



## State of New Mexico Office of the State Auditor

CONSTITUENT SERVICES  
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*Via E-mail (raul.torrez@da2nd.state.nm.us)*

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***Re: Special Audit of the Bernalillo County Criminal Justice System***

On May 23, 2018, then State Auditor Wayne Johnson designated a special audit of seven (7) different entities within the Second Judicial District. Former State Auditor Johnson indicated the objective of the designation was to identify weaknesses in the processes from arrest to confinement, which potentially reduce the overall effectiveness of the criminal justice system in Bernalillo County. The original concept for the designations was to have each of the seven (7) entities reviewed independently and, upon completion, the Office of the State Auditor (OSA) was to consolidate the findings into one (1) comprehensive report. This original concept has been re-evaluated and based on the circumstances, the OSA has determined consolidating the results will not provide readers with the comprehensive understanding initially contemplated.

In response to the designation, on June 26, 2018, the Second Judicial District Court requested an opinion from the New Mexico Office of the Attorney General (NMAG) regarding whether the OSA's designation for this purpose exceeded the OSA's constitutional authority. Despite that request, five (5) of the engagements were completed and the reports are available on the OSA's website. The Bernalillo County Sheriff's Office and the Metropolitan Detention Center reports were combined and OSA has released four (4) separate reports. The two (2) remaining entities designated for the special audit, the Law Office of the Public Defender and the Albuquerque Police Department have not complied with the special audit designation pending receipt of an opinion from the NMAG. As of this date no opinion has been issued.

In this instance the special audit of the criminal justice system in Bernalillo County did not have a sufficiently defined scope to properly analyze the system in its entirety. Instead the scope emphasized process and did not sufficiently consider the complexity of the criminal justice system as a whole and the many nuances relating to the protection of defendants' constitutional rights, victims' rights, and adherence to statutes and rules of criminal procedure. Despite these issues, recommended actions presented in each of the reports and observations from other evaluations are intended to improve the best practices of each of the agencies involved.

At the time of the designation of this special audit by former State Auditor Johnson, the Legislative Finance Committee (LFC) was in the final stages of completing its own evaluation of the Bernalillo County criminal justice system. Initiated in late 2017, the LFC sought to assess trends and the current situation of crime and the justice system as a whole. That report, #18-05, was published on July 19, 2018 and is a comprehensive 123 page evaluation with recommendations and responses.

After thorough review and in light of the contemporaneous evaluation of the Bernalillo County Criminal Justice System made by the LFC it was found that the special audit initiated by former Auditor Johnson was superfluous. Moreover, taken together the completed reports from the special audit and the LFC amount to a comprehensive review of the Criminal Justice System in Bernalillo County.

Therefore, it has been determined that the OSA will not enforce the designation of the final two (2) engagements as the information and data presented in the LFC report in conjunction with those contained in the completed special audit reports together provide a sufficient basis to evaluate the system. At this time the OSA is concluding the Criminal Justice Special Audit and encourages all entities to consider the recommendations to improve the Bernalillo County Criminal Justice System.

Respectfully,



Brian S. Colón, Esq.  
New Mexico State Auditor



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**OFFICE OF THE SECOND JUDICIAL  
DISTRICT ATTORNEY, NEW MEXICO**

**CRIMINAL JUSTICE SYSTEM REVIEW**



# OFFICE OF THE SECOND JUDICIAL DISTRICT ATTORNEY, NEW MEXICO

## CRIMINAL JUSTICE SYSTEM REVIEW

Mr. Raúl Torrez, Second Judicial District Attorney  
 Office of the Second Judicial District Attorney  
 and Mr. Brian Colón, State Auditor  
 Office of the State Auditor

The information and findings contained within this report are presented in pursuance of the terms of the consulting agreement executed on March 17, 2019 by and between the Office of the Second Judicial District Attorney, New Mexico (referred to herein as “The Office” or the “DA’s Office”), and Hinkle + Landers, PC.

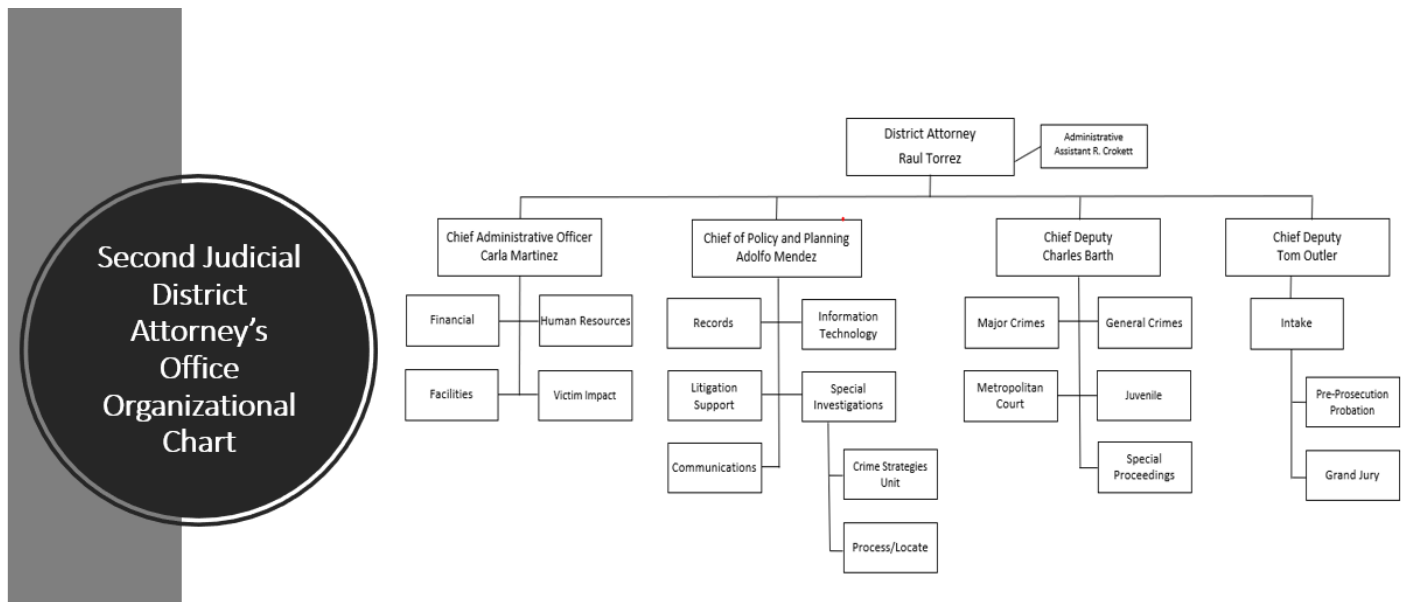
The overall objective of the work performed was to identify weaknesses in the system used by The Office which detrimentally impact effectiveness in the handling of criminal cases from arrest to confinement.<sup>1</sup> This will include identification of opportunities for improvement to increase the overall efficiency of criminal justice activities.

The DA’s Office receives approximately 25,000 referrals each year for misdemeanor, felony, juvenile, and probation violations from partners in the Albuquerque Police Department, Bernalillo County Sheriff’s Office, New Mexico State Police and other law enforcement agencies. The Office proceeds on approximately 18,000 (75%) of these referrals.

The Office has primary jurisdiction over the prosecution of cases occurring within Bernalillo County. However, if there are factors present which preclude The Office’s involvement in a case, such as conflict of interest, the case is not handled by The Office but is referred to another District Attorney’s office, a special prosecutor or the Attorney General’s Office (AGO).

An organizational chart of The Office is included below for reference.

**Chart 1: The District Attorney’s Office Organizational Chart**



<sup>1</sup> Except where otherwise noted, this report contemplates adult felony arrest cases only. It does not include misdemeanors, juvenile cases, or non-arrest case referrals. Additionally, although structures, processes and procedures are changing, this report reflects the operating procedures at the Office during the time of the audit.

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During the course of our review, the following staff members were interviewed:

**Table 1: Staff Members Interviewed**



Staff	Title
1- Raul Torrez	2nd District Attorney
2 -Carla Martinez	Chief Administrative Officer
3-Melissa Spangler	Chief Financial Officer
4-Glenn T. Hasler	Assistant District Attorney
5-Tom Outler	Chief Deputy District Attorney
5-Adolfo Mendez	Chief of Policy and Planning
6-Bianca Hernandez	Administrative Support (Assistant District Attorney)
7-John Lichford	Crimes Against Children
8-Joseph Montano	Special Proceedings
9-Rachel Eagle	Community Crimes
10-Gloria Reynolds	Legal Secretary

Interviews conducted October through December 2018 at the DA's Office

This report is organized according to the steps and elements contained within the contract under which this work was performed.

**STEP 1: DOCUMENT THE PROCESS FOR INITIATING CRIMINAL CASES**

**1. Determine the process for assignment of case numbers.**

Each agency assigns a case number when a new case is opened. A uniform numbering system for criminal justice agencies in the State of New Mexico has not yet been established; thus, it is possible for one case to have several associated case numbers because it is handled by several different agencies. For example, in Bernalillo County, each of the following agencies assigns unique case numbers for the same cases:

Law enforcement (Computer Aided Dispatch (CAD) number, Case number)

The Metropolitan Court (Case number)

The 2<sup>nd</sup> Judicial District Attorney (Case number, Probation Violation number)

District Court (Felony case number, Unique case number for cases in which detention has been sought, and other miscellaneous identification numbers)

Each of these numbering systems is unique and there is not currently a process in place through which all numbers assigned to a specific case by various agencies can be routinely linked. The lack of uniformity of case number assignment within the criminal justice system results in the following areas of inefficiency when sharing case information between involved agencies:

- a) Tracking of multiple case numbers is complicated and administratively burdensome.

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- b) The time spent tracking case numbers negatively impacts the productivity of the Criminal Justice System as a whole.
- c) There is an increased risk of mistakes, cases being thrown out, or cases having to be re-filed due to technical issues and errors.
- d) The complexity increases the need for more personnel and is taxing on human resources.

**STEP 2: DOCUMENT THE PROCESS FOR FOLLOWING CASE FROM REFERRAL TO INDICTMENT**

Background

In February 2015, the New Mexico Supreme Court issued a new case management order (CMO) for the purpose of reducing undue delays and backlogs in Bernalillo County's court system. These delays were linked to overcrowding at the Metropolitan Detention Center (MDC) and unresolved court cases. This new order significantly changed the rules for case initiation and processing of cases. The CMO significantly compressed the time to process a case, and imposed mandatory sanctions including the dismissal of a case.

**2. Determine how referrals are made and determine weaknesses in the process.**

The referral process can start several ways:

- a) when law enforcement makes an arrest and files this as a case with the Metropolitan Court;
- b) when law enforcement files an arrest warrant with Metropolitan Court;
- c) when law enforcement files a summons with Metropolitan Court; or
- d) when law enforcement submits a case to the Second Judicial District Attorney's Office without an arrest (nonarrest case).

This Criminal Justice Review focuses only on adult felony cases referred for prosecution through law enforcement making an arrest of a defendant and filing the arrest as a case with the Metropolitan Court. The report does not address the other three ways an adult felony case may be initiated. It also does not address misdemeanor cases, juvenile cases or probation violations.

When a defendant is arrested for a felony, the defendant may face pre-trial incarceration in the MDC and receive conditions for release at his or her Felony First Appearance (FFA). The Office will then seek formal charges either through a preliminary examination hearing or from a grand jury.

For felony arrests, The Office uses a risk assessment policy to prioritize defendants by assigning the case to one of three tiers. The defendants and the related crime are prioritized into these tiers based on:

- The seriousness and recency of the crime charged;
- The frequency of the defendant's criminal activity; and/or
- The criminal history of the defendant.

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The intake and processing of referrals are handled by different departments in a simultaneous manner as follows:

**Intake**

On a daily basis, the Metropolitan Court sends an FFA list containing cases filed by law enforcement to The Office. This list is sent via email, and contains the prior day (and weekend, when applicable) arrests by law enforcement. Each of these cases is then assigned a case number.

The review of the FFA list begins at 6:00 a.m. each morning in preparation for FFA to occur at 1:30 p.m. This review guides the decision on whether a preventative detention motion will be filed for each case. To facilitate the screening of cases for FFA, the cases are entered into a database, so defendants can be evaluated in regard to preventative detention in an efficient and consistent fashion. The database includes crucial information such as:

- Personal identifiers;
- Charges associated with the case;
- Date of the arrest; and
- Case numbers.

To facilitate the daily intake of cases, key staff in The Office meet to review the FFA list. Staff members from the pre-prosecution program, prosecuting attorneys, senior management and support staff come together to discuss the new cases on the list.

Once the cases are entered into the database, an intake attorney orally reviews the cases with other staff. Probable cause, sufficiency of evidence, pretrial detention and dangerousness of the defendant are discussed.

Meanwhile, the Director of the Priors Unit and her staff receive the same FFA list from Metropolitan Court and conduct a criminal background check on the defendants listed. A RAP sheet (Record of Arrests and Prosecutions) for each defendant is obtained from the National Crime Information Center (NCIC) and used to create or update the defendant's criminal history. The update of criminal history needs to be completed daily prior to 10:30 a.m. in order to facilitate the defendant's risk-assessment.

As this review process occurs and level of risk is determined, the Legal Secretary completes the database based on these determinations.

The Office staff completes a final review of cases that will be filed that day with the Metropolitan Court. A Chief Deputy District Attorney also reviews cases to determine whether preventative detention will be requested. If a decision is made to file a preventative detention motion, the motions are prepared and ready by 1:00 p.m. to be filed by the attorneys who will be appearing in Metropolitan Court for FFAs.



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#### Assignment of Cases

The DA's Office is organized into the following divisions which are involved in the initiation and prosecution of cases:

- General Crimes — Responsible for felony cases that are typically less violent and/or have a lower risk of defendants posing a danger
- Major Crimes (including the Special Victims Unit )— Responsible for the most serious crimes, such as homicide, and the most dangerous defendants, such as those who utilize firearms. These are the cases which require more prosecuting resources
- Metro Division — Responsible for all record misdemeanors<sup>2</sup>, which represent a high volume of cases such as DWIs and domestic violence
- Juvenile Division (located at the Juvenile Justice Center) — Responsible for defendants under the age of 18, unless they qualify to be prosecuted as an adult
- Special Proceedings — Responsible for probation violations, extraditions, and other special proceedings
- Intake — Responsible for opening cases, collecting initial discovery, and initiating felony cases

By its organization into these divisions, The Office is able to add specialization and efficiency to its units, which can provide the following:

- Direct cases to the proper staff with aptitude for prosecution of a certain type of crime;
- Allow education, training and other resources specific to a class of crime or defendant to be focused on a smaller group of staff for more immediate results and improved outcomes;
- Promote attitudinal changes based on shared information, which will in turn contribute to the education and training of others in the general system;
- Improve consistency and efficiency in the interpretation and application of laws as a result of shared understanding and awareness among a smaller number of key decision makers;
- Promote best practices that can be mainstreamed to drive change in the system; and
- Allow for earlier and more effective legal intervention resulting in less legal work and fewer demands for social services.

In general, cases are assigned to prosecutors based on an assignment matrix. If a defendant has multiple cases pending at the same time, then the Office tries to assign all cases to one lawyer, rather than having multiple lawyers handle the different cases, which would be less effective and efficient.

The periods for filing felony charges in District Court are as follows:

- Defendants in custody: 10-day filing window<sup>3</sup>

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<sup>2</sup> Record misdemeanors include Driving While Intoxicated (DWI) and domestic violence cases. Other misdemeanors are not cases of record.

<sup>3</sup> An indictment or an information must be filed in District Court within 10 days of the Felony First Appearance (FFA).

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- Defendants not in custody: 60-day filing window<sup>4</sup>
- Once cases have been assigned, The Office prepares the case for trial.

**Discovery Team**

To begin preparing for trial, The Office begins its discovery process.

“Discovery” refers to supporting documentation for an arrest, which is sent to The Office by law enforcement. The Office receives Discovery each day for approximately 40 cases via email and an additional 40 cases in person.

Most Discovery requests and acquisition are handled by a centralized separate unit in the Intake Division. After the FFA occurs, paralegals create a file, including paper and electronic Discovery. The paper version may also contain CD storage of additional Discovery that is not contained within the electronic version. Although there are both a paper and electronic version of the Discovery file, the paper file is considered the primary file.

The physical files are color-coded as follows:

- Blue—10-day filing window
- Red—Preventive Detention (Highest-priority)
- Tan—60-day filing window

The Discovery Team uploads all the information by scanning paper documents into electronic form. This appears to be an inefficient process and the possibility of receiving an original electronic version of these documents from the providing agencies should be considered as this would save a significant amount of person hours and wear and tear on the scanner.

This information is entered into The Office’s Case Management System to ensure completeness and accessibility.

**Weaknesses in the System**

The combination of the case management order (CMO) issued by the Supreme Court of New Mexico and the preliminary hearings as currently designed and implemented by the Bernalillo County court system appear to be overly financially and administratively burdensome for the following reasons:

1. The CMO has significantly changed the rules for case initiation and processing of cases resulting in a significantly compressed time to process cases after which mandatory sanctions are imposed, including case dismissal.

Compliance with the CMO has resulted in:

- a shortened window of time to provide discovery
- a rush to prepare for hearings
- an inordinate amount of stress on the prosecution’s system in preparing for preliminary hearings

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<sup>4</sup> An indictment or an information must be filed in District Court within 60 days of the Felony First Appearance (FFA).

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It appears that the CMO was issued without considering its effect on the entire framework of the criminal justice system and specifically how it would affect the crime rate in Bernalillo County.

2. The preliminary hearings process in Bernalillo County is considered one of the most burdensome in the country. The system requires a full evidentiary presentation in order to make a probable cause determination through a preliminary hearing which often:
  - lasts for hours, resulting in
    - police officers being required to attend for extensive amounts of time
    - witnesses being required to attend for extensive amounts time
  - there are “no shows” of witnesses and other key people, which often further delays the process
  - there are scheduling conflicts with key parties involved in the process

In contrast, grand jury proceedings move much more quickly and do not require as many witnesses. Additionally, there are certain cases which the DA’s Office believes are not appropriate to be initiated by preliminary hearing.

Additional weaknesses in the system are:

- A lack of a unified case numbering system amongst the criminal justice agencies (prosecution agencies, law enforcement and courts)
- A lack of coordinated planning and data sharing among criminal justice agencies. An example of best practices was Maricopa County, Arizona, which received 47 National Association of Counties (NACo) awards in 2015 for its use of several programs coordinating justice system agencies, including the Electronic Court Automated Case Tracking and Imaging System (eCACTIS).
- The Discovery Team uploads all the information by scanning paper into electronic form, which appears to be an inefficient process. It is recommended that the DA’s Office encourage other agencies to send Discovery documents electronically rather than in paper form.
- The Discovery Team also creates two files; an electronic and a paper file. It is recommended that Discovery only create these files in electronic form and that prosecution files become “paperless.”
- Approximately 8,000 unprocessed cases were found when the new administration took office in 2017. The backlog of unprocessed cases was created as a result of inadequate resources to meet the new evidence and timeline requirements of the CMO.<sup>5</sup>
- The Case Management System The Office uses is obsolete and needs to be updated.
- The daily process of obtaining the FFA has several manual steps for inputting it into a database in order to be used in the defendant risk assessment prior to prosecuting offenders. It appears that more automation of this process to create efficiency would be a valuable short-term goal. In the long-term, this process should be part of a unified data-base.
- Background checks are conducted by both the DA’s Office and the Metropolitan Court. This appears to be a redundant process and a single background check with the results communicated between both agencies should be used.

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<sup>5</sup> In the 2018 Legislative Session, the New Mexico Legislature gave The Office special funding to address the backlog of the approximately 8,000 unindicted felony cases. To date, The Office has processed the majority of the backlog.

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**3: Determine data available during the process. Determine whether all agencies involved are receiving the same data or have the same data available.**

The DA's Office, Metropolitan Court and MDC are not consistently tracking metrics of the following:

- a) # of felony arrests
- b) # of cases in which detention is requested
- c) # of cases judge puts on bond
- d) # of type of cases (auto theft, gun, etc.)
- e) # of defendants falling into key demographics (profiles)
- f) # of referrals from each law enforcement agency
- g) # of preliminary hearings and resulting indictments

In other words, the metrics for each area noted above are tracked independently and with different resulting outcomes by each of the respective criminal justice agencies. A consolidation of these efforts would require less manpower, and could also result in more comprehensive and consistent tracking.

**Siloed Information Sources**

The Office must query at least 24 separate information source reports to proceed with a case, in order to comply with the recently implemented Supreme Court case management order in preparation for court hearings.

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The Albuquerque Police Department has multiple information sources and databases as well, which are not located in a centralized place but are siloed.

The following are information sources and reports The Office needs to review:

**Table 2: Information Sources and Reports Reviewed by Second Judicial District Attorney’s Office**

**Discovery Processes and Reports Reviewed by Second Judicial District Attorney’s Office**

Reports/Paper Discovery	Audio/Video
1- Detective Supplemental Reports	1.- Surveillance footage
2- Field Officer Reports	2.- Lapels
3- Forensic Interview (FI) Reports	3.- Interviews
4- SWAT Reports	4.- Search Warrant Audio (DNA, major case prints)
5- K9 Reports	5.- 911 Audio
6- Tow Sheets	6.- Air Support Video
7- Search Warrants (vehicles, residence, DNA, major case prints, latent, etc.)	7.- Photos
8- Photo Line-Up	8.- Real Time Crime Center (RTCC)
9- Victim/Witness Statements	9.- Electronic Communications
10- ATF Reports	Source: Second Judicial District Attorney’s Office
11- NIBIN Hit Reports	
12- Computer Aided Dispatch (CAD) Print Outs	
13- Receipts	
14- Documents from victims with listed property and value (valuation reports for/from insurance companies)	
15- All related case numbers (accident reports, out of state theft reports, license plate reports, gun reports, vehicle reports)	
Source: Second Judicial District Attorney’s Office	

The effect of the decentralized databases and the siloed information sources that are unable to link to each other are the following:

- Additional staff are required to obtain information from disorganized and siloed databases
- Time and human resources are not used effectively and efficiently
- Difficulty in building complete cases within the timeline requirements in order to launch a successful prosecution
- Higher risk that human error will be made and go undetected since the locations to retrieve Discovery are separate and not connected

**Recommendation—Share Access to Data Amongst Criminal Justice Partners**

It is recommended that linkages be created across databases amongst all of the Criminal Justice Partners so queries and the process of discovery becomes more efficient and the quality of data is higher. This should be done as a concerted effort between the agencies and an effort should be made to set an

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effective timeline for implementation. This may require an outside contract to determine and manage implementation of the most effective solution, and/or additional internal personnel (for a limited time) to complete the process.

**4: Determine how "case numbers" are used between referral of cases to the Second Judicial District Attorney's Office and indictment of cases with Metropolitan and District Courts and determine weaknesses in the process.**

Tracking performance measures for unique defendants across both courts is difficult to do in the current system as each court uses separate case numbers that do not automatically link to each other.

A result of multiple case numbering systems which are unable to automatically link to each other means that sharing case information between the criminal justice agencies has to be done manually, which takes more person hours and is more prone to error.

**5: Determine if the "name" of the accused is used as an identifier and whether the use of names as an identifier is causing any weakness in the process.**

The name of the accused is used as an identifier, which has resulted in multiple profiles being created and used for the same person in New Mexico's Case Management System (CMS). The lack of assignment of a unique identifier to defendants means that there is a higher risk that an incomplete RAP sheet may be compiled for defendants who have a history of committing multiple crimes. Also, because errors naturally occur and over time can significantly affect the quality of information stored in databases, routine cleaning of the databases used by all criminal justice partners is recommended.

**6: Determine procedures for "dismissal" of a case and assess whether or not there are cases which are being dismissed as a result of weaknesses in the process, rather than as a result of proper judicial process or defense.**

When a defendant is arrested for suspicion of committing a crime, The Office has the burden of establishing probable cause. The Office seeks indictment by either a grand jury, which is a closed proceeding in front of a grand jury panel consisting of local citizens, or at a preliminary hearing in front of a judge.

The significant factors affecting the increase in "rate of dismissals" are the following issues:

- The implementation of the relatively new evidence requirements and the scheduling deadlines imposed on the prosecution by the CMO. This appears to contain some of the most burdensome requirements in the country.
- Absence of a Tier I, II, III risk assessment system at the time the CMO was implemented through the end of the previous administration. This system was created by the current administration when it came into office.
- The lack of a master database and/or the inability to share data across multiple databases that are decentralized and siloed. This results in an environment which creates challenges in collecting accurate information and producing timely evidence in court.

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The systemic issues noted above have created a pro-defendant environment which gives defendants a high likelihood they will receive a dismissal.

Beginning in November 2018, grand juries are no longer available to prosecutors five days a week. Instead, the District Court is limiting prosecutors’ access to grand jury panels and therefore must use preliminary hearings to determine if probable cause exists to charge a defendant with a crime.

Advocates of the preliminary hearing system believe the requirement for the prosecution to publicly disclose evidence will improve the swiftness of moving a case along because defendants will know if they want to fight the case or take a plea agreement. The Office opposes the limitation of the grand jury system because preliminary hearings may last for hours, require multiple witnesses, and create scheduling conflicts. There are often “no shows” of witnesses and other key people, which can further delay the process. In contrast, grand jury proceedings require much less time and fewer witnesses. Also, there are certain cases which the DA’s Office believes are not appropriate to be initiated by preliminary hearing. Typically speaking, such cases include, but are not limited to, crimes against children and sexual assault.

Although there are many pros and cons for both the grand jury and the preliminary hearing systems, the National Center for State Courts recommends more preliminary hearings and fewer grand juries.

In the current environment, the Office believes the increase in preliminary hearings will cause more strain on their limited resources and will lead to a rise in dismissals due to technical issues. This will give rise to a judicial setting in which more cases will be decided on technicalities rather than on merit.

The Office has stated that evidence rule requirements placed on the prosecution in Bernalillo County for both preliminary hearings and grand juries are some of the most burdensome in the country and points out that many other states utilize reliable hearsay in their preliminary hearings, greatly reducing the number of officers needed to initiate a case.

The following table tracks the number of preliminary hearing cases held from February 2018 to December 2018 and the reason they were dismissed as tracked by the District Attorney’s Office.

**Table 3: Preliminary Court Hearing Cases Held and Dismissed**

2018	TOTAL SETTINGS	DISMISSALS											TOTAL DISMISSALS		
		DISMISSED AFTER HEARING	OFFICER FAILED TO APPEAR	OTHER WITNESS FAILED TO APPEAR	MISSING DISCOVERY	DEFENDANT NOT TRANSPORTED	OTHER DISMISSAL								
February	42	0	0%	1	2%	0	0%	2	5%	0	0%	8	19%	11	26%
March	196	1	1%	8	4%	8	4%	3	2%	0	0%	75	38%	95	48%
April	265	2	1%	16	6%	19	7%	2	1%	0	0%	97	37%	136	51%
May	281	0	0%	10	4%	19	7%	1	0%	2	1%	81	29%	113	40%
June	290	2	1%	18	6%	21	7%	0	0%	2	1%	79	27%	122	42%
July	239	2	1%	17	7%	9	4%	1	0%	0	0%	66	28%	95	40%
August	279	0	0%	26	9%	30	11%	2	1%	5	2%	51	18%	114	41%
September	248	0	0%	26	10%	22	9%	3	1%	1	0%	37	15%	89	36%
October	312	1	0%	38	12%	32	10%	7	2%	5	2%	38	12%	121	39%
November	278	0	0%	27	10%	39	14%	4	1%	2	1%	35	13%	107	38%
December	179	0	0%	19	11%	27	15%	3	2%	1	1%	43	24%	93	52%
<b>Total</b>	2609	8	0%	206	8%	226	9%	28	1%	18	1%	610	23%	1096	42%

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The following table tracks the number of cases initiated by preliminary hearing between February 2018 and December 2018 and how they were resolved.

**Table 4: Preliminary Court Hearing Cases Held and Resolved**

2018	TOTAL SETTINGS	RESOLUTION							
		MISDEMEANOR PLEA		WAIVER OF PRELIM - Bound Over to District Court		HEARING - Bound Over to District Court		TOTAL RESOLUTIONS	
February	42	2	5%	5	12%	0	0%	7	17%
March	196	18	9%	19	10%	3	2%	40	20%
April	265	18	7%	28	11%	9	3%	55	21%
May	281	28	10%	51	18%	5	2%	84	30%
June	290	31	11%	32	11%	6	2%	69	24%
July	239	27	11%	36	15%	5	2%	68	28%
August	279	47	17%	27	10%	5	2%	79	28%
September	248	30	12%	34	14%	4	2%	68	27%
October	312	36	12%	36	12%	14	4%	86	28%
November	278	42	15%	46	17%	2	1%	90	32%
December	179	23	13%	17	9%	8	4%	48	27%
<b>Total</b>	<b>2609</b>	<b>302</b>	<b>12%</b>	<b>331</b>	<b>13%</b>	<b>61</b>	<b>2%</b>	<b>694</b>	<b>27%</b>

The following table tracks the number of cases failing resolution through the preliminary hearing process between February 2018 and December 2018 and why they were deferred.

**Table 5: Preliminary Court Hearing Held and Deferred**

2018	TOTAL SETTINGS	DEFERRED							
		BENCH WARRANT ISSUED (Defendant Failed to Appear)		COMPETENCY RAISED		RESET		TOTAL DEFERRED	
February	42	13	31%	1	2%	10	24%	24	57%
March	196	39	20%	6	3%	16	8%	61	31%
April	265	67	25%	2	1%	5	2%	74	28%
May	281	71	25%	2	1%	11	4%	84	30%
June	290	85	29%	2	1%	12	4%	99	34%
July	239	63	26%	3	1%	10	4%	76	32%
August	279	68	24%	4	1%	14	5%	86	31%
September	248	77	31%	4	2%	10	4%	91	37%
October	312	85	27%	1	0%	19	6%	105	34%
November	278	69	25%	1	0%	11	4%	81	29%
December	179	33	18%	2	1%	3	2%	38	21%
<b>Total</b>	<b>2609</b>	<b>670</b>	<b>26%</b>	<b>28</b>	<b>1%</b>	<b>121</b>	<b>5%</b>	<b>819</b>	<b>31%</b>

On average, 26% of hearings result in a bench warrant for failure to appear.



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As mentioned previously, the burden of the current requirements concerning preliminary hearings on those outside the court, both law enforcement officers and other witnesses, is large. This increases the risk that cases will be dismissed due to “no shows” occurring. The number of subpoenas issued for these hearings during the tracked time frame is shown below.

**Table 6: Preliminary Court Hearing Cases and the Number of Subpoenas Required**

2018	TOTAL SETTINGS	SUBPOENAs	
		TOTAL LAW ENFORCEMENT OFFICERS SUBPOENAED	TOTAL CIVILIANS SUBPOENAED
February	42	21	9
March	196	100	55
April	265	157	102
May	281	164	92
June	290	191	111
July	239	176	108
August	279	215	101
September	248	208	116
October	312	252	113
November	278	147	136
December	179	135	83
<b>Total</b>	<b>2609</b>	<b>1766</b>	<b>1026</b>

**Recommendation—Amend Preliminary Hearing Requirements**

The statistics above related to preliminary hearings were collected by The Office from February through December of 2018 and provided for the purpose of assisting in this report. The data included cases divided into 3 main categories, with several subcategories, and outcomes of cases heard during each month were quantified. As you can see in Table 5, the number of preliminary hearings resolved (27%) lags behind the number of cases either deferred (31%) or dismissed (42%). While this is a simplified conclusion and there are many factors affecting deferral and dismissal of cases which can be further analyzed, this data does reflect inefficiency of the preliminary hearing process as it is currently designed and implemented.

Because of the several advantages that preliminary hearings have over grand jury hearings in providing a fairer adjudication process for defendants, it is recommended that the current preliminary hearing requirements be reviewed and amended to be more in line with preliminary hearing systems adopted in other states, which have been demonstrated to be more successful and efficient. It is understood that the ability to make this change is outside of The Office’s purview.

Currently, the preliminary examinations in Bernalillo County are considered some of the most burdensome in the country due to the following requirements:

- Full evidentiary presentation
- Witnesses are required to attend for extended periods of time

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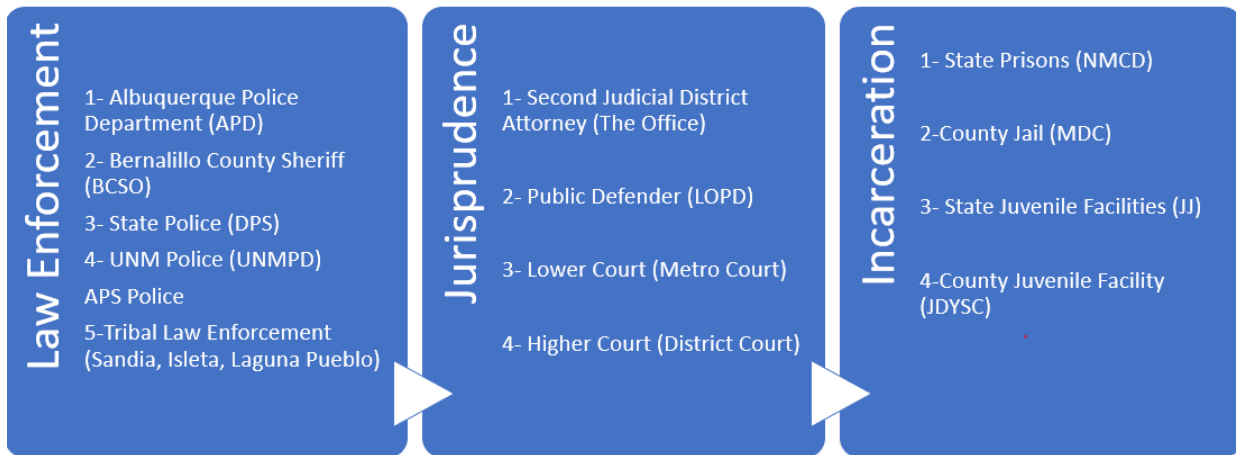
- Law enforcement officers are required to attend for an extended time

Modifying rules related to hearsay requirements and witnesses would decrease these burdens and reduce the likelihood of cases being dismissed due to technicalities rather than lack of merit.

**STEP 3: REVIEW THE POLICIES OF VARIOUS ORGANIZATIONS**

**7: Determine if Second Judicial District Attorney's Office is interfacing or is conflicting with other agency policies and whether there are conflicts in the internal policies of each entity or department which contribute to weaknesses in the process.**

**Table 7: Bernalillo County Criminal Justice System: State and Local Agencies**



Source: City of Albuquerque and Bernalillo County

The Supreme Court of New Mexico issued the case management order (CMO) and other procedural reforms which were applicable only to Bernalillo County. While it is understood that one of the goals of the CMO was to meet national timeliness standards related to disposition of felony cases and best practices, this directive has caused a conflict with The Office’s ability to prosecute cases effectively and efficiently with their current tools and resources.

In addition, the Second Judicial District Court is curtailing the availability of grand juries. Therefore, The Office must use preliminary hearings more often to determine whether probable cause exists to charge a defendant with a crime.

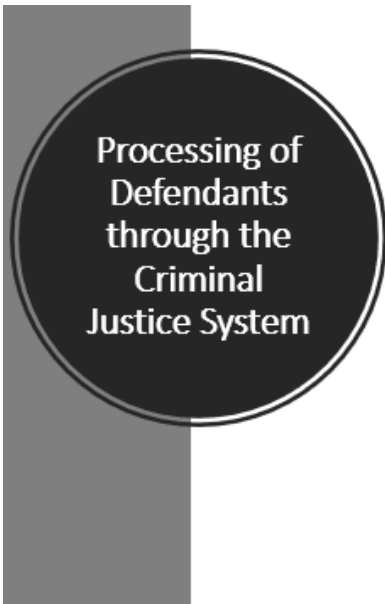
The implementation of the CMO has created new challenges for The Office and its ability to prosecute cases. The approximately 8,000 unprocessed (unindicted) felony cases found when the new administration came into office in January 2017 can be correlated to the issuance of the CMO. The Office simply did not have the tools and resources in place to handle the new requirements. Curtailing the availability of grand jury hearings may have also contributed to these consequences, at least in the short

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term. The criminal justice system as a whole needs to ensure The Office has the appropriate tools, plans, resources and adequate transition time when implementing new restrictive regulations.<sup>6</sup>

Conflicts have arisen as The Office believes the CMO is too burdensome. New Mexico rules that require a full evidentiary presentation to make a probable cause determination through preliminary hearing are far more burdensome than preliminary hearing requirements in the federal court or other states. The weight of this burden may lead to a larger number of unprocessed cases and a high percentage of cases being dismissed based on technicalities, which ultimately will result in a higher crime rate.

**Table 8: Processing Defendants Through the Bernalillo County Criminal Justice System**



Measure	2010	2017
APD Crimes Solved	1 in 4	1 in 7
Specialty Court Graduates	272	173
2 <sup>nd</sup> Judicial District Attorney Felony Conviction Rate	54%	49%
MDC Admits	36,250	24,289
NMCD Bern. County Admits	1,464	1186
<small>Source: Review of the Criminal Justice System in Bernalillo County, Report#18-05, July 2018</small>		

According to “Review of the Criminal Justice System in Bernalillo County, Report #18-05” which was published July 2018, Bernalillo County agencies have invested in many reforms in recent years. The same report also points out since the end of 2017, reported crime is decreasing in Albuquerque and, in June 2018, Albuquerque saw the lowest monthly crime levels since February 2016. However, if the efforts and cooperation between agencies are not improved and maintained, and system performance is not monitored, the potential for failure remains.

It is recommended that in the short-term, efforts that promote shared access of information between criminal justice partners be implemented. In the long-term, it is recommended that a comprehensive step-by-step 5-year plan with input from all appropriate stakeholders and criminal justice partners be instituted. This plan would establish a cooperative criminal justice system that is achievable, accountable and sustainable based on realistic interim goals and full implementation over an adequate transition time period.

**8: Determine what issues affect acceptance of defendants into diversion programs upon referral.**

Based on the statistics noted below, there appears to be a very low percentage of defendants that are referred to the pre-prosecution diversion programs who accept participation. The Office has stated that because the burden of proof for the prosecution is so high based on the administrative, logistical burdens,

<sup>6</sup> In the 2018 Legislative Session, the New Mexico Legislature gave The Office special funding to address the backlog of the approximately 8,000 unindicted felony cases. To date, The Office has processed the majority of the backlog.

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and mandatory sanctions imposed by the CMO, the defendants believe there is a high likelihood of getting a dismissal due to technical issues. Therefore, the incentive to go through the diversion programs is weak.

**Table 9: Pre-Prosecution Diversion Program—Offered and Accepted**

PPP	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	TOTAL
<b>TOTAL OFFERS</b>	35	44	46	24	11	20	23	203
<b>Public Defender Offers</b>	29	40	40	21	9	19	18	176
<b>Private Attorney Offers</b>	6	4	6	3	2	1	5	27
<b>Total Accepted</b>	7	6	9	14	3	5	3	47
<b>Public Defender Accepted 15% of Cases Offered to Them</b>	4	3	4	8	2	3	2	26
<b>Private Attorney Accepted 78% of Cases Offered to Them</b>	3	3	5	6	1	2	1	21

In addition, the following are disincentives to participating in pre-prosecution diversion programs:

- An extensive amount of time is required (18 months to 24 months).
- Participants must adhere to strict rules.
- Participants are likely required to pay program fees.

It appears that until the rate of dismissal due to technicalities under the CMO decreases, there will be little incentive for defendants to participate in diversion programs.

**9: Determine what reports are generated by the Second Judicial District Attorney's Office and whether those reports are contributing to process efficiency or reflect an opportunity for system improvement.**

A large number of crime metrics exist, but the data is in multiple databases in multiple agencies and therefore is not readily accessible or readily available for reporting purposes. The Office compensates for the lack of readily accessible data by increasing the number of staff so that it may manually compile information it needs to meet timelines required by the CMO. This need for accessible data has been identified as one of the major weaknesses in this arm of the criminal justice system.

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The Office has received a one-time appropriation of \$1,100,000 toward the development of an intelligence-driven strategy system for the purpose of crime reduction called Intelligence-Driven Prosecution (IDP), and has partnered with the New Mexico Institute of Mining and Technology in this effort. The Office is currently establishing a Crime Strategies Unit (CSU) modeled on CSUs used by the New York County District Attorney Office, to reduce crime by utilizing criminal justice data to identify and prosecute individuals and criminal networks who drive crime.<sup>7</sup>

**10: Provide an assessment of any weaknesses in the process or interface between entities or departments which are identified by the IPA, but not listed in this scope of work.**

The most significant weakness appears to be a lack of sharing data, as a master database for the criminal justice agencies does not exist. This is contributed to by factors in the following areas:

- Adoption of technological change
- Culture of lack of accountability
- Making decisions based on organized data
- Coordination between the criminal justice agencies is paramount
- Lack of long-term expectations for sharing of data

The Office is introducing a significant amount of technological change into its units. There appears to be significant reengineering and transitioning from the old way of working to a new way.

**Weakness in coordination efforts.**

There is an on-going lack of shared access to data between criminal justice partners. Solving the crime problem in Bernalillo County requires all of the stakeholders to come together, to develop a comprehensive step-by-step 3- to 5-year plan that is doable, accountable and sustainable.

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<sup>7</sup> As of the release date of this report, The Office has created a Crime Strategies Unit (CSU) Fusion Center which houses approximately seven special agents and three crime analysts. The Center also provides space for law enforcement agencies to collaborate on cases with The Office.

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**11: Assess staffing levels of each agency to determine impact on case flow and determine if staffing levels are contributing to weaknesses in the system.**

Table 10: Second Judicial District Attorney’s Office Appropriated and Filled Positions

## DA Office Staff Appropriation 2014 to 2018

### Appropriated

Appropriated		2014	2015	2016	2017	2018
FTEs						
<b>General Fund</b>						
Attorneys		109	111	110	111	110
Support Staff		148	145	143	145	147
Victim Witness		12	12	12	13	13
Investigator		14	15	17	16	16
<b>Grant</b>						
Attorneys		5	5	6	5	6
Support Staff		1	1	2	3	1
Victim Witness		3	3	4	4	3
Investigator		0	0	0	0	0

### Filled

Filled		2014	2015	2016	2017	2018
<b>General Fund</b>						
Attorneys		107	107	102	92	90
Support Staff		142	140	142	130	121.5
Victim Witness		11	12	12	11	11
Investigator		14	14	16	15	14
<b>Grant</b>						
Attorneys		4	5	5	4	6
Support Staff		1	1	2	2	1
Victim Witness		1	3	4	4	4
Investigator		0	0	0	0	0

By and large, the Office considers itself to be understaffed in the areas of attorneys, investigators and victim advocates. As can be seen in Table 10, the staffing of The Office has decreased as the requirements on The Office have increased. Staffing will continue to be an issue due to the administratively burdensome requirements of the CMO, the restrictions on the use of grand juries and the need to address the backlog

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of cases the administration inherited. The Office has significantly improved its intake of case referrals in the past 2 years. It continues to make changes in this area with the redesigning of the Office into crime units to ensure it will become more effective and efficient. The Office is also adopting an intelligence-driven strategy system. It is expected that with these system changes the use of its staff will produce improved results.

**Recommendation: Construction of a 3 to 5-year over-arching plan including short-term milestones and long-term goals**

The challenges the criminal justice system in Bernalillo County faces are immensely complex and have troubled the County for some time. It is understood that agencies in the criminal justice system such as the Supreme Court of New Mexico, the 2<sup>nd</sup> Judicial District Court and the Albuquerque Police Department have implemented reforms based on national best practices and oversight by the U.S. Department of Justice because procedures were found to be unconstitutional, but it appears that these reforms have been implemented in a piecemeal fashion rather than a comprehensive manner. The effect of this piecemeal plan has been a shifting of problems from some agencies to other agencies which were not prepared to implement these reforms. Ultimately, this has led to a spike in crime that may have been avoided had a holistic plan been created and implemented.

Therefore, it is recommended that in the short-term, agreements are established between criminal justice partners, so increased efforts may be undertaken to take advantage of improved technology to share access to information between criminal justice partners. In the long-term, a new comprehensive plan should be developed and facilitated by a body such as the Bernalillo County Criminal Justice Coordination Council (BCCJCC). The plan would include participation by all appropriate criminal justice agencies and stakeholders. This unified process would take into consideration the strengths and weaknesses of the individual agencies and the tools and resources within these individual agencies, as well as an overarching look at the impact and consequences proposed changes would have on the entire criminal justice system. Milestones would be developed to guide the implementation of new processes and reform, and these changes would be planned and implemented in such a way as to avoid overloading the system in key areas to avoid creating a resultant spike in the crime rate.

**REPORTING**

Upon conclusion of the field work, preliminary findings were reviewed with management to verify accuracy prior to issuing the final report. The final report shall be issued to the Second District Attorney's Office and the Office of the State Auditor containing the following information, as applicable:

- Overview of work performed
- Findings related to the scope of work, which will also include management's responses to the findings.
- Recommendations for resolution and improvement
- Report summary

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Exit Conference

The report was presented and accepted by management of the Office of the Second Judicial District Attorney of New Mexico on July 22, 2019. The following individuals were in attendance:

District Attorney's Office

Carla Martinez, Chief Administrative Officer  
Adolfo Mendez, Chief of Policy and Planning

Hinkle + Landers, PC

Farley Vener, Managing Shareholder, Hinkle + Landers, PC



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**Glossary of Term/Acronyms**

**AGO** – Attorney General’s Office

**APD** - Albuquerque Police Department

**BCCJCC** - Bernalillo County Criminal Justice Coordination Council

**CAD** – Computer Aided Dispatch

**CMO** - Case Management Order

**CSU** – Crime Strategies Unit

**eCACTIS** – Electronic Court Automated Case Tracking and Imaging System

**FFA** – Felony First Appearance

**FTE** - Full Time Employee

**IDP** - Intelligence-Driven Prosecution

**ISR** - Institute for Social Research

**L.A- CDA -JI & RJ-** Los Angeles County District Attorney Justice Innovations and Restorative Justice

**MC-CJS-** Maricopa County Criminal Justice System

**MDC** - Metropolitan Detention Center (Bernalillo County)

**NACo** - National Association of Counties

**NCIC** – National Crime Information Center

**NIBIN** - National Integrated Ballistic Information Network

**NIJ** - National Institute of Justice

**NYCDA-IDP-** The New York County District Attorney -Intelligence-Driven Prosecution Model

**The Office** or the **DA’s Office** - Second Judicial District Attorney’s Office

**RAP** – Record of Arrests and Prosecutions

**ROCJS-BC-** Review of the Criminal Justice System in Bernalillo County (July 19, 2018)