



**Bernalillo County  
Public Safety  
Assessment Review –  
July 2017 to March  
2019**

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**Prepared for:  
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## Introduction

The pretrial phase of a criminal case takes place at the beginning of the court case, after arrest, and prior to the trial and final disposition of the case. During the pretrial phase the defendant is presumed innocent and is entitled to due process of law (U.S. Constitution, amend. V) and is also entitled to reasonable conditions of release, specifically either “bailable by sufficient sureties” or via relief through the courts for those unable to post a bond (N.M. Constitution, art. II, §13). Historically, release decisions have been based on the seriousness of the crime and prior criminal history. Judges are often required to make decisions such as pretrial release decisions in a short period of time with incomplete information (Steffensmeier, Ulmer and Kramer, 1998). Limited information coupled with limited decision making time can result in disparate treatment of minorities and the poor during their pretrial period, release decision-making, and pretrial incarceration (Schlesinger, 2005). As limitations and challenges in pretrial release decision making have become more prominent, there has been an increased interest in the development and use of pretrial risk assessment instruments (Pretrial Justice Institute, 2015).

This report reviews one of these pretrial risk assessment instruments and the use of this instrument in cases spanning both the Bernalillo County Metropolitan Court (BCMC) and the Second Judicial District Court (SJDC) in Bernalillo County, New Mexico. Bernalillo County implemented the Public Safety Assessment (PSA) in June 2017. The PSA was developed by Arnold Ventures in partnership with leading criminal justice researchers (Arnold Ventures, 2019). Approximately 750,000 cases from about 300 jurisdictions across the United States were used to create the PSA (PSApretrial.org, 2019). The tool was validated for over half a million cases nationally and has been re-validated at locations such as Mecklenburg County, North Carolina and in Kentucky (PSApretrial.org, 2019).

The PSA uses evidence-based, neutral information to predict the likelihood that a defendant will commit a new crime if released before trial (New Criminal Activity [NCA]), and to predict the likelihood that he/she will fail to return for a future court hearing (Failure to Appear [FTA]). In addition, it flags those defendants who present an elevated risk of committing a violent crime (New Violent Criminal Activity [NVCA]). The FTA, NCA, and NVCA will be referred to as the outcome measures herein. The PSA is a judicial decision-making tool to help judges gauge the risk a defendant poses. The PSA informs rather than replaces judicial discretion. This report also reviews and discusses the adherence rate – the degree to which conditions of release ordered correspond with the PSA recommendation category. The adherence rate is compared to the outcome measures to determine if using conditions of release in line with the PSA recommendation reduces FTAs and NCAs.

In other jurisdictions using the PSA, PSAs are completed for defendants facing misdemeanor charges as well as defendants facing felony charges. In Bernalillo County, PSAs are only completed for defendants facing felony charges. For this reason, the PSA outcome measures in Bernalillo County are not comparable to those from other PSA sites. Furthermore, because felony charges are more serious than misdemeanor charges, defendants may have higher FTA and NCA scores, longer periods of pretrial release, and higher failure rates in Bernalillo County than jurisdictions that include defendants facing misdemeanor charges in their PSA statistics.

The cases and findings within this study are not representative of the criminal justice system in Bernalillo County as a whole. The study is made up of a subset of felony cases within the BCMC and SJDC courts. This PSA study is a sample of BCMC and SJDC cases that were selected if each case met prerequisites, described in the Sample section below. Therefore, it is worth noting that while this sample and findings provide insight to the PSA implementation in Bernalillo County in the given timeframe, it is not a study of all cases in the BCMC and SJDC and the findings do not apply to all cases Bernalillo County.

## PSA Implementation in Bernalillo County

Each jurisdiction utilizing the PSA develops a Decision-Making Framework (DMF). The DMF plots the defendant's NCA score against the defendant's FTA score and provides a recommended release category for the defendant. In early 2017, criminal justice stakeholders in Bernalillo County formed a PSA Implementation Team. The Team included representatives from criminal justice entities that would be impacted by the PSA: BMCM, SJDC, the Offices of the District Attorney and Public Defender, Pretrial Services, and local law enforcement. The PSA Implementation Team met regularly to prepare for the PSA implementation. As part of its work the PSA Implementation Team developed the Decision-Making Framework for Bernalillo County.

The PSA is designed to predict a defendant's likelihood for failing to appear at future court hearings and the likelihood of committing a new criminal offense. The PSA is scored by reviewing a defendant's criminal history, current cases, and age to create an FTA score and an NCA score as well as a flag for NVCA. Table 1 below combines the relationship between the risk factors and the three pretrial outcome measures (LJAF, 2016). An "X" indicates an increase in the defendant's likelihood of that outcome, based on the risk factor. For instance, if the defendant's current offense is violent (#2 below), it increases that defendant's likelihood of committing an NVCA during their pretrial period.

Table 1. PSA Risk Factors and Pretrial Outcomes			
Risk Factor	Pretrial Outcome		
	FTA	NCA	NVCA
1. Age at current arrest		X	
2. Current violent offense			X
2A. Current violent offense and 20 years old or younger			X
3. Pending charge at the time of the offense	X	X	X
4. Prior misdemeanor conviction		X	
5. Prior felony conviction		X	
5A. Prior conviction (misdemeanor or felony)	X		X
6. Prior violent conviction		X	X
7. Prior failure to appear in the past two years	X	X	
8. Prior failure to appear older than two years	X		
9. Prior sentence to incarceration		X	

Using the FTA and NCA scales, a release recommendation for each defendant is assigned using the DMF. The DMF provides recommendations that range from release on own recognizance (ROR), various levels of pre-trial supervision, up to a recommendation to detain or release with maximum conditions. The level of pre-trial supervision, or pre-trial monitoring level (PML) ranges from level 1 to level 4 with increasing degrees of supervision and conditions as the level increases<sup>1</sup>. The DMF was tailored for this jurisdiction by a PSA Implementation Team involving key stakeholders (see Table 2).

<sup>1</sup> The PML level indicates to what degree the defendant should be supervised, including the frequency and type of contacts with PTS (phone versus office visits), electronic monitoring, and the frequency of UAs.

Table 2. Decision Making Framework							
		New Criminal Activity Scale					
		NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
Failure to Appear Scale	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	(E) ROR PML 1	(F) ROR PML 3	(G) ROR PML 4	
	FTA 3		(H) ROR PML 1	(I) ROR PML 2	(J) ROR PML 3	(K) ROR PML 4	(L) Detain or Max Conditions
	FTA 4		(M) ROR PML 1	(N) ROR PML 2	(O) ROR PML 3	(P) ROR PML 4	(Q) Detain or Max Conditions
	FTA 5		(R) ROR PML 2	(S) ROR PML 2	(T) ROR PML 3	(U) Detain or Max Conditions	(V) Detain or Max Conditions
	FTA 6				(W) Detain or Max Conditions	(X) Detain or Max Conditions	(Y) Detain or Max Conditions

The next several sections report the sample, the PSA recommendation categories and the PSA outcome measures: the FTA rate, the NCA rate, and the NVCA rate. A failure to appear warrant was considered valid if it was issued during the study period for failure to appear at a court hearing<sup>2</sup>. New criminal activity does not include City or County ordinances or traffic offenses per decisions made with local stakeholders and Arnold Ventures. Stakeholders also identified violent criminal activity, which consists of offenses such as murder, kidnapping, or any offense or conspiracy to commit such offense, which causes physical injury to another person.<sup>3</sup>

## Sample

Cases in this sample included:

- Felony cases<sup>4</sup> that were filed between July 1, 2017<sup>5</sup> and March 31, 2019; and that
- Had a PSA completed; and where
- The defendant was in custody for either the Felony First Appearance (FFA) or the Felony Arraignment (FA); and where
- The case was closed (case status) and no longer pending on March 31, 2019; and where
- The defendant was released during the pretrial period between FFA or FA and final case disposition.

The cases included in this study were in the electronic data from BCMC and SJDC. Among other variables, the data included all court cases, filing dates, hearing dates, PSA scores, and closing dates. Fugitive cases were also excluded as they are not considered eligible for assessment<sup>6</sup>.

Cases in the sample were also categorized by case filings and indictments. While the data was provided separately from the courts, there is often overlap between the cases due to an indictment during the BCMC pretrial period. In Bernalillo County, most felony cases begin in BCMC, with few exceptions. Once the case is opened, the prosecution has 60 days from the defendant's FFA and pretrial release to charge the defendant either through a grand jury indictment or through a preliminary hearing where a

<sup>2</sup> While in some circumstances the warrant is issued in error or a cancellation is issued based on stipulation with the courts, this study does not distinguish between the two.

<sup>3</sup> The New Mexico Criminal Code was reviewed and violent offenses categorized by committee prior to the implementation of the PSA. It is worth noting that some statutes may have subsections which are not considered violent offenses.

<sup>4</sup> While the PSA is designed to be used for release decision making for all arrests resulting in a booking into jail, Bernalillo County only uses the PSA for felony cases and not for misdemeanor cases.

<sup>5</sup> The month of PSA implementation, June 2017, was excluded to allow a brief period of time to adjust for implementation.

<sup>6</sup> Fugitive cases are not considered eligible for assessment as release decisions are made to some degree in conjunction with other jurisdictions rather than solely at the discretion of the local judiciary.

judge may decide if there is enough evidence to indict. Once the case is indicted, the BCMC case is linked to the SJDC case but proceeds in SJDC. When the BCMC and SJDC cases overlap it is considered one pretrial period and analyzed as a single unit. Oftentimes, the BCMC case is resolved in BCMC and never gets indicted. These cases were analyzed as BCMC only. When an indictment occurs after the BCMC pretrial period, the SJDC is analyzed as a separate unit with its own pretrial period. Findings, including outcome measures and adherence, are reported in the aggregate rather than by case categorization.

### Case Status.

The case status on March 31, 2019 was collected and cases were identified as either closed or pending. A case was considered closed when there was a final disposition, such as a sentence, dismissal, or plea bargain on or by March 31, 2019. The initial<sup>7</sup> court case close date was used as the overall close date for the case. In a number of cases, the BCMC court cases remained open beyond the 60 days allowed by court rule. In these cases, a proxy close date was calculated 60 days from the FFA hearing date and this date was used as the close date for the BCMC portion of the case. This date is the deadline for which the defendant must be indicted or the case must be dismissed. When the defendant was indicted within the 60 days, it was considered a BCMC-SJDC case. If the indictment either occurred outside of this time period<sup>8</sup> or did not occur at all, the cases were BCMC or SJDC respectively, with separate pretrial periods. If not indicted within the 60 days, it was considered BCMC only. A case was considered pending if it was still open on March 31, 2019 and were excluded. Only cases that were opened and closed between July 1, 2017 and March 31, 2019 were included in this analysis.

### Exposure.

The court and jail data were compared to determine if the inmate was released from jail before the case was resolved. When the release from jail was after the end of the case, the case was not considered for further analysis as there was no exposure time in the community during which there could be a FTA, NCA, or NVCA.

A release rate was calculated by dividing the amount of closed cases with exposure with the total number of closed cases. The release rate was 71.7%.

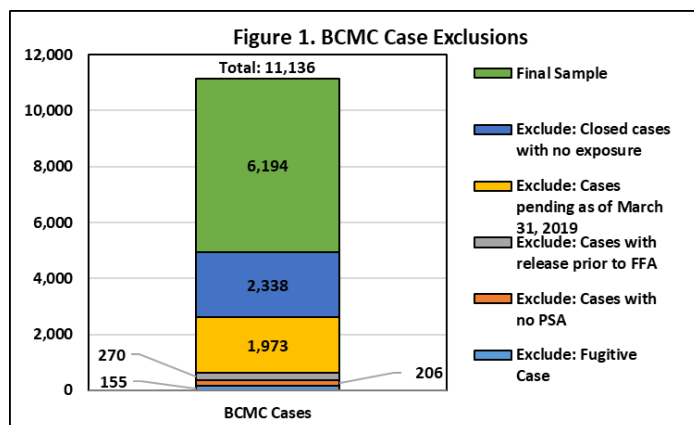
### Final Sample.

Figure 1 reports the number of court cases excluded from the BCMC sample by type of exclusion. There were 11,136 cases in the electronic file. First, 155 Fugitive cases (1.4%) were excluded. Second, a small number of cases were excluded because there was no PSA (206 or 1.8%). Third, 270 cases were excluded due to a release prior to the FFA (2.4%). Fourth, 1,973 (17.7%) cases were excluded because they were pending (not closed) on March 31, 2019. Finally, 2,338 (21%) cases were excluded that had been closed but for which the defendant did not spend time in the community during the pretrial period. The final sample of assessed, closed cases with exposure in the community consisted of 6,194 cases, 55.6% of the original cases provided.

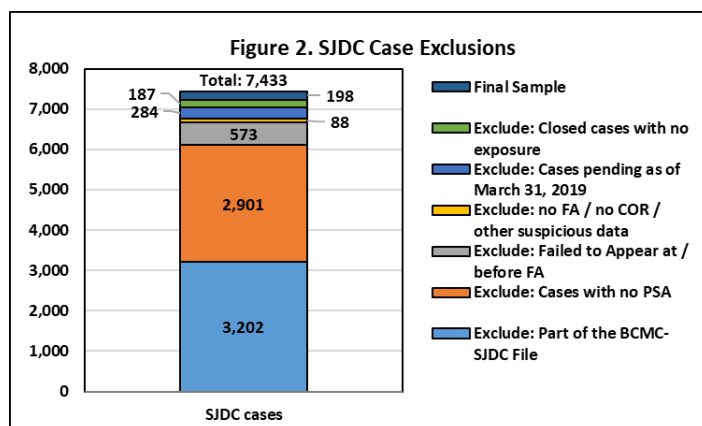
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<sup>7</sup> In some instances, if there is a probation violation for example, there could be a later close date due to the reopening of the case. The initial close was used as it relates to the charges.

<sup>8</sup> For this study, the close date of the BCMC case was the official cutoff date for the filing of the SJDC case. However, cases may also be indicted within a few days that may not technically meet the cutoff for overlapping periods, but the indictment was filed prior to the BCMC close. For example, cases between September 1, 2018 to March 31, 2019 were reviewed and there were 15/3,647 cases where the period could be extended due to the issuance of a warrant during the pretrial period and 79/3,647 that were indicted one day after the BCMC close date.



Following the same process as the BCMC sample (Figure 1), Figure 2 reports the number of cases excluded from the SJDC sample. The original SJDC data extract consisted of 7,433 cases opened during the study timeframe. First, a large portion of the court cases were excluded from the SJDC sample as they were part of an overlapping BCMC case, and considered a BCMC-SJDC case (3,202 or 43.1%). Second, 2,901 (39%) cases were excluded because there was no PSA. This occurs more frequently in SJDC as a larger number of defendants are not in custody at the beginning of or during the SJDC portion of the case. Third, 573 cases (7.7%) were excluded because there was an FTA at a FA. Fourth, 88 cases (1.2%) for which there was no FA, no conditions of release, or other data concerns (i.e. cases resolved prior to the FA) were excluded. Fifth, 284 cases were excluded that were pending as of March 31, 2019 (3.8%) and finally, 187 cases (2.5%) that were closed but for which there was no exposure during the pretrial period were excluded. The final sample consisted of 198 cases, 2.7% of the original cases provided.



There were 6,392 BCMC and SJDC cases available for analysis during the study timeframe.

## PSA Recommendation Categories

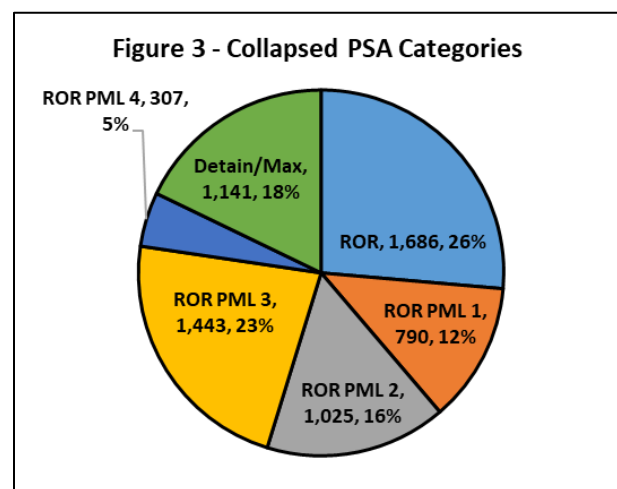
The NCA and FTA score from the PSA result in 25 options for release recommendation categories, which consist of conditions for ROR<sup>9</sup>, ROR – PML 1, ROR – PML 2, ROR – PML 3, ROR – PML 4, or to detain or release with maximum conditions.

<sup>9</sup> ROR refers to release on own recognizance. When it is coupled with a PML level, it refers to when a defendant is released with conditions of release to be supervised by the Pretrial Services Division of the BCMC or the SJDC.

Table 2 shows the recommendation categories for the 6,392 cases in the outcome measures analysis. The three most commonly assigned categories included 11.6% (744) in the (A) ROR category, 9.7% (618) in the (I) ROR – PML 2 category, and 8.8% (564) in (J) ROR – PML 3. The three least commonly assigned categories included 2 cases in (G) ROR – PML 4, 4 cases in (L) detain / max conditions, and 11 cases in (R) ROR – PML 2. Each of these three categories accounted for less than 1% of all cases.

Table 2. PSA Recommendation Categories													
FTA Scale	New Criminal Activity Scale												
		1		2		3		4		5		6	
		Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
	1	(A) ROR 744      11.6%		(B) ROR 431      6.7%									
	2	(C) ROR 137      2.1%		(D) ROR 374      5.9%		(E) ROR PML 1 381      6.0%		(F) ROR PML 3 211      3.3%		(G) ROR PML 4 2      0.03%			
	3			(H) ROR PML 1 376      5.9%		(I) ROR PML 2 618      9.7%		(J) ROR PML 3 564      8.8%		(K) ROR PML 4 48      0.8%		(L) Detain or Max Conditions 4      0.1%	
	4			(M) ROR PML 1 111      1.7%		(N) ROR PML 2 272      4.3%		(O) ROR PML 3 304      4.8%		(P) ROR PML 4 257      4.0%		(Q) Detain or Max Conditions 43      0.7%	
	5			(R) ROR PML 2 11      0.2%		(S) ROR PML 2 124      1.9%		(T) ROR PML 3 364      5.7%		(U) Detain or Max Conditions 347      5.4%		(V) Detain or Max Conditions 160      2.5%	
	6									(W) Detain or Max Conditions 100      1.6%		(X) Detain or Max Conditions 109      1.7%	

Figure 3 shows the number of total cases in the PSA recommendation categories. The largest category was ROR, which accounted for 1,686 (26.4%) cases. There were an additional 790 cases (12.4%) that had a ROR with PML 1 and another 1,025 cases (16%) with PML 2. The second largest category was ROR with PML 3, accounting for 1,443 (22.6%) cases. Recommendations with ROR – PML 4 accounted for the fewest cases, 307 or 4.8%. Finally, there were 1,141 (17.9%) cases for which the recommended condition was to detain or release with maximum conditions.



The next section reports the FTA, NCA, and NVCA outcome measures.



## PSA Outcome Measures

This section reports on the three outcomes measured by the PSA - Failure to Appear (FTA), New Criminal Activity (NCA), and New Violent Criminal Activity (NVCA). In addition, this section includes details on the charge level for the NCA that occurred during the pretrial period.

### Failure to Appear.

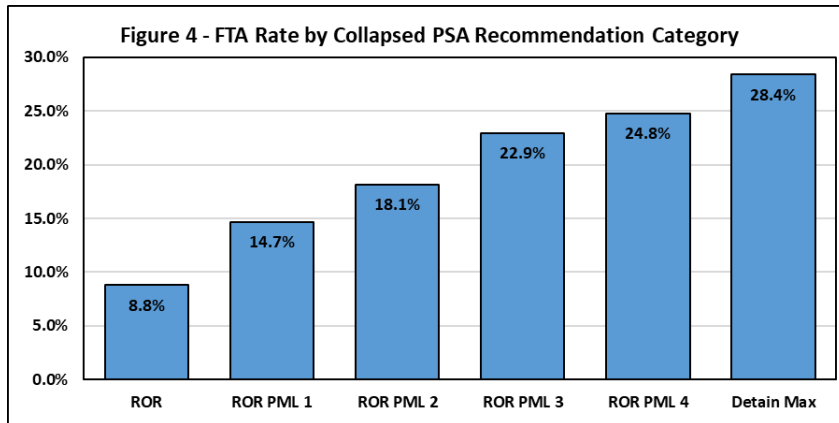
Any warrant issued for FTA at a scheduled court appearance was considered a valid warrant and applied to the FTA rate. The overall FTA rate was 18.5%. Table 4 shows the FTA rate by PSA recommendation category. In general, the higher the recommendation category, the higher the FTA rate. Exceptions to this primarily occurred in recommendation categories where the number of cases was very small. For example, in recommendation category L there were only four cases.

Table 4. FTA Rates by PSA Recommendation Category													
FTA Scale	New Criminal Activity Scale												
		1		2		3		4		5		6	
		FTAs	FTA Rate	FTAs	FTA Rate	FTAs	FTA Rate	FTAs	FTA Rate	FTAs	FTA Rate	FTAs	FTA Rate
	1	(A) ROR 66/744    8.9%		(B) ROR 39/431    9.0%									
	2	(C) ROR 16/137    11.7%		(D) ROR 27/374    7.2%		(E) ROR PML 1 62/381    16.3%		(F) ROR PML 3 36/211    17.1%		(G) ROR PML 4 1/2        50.0%			
	3			(H) ROR PML 1 46/376    12.2%		(I) ROR PML 2 110/618    17.8%		(J) ROR PML 3 121/564    21.5%		(K) ROR PML 4 10/48      20.8%		(L) Detain or Max Conditions 3/4        75.0%	
	(M) ROR PML 1 23/111    20.7%			(N) ROR PML 2 44/272    16.2%		(O) ROR PML 3 77/304    25.3%		(P) ROR PML 4 65/257    25.3%		(Q) Detain or Max Conditions 10/43      23.3%			
	(R) ROR PML 2 4/11       36.4%			(S) ROR PML 2 28/124    22.6%		(T) ROR PML 3 97/364    26.6%		(U) Detain or Max Conditions 83/347    23.9%		(V) Detain or Max Conditions 51/160    31.9%			
	4							(W) Detain or Max Conditions 31/100    31.0%		(X) Detain or Max Conditions 41/109    37.6%		(Y) Detain or Max Conditions 90/300    30.0%	

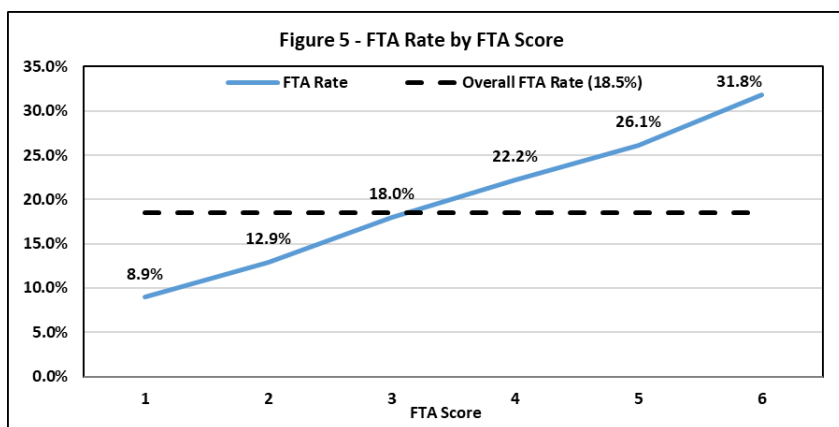
A chi-square ( $X^2$ ) test of independence was performed to determine if there was a correlation between the outcome measures and the PSA recommendation categories. The results are shown in Table 5 below. The results indicate that the correlation between the outcome measures and the PSA recommendation category is significant rather than occurring by chance alone. This correlation means that knowledge of the PSA recommendation category improves the ability to predict the FTA, NCA, and NVCA rates.

Table 5. Chi-Square Results Summary Table				
	df	N	$x^2$	Sig.
FTA Rate * PSA Recommendation Category	5	6, 392	214.548	p<.001
NCA Rate * PSA Recommendation Category	5	6, 392	250.659	p<.001
NVCA Rate * PSA Recommendation Category	5	6, 392	60.849	p<.001

Figure 4 shows the FTA rates by PSA recommendation categories. Cases with a ROR had an FTA rate of 8.8%. The FTA rate for PML 1 and PML 2 were 14.7% and 18.1% respectively. Cases with a PML 3 had an FTA rate of 22.9%. The rate for PML 4 and those with detain or maximum conditions were 24.8% and 28.4%. While some categories were similar, overall the pattern held. Defendants in the least restrictive categories had lower FTA rates and those in more restrictive categories had higher FTA rates.



The FTA rate for the 6,392 cases was 18.5% (see Figure 5). As the FTA score increased, the FTA rate increased. Defendants who score higher on the PSA are considered higher risk and FTA at a higher rate than defendants who scored lower on the PSA. The FTA rate increased from 8.9% for those assessed with an FTA 1 to 31.8% with an FTA 6. The FTA score, which is one of two scores used in the decision-making framework, shows a clear pattern in which those with higher FTA scores have higher FTA rates.



### New Criminal Activity.

Court data was reviewed to determine if there was an NCA during the pretrial period of the case. As noted earlier, City and County ordinances were not considered new criminal activity<sup>10</sup>.

The NCA rate for all cases was 17.2%. Similar to the FTA rate, the NCA rate varied by recommendation category, and generally increased as the category increased. Table 6 shows the NCA rate by PSA recommendation category. The least restrictive recommendation category, (A) ROR, had an NCA rate of 7.9%. The most restrictive category, (Y) Detain or Max Conditions, had an NCA rate of 29.0%. However, there were a few recommendation categories that were lesser or greater. For example, category (D) ROR, had the lowest NCA rate at 7.2%. Category (W) had the highest NCA rate at 33.0%. In general, the higher the recommendation category, the higher the NCA rate.<sup>11</sup> The lowest scores (7.2% to 11.8%) remained in

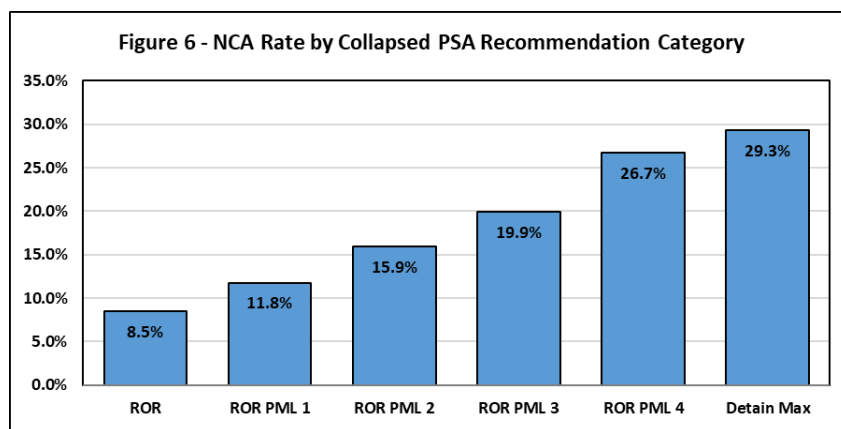
<sup>10</sup> If an NCA was within the pretrial period, any charges that were City or County ordinances were also not included. For example, if a case number had three charges and one of which was a City or County ordinance, it was not included, even in the instance that it was the highest charge.

<sup>11</sup> The NCA Rates (Table 6) includes charges that are considered NVCA. However, the NVCA Rates (Table 7) does not include NCA charges but only charges that are considered violent. The totals, however, include both the NVCA and NCA.

the A through E range and the higher scores (12% to 33%) remained in the F through Y range, with the exception of (H) ROR PML 1 at 11.4%. Some exceptions to this occurred in the categories where the frequency was very small, such as (G) ROR PML 4, has a 100% NCA rate due to the two of two cases having an NCA.

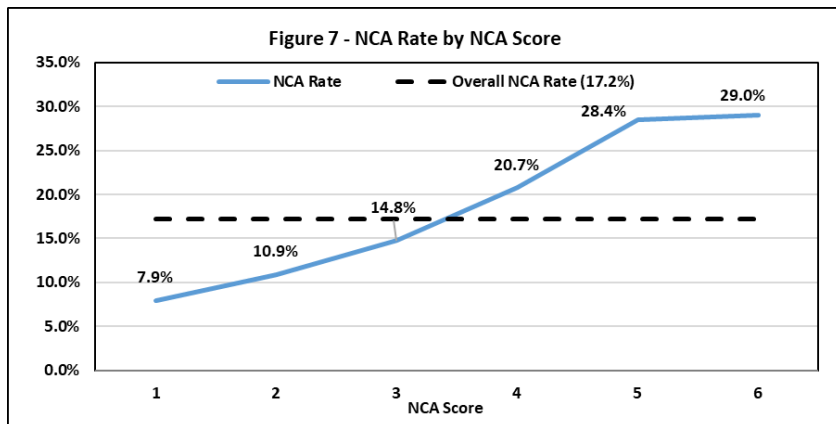
Table 6. NCA Rates by PSA Recommendation												
FTA Scale	New Criminal Activity Scale											
	1		2		3		4		5		6	
	NCA's	NCA Rate	NCA's	NCA Rate	NCA's	NCA Rate	NCA's	NCA Rate	NCA's	NCA Rate	NCA's	NCA Rate
1	(A) ROR 59/744 7.9%		(B) ROR 46/431 10.7%									
2	(C) ROR 11/137 8.2%		(D) ROR 27/374 7.2%		(E) ROR PML 1 45/381 11.8%		(F) ROR PML 3 36/211 17.1%		(G) ROR PML 4 2/2 100.0%			
3			(H) ROR PML 1 43/376 11.4%		(I) ROR PML 2 85/618 13.8%		(J) ROR PML 3 104/564 18.4%		(K) ROR PML 4 9/48 18.8%		(L) Detain or Max Conditions 1/4 25.0%	
4			(M) ROR PML 1 24/111 21.6%		(N) ROR PML 2 50/272 18.4%		(O) ROR PML 3 71/304 23.4%		(P) ROR PML 4 71/257 27.6%		(Q) Detain or Max Conditions 8/43 18.6%	
5			(R) ROR PML 2 2/11 18.2%		(S) ROR PML 2 26/124 21.0%		(T) ROR PML 3 76/364 20.9%		(U) Detain or Max Conditions 103/347 29.7%		(V) Detain or Max Conditions 51/160 31.9%	
6							(W) Detain or Max Conditions 33/100 33.0%		(X) Detain or Max Conditions 32/109 29.4%		(Y) Detain or Max Conditions 87/300 29.0%	

Figure 6 shows the NCA rates by the collapsed PSA recommendation categories. As seen in Figure 4 above, FTA rates increased as the FTA score increased. Similarly, defendants who were in more restrictive recommendation categories had higher NCA rates than those who were lower risk. Cases with a ROR had an NCA rate of 8.5%. The NCA rate for PML 1 was 11.8% and for PML 2 was 15.9%. Cases with a PML 3 had an NCA rate of 19.9%. The rate for PML 4 was 26.7%. Those with detain or maximum conditions had an NCA rate of 29.3%. In general, as the recommendation category became more restrictive, the NCA rate increased.



In general, the NCA rate increased as the NCA score increased, but the increase varied by NCA score. The NCA rate (see Figure 7) for those with a score of 1 was 7.9%. For cases with an NCA 2, the NCA rate was 10.9% and for an NCA 3 it was 14.8%. Those with an NCA score of 4 had a rate of 20.7%. The highest NCA rate was for those with an NCA 5 at 28.4% a score of 6 resulted in an NCA rate of 29%. In general, the rate increased by varying percentages. The increase in the NCA rate from FTA 1 to FTA 6 is more than 20%, however, the rate increased gradually as the FTA score increased. There was a 3%

increase from FTA 1 to FTA 2, then a 3.9% increase, a 5.9% increase, a 7.7% increase, and finally a 0.6% increase from FTA 5 to FTA 6.



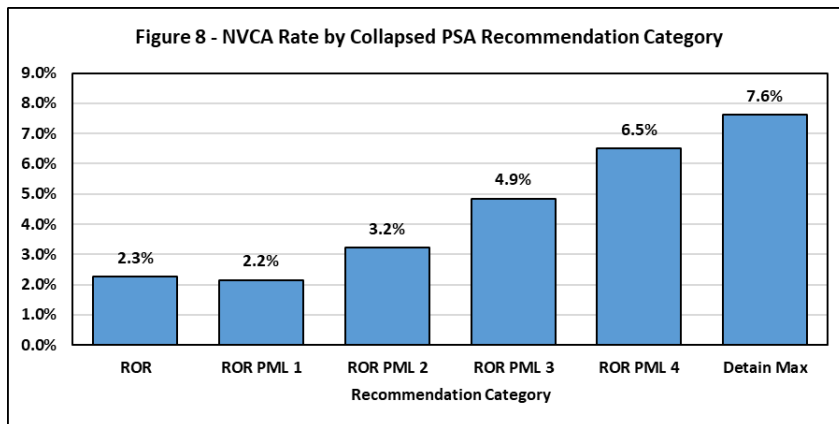
### New Violent Criminal Activity.

Statutes were identified as violent by the PSA Implementation Team with the Laura and John Arnold Foundation (LJAF) and defined as “when a person causes or attempts to cause physical injury to another person” (PSA Risk Factor and Outcome Definitions Bernalillo County, New Mexico, p. 1). These offenses include murder, kidnapping, robbery, assault, sex offenses such as rape and sexual assault, and conspiracy to commit these offenses. The NVCA rate was much lower than the NCA rate, 4.1% overall compared to the NCA rate of 17.2%. Table 7 shows the NVCA rates by PSA recommendation category. In general, categories with more restrictive conditions of release had an NVCA rate that was higher.

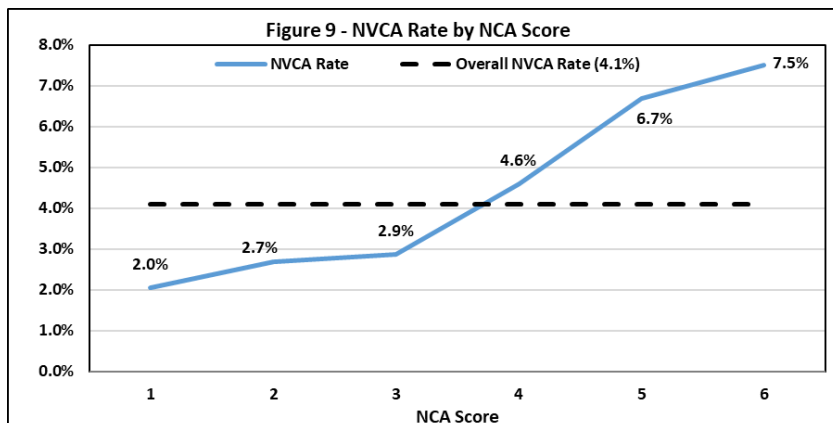
Table 7. NVCA Rates by PSA Recommendation												
FTA Scale	New Criminal Activity Scale											
	1		2		3		4		5		6	
	NVCAs	NVCA Rate	NVCAs	NVCA Rate	NVCAs	NVCA Rate	NVCAs	NVCA Rate	NVCAs	NVCA Rate	NVCAs	NVCA Rate
1	(A) ROR 15/744 2.0%		(B) ROR 7/431 1.6%									
2	(C) ROR 3/137 2.2%		(D) ROR 13/374 3.5%		(E) ROR PML 1 8/381 2.1%		(F) ROR PML 3 11/211 5.2%		(G) ROR PML 4 0/2 0.0%			
3			(H) ROR PML 1 9/376 2.4%		(I) ROR PML 2 16/618 2.6%		(J) ROR PML 3 32/564 5.5%		(K) ROR PML 4 3/48 6.3%		(L) Detain or Max Conditions 1/4 25.0%	
4			(M) ROR PML 1 6/111 5.4%		(N) ROR PML 2 12/272 4.4%		(O) ROR PML 3 14/304 4.6%		(P) ROR PML 4 16/257 6.2%		(Q) Detain or Max Conditions 2/43 4.7%	
5			(R) ROR PML 2 0/11 0.0%		(S) ROR PML 2 5/124 4.0%		(T) ROR PML 3 13/364 3.6%		(U) Detain or Max Conditions 24/347 6.9%		(V) Detain or Max Conditions 16/160 10.0%	
6							(W) Detain or Max Conditions 5/100 5.0%		(X) Detain or Max Conditions 10/109 9.2%		(Y) Detain or Max Conditions 20/300 6.7%	

There were some increases in the NVCA rate as the recommendation categories became more restrictive. As the NCA and FTA scores increased, so did the NVCA rates, as shown in Figure 8 below. Defendant with a higher score had higher rates of NVCA. For those ordered to ROR, the NVCA rate was 2.3%, which decreased to 2.2% among those cases with a PML 1. The NVCA rate increased to 3.2% for PML 2 and to 4.9% for the PML 3. Cases with a recommendation of PML 4 had an NVCA rate of 6.5% and cases with detain or release with maximum conditions had an NVCA rate of 7.6%. While the rate was

unexpectedly high for those with a ROR recommendation, the remaining categories had an NVCA rate that increased as the restrictiveness of the recommendation category increased.



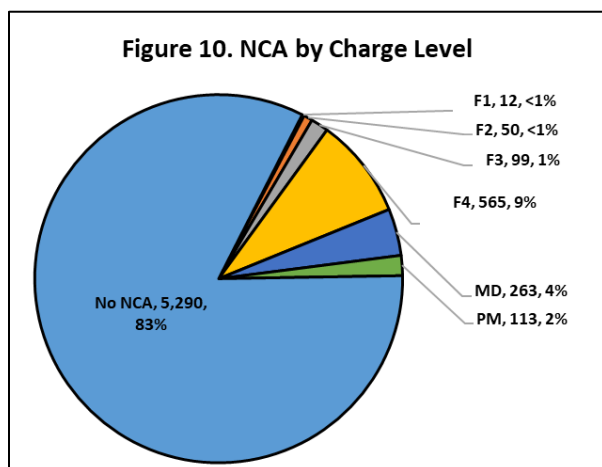
The NVCA rate also increased by score, although the NCA scores 1 through 3 were similar and then increased to NCA 4 through 6. For those with an NCA score of 1, the NVCA rate was 2.0%. This remained similar among those with a score of NCA 2, increasing to 2.7% and then increasing to 2.9% for NCA 3. The NVCA rate was higher among the higher scored categories, with a NVCA rate of 4.6% for NCA 4, NVCA of 6.7% for NCA 5, and NVCA of 7.5% for NCA 6. As seen above with the FTA and NCA rates, the rates increased as the scores and recommendation category increased.



### New Criminal Activity and Charge Level.

New criminal activity was ranked by highest charge level. The highest charge level was selected and is shown in Figure 10 below. The charge levels were recorded as either a 1<sup>st</sup> degree felony (F1), a 2<sup>nd</sup> degree felony (F2), a 3<sup>rd</sup> degree felony (F3), a 4<sup>th</sup> degree felony (F4), misdemeanor (MD), and petty misdemeanor (PM).<sup>12</sup> The majority of cases in the sample, 83%, did not have an NCA. Less than 1% of cases had an NCA with an F1 or an F2. The highest percent charge level was F4 at 9%.

<sup>12</sup> For example, if the new case had multiple charges, the three highest were recorded by using the charge hierarchy: F1, F2, F3, F4, felony unknown, MD, and then PM. There were few capital felonies and were included in the F1 rates. The unknown level felonies were collapsed into the F4s and are usually accounted for by instances where the charge level is not identified. This seems to occur most typically when initial charges may not include enough detail to assign the level, such as which if it is a first or subsequent off



New criminal activity was also ranked by highest charge category. The highest category was selected and is shown in Figure 11 below. The charge categories were recorded as either a violent, drug, property, DWI, or public order/other<sup>13</sup>. Violent offenses comprised 4.1% of cases in the sample. An additional 4.1% had NCA consisting of drug offenses. The largest charge category was property offenses, accounting for 7.4% of cases in the sample. NCA consisting of DWIs accounted for .2% of charges and public order/other cases comprised 1.5% of cases.

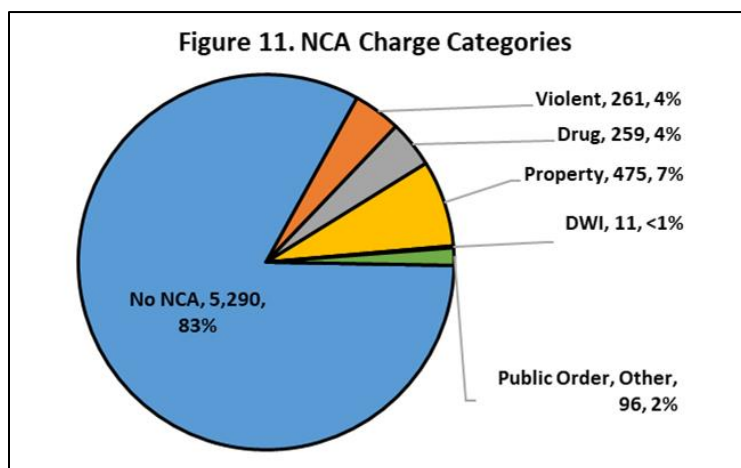


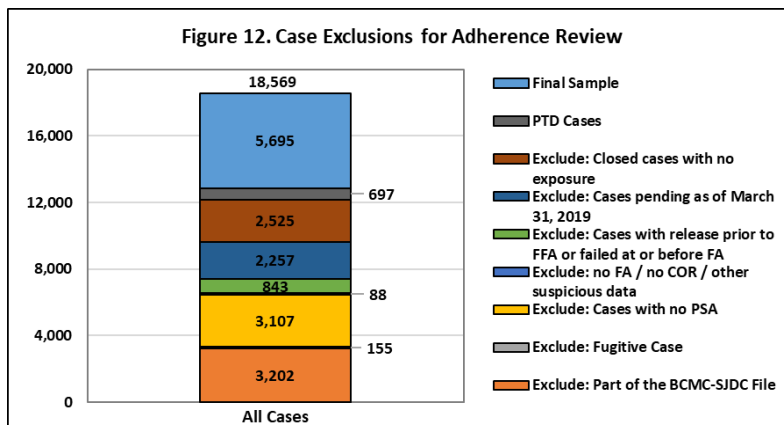
Table 8 below shows the charge level by recommendation category. The majority of cases without NCA scored in the ROR category (29.2%) and the PML 3 category (21.9%). Of the new first-degree felonies, the bulk (33.3%) had a detain or release with maximum conditions. In general, detain or release with maximum conditions comprise the largest portion of charges of every category other than the second degree felonies.

<sup>13</sup> This includes charges such as judicial interference charges, prostitution, contributing to the delinquency of a minor, and animal abuse charges.

Table 8. NCA Charge Level by PSA Recommendation Category							
	ROR	ROR PML 1	ROR PML 2	ROR PML 3	ROR PML 4	Detain Max	Total
<b>F1</b>	16.7%	16.7%	8.3%	8.3%	16.7%	33.3%	100.0%
<b>F2</b>	12.0%	12.0%	18.0%	40.0%	2.0%	16.0%	100.0%
<b>F3</b>	11.1%	5.1%	18.2%	27.3%	8.1%	30.3%	100.0%
<b>F4</b>	12.7%	7.4%	16.5%	26.5%	8.3%	28.5%	100.0%
<b>MD</b>	13.7%	10.3%	10.3%	22.4%	5.3%	38.0%	100.0%
<b>PM</b>	14.2%	9.7%	13.3%	26.5%	8.8%	27.4%	100.0%
<b>No NCA</b>	29.2%	13.2%	16.3%	21.9%	4.3%	15.3%	100.0%
<b>Total</b>	25.3%	12.0%	16.1%	22.9%	5.1%	18.7%	100.0%

## Adherence

Between July 2017 and March 2019, there were 18,569 cases from the BCMC and SJDC electronic data. Cases were excluded from both BCMC and SJDC when there was no PSA, when the case was still pending on March 31, 2019, where the defendant was released prior to the FFA or FA, when the defendant did not have exposure in the community, and any fugitive cases. After these exclusions, shown in Figure 1 and Figure 2 above, there were 6,392 cases available for analysis. For the adherence review, conditions of release at a defendant's FFA or FA were compared to the PSA recommendation. In order for it to be considered adherence, the PSA recommendation must match the ordered conditions of release. By definition, cases that are applicable for adherence are cases for which there is a PSA Recommendation and the judge sets conditions. Therefore, cases for which there is a Preventive Detention (PTD) motion filed would not qualify as there is no condition set by the BCMC judge. There were 684 cases excluded from BCMC and 13 cases excluded from SJDC for adherence analysis for this reason. With the PTD cases excluded, there were 5,695 cases available for adherence review. This is shown in Figure 12 below. The adherence rate or deviation from the PSA rate was calculated by PSA recommendation category and by conditions of release. The FTA, NCA and NVCA rates were also calculated and tested for statistical significance.



The cases within the final sample were opened and closed within the sample time period, from July 1, 2017 to March 31, 2019. Due to the proximity of the cutoff date to the present date, there were fewer cases in the sample from 2019, especially March 2019. Adherence will continue to change over time, depending on the case close date for example. For this reason, a brief review was conducted of the adherence rates by month and year for July 1, 2017 to December 31, 2018, not including 2019. The overall adherence rate in 2017 was 72.1%. The overall adherence rate in 2018 was 77.7%. The adherence rates per quarter gradually increased, from 72.7% for Q1 in 2017 to 81% for Q4 in 2018.

## PSA Recommendations.

Table 9 reports the number of cases used for adherence analysis by PSA recommendation. The majority of cases received a ROR (26.6%) followed by PML 3 at 22.2%, then Detain/Max at 17.5%. The least assigned recommendation category was PML 4, at 4.6%.

Table 9. Adherence or Deviation Rate by PSA Recommendation					
Category	Total	Percent of all Adherence Cases	Adherence Rate	Less Restrictive	More Restrictive
ROR	1,517	26.6%	75.4%		22.3%
ROR PML 1	711	12.5%	70.5%	24.3%	5.2%
ROR PML 2	941	16.5%	77.0%	12.1%	10.8%
ROR PML 3	1,267	22.2%	78.5%	7.0%	14.8%
ROR PML 4	263	4.6%	72.2%	6.1%	22.1%
Detain/Max	996	17.5%	71.0%	6.8%	22.2%
<b>Total</b>	<b>5,695</b>	<b>100.0%</b>	<b>74.8%</b>	<b>8.0%</b>	<b>17.2%</b>

## Adherence Rate.

This section reports on the adherence rate. Adherence is defined as the degree to which the conditions of release set at the FFA or FA correspond with the PSA recommendation. Any condition over and beyond the recommendation for categories ROR or ROR with PML of any level is considered a more restrictive condition. The complete matrix comparing the recommendations and conditions of release set can be seen in Appendix A, Table A1.

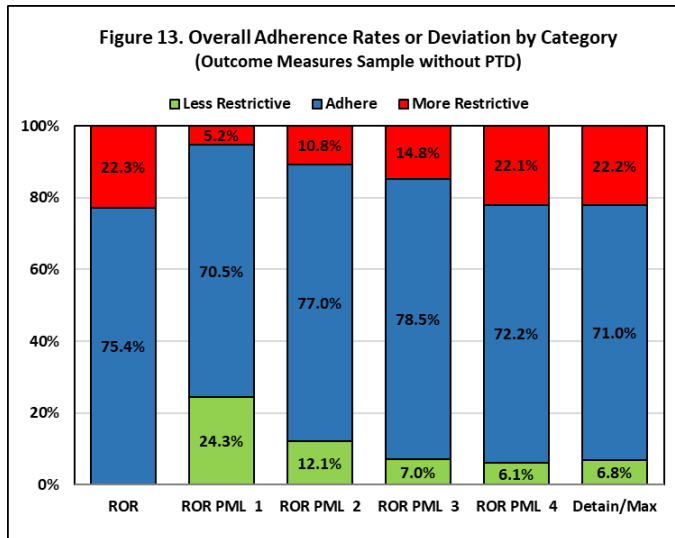
There were 1,143 cases that scored in the ROR category and who were released on their own recognizance, demonstrating a 75.4% adherence rate. Of the total 22.3% in the ROR category who were ordered to more restrictive conditions, there were 338 or 22.2% who were ordered to ROR with Pretrial Supervision; eight or 0.5% where third-party custody (TPC) to PTS was ordered<sup>14</sup>; seven or 0.5% who had a bond set; 19 or 1.3% who had a bond set with Pretrial Supervision; and two or 0.1% with other, such as bond or third party or unsecured bond.

Figure 13 reports the percent adherence for each category, as well as percent of more or less restrictive conditions. The highest adherence rate is demonstrated in the ROR PML 3 category at 78.5%, followed by the ROR PML 2 category, at 77% adherence, and ROR with 75.4% adherence. The highest deviation to more restrictive conditions was in the ROR category, at 24.7%, followed by ROR PML 4 at 22.4%. The highest deviation to less restrictive conditions was in the ROR PML 1 category at 22.3%, followed by Detain/Max, at 22.2%. For the Detain/Max, we consider ROR a deviation down but ROR, PTS, Third Party, Bond, Bond and/or Third Party, and NBH were considered adherence because defendants are getting some type of additional conditions. As previously mentioned, the 697 PTD cases were not included.

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<sup>14</sup> When a defendant is ordered to third party custody, PTS assesses whether the defendant is amenable to supervision before the defendant is released. If amenable to supervision the defendant is released and supervised by PTS.





### Adherence and Deviation Outcome Measures.

For the 5,695 cases in the adherence review, Failure to Appear and New Criminal Activity rates were calculated by adherence rate. As a comparison, the rates from the outcome measure sample (6,392 cases) above were: 18.5% for the FTA rate, 17.2% for the NCA rate, and 4.1% for the NVCA rate.

Table 10 shows the FTA rates by adherence. For those who had less restrictive conditions set, the FTA rate was 15.1%. For those who had conditions set that matched the PSA recommendation, the FTA rate was 18%. In the instances that more restrictive conditions were set, the FTA rate increased to 23.2%.

There were more cases without an FTA than with an FTA when they were ordered to conditions that adhered to the PSA recommendation, 3,550 out of 5,695 cases, or 62.3%. The overall FTA rate among the adherence sample was 18.6%.

Table 10. FTA Rates by Adherence or Deviation				
	Less Restrictive	Adherence	More Restrictive	Total
No FTA	387	3,550	700	4,637
FTA	69	777	212	1,058
Percent	15.1%	18.0%	23.2%	18.6%
Total	456	4,327	912	5,695

Table 11 shows the NCA rates by adherence<sup>15</sup>. When less restrictive conditions were set, the NCA rate was 12.3%. For those who had conditions set that matched the PSA recommendation, the NCA rate was 16.8%. As seen with the FTA rate, the NCA rate increased in the instances that more restrictive conditions were set, to 21.5%. There were more cases without a new charge than a new charge when they were ordered to conditions that adhered to the PSA recommendation, 3,601 out of 5,695 or 63.2%. The overall NCA rate among the adherence sample was 17.2%.

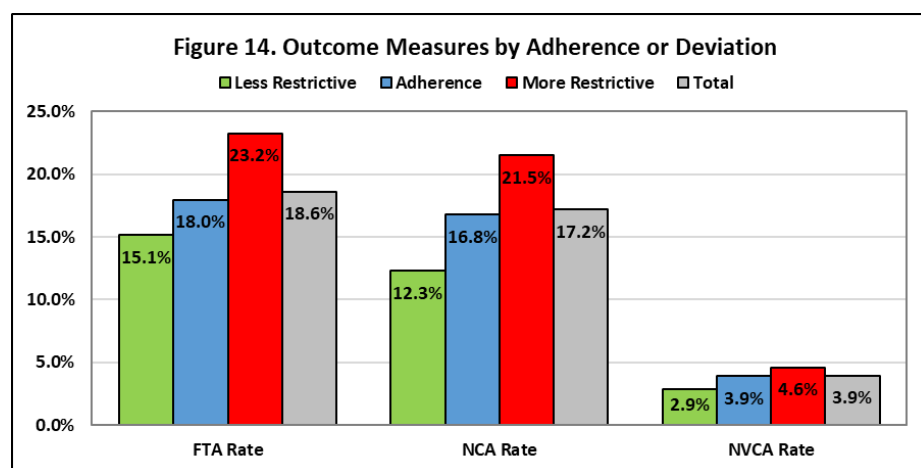
Table 11. NCA Rates by Adherence or Deviation				
	Less Restrictive	Adherence	More Restrictive	Total
No New Charge	400	3,601	716	4,717
NCA	56	726	196	978
Percent	12.3%	16.8%	21.5%	17.2%
Total	456	4,327	912	5,695

<sup>15</sup> As calculated in the outcome measures sample, the NCA rate includes both violent and non-violent charges.

Table 12 shows the NVCA rates by adherence. As with the FTA and NCA rate, the NVCA rate was lowest in the instances that the less restrictive conditions were set, at 2.9%. In the instances that the conditions matched the PSA recommendation, the NVCA rate was 3.9%, increasing to 4.6% when conditions were more restrictive. In addition, the percent of cases without a violent new charge was greatest in the adherence category, 4,159 out of 5,695 or 73%. The overall NVCA rate among the adherence sample was 3.9%.

	<b>Less Restrictive</b>	<b>Adherence</b>	<b>More Restrictive</b>	<b>Total</b>
<b>No New Charge</b>	443	4,159	870	5,472
<b>NVCA</b>	13	168	42	223
<b>Percent</b>	2.9%	3.9%	4.6%	3.9%
<b>Total</b>	456	4,327	912	5,695

Figure 14 shows the FTA, NCA and NVCA rates across the adherence categories. As discussed above, the rates increased with more restrictive conditions and were lowest with less restrictive conditions. The overall rates are also shown in grey.



Tables 10, 11, 12 and Figure 14 above would suggest that when deviating from the PSA recommendation to more restrictive categories, defendants are more likely to fail to appear and more likely to commit new criminal activity. When adhering more closely to the PSA recommendation, the FTA and NCA rates were lower. When it comes to pretrial release decision-making, setting more restrictive conditions is neither a means to guarantee a defendant's appearance at future hearings, nor a guarantee that the defendant will not commit new criminal activity. Less restrictive conditions have FTA and NCA rates even lower than cases with conditions that adhere to the PSA.

In general, the more restrictive the conditions, the higher the FTA and NCA rate and the more likely the defendant failed to appear or commit new criminal activity. A binomial logistic regression was used to determine if the correlation between adherence and the outcome measures was statistically significant, not occurring by chance alone. This statistical test was selected because of the nature of the adherence variable, specifically that it is a categorical variable which is non-numeric. For FTAs, the logistic regression model was statistically significant (see Table 13). Those with less restrictive conditions had lower rates of FTA than those with adherence, but not to a degree that was significant. Those with more restrictive conditions had higher FTA rates and this correlation was significant. Those with more restrictive conditions were 1.38 times more likely to have an FTA than those for whom there was adherence. The Cox & Snell R-square values for these models indicate that adherence only explains a small portion of the associated failure rates (.3% and .4%). For NCAs, the logistic regression model was

statistically significant. The correlation between the NCA rate and both less and more restrictive conditions was statistically significant. For those with less restrictive conditions, the likelihood of having an NCA was .69 compared to those with adherence while those with more restrictive conditions were 1.36 times more likely to have an NCA. The logistic regression model for the NVCA was not statistically significant, indicating that knowledge of the type of adherence does not improve the ability to predict NVCA. The Cox & Snell R-square values for these models indicate that adherence only explains a small portion of the associated failure rates (.3 and .4%). It seems likely that there may be additional variables that may contribute to these models to some degree. Those who were ordered less restrictive conditions had lower FTA rates, but this difference was not statistically significant. However, it was significant on the likelihood of having an NCA. Those with less restrictive conditions were more likely to have an NCA than those in the adherence category, and those with more restrictive conditions were twice more likely to have an NCA.

<b>Table 13. Binomial Logistic Regression Outcomes</b>				
<b>FTA Rate</b>				
	<b>B</b>	<b>S.E.</b>	<b>df</b>	<b>Exp(B)</b>
<b>Adherence (Reference)</b>			2	
<b>Less Restrictive</b>	-0.205	0.137	1	0.815
<b>More Restrictive</b>	0.325***	0.088	1	1.384
<b>Constant</b>	-1.519***	0.040	1	0.219
<b>NCA Rate</b>				
	<b>B</b>	<b>S.E.</b>	<b>df</b>	<b>Exp(B)</b>
<b>Adherence (Reference)</b>			2	
<b>Less Restrictive</b>	-0.365*	0.148	1	0.694
<b>More Restrictive</b>	0.306***	0.090	1	1.358
<b>Constant</b>	-1.601***	0.041	1	0.202
<b>NVCA Rate</b>				
	<b>B</b>	<b>S.E.</b>	<b>df</b>	<b>Exp(B)</b>
<b>Adherence (Reference)</b>			2	
<b>Less Restrictive</b>	-0.320	0.292	1	0.726
<b>More Restrictive</b>	0.178	0.176	1	1.195
<b>Constant</b>	-3.209***	0.079	1	0.040

## Conclusion

This study presented the failure to appear (FTA) rate, the new criminal activity (NCA) rate, and the new violent criminal activity (NVCA) rate for cases filed, assessed, closed, and those that had exposure in either Bernalillo County Metropolitan Court (BMC) or Second Judicial District Court (SJDC) between July 1, 2017 and March 31, 2019. There were 6,392 cases used for analysis.

The outcome measures for the PSA were calculated for the 6,392 cases in the study by recommendation category. As the FTA and NCA/NVCA scores increased, so did the percent of failures. A failure to appear (FTA) warrant was considered valid if it was issued during the study period for failure to appear at a court hearing. The overall FTA rate was 18.5%. The FTA rate generally increased as the FTA score from the PSA increased. The NCA rate also increased as the NCA score increased, with an overall NCA rate of 17.2%. The NVCA rate was highest among those cases with higher NCA scores, with an overall NVCA rate of 4.1%.

Cases within the sample were also reviewed for adherence. There were 697 Preventive Detention cases, where a defendant was detained while awaiting a SJDC detention hearing that were excluded and there were 5,695 cases that were reviewed. Adherence was determined by comparing the PSA recommendation

for a case to the ordered conditions of release. A brief analysis of the adherence rates between July 1, 2017 and December 31, 2018 found the overall adherence rate in 2017 was 72.1% and 77.7% in 2018.

When ordered conditions of release deviated from the recommendation with less conditions, it was considered less restrictive. In the ROR PML 1 recommendation category, less restrictive conditions were ordered 24.3% of the time. In ROR PML 2, it decreased to 12.1%, then remained between 6% and 7% for PML 3, PML 4 and Detain/Max. The FTA and NCA rates were lowest in the instances that less restrictive conditions were ordered. When ordered conditions of release matched the PSA recommendation, it was considered adherence. Overall, the adherence rate remained in the 70% range across all PSA categories. It was highest in the ROR PML 2 and 3 categories at 77% and 78.5%, respectively. There were more cases without an FTA or NCA in the adherence category. When ordered conditions of release were higher than the PSA recommendation, it was considered more restrictive. In the ROR category, more restrictive conditions were ordered 22.3%, the highest among all categories. In the Detain/Max category, it slightly decreased to 22.2%, then to 22.1% in PML 4, and was lowest in PML 2, at 5.2%. When conditions became more restrictive, the FTA and NCA rates increased.

The PSA provides valuable information that can inform judicial decision making. While failures occur regardless of the type of conditions recommended, adhering more closely to the PSA will likely improve the FTA and NCA rates for assessed cases.

Future studies incorporating additional data will provide a more complete picture of the criminal justice system in Bernalillo County as a whole.

## References

- Arnold Ventures. (2019). Public Safety Assessment FAQs (“PSA 101”). Retrieved from [https://craftmediabucket.s3.amazonaws.com/uploads/Public-Safety-Assessment-101\\_190319\\_140124.pdf](https://craftmediabucket.s3.amazonaws.com/uploads/Public-Safety-Assessment-101_190319_140124.pdf).
- Laura and John Arnold Foundation. (2016). Public Safety Assessment: Risk Factors and Formula. Retrieved from <https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/PSA-Risk-Factors-and-Formula.pdf>.
- N.M. Constitution, art. II, §13.
- Pretrial Justice Institute (2015). Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants [Issue Brief].
- PSApretrial.org. (2019). Public Safety Assessment (PSA). Retrieved from: <https://www.psapretrial.org/about/background>. [Accessed 20 Nov. 2019].
- Schlesinger, Traci. (2005) Racial and Ethnic Disparity in Pretrial Criminal Processing. *Justice Quarterly*, 22:2, 170-192. doi: 10.1080/07418820500088929.
- Steffensmeier, D. J., Ulmer, J. and Kramer, J. H. (1998). The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment of Being Young, Black, and Male. *Criminology*, 36(4), 763-798. doi: 10.1111/j.1745-9125.1998.tb01265.x.
- U.S. Constitution. amend. V.

## Appendix A

Table A1 shows the matrix of the PSA recommendation and the conditions of release. Conditions not commonly used that are normally categorized as “other” are assessed as either adhering or deviating from the recommendation on a case by case basis.

<b>Table A1. PSA Recommendation by COR Match or Deviation for Reference</b>						
PSA Recommendation	Conditions of Release					
	ROR	ROR, PTS	TPC	NBH	Bond	Bond and/or TPC
ROR	=	↑	↑	↑	↑	↑
ROR PML 1	↓	=	↑	↑	↑	↑
ROR PML 2	↓	=	↑	↑	↑	↑
ROR PML 3	↓	=	↑	↑	↑	↑
ROR PML 4	↓	=	↑	↑	↑	↑
Detain/Max	↓	=	=	=	↑	↑