESEARCH DESIGN AND DETAINEE CHARACTERISTICS

This study includes information for 2,166 detainees from six counties: Bernalillo, Curry, Dona Ana, Eddy, San Juan, and San Miguel.<sup>3</sup> These counties as they are geographically dispersed, represent different judicial districts, and each have a population over 25,000. We drew information from all detainees incarcerated on June 30, 2020, making this a "point in time" study. We collected the booking date for each detainee, in the dataset going back as early as August 25, 2016, and their release date through May 18, 2022. For summary measures of length of stay, we report median (middle) values rather than mean (average) values, given the measure's skew as well as the influence of outliers on mean values. For additional details about methodology, please see Appendix A.

Point in time studies like this one provide an idea of "the typical day" in these counties' detention centers. They include a far greater percentage of detainees with long lengths of stay compared to that percentage for all detainees who pass through detention centers in, for example, one year's time. We can get a better idea of "the typical detainee" using this dataset by examining incoming detainees on the only day on which all incoming detainees are captured, June 30, 2020. Among the 49 detainees booked that day, 31% were released the same day; almost 70% were released within two weeks; and the median length of stay was a single day.<sup>4</sup> These measures are very different from those in the overall dataset. Just 3% of detainees in the overall dataset were released the same day; only 7% were released within two weeks; and the median length of stay was 191 days.

Among the 2,166 detainees in this study, 17% were younger than 25 years of age; 40% were between 25 and 34 years of age; 28% were between 35 and 44; and 15% were 45 years or older—overall, about the same as in the previous studies.<sup>5</sup> In terms of location, 60% were detained in Bernalillo County; 14% were in San Juan County; 10% were in Eddy County; 10% were in Dona Ana County; 4% were in Curry County; 2% were in San Miguel County.

## FINDINGS

Detainees charged with or serving time for serious offenses are likely to spend more time in jail compared to those charged

with less severe offenses. As a control for this important influence on length of stay, we analyze felonies and misdemeanors separately throughout this report.

The composition of detainees this year is different from the compositions of detainees in 2010 and 2003. First, there were fewer people held in custody overall. This year's study includes a total of 2,166 detainees, compared to 4,921 detainees from the same counties in 2010 and 2,536 detainees in 2003 (which was limited to those held on felony charges).<sup>6</sup> Second, 90% of the detainees in this dataset had been charged with at least one felony, compared to 66% in 2010 and approximately 69% in 2003.<sup>7</sup>

### 1. How long are detainees held in county custody?

Table 2 examines the lengths of stay for detainees charged with felonies (a new felony, felony warrant, probation violation, or parole violation) in each of the six counties and over time. Overall, length of stay has increased 23% from 176 days in 2003 to 216 days (7.2 months) in 2020. Most of the increase has occurred since 2010; increases occurred in every county. The difference in median lengths of stay vary by county from a median of 240 days (8.0 months) in Bernalillo County to 180 days (6.0 months) in San Miguel County. Figure 2 is a histogram or representation of the distribution of length of stay. The measure's long 'tail' to the right indicates a strong positive skew—that is, the bulk of cases occur in shorter lengths of stay but there are numerous cases with longer lengths of stay and some outliers with very long lengths of stay above 1,000 days.

|              | 2020            |              | 2010            |              | 2003            |              |
|--------------|-----------------|--------------|-----------------|--------------|-----------------|--------------|
|              | Median LOS days | <i>n</i>     | Median LOS days | <i>n</i>     | Median LOS days | <i>n</i>     |
| Bernalillo   | 240             | 1,157        | 206             | 2,131        | 183             | 1,446        |
| Curry        | 215             | 64           | 146             | 218          | 196             | 170          |
| Dona Ana     | 183             | 198          | 149             | 444          | 168             | 332          |
| Eddy         | 216             | 174          | 169             | 119          | 164             | 108          |
| San Juan     | 184             | 279          | 149             | 298          | 144             | 415          |
| San Miguel   | 180             | 45           | 109             | 78           | 147             | 52           |
| <b>Total</b> | <b>216</b>      | <b>1,917</b> | <b>181</b>      | <b>3,394</b> | <b>176</b>      | <b>2,523</b> |

Figure 2: Distribution of Length of Stay Days for Detainees with Felony Charges

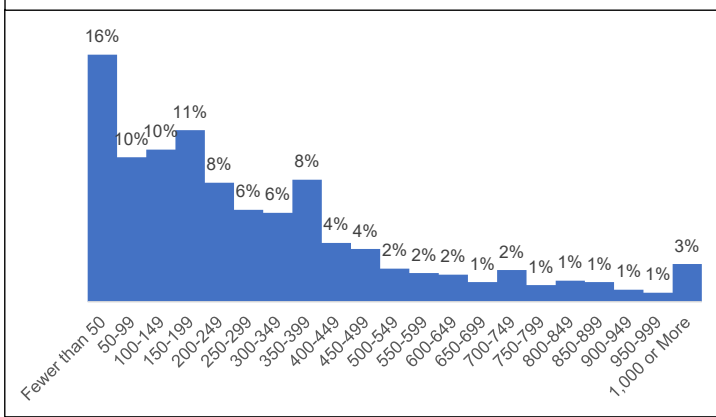
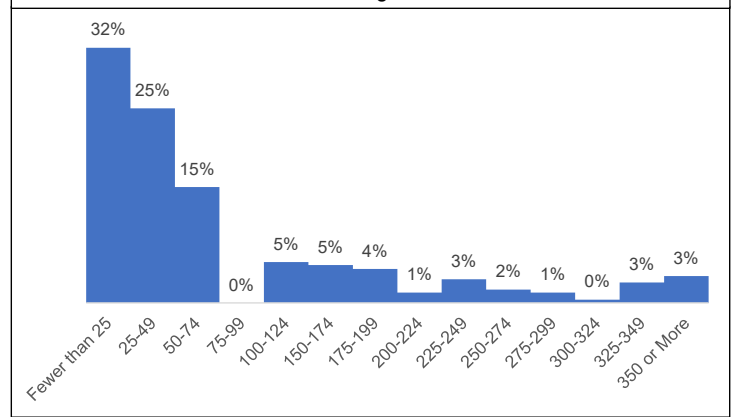


Figure 3: Distribution of Length of Stay for Detainees with Misdemeanor Charges



**2. How does length of stay vary by the booking category (reason for arrest), jurisdiction, and the level of seriousness of a person’s charge?**

**Booking Categories**

We categorize detainees’ bookings according to five causes for detention: a new charge, a probation violation, a warrant for arrest, a parole violation, or other causes. Table 4 lists booking categories for 2020 and 2010.<sup>9</sup> In 2020, about two in three detainees, 67%, were booked on a new charge. Probation violations were the second most common category at 21%, followed by warrants at 9% and parole violations at 2%. The distribution of booking categories in 2020 and 2010 is similar; in 2020 there was a somewhat higher percentage of new charges, and a somewhat lower percentage of warrants.

Table 3 indicates the total lengths of stay for detainees whose most serious charge was a misdemeanor (a new misdemeanor, misdemeanor warrant, or misdemeanor probation violation) in each of the six counties in 2020 and 2010.<sup>8</sup> As noted above, the percentage of detainees charged only with misdemeanors was lower in 2020 compared to past years; there were only 228 misdemeanor detainees in the six counties in 2020, compared to 1,655 in 2010. Their overall median length of stay is 56 days in 2020, compared to 80 days in 2010. Not every county experienced a drop; the median length of stay for misdemeanor cases decreased in four counties and increased in two. By county, lengths of stay vary widely from a median of 8 days in Dona Ana to 174 days (5.8 months) in Curry, but note the low number of cases in most counties. Figure 3 indicates that, as with felonies, the distribution of length of stay for misdemeanors exhibits a positive skew of the measure as well as the presence of outliers.

**Table 3: Median Length of Stay for Detainees with Misdemeanor Charge**

|              | 2020            |            | 2010            |              |
|--------------|-----------------|------------|-----------------|--------------|
|              | Median LOS days | n          | Median LOS days | n            |
| Bernalillo   | 35              | 126        | 84              | 1,076        |
| Curry        | 174             | 19         | 77              | 103          |
| Dona Ana     | 8               | 6          | 32              | 69           |
| Eddy         | 92              | 43         | 106             | 80           |
| San Juan     | 44              | 25         | 87              | 302          |
| San Miguel   | 67              | 9          | 41              | 25           |
| <b>Total</b> | <b>56</b>       | <b>228</b> | <b>80</b>       | <b>1,655</b> |

**Table 4: Booking Categories**

|                     | 2020         |     | 2010         |     |
|---------------------|--------------|-----|--------------|-----|
|                     | n            | %   | n            | %   |
| New Charge          | 1,450        | 67% | 3,164        | 62% |
| Probation Violation | 462          | 21% | 924          | 18% |
| Warrant             | 190          | 9%  | 875          | 17% |
| Parole Violation    | 43           | 2%  | 40           | 1%  |
| Other               | 21           | 1%  | 106          | 2%  |
| <b>Total</b>        | <b>2,166</b> |     | <b>5,109</b> |     |

We compare median lengths of stay in 2020 by booking category in Table 5 for felonies and misdemeanors.<sup>10</sup> Felonies comprise the majority of every booking category, especially new charges and probation violations. Detainees charged with felonies serve more time in jail than detainees charged with misdemeanors in every category. Felony detainees on a new charge have a median length of stay at 277 days (9.2 months), compared to 45 days for new charge misdemeanor detainees. Detainees charged with felony probation violations have a median length of stay of 144 days (4.8 months) compared to the median of 93 days for detainees charged with misdemeanor probation violations. Similarly, detainees with felony warrants have a median length of stay of 142 days (4.8 months) compared to 52 days for detainees with

misdemeanor warrants. Individuals charged with charged with parole violations serve a median of 39 days. Detainees there for another reason, almost always with a felony case, are held for a median of 273 days (9.1 months).

|                       | Felony     |              | Misdemeanor |            |
|-----------------------|------------|--------------|-------------|------------|
|                       | Median LOS | <i>n</i>     | Median LOS  | <i>n</i>   |
| New Charge            | 277        | 1,329        | 45          | 121        |
| Probation Violation   | 144        | 410          | 93          | 52         |
| Warrant               | 142        | 135          | 52          | 55         |
| Parole Violation      | 39         | 43           |             |            |
| Other Type of Booking | 273        | 18           |             |            |
| <b>Total</b>          |            | <b>1,935</b> |             | <b>231</b> |

In Table 6, this information for felonies is broken down by county (excluding those with an “other” booking category). The differences in lengths of stay for felonies between counties are at least moderate. Among new charges, the median length of stay of 322 days in Dona Ana is almost five months longer than the median length of stay in San Miguel, 180 days. Among probation violations, the highest median length of stay, 161 days in Bernalillo, is only 55 days longer than the shortest median length of stay, 106 days in San Miguel. For warrant arrests, Eddy has a median length of stay of 210 days, about 5.8 months longer than the median in Bernalillo, 37 days. Given the many influences on length of stay, it will take additional research to know whether these differences across counties are systematic to practices within counties or merely a function of case characteristics. However, there does not seem to be a consistent pattern of differences between counties across booking categories.

|              | New Charge |              | Probation Violation |            | Warrant    |            | Parole Violation |           |
|--------------|------------|--------------|---------------------|------------|------------|------------|------------------|-----------|
|              | Median     | <i>n</i>     | Median              | <i>n</i>   | Median     | <i>n</i>   | Median           | <i>n</i>  |
| Bernalillo   | 287        | 873          | 161                 | 231        | 37         | 31         | 32               | 22        |
| Curry        | 286        | 48           |                     |            | 132        | 9          |                  |           |
| Dona Ana     | 322        | 118          | 122                 | 43         | 90         | 24         | 34               | 13        |
| Eddy         | 310        | 93           | 118                 | 44         | 210        | 34         |                  |           |
| San Juan     | 255        | 162          | 127                 | 8          | 140        | 32         |                  |           |
| San Miguel   | 180        | 35           | 106                 | 5          | 183        | 5          |                  |           |
| <b>Total</b> | <b>277</b> | <b>1,329</b> | <b>144</b>          | <b>410</b> | <b>142</b> | <b>135</b> | <b>39</b>        | <b>43</b> |

Table 7 repeats this county-level analysis for misdemeanors. Lengths of stay for warrants have the most difference by county. The median in Curry, 208 days, is 6.4 months longer than the median in Bernalillo, 15 days. For new charges, the median length of stay in Curry, 119 days, is 3.2 months longer than the median length of stay in San Juan, 22 days. The low number of cases per county challenges one’s ability to draw

generalizations and determining the cause of these differences requires more research. However, across booking categories misdemeanor lengths of stay in Bernalillo are comparatively shorter, and those in Curry comparatively longer, than in most other counties.

|              | New Charge |            | Probation Violation |           | Warrant   |           |
|--------------|------------|------------|---------------------|-----------|-----------|-----------|
|              | Median     | <i>n</i>   | Median              | <i>n</i>  | Median    | <i>n</i>  |
| Bernalillo   | 25         | 71         | 62                  | 26        | 15        | 29        |
| Curry        | 119        | 9          |                     |           | 208       | 7         |
| Dona Ana     |            |            |                     |           |           |           |
| Eddy         | 100        | 18         | 97                  | 16        | 70        | 9         |
| San Juan     | 22         | 14         | 93                  | 5         | 71        | 6         |
| San Miguel   | 67         | 7          |                     |           |           |           |
| <b>Total</b> | <b>45</b>  | <b>121</b> | <b>93</b>           | <b>52</b> | <b>52</b> | <b>55</b> |

### Jurisdiction

Figure 4 shows the jurisdiction of cases for detainees charged with felonies by booking type. Jurisdiction correlates strongly with the level of the criminal charge. As a matter of course, felony detainees’ cases are bound over to District Court if they originate in a lower court unless the felony charges are dismissed before disposition. Here, the felony charges for any case remaining in Metropolitan or Magistrate Court had been dropped. Nearly all, 99%, of probation violations, 94% of warrants, and 92% of new charges were in District Court jurisdiction.<sup>11</sup>

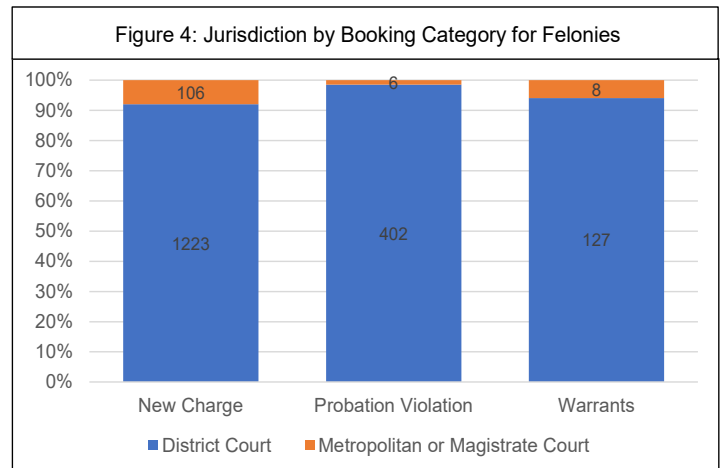
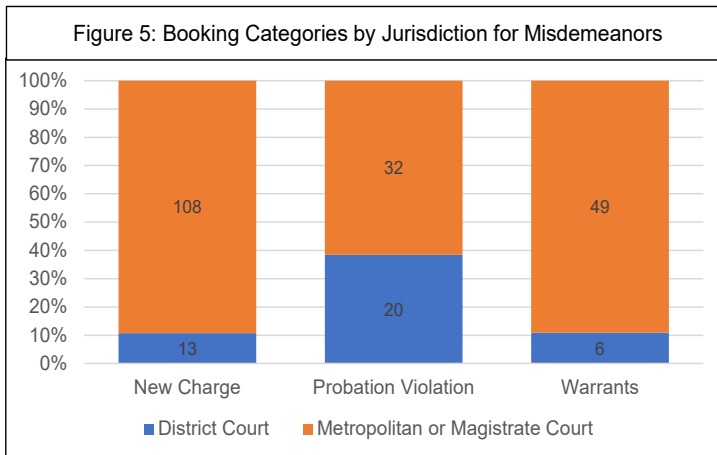


Figure 5 indicates jurisdiction by booking type for detainees charged with misdemeanors. Misdemeanor cases are more likely to remain in Metropolitan or Magistrate Court, but there is more variation than with felonies; 11% of both new charges and warrants and 38% of probation violations are heard in District Court.<sup>12</sup>



Jurisdiction holds particular importance for probation violations, as probation is supervised by different agencies. The New Mexico Corrections Department (NMCD) supervises offenders who are sentenced by a District Court. Typically, these detainees are charged with felonies rather than misdemeanors (89% in this dataset). Nearly all detainees booked on probation violations in this study are supervised by NMCD (92%). Bernalillo County Metropolitan Court and some Magistrate Courts also supervise probationers. In the Metropolitan Court, court-employed probation officers supervise people sentenced to probation. In the Magistrate Courts, county-employed compliance officers supervise people on probation.<sup>13</sup>

### Most Serious Charges

We categorize the most serious charges for the 1,450 individuals arrested on a new charge in Table 8.<sup>14</sup> Violent crime comprises over half of most serious charges in 2020, 52%, compared to about one third in 2010.<sup>15</sup> Property crime represents 23% of most serious offenses in 2020, up five percentage points from 2010. On the other hand, violations of public order represent a lower percentage in 2020, 12%, compared to 36% in 2010. The difference is driven mostly by fewer Driving While Intoxicated (DWI) cases, 4% of cases in 2020 compared to 20% in 2010. The percentage of cases that are drug-related in 2020, 12%, represents no change since 2010.

| Table 8: Most Serious Charge for Detainees Booked on a New Charge |              |               |                    |               |
|---|--------------|---------------|--------------------|---------------|
| Most Serious Offense  | 2020         |               | 2010 <sup>16</sup> |               |
|   | <i>n</i>     | % Total Cases | <i>n</i>           | % Total Cases |
| <b>Violent</b>  | <b>754</b>   | <b>52%</b>    | <b>1,024</b>       | <b>32%</b>    |
| Assault/Battery   | 325          | 22%           | 310                | 10%           |
| Domestic Violence & Child Abuse                                   | 159          | 11%           | 231                | 7%            |
| Murder and Homicide   | 110          | 8%            | 71                 | 2%            |
| Sexual Offenses   | 77           | 5%            | 137                | 4%            |
| Other Violent   | 83           | 6%            | 275                | 9%            |
| <b>Property</b>   | <b>329</b>   | <b>23%</b>    | <b>564</b>         | <b>18%</b>    |
| Robbery   | 67           | 5%            | 51                 | 2%            |
| Other Property  | 262          | 18%           | 513                | 16%           |
| <b>Drug Related</b>   | <b>176</b>   | <b>12%</b>    | <b>389</b>         | <b>12%</b>    |
| Drug Possession   | 136          | 9%            | 214                | 7%            |
| Drug Trafficking  | 40           | 3%            | 175                | 5%            |
| <b>Public Order</b>   | <b>168</b>   | <b>12%</b>    | <b>1,106</b>       | <b>36%</b>    |
| Criminal Justice Interference                                     | 94           | 6%            | 179                | 6%            |
| DWI   | 61           | 4%            | 635                | 20%           |
| Other Public Order  | 8            | 1%            | 209                | 7%            |
| Traffic Violations  | 5            | <1%           | 83                 | 3%            |
| <b>Other New Charges</b>  | <b>23</b>    | <b>2%</b>     | <b>81</b>          | <b>3%</b>     |
| <b>Total</b>  | <b>1,450</b> |               | <b>3,164</b>       |               |

Table 9 shows median lengths of stay by most serious charge for felonies and misdemeanors. Looking first at felonies, the violent crime category has the longest length of stay, with a median of close to one year (361 days). Within the violent crime category, murder/homicide has the longest median length of stay at 803 days (26.8 months), followed by sexual offenses with a median length of stay of 434 days (14.5 months). Assault and battery, the most common violent crime, has a median length of stay of 294 days (9.8 months), and domestic violence and child abuse cases have a median length of stay of 267 days (8.9 months).

The next longest length of stay among felonies is for public order violations, with an overall median length of stay of 254 days (8.5 months), including a median of 300 days for criminal justice interference (usually resisting arrest, fleeing from an officer, or tampering with evidence) and 188 days for DWI. The felony property offense category yields similar lengths of stay, with an overall median length of stay of 221 days (7.4 months), 351 days for robbery and 188 days for other property crimes. The median total length of stay for felony drug offenses overall is 172 days (5.7 months), 148 days for felony drug possession and 259 days for drug trafficking. Finally, the median length of stay for all other felonies is 118 days (3.9 months).

| <b>Table 9: Most Serious Charge for Detainees Booked on a New Charge</b> |                   |              |                    |            |
|--|-------------------|--------------|--------------------|------------|
| <b>Most Serious Offense</b>  | <b>Felony</b>     |              | <b>Misdemeanor</b> |            |
|  | <b>Median LOS</b> | <b>n</b>     | <b>Median LOS</b>  | <b>n</b>   |
| <b>Violent</b>   | <b>361</b>        | <b>710</b>   | <b>50</b>          | <b>44</b>  |
| Assault/Battery  | 294               | 314          | 67                 | 11         |
| Domestic Violence & Child Abuse  | 267               | 129          | 44                 | 30         |
| Murder and Homicide  | 803               | 110          | n/a                | 0          |
| Sexual Offenses  | 434               | 77           | n/a                | 0          |
| Other Violent  | 311               | 80           | n<5                | 3          |
| <b>Property</b>  | <b>221</b>        | <b>311</b>   | <b>56</b>          | <b>18</b>  |
| Robbery  | 351               | 67           | n/a                | 0          |
| Other Property   | 188               | 244          | 56                 | 18         |
| <b>Drug Related</b>  | <b>172</b>        | <b>171</b>   | <b>21</b>          | <b>5</b>   |
| Drug Possession  | 148               | 131          | 21                 | 5          |
| Drug Trafficking   | 259               | 40           | n/a                | 0          |
| <b>Public Order</b>  | <b>254</b>        | <b>114</b>   | <b>34</b>          | <b>54</b>  |
| Criminal Justice Interference  | 300               | 74           | 62                 | 20         |
| DWI  | 188               | 40           | 25                 | 21         |
| Other Public Order   | n/a               | 0            | 51                 | 8          |
| Traffic Violations   | n/a               | 0            | 6                  | 5          |
| <b>Other New Charges</b>   | <b>118</b>        | <b>23</b>    | <b>n/a</b>         | <b>0</b>   |
| <b>Total</b>   |                   | <b>1,329</b> |                    | <b>121</b> |

Median lengths of stay for most misdemeanors vary from one to two months. In descending order, median lengths of stay are 67 days for assault and battery, 62 days for criminal justice interference, 56 days for non-robbery property crime, 51 days for other public order violations, 44 days for domestic violence<sup>17</sup>, 25 days for DWI, and 21 days for drug possession. The shortest median length of stay is for traffic violations (six days). Note, however, that the number of cases in each category of misdemeanors is generally quite small.

### 3. How much of detainees' time is unsentenced and how much is sentenced?

Table 10 focuses on detainees charged with felonies (a new felony, felony warrant, felony probation violation, or felony parole violation) and compares them by sentence status or the type of time they served: unsentenced (before sentencing)<sup>18</sup>, sentenced (after adjudication and sentencing), or a combination of both. Over half of felony detainees, 58%, spent the entire duration of their time in jail unsentenced, compared to 50% in 2010 and 46% in 2003. The largest increase in median length of stay is for this status, from 112 days in 2003 to 194 days (6.5 months) in 2020. This increase of 73% is higher than the increase for the other two statuses. Because of these two facts—growth in the proportion of felony detainees

serving only unsentenced time and its rise in length of stay—detainees serving unsentenced time only has driven most of the increase in length of stay among felony detainees.<sup>19</sup>

| <b>Table 10: Total Length of Stay by Sentence Status for Detainees with Felony Charges</b> |                        |              |                        |              |                        |              |
|--|------------------------|--------------|------------------------|--------------|------------------------|--------------|
|  | <b>2020</b>            |              | <b>2010</b>            |              | <b>2003</b>            |              |
|  | <b>Median LOS days</b> | <b>n (%)</b> | <b>Median LOS days</b> | <b>n (%)</b> | <b>Median LOS days</b> | <b>n (%)</b> |
| Detainees who spent time both Unsentenced and Sentenced                                    | 237                    | 773 (40%)    | 228                    | 1,495 (44%)  | 224                    | 1,256 (50%)  |
| Detainees who only spent time Unsentenced  | 194                    | 1,110 (58%)  | 147                    | 1,686 (50%)  | 112                    | 1,152 (46%)  |
| Detainees who only spent time Sentenced  | 184                    | 34 (2%)      | 163                    | 213 (6%)     | 151                    | 96 (4%)      |
| <b>Total</b>   |                        | <b>1,917</b> |                        | <b>3,394</b> |                        | <b>2,504</b> |

Detainees spending both unsentenced and sentenced time in a detention center, about 40% of felony detainees, have the longest median length of stay at 237 days (7.9 months). This length of stay has increased 6% since 2003. Only a small portion of detainees charged with a felony, 2%, spent the duration of their time in the detention center completing a court-ordered sentence. For this group, the median length of stay was 184 days (6.1 months), up 22% from 151 days in 2003.

We see a similar distribution among detainees charged with misdemeanors in Table 11, and a similar change over time. That is, the percentage of misdemeanor detainees who spent the entire duration of their time in jail unsentenced or pretrial is higher in 2020, 64%, than in 2010, 43%, this detainee status is the largest of the three. However, unlike felony detainees, the median lengths of stay for misdemeanor detainees fell overall, but changes over time differ by sentence status. Among those who spent the entirety of their detention unsentenced, the median length of stay dropped by 32% from 55 days in 2010 to 37 days in 2020. About 27% of misdemeanor detainees spent some portion of their stay unsentenced and some portion sentenced in 2020, compared to 44% in 2010. Their length of stay increased by 53% since 2010 from 97 days to 149 days (5.0 months) in 2020. Only 9% of detainees served the entirety of their time post-sentence; their median length of stay dropped to 40 days in 2020 from 88 in 2010.

**Table 11: Total Length of Stay by Sentence Status for Detainees with Misdemeanor Charges**

|  | 2020            |            | 2010            |              |
|--|-----------------|------------|-----------------|--------------|
|  | Median LOS days | n (%)      | Median LOS days | n (%)        |
| Detainees who spent time both Unsented and Sentenced | 149             | 62 (27%)   | 97              | 730 (44%)    |
| Detainees who only spent time Unsented               | 37              | 145 (64%)  | 55              | 718 (43%)    |
| Detainees who only spent time Sentenced              | 40              | 21 (9%)    | 88              | 222 (13%)    |
| <b>Total</b>   |                 | <b>228</b> |                 | <b>1,670</b> |

**Unsented Length of Stay**

We turn our attention to unsented time. Table 12 examines unsented length of stay booking category (except “other” booking category) for felony detainees. As seen above, nearly all felony detainees in the study, 98%, served all or a portion of their time unsented. The longest unsented lengths of stay are for cases with new charges, with a median of 246 days (8.2 months). Probation violation and parole violation cases had similar unsented lengths of stay of 44 and 34 days, respectively. The median unsented length of stay for warrant cases is 117 days (3.9 months).

**Table 12: Unsented Length of Stay by Booking Category for Felonies**

|                     | Unsented Length of Stay |              |
|---------------------|-------------------------|--------------|
|                     | Median                  | n            |
| New Charge          | 246                     | 1,301        |
| Probation Violation | 44                      | 402          |
| Warrant             | 117                     | 131          |
| Parole Violation    | 34                      | 43           |
| <b>Total</b>        |                         | <b>1,877</b> |

Table 10, above, shows that there has been a 73% increase in the median total length of stay for people charged with felonies and serving unsented time only since 2003. Combining information in Table 12 with unsented length of stay by booking category published in prior reports, it appears that the increase applies mostly to people with new felony charges. The median unsented length of stay for people with new felony charges increased to 246 days in 2020 from 193 days in 2010 and 167 days in 2003, an increase of 47%. This trend is not apparent for the unsented time served by people with either felony warrants or people charged with felony probation violations.<sup>20</sup>

Table 13 examines unsented length of stay by booking category for detainees charged with misdemeanors. The

median unsented length of stay for new misdemeanor charges is 42 days, similar to the median 37 days for probation violations and 25 days for warrants.

**Table 13: Unsented Length of Stay by Booking Category for Misdemeanors**

|                     | Unsented Length of Stay |            |
|---------------------|-------------------------|------------|
|                     | Median                  | n          |
| New Charge          | 42                      | 105        |
| Probation Violation | 37                      | 43         |
| Warrant             | 25                      | 50         |
| <b>Total</b>        |                         | <b>198</b> |

**Sented Length of Stay**

Table 14 examines sented length of stay by booking type for detainees with felony charges. About 42% of felony detainees in this study served sented time in whole or part. The longest median sented length of stay, 110 days (3.7 months), applies to people found guilty of a probation violation. Median sented time for people found guilty of a new charge is 29 days, similar to people brought to jail on a warrant with a median of 33 days.

**Table 14: Sented Length of Stay by Court Jurisdiction and Booking Category for Felonies**

|                     | Unsented Length of Stay |            |
|---------------------|-------------------------|------------|
|                     | Median                  | n          |
| New Charge          | 29                      | 463        |
| Probation Violation | 110                     | 281        |
| Warrant             | 33                      | 57         |
| <b>Total</b>        |                         | <b>808</b> |

These data suggest little change in how much sented time people charged with felonies are spending in detention after sentencing for new charges and warrants, at least since 2010.<sup>21</sup> On the other hand, there does seem to be an increase in median sented length of stay for probation violations. The median sented length of stay for probation violations assigned to District Court in 2010, assumed to be mostly felonies, was 77 days. In 2020, the median sented length of stay for felony probation violations is 110 days, an increase of 43%.

The median sented lengths of stay for misdemeanor cases is shown in Table 15. Overall, about 36% of misdemeanor cases in the dataset include sented time in a detention center. The median length of time served post-sentence for new misdemeanor charges is 37 days, compared to the median of 92 days of sented time served by people with a misdemeanor probation violation and 83 days of sented time served by people arrested on a misdemeanor warrant.



| Table 15: Sentenced Length of Stay by Booking Category for Misdemeanors |                            |           |
|---|----------------------------|-----------|
|   | Unsentenced Length of Stay |           |
|   | Median                     | <i>n</i>  |
| New Charge  | 37                         | 28        |
| Probation Violation   | 92                         | 38        |
| Warrant   | 83                         | 17        |
| <b>Total</b>  |                            | <b>83</b> |

## CONCLUSION

This study presents a picture of what New Mexico detention center staff and inmates experience daily. With the “point in time” methodology employed here, we have been able to answer questions regarding how long detainees remain in detention, what factors influence their length of stay, and how much of defendants’ time is spent unsentenced and how much sentenced. We have analyzed felonies and misdemeanors separately and noted differences across time and county. This methodology is particularly helpful when considering programming and appropriate protocols inside jails, such as those around safety and treatment.

Although it is not possible in this research to trace the causes for changes in lengths of stay, it is evident that there have been some changes since the 2012 report. Three key findings are: (1) the overall jail population decreased in the past decades, a decline that began before the COVID pandemic; (2) detention centers are now housing a greater percentage of people charged with felonies; and (3) the length of stay for people charged with felonies has increased which seems to be due mostly to the unsentenced detention of people arrested on new charges. These changes may imply new challenges, or opportunities, for New Mexico counties’ administration of detention facilities.

The length of time people spend in detention, sentenced and unsentenced, has important consequences to their safety and public safety, the severity of collateral consequences, and the cost of incarceration to taxpayers. In the Background section of this report, we described several changes in policy and practice since the last length of stay study. It will be fruitful in future studies to examine whether those and future changes in policy and practice result in the improvements that are intended. To do so, it will be helpful for researchers to perform length of stay studies more frequently, to research cross-sectional samples of all detainees in addition to “point-in-time” studies, and to control for case-specific factors that likely influence length of stay, such as criminal history and case complexity. In addition, studies of how programming within jails affects outcomes such as recidivism would contribute greatly to the development of best practices within detention centers.

## APPENDIX A: Detailed Methodology and Terms

NMSC staff collected data from six detention centers in New Mexico using a cross-sectional approach similar to a census. The six detention centers provided their list of detainees in custody on June 30, 2020. NMSC staff determined the most serious charge for each arrest that was due to new charges based on the assumption that the most serious charge held them in the facility.

Detainees often have concurrent cases and arrests which can complicate data collection and analysis because the length of stay may be related to more than one case. We attempted to base booking category on the case that kept the detainee in the detention center, even if another, less major event precipitated the arrest.

We excluded escapees, detainees who died while in custody and detainees in community custody (living in the community with electronic monitoring). Of the 2,166 detainees in the final dataset, 79 were still in custody on May 18, 2022. For them, we assumed this date as their release date to calculate length of stay, thereby truncating the measure by an unknown amount.

We report the median length of stay of detainees as a better measure of the “typical” length of stay, given the skew in the measure and the influence of outliers on means.

We used the following length of stay (LOS) calculations. Note that detainees may lack either unsentenced LOS or sentenced LOS.

|                  |  |
|------------------|--|
| Total LOS:       | # days between a detainee’s booking date and transfer out of or release from the detention facility.   |
| Unsentenced LOS: | # days between a detainee’s booking date and sentencing date or, if there is no sentencing date, transfer out of or release from the detention facility. |
| Sentenced LOS:   | # days between a detainee’s sentencing hearing and transfer or release from the detention facility.  |

## Endnotes

1. Between March and May of 2020, the detention center population declined from 6,042 to its low point of 3,853, a 36% drop in less than two months’ time. Note these values include federal detainees held in New Mexico’s jails as well as detainees under state jurisdiction (New Mexico Counties, 2020).
2. The 2005 report is based on people who were in custody on June 30th, 2003. The 2012 report is based on people who were in custody on June 30th, 2010. The 2012 study included information for detainees detained in Cibola County as well.
3. The dataset includes approximately 52% of the state’s detention population of 4,155 on June 30, 2020.
4. By way of comparison, in the 2012 study, the median length of stay for detainees booked on June 30, 2010 was

- eight days (Freeman, 2012).
5. In 2010, 24% of detainees were younger than 25 years of age, 34% were between 25 and 34 years of age; and 41% were 35 years of age or older. In 2003, 26% of detainees were younger than 25 years of age, 32% were between 25 and 34 years of age, and 43% were 35 years or older.
  6. The dataset includes 52% of the state's detention population of 4,155 on June 30, 2020.
  7. The 2003 study mentioned the percentage (69%) of detainees charged with felonies in all New Mexico jails; the study only included those charged with felonies in the six counties in its analysis.
  8. The 2003 study did not include detainees whose most serious offense was a misdemeanor.
  9. This table was not published in 2003.
  10. We have omitted length of stay information in Tables 5, 6, and 7 when  $n < 5$ .
  11. We do not include parole violations since they are not heard in court. All cases with an "other" type of booking were heard in District Court.
  12. We found no difference in court by type of crime for new charges. For felonies, no matter the category of crime—violent, property, drug-related, criminal justice interference, or DWI—90% or more were held in District Court. Similarly, at least 67% of cases within each new misdemeanor charge category were held in Metropolitan or Magistrate Court.
  13. The 2010 study also examined cases by court jurisdiction, but we do make a comparison due to a change in methodology. In this study, we assigned cases to District Court when they had been bound over from Metropolitan or Magistrate Court. Such re-assignments were made less consistently in 2010.
  14. Most cases include multiple charges. The most serious charge is selected first according to its level (felony vs. misdemeanor), then by degree (1st, 2nd, 3rd, or 4th felony or high vs. petty misdemeanor), then by offense type (violent, property, drug-related, public order, or other).
  15. This table was not published in 2003.
  16. The number of cases between 2010 and 2020 should be interpreted with caution. The 2010 analysis included an additional county, Cibola, although the county contributed only 2% of the cases with new charges.
  17. There are no misdemeanor cases of child abuse in the dataset.
  18. Unsentenced time is similar but not equivalent to pretrial time (or pretrial detention), a concept that may be more familiar. Some recent changes in law and practice specifically target pretrial detention. Unsentenced detention captures all pretrial detention and adds a comparatively short amount of time from the start of the trial, if there is one, to sentencing.
  19. Overall, an increase of 23%.
  20. This finding is important but qualified because the 2010 study combined misdemeanors and felonies. Here we report the 2010 unsentenced length of stay for new charges assigned to District Court and assume most cases were felonies. The median unsentenced length of stay for felony warrants was 117 days in 2020, 114 days in 2010, and 123 days in 2003. The median unsentenced length of stay for probation violations was 44 days in 2020, 70 days in 2010, and 66 days in 2003. We are unable to construct a similar analysis of unsentenced length of stay across time for misdemeanors.
  21. In 2010, the median sentenced length of stay for cases with new charges assigned to District Court was 36 days; we assume most of these cases were felonies. The median sentenced length of stay for warrants assigned to District Court was 32 days in 2010. The 2003 study does not analyze sentenced length of stay in a comparable way.

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