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# Bail Reform: Motions for Pretrial Detention and their Outcomes

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## Notes and Disclaimers

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## Introduction

Like other jurisdictions and states across the nation, New Mexico recently reformed its bail system. In 2016, New Mexico voters passed a constitutional amendment intended to ensure that defendants are not detained solely because they are unable to post bond, while simultaneously protecting the safety of the community. The New Mexico Statistical Analysis Center has engaged in an ongoing project to assess bail reform efforts in New Mexico. The current report focuses on one aspect of bail reform: the use of preventative detention.<sup>1</sup>

## Background on Preventative Detention Motions

Prior to bail reform, judges frequently ordered defendants to post a cash bail or bond to secure release. This often resulted in long-term detention of defendants who could not afford to post bond but did not pose a danger to an individual or the community. Conversely, others who did pose a danger but could afford to post bail were released pending trial. Bail reform aimed to eliminate this practice. Now, prosecutors carefully screen cases to determine whether a felony defendant poses a threat to an individual or the community. If the prosecutor determines that the defendant does pose a threat, they may file a motion for preventative detention. While attorneys can file preventative detention motions at any time prior to case disposition, they most often do so within the first few days of arrest.

Once filed, the district court opens a new case and schedules a hearing where the judge determines whether to approve or deny pretrial detention. If approved, the defendant is detained for the duration of the pretrial period, unless circumstances change or the decision is successfully appealed. If the judge denies the motion for preventative detention, they set conditions of release, which may include bail. If bail is ordered and the defendant is not released within 24 hours, the defendant is entitled to a hearing to review the ordered bond (N. M. R. Crim. P. Dist. Ct. 5-401 (H)(1)). Finally, if a defendant is released but violates the conditions set by the judge, the defendant may be detained for the duration of the pretrial period.

## Current Study

To date, there have been some limited studies on bail reform in New Mexico generally (e.g., Dole et al., 2019; Siegrist et al., 2020) and in Bernalillo County specifically (Ferguson, De La Cerda, and Guerin, 2019), but none have focused on the use of preventative detention across the state. This study aims to fill this gap. We assess the following research questions:

1. What are the numbers and rates of preventative detention motion hearings?
2. How many preventative detention motions result in detention, conditions of release, and bail?
3. How long are defendants detained pretrial?
4. Among those not detained, what proportion fail pretrial?
  - a. What proportion are arrested for a new offense?
  - b. What proportion fail to appear or fail to comply?
5. Which case and defendant characteristics are associated with prosecutors' decisions to file for preventative detention?

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<sup>1</sup> The terms pretrial detention, preventative detention, and preventive detention are used interchangeably. In this report, we chose to use the term preventative detention, consistent with the terminology used by many attorneys and judges throughout New Mexico.

## 6. Which case and defendant characteristics are associated with judges' decisions to detain?

This report begins with an overview of the total number and rate of preventative detention (PTD) motions filed in felony cases between January 1, 2017 and December 31, 2020. The remainder of this report examines a sample of 300 PTD cases. This includes cases filed and disposed between January 1, 2017 and December 31, 2019. We describe the outcomes of these motions and the conditions that judges order. We chose to limit the data to 2019 to allow a sufficient follow-up period in which to observe pretrial success and failure as well as time to disposition. Next, we explore the information that prosecutors use to present their case and that judges use to justify their pretrial decisions. We then compare the PTD motion outcomes by the characteristics of the cases and defendants. In the conclusion, we discuss the findings from this report in relation to the intentions of the bail reform.

## Methods

### Data Sources and Information Gathered

This report utilizes court data from the Administrative Office of the Courts (AOC) and arrest data from the Department of Public Safety (DPS). The New Mexico Sentencing Commission (NMSC) provided automated datasets from the AOC and DPS for this study. Additionally, we gathered information and accessed primary documents from the AOC's Odyssey court system.

The study begins with all disposed court cases filed between 2017 and 2020 to determine the approximate rate of filing for preventative detention across the state. To do so, we first identified all "LR" cases from the AOC data. "LR" cases include appeals from the lower courts to the district courts, and include, but are not limited to, PTD cases. The AOC data include several variables that can be used to determine whether a case may involve preventative detention, but there is no single variable that describes the case as such. Using a sample of 406 cases, we compared the values of the variables "petition type," "statute," and "disposition" to filing and other documents in Odyssey and recorded whether the petition involved preventive detention, an appeal of conditions of release, or some other appeal. We then determined which combinations of these variables always identified preventative detention, as opposed to which combinations almost always identified preventive detention, but sometimes involved an appeal to review conditions of release instead. We label these as "definite" preventive detention and "likely" preventive detention.

Using this schema, we then identified the number of both "definite" and "likely" PTD motions filed between 2017 and 2020 relative to the total population of felony-level cases initiated in magistrate or metropolitan court during the same time frame. While this is an imperfect measure, these results provide a ballpark estimate of the proportion of felony cases on which prosecutors filed a PTD motion.

Second, from the total population of definite and likely PTD cases identified from disposed LR cases filed between 2017 and 2019, we selected 300 cases to address questions of prosecutorial and judicial decision-making and pretrial outcomes. This timeframe was chosen to allow sufficient time to assess the outcomes of preventative detention hearings and to observe successes and failures during the pretrial period.

We first identified the year of disposition from the automated data and then randomly selected 100 cases per year. After collecting the data, we discovered that we did not have the expected distribution of 100 cases annually. This is primarily because the disposition date recorded in the automated dataset

often reflected the last action date or the date the case was closed in district court rather than the date the judge decided on the preventive detention motion. Furthermore, in some instances, the case was reopened and the dataset included this most recent disposition date. Thus, a greater proportion of our sample was disposed in 2018 than intended (see [Appendix A](#) for details about annual and geographical distribution).

We looked up each case in our sample in Odyssey, the New Mexico Courts' secured public access database. We examined all documents available in the case and coded information reflecting the reasons prosecutors file motions, details about the current case, case outcomes, judges' justifications for their rulings, and pretrial performance (failures to appear or comply, including new criminal activity). In some instances, a case was reopened. When that occurred, we recorded the initial disposition information. Staff cross-checked data initially coded by another staff member to ensure accuracy.

It was the intent of this study to gather standard information across all cases in our sample; however, there were some data limitations. While most cases in our sample included a petition for detention and had an order explaining the judge's decision, the types of evidence presented and level of detail available in these documents varied within and across districts, as well as over time. Districts have different forms and standard procedures for presenting a case for preventative detention (see [Appendix B](#) for two examples of the forms prosecutors use when petitioning the court for preventative detention). Besides the inconsistencies in information available due to differences in the forms themselves, some prosecuting attorneys almost always included highly detailed supporting documents while others provided very little information. Certainly, this is in part related to the evidence available at the time the prosecutor files the case, but it also appears to be due to different norms.

Additionally, judges provide different levels of detail when explaining their decisions, and the availability of documentation within Odyssey varies. There were no documents to explain the judge's order in about 10% of the cases we reviewed. Whether that is because the judge did not complete the form or because it was not uploaded to Odyssey is unknown. Finally, evidence related to one's formal risk assessment was only available from the 2<sup>nd</sup> Judicial District, typically reflecting the results from the Public Safety Assessment. Other courts may have been informally using risk tools to aid release decisions; however, no other district reported or referenced the use of such assessments.

Despite these limitations, we were able to gather some common data. The vast majority of cases in our sample (n=242) included the criminal complaint in the PTD case or at least in the underlying criminal case. Nearly every PTD case contained details of the events of the underlying case, either within the petition itself or in attached documents. Details gathered include the nature and circumstances of the current offense, such as the offense type, the presence and use of weapons, drug/alcohol involvement, whether there were victims and witnesses, and any injuries sustained to victims.

Most petitions (n=268) at least referenced the defendant's criminal history or stated whether there was one. When available, we coded data about the degree and type of prior convictions and arrests. Additional information gathered included whether the current offense involved the same victim or was similar to prior charges, and whether the defendant had previous failures to comply with conditions of release or probation or prior failures to appear. We also gathered details about the defendant's current involvement with the criminal justice system (e.g., if they were on probation or had active warrants) when noted in the files.

In addition to data related to the defendant and the underlying criminal case, we collected data about preventative detention outcomes. Judges may approve or deny the motion, suspend the case pending further information (e.g., results of a competency assessment), or dismiss the case without deciding on the motion. Prosecutors can also choose to withdraw the motion. We recorded all of these outcomes. Additionally, we gathered information about conditions of release, including whether the judge ordered bond and whether and when the defendant posted bond if it was ordered. We gathered details provided by the judge to support their opinion when available.

Occasionally, the information presented by the prosecutor in the petition did not agree with the information the judge referenced in their order. Since prosecutors and judges sometimes cite different information, we combined the information from both sources to obtain the most accurate portrait of a case. In cases where information was discrepant, we verified that the characteristic was in fact associated with the case. For example, if our coding of the case indicated that the prosecutor did not reference an individual's history of probation violations, but the judge did, we verified whether that was accurately coded. If so, we coded the case as involving a defendant with a history of probation violations.

Finally, we calculated the length of time defendants remained in detention and defendants' pretrial performance (failures to appear or comply, including new criminal activity) after the resolution of the LR case. We calculated the length of detention from the most proximate date of initial detention (typically the date they were first arrested) to the date they were released upon resolution of the LR case. Some defendants who were initially released may have been detained later; we did not include that time in our calculations of initial pretrial detention, though we did document subsequent detainment. To determine pretrial performance, we utilized data available in Odyssey, and supplemented with arrest data from DPS, to check whether each released defendant had been arrested and booked on a subsequent offense, as new offenses are not always documented in the current criminal offense data from the court. DPS data include warrants for offenses committed prior to the current offense and traffic offenses; these were excluded.

## Analysis of Data

We use univariate and bivariate descriptive statistics to summarize the data gathered. When reporting results, we use several statistical terms: mean, median, outlier, standard deviation, and statistically significant. The mean indicates the arithmetic average of all cases included for that variable and is referred to in the report as the mean or average. The median indicates the mid-point of all cases when values for the variable are listed from smallest to largest. In other words, the median indicates the point at which the values of half the cases are less and half are more. An outlier is a case that has a value that is much smaller or greater than the others. This is important to note because outliers can increase or decrease the value of the mean in a way that may not be representative of all cases. However, outliers do not affect the median. Standard deviation is used to discuss the average distance from the mean; a smaller standard deviation indicates that values tend to be close to the mean. Finally, all measures of significance are reported using p-values. The lower the p-value, the more confident one can be that the observed difference is not due to chance. We use the common threshold of .05, meaning that we are at least 95% confident that our results are not due to chance, and consider anything at or below that level to be statistically significant. Statistically significant findings are noted both in the text and in or below tables and figures.

The implementation of bail reform is not a single event. The amendment to reform bail practices went into effect January 1, 2017. The New Mexico Supreme Court published the rules guiding bail reform in June 2017; these rules have since been revised. Thus, bail reform has seen notable change over the past few years and likely continues to evolve as stakeholders become more familiar with the process and adopt new tools and processes. Additionally, the bulk of this study concerns motions filed before the COVID-19 crisis. Many jurisdictions changed their handling of criminal cases as a result of the pandemic; it is unclear which, if any, of these changes will remain in place after the crisis abates. Therefore, when analyzing the data, we examine changes over time, using the filing year of the preventative detention case as our measure of time. Finally, implementation is likely to vary by location. Due the relatively small number of cases in individual counties or districts, we aggregate the data to region based on county location (see [Appendix C.1](#)).

Using all felony court cases filed between 2017 and 2020, we begin with descriptive statistics to assess the number and rates of PTD cases overall, over time and across regions. Then, using a subsample of cases from 2017 to 2019, we summarize information about PTD cases and their outcomes using univariate and bivariate descriptive statistics.

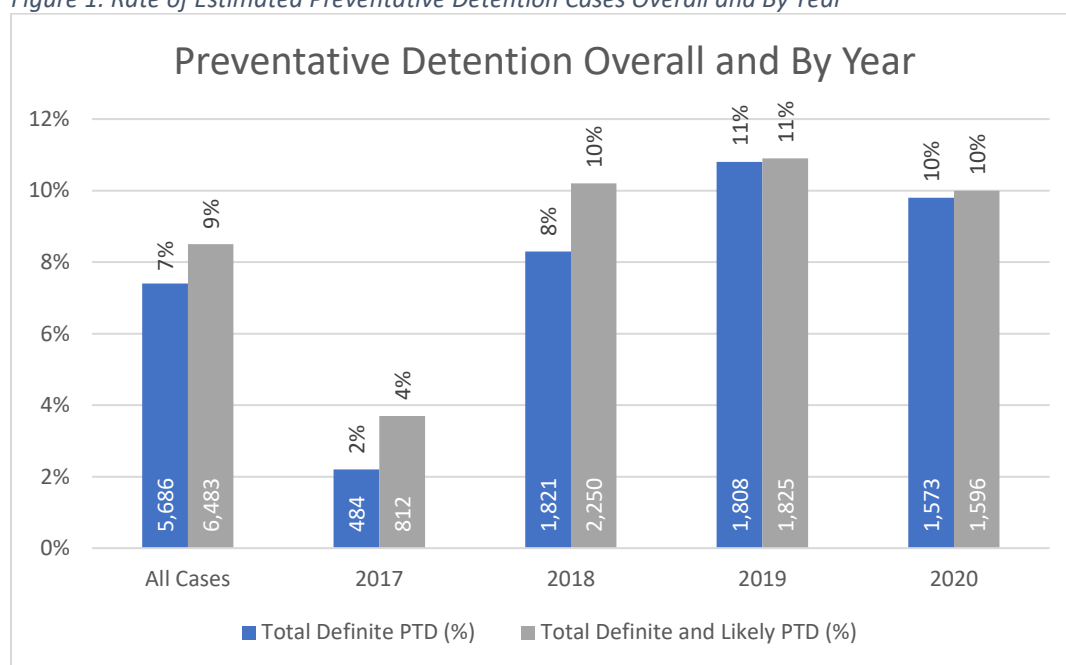


## Results Part I: Motions Filed, Orders, and Outcomes

### How Often did Prosecutors File for Preventative Detention?

There were 76,501 felony-level cases filed and disposed of in magistrate or metropolitan court between January 1, 2017 and December 31, 2020.<sup>2</sup> As displayed in Figure 1 below, the number of PTD cases filed was somewhere between 5,686 (7.4% definite PTD cases) and 6,483 (8.5% likely and definite PTD cases).<sup>3,4</sup> The number and proportion of PTD cases varied by year. In 2017, prosecutors filed motions for preventative detention in about 2 to 4% of all felony cases; the rate increased dramatically in 2018, where prosecutors filed for preventative detention in 8 to 10% of felony cases. This is likely because while the amendment took effect on January 1, 2017, the rules guiding the filing of such motions were not published until June of that year. Rates peaked in 2019 and were slightly lower in 2020.

Figure 1. Rate of Estimated Preventative Detention Cases Overall and By Year



N = 76,501

The proportion of PTD motions filed also varied by region. Figure 2 below shows the proportion of motions filed in each region of the state (see Appendix C.1. for a [map of regions](#)).<sup>5</sup> The Northeast region had the lowest percentage of PTD motions (approximately 3%). The Central region, which contains New Mexico's largest metropolitan area, had the greatest proportion of motions (around 11 to 12%), while the rates in the remaining regions fell somewhere in the middle. [Appendix D](#), Table D.1 summarizes the proportion of motions filed by judicial district.

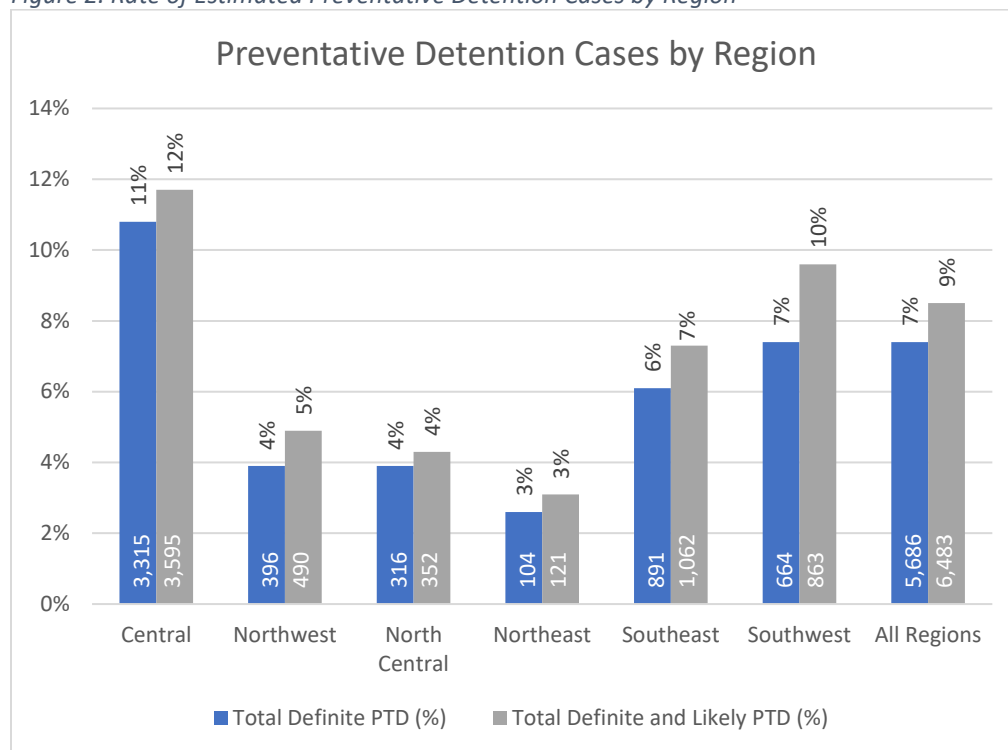
<sup>2</sup> Included here are all cases identified as felony by the case type description and/or involving a felony offense.

<sup>3</sup> See methods section for explanation of how PTD motions were determined, including "definite" and "likely" PTD motions.

<sup>4</sup> This excludes any motions for detention initiated after the underlying criminal case was bound over to district court.

<sup>5</sup> Regions are based on county of filing.

Figure 2. Rate of Estimated Preventative Detention Cases by Region



N = 76,501

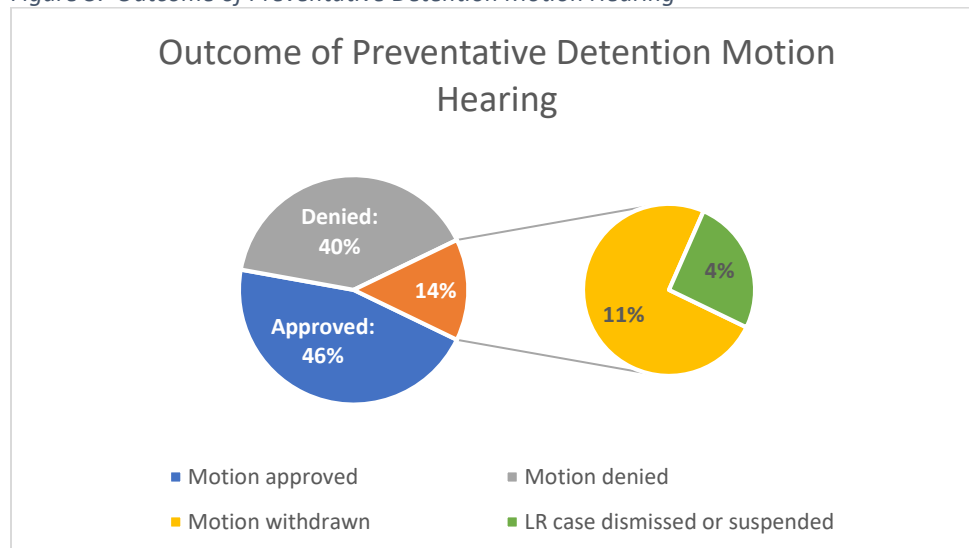
## Outcomes Among a Sample of 300 Cases

The remainder of this report examines a sample of PTD motions heard in the district court between 2017 and 2019. This section presents the outcomes of these motions; the conditions that judges order, including details on the use of bond; length of detention; and pretrial success.

### What Proportion of Motions Result in Detention?

Judges approved 46% (n=137) of PTD motions and denied 40% (n=120) of motions. In 11% of cases (n=32), the prosecutor withdrew the motion. In seven of those cases, the prosecutor withdrew the motion because the underlying criminal case ended, while in 14 others, the prosecuting and defense attorneys agreed to conditions of release that the LR judge then set. In the remaining 11 withdrawn cases, the judge remanded the case to the lower court to determine conditions of release. In just over 3% of cases (n=9), the judge dismissed the motion. The reasons cited for dismissal included the dismissal or resolution of the underlying criminal case (n=3; one of which was moved to federal jurisdiction), procedural challenges (n=4; e.g., exceeding the mandated time limit, defendant not transported to court), and redundancies in filing (n=2) because the defendant was already being held on another case. The judge did not order conditions of release in these cases. In the final 1% of cases (n=2), the motion was suspended pending a competency assessment, and the defendant was detained pending results. Case outcomes are summarized in Figure 3 below.

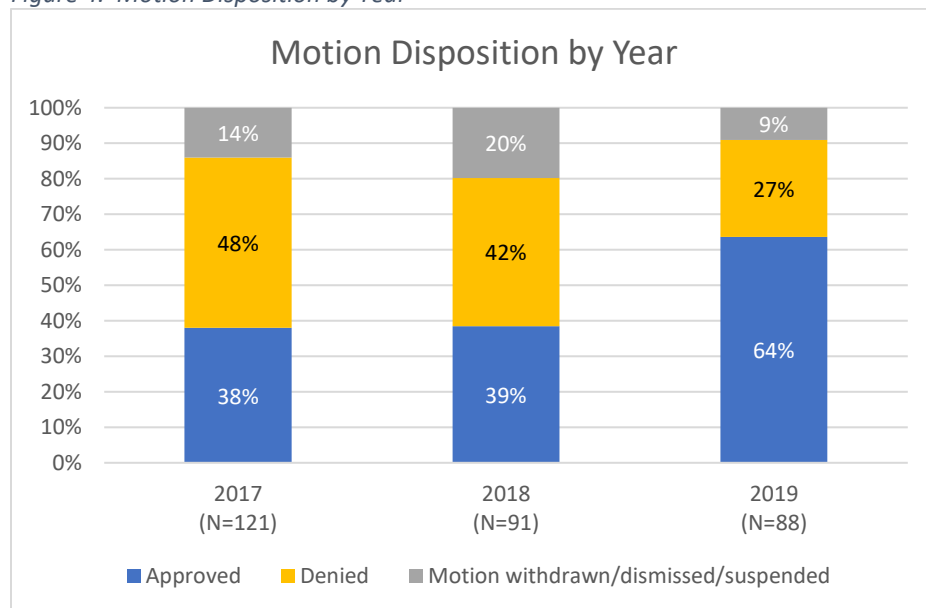
Figure 3. Outcome of Preventative Detention Motion Hearing



n = 300

There has been an increase in the proportion of approved motions over time (see Figure 4 below). In 2017, judges approved 38% of motions for preventative detention and denied 48%. In 2018, the approval rate was virtually the same (39%), but the proportion of the motions withdrawn or dismissed increased from 14% in 2017 to 20% in 2018. Conversely, in 2019, judges approved the majority of PTD motions (64%), and just 9% were withdrawn, dismissed, or suspended, while 27% were denied.

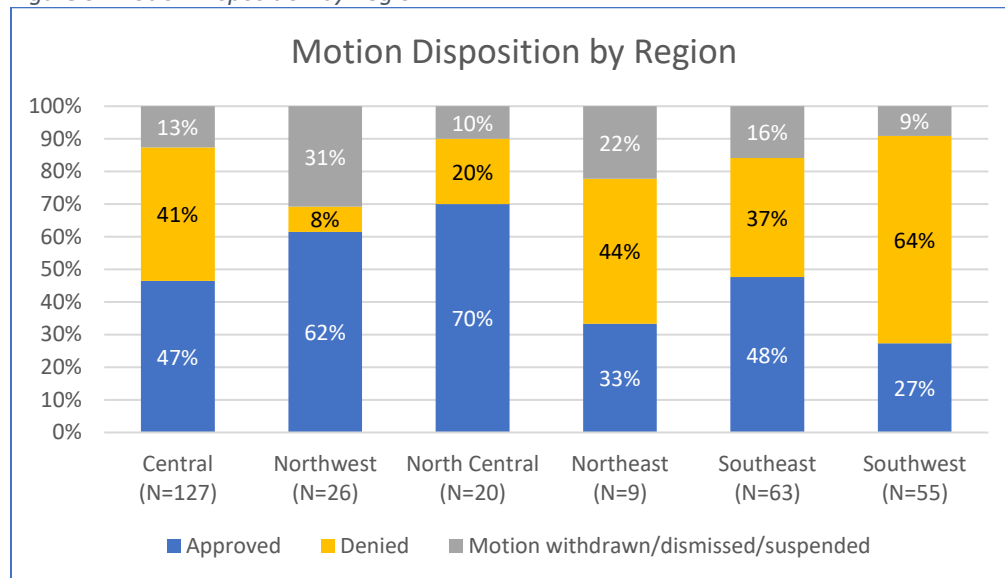
Figure 4. Motion Disposition by Year



Judicial rulings also varied by region. In the North Central region of the state, 70% of all PTD motions were approved, while 20% were denied and the final 10% of cases were withdrawn, dismissed, or suspended. The lowest rate of preventative detention was in the Southwest region, where just over 27% of PTD motions were approved. In this region, nearly 64% of motions were denied and 9% were dismissed or withdrawn. Some regions, such as the Northeast, have a very small number of cases; thus,

it is difficult to generalize these results to assume consistent trends in motion outcomes. Figure 5 outlines the disposition of PTD motions by region (see Figure D.1, [Appendix D](#) for outcomes by region over time).

Figure 5. Motion Disposition by Region



### What Release Conditions did the Judge Order?

When judges deny a motion for preventative detention, they typically impose conditions of release. Table 1 outlines the conditions set by the disposition of the PTD motion. In our sample, judges released defendants without a bond but imposed other conditions in 43% of denied cases (see the “motion denied” column in Table 1 below). When they denied a pretrial detention motion, judges ordered a secured bond 40% of the time and an unsecured bond 14% of the time. They almost never released a defendant without imposing some conditions; in just 3% of denied cases, judges ordered release on recognizance (ROR) only, and in an additional 1% they did not address conditions of release.

Generally, judges did not impose conditions when they approved the motion to detain, but they did do so in three cases (2% of approved cases). In these cases, judges required that the defendant complete the Addiction Treatment Program offered in the detention center and/or be assessed by pretrial services. Judges were much more likely to set conditions when the prosecutor withdrew the case (see “motion withdrawn” column in Table 1). Judges set some conditions of release in 43% of these cases. Most often, judges ordered conditions that did not include bond (34% of withdrawn cases). The judges ordered ROR without any additional conditions in 16% of cases where the motion was withdrawn by the prosecutor and ordered a secured bond in just 3% of these cases. Judges never set conditions when they dismissed or suspended the decision on the motion.

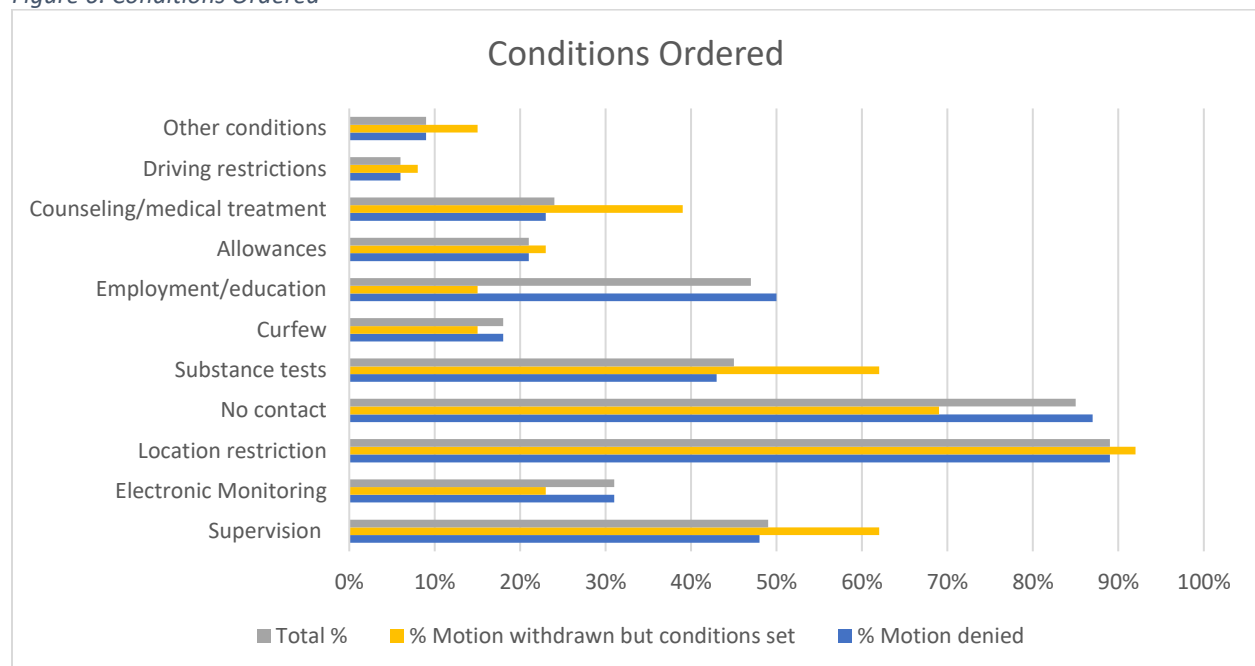
Table 1. Release Conditions by Court Action

Conditions Set	Motion Denied	Motion Approved	Motion Withdrawn	Motion Dismissed	Motion Suspended	Total%	Total N
ROR only	3%	0%	16%	0%	0%	2%	7
Released with conditions, no bond	43%	0%	34%	0%	0%	20%	60
Unsecured bond set <sup>†</sup>	14%	0%	6%	0%	0%	6%	19
Secured bond set <sup>†</sup>	40%	0%	3%	0%	0%	16%	48
Detained with conditions	0%	2%	0%	0%	0%	1%	3
Remanded to lower court to set conditions	0%	1%	16%	78%	0%	4%	13
Did not address conditions	1%	97%	25%	22%	100%	50%	150
<b>Total N</b>	<b>120</b>	<b>137</b>	<b>32</b>	<b>9</b>	<b>2</b>	<b>100%</b>	<b>300</b>

<sup>†</sup>With or without additional conditions.

The types of conditions that judges order vary. Conditions such as electronic monitoring or release to pretrial services are only available in some districts. Other conditions, such as ordering a defendant to stay away from the victim or witness, are not limited by resources. Thus, the conditions that judges order reflect not only what is appropriate for the defendant, but also what is available in a given district. In addition, conditions can differ depending on whether the judge rejected the pretrial detention motion or if the prosecutor withdrew the motion. Figure 6 below summarizes which conditions were most frequently ordered by judges. It also illustrates conditions imposed when the judge denied the motion (the defendant was not preventatively detained, n=120) compared to those cases that were withdrawn by the prosecutor (n=32). Due to the relatively small number of cases withdrawn by prosecutors, these differences should be interpreted cautiously.

Figure 6. Conditions Ordered



n = 152

Regardless of the outcome of the motion, judges most often prohibited defendants from going to a specific location (e.g., the scene of the crime or the victim's residence). This occurred in 89% of cases overall and was slightly more common in cases in which the prosecutor withdrew the motion (92%) than those in which the judge denied the motion (89%). Included in this category is house arrest, though judges ordered this in just 4% of cases overall.

Also common were no contact orders. These orders prohibit defendants from contacting victims, witnesses, or other specified individuals (87% of cases). Judges ordered no contact more often when they denied preventative detention (85%) than when the prosecutor withdrew the motion (69%).

Judges ordered the defendant to maintain/obtain employment or education much more often when they denied the motion than when the case was withdrawn (50% vs. 15%; 47% of cases overall). Judges ordered the defendant to submit to electronic monitoring (EM), primarily GPS, in 31% of cases overall. EM was more common when judges denied the motion (31%) than when the prosecutor withdrew the motion to detain (23%). While not as common, judges required the defendant to follow a curfew in 18% of cases in which they denied the PTD motion and 15% of cases in which the prosecutor withdrew the motion.

Judges specified other conditions more often when prosecutors withdrew the motion than when they denied the motion. For example, judges ordered supervision by pretrial services or a third party more often when the motion was withdrawn than when they denied the motion (62% of withdrawn vs. 48% of denied motions). Much of this difference was due to third-party supervision: judges required third-party supervision in 16% of withdrawn cases vs. 7% of denied motions. Conversely, rates of supervision by pretrial services were more similar (46% vs. 40%, respectively). Judges also ordered defendants to submit to substance testing much more often when cases were withdrawn (62%) than denied (43%), and to obtain counseling or medical treatment (39% of withdrawn cases vs. 23% of denied cases). Judges set other specific conditions, such as *maintain medication and appear for doctor's appointments*,

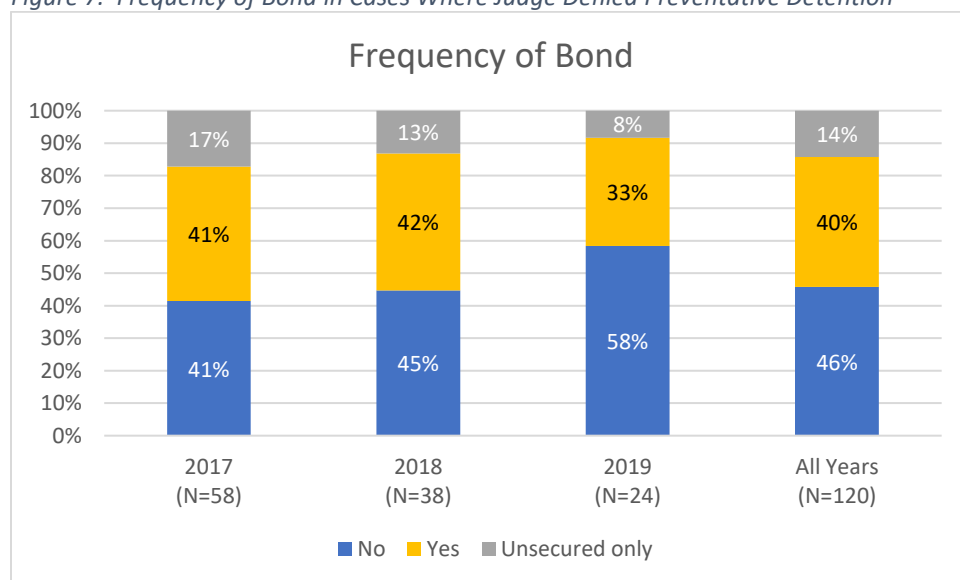
and specifics about no contact orders, such as *maintain a distance of 50 feet from victim*, or *allowed to visit victim but do not discuss the case*, in 15% of withdrawn cases and 9% of denied cases. Judges restricted driving for 6% of defendants overall; most of these were related to DWI cases and required the use of an ignition interlock. Judges ordered this condition slightly more often when the motion was withdrawn (8%).

While most conditions restrict defendants, judges also specified allowances in 21% of cases. Most often, judges allowed defendants to travel to certain locations for specific reasons (e.g., out of the county for work). In a handful of cases, the judge specified a third party to act as an intermediary contact between the defendant and another individual (e.g., when the victim was an intimate partner and they had shared children). These were specified in 23% of cases in which the prosecutor withdrew the motion versus 21% of denied cases.

### Use of Bond

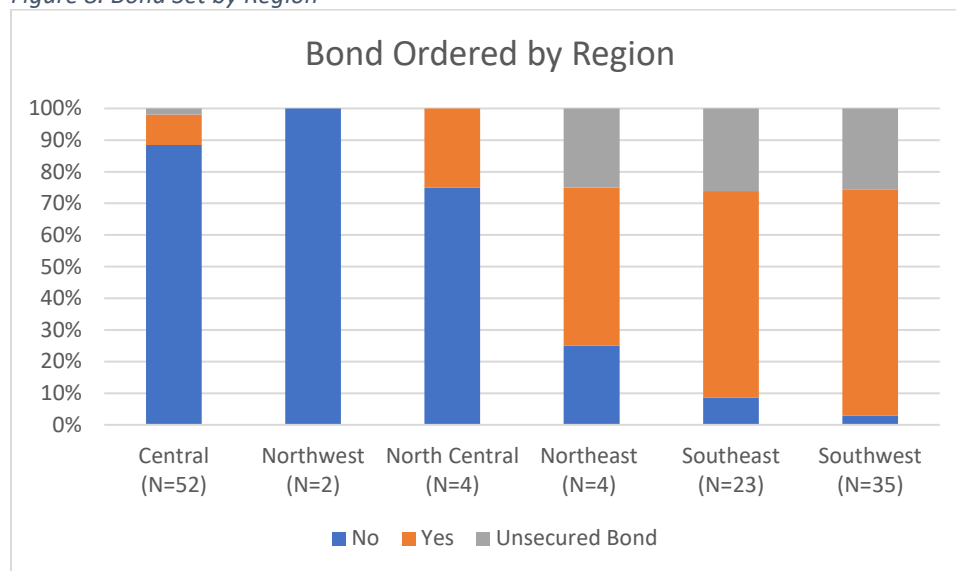
Judges set a secured bond in 40% (n=48) of cases where they denied preventative detention and an unsecured bond in 14% (n=17) of those cases. In addition, the judge set a secured bond in one case in which the prosecutor withdrew the petition to detain but requested bond be set; the defense attorney agreed to this condition. Judges ordered bond more often in 2017 and 2018 than in 2019. In 2019, judges ordered secured bond in 33% of cases, compared to 41% in 2017 and 42% in 2018, suggesting that the use of secured bond may be diminishing over time. Figure 7 below illustrates the frequency of bond in cases where the judge denied the motion for preventative detention.

Figure 7. Frequency of Bond in Cases Where Judge Denied Preventative Detention



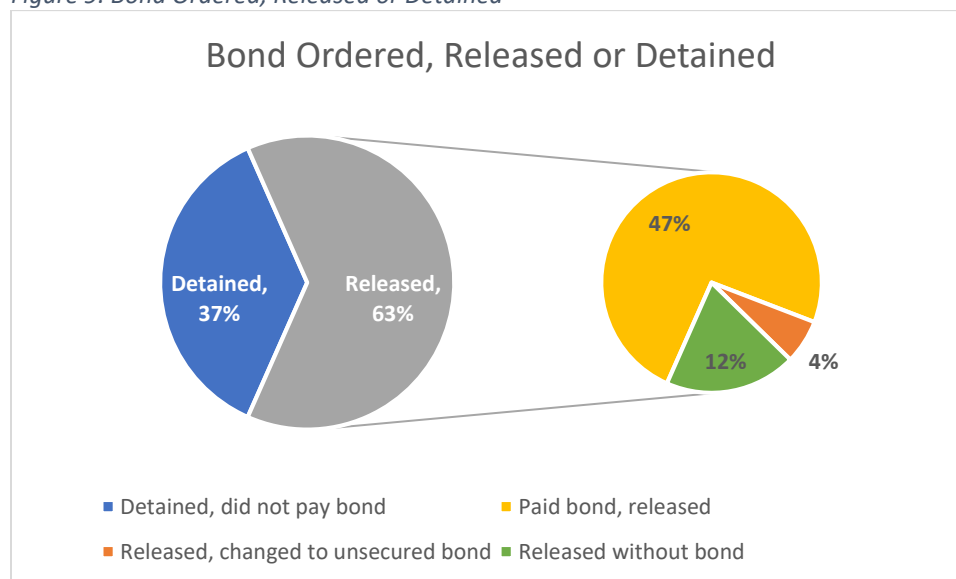
The frequency with which judges ordered bond also varied by region. Judges in the Northeast, Southeast, and Southwest regions of the state ordered bond more often than in other regions. Note, however, that the total number of cases in which the judge denied the motion to detain was very small in some areas. For example, in the Northwest region, judges denied the motion in just two (8%) of the 26 cases from that region included in the current study; they did not order bond in either case. Figure 8 below illustrates the distribution of bond by region.

Figure 8. Bond Set by Region



Most of the 48 defendants ordered to pay a cash or secured bond were released (63%), most often because they posted the bond (47%) (see Figure 9 below). Another 16% who were ordered to pay a secured bond were released without paying it, either because a judge later ordered the defendant's release on unsecured bond (4%; n=2) or without any bond (12%; n=6). Over one-third (37%; n=18) of defendants with a secured bond remained in jail for the duration of the pretrial period.

Figure 9. Bond Ordered, Released or Detained



n=48

### Amount of Bond Ordered

The average initial secured bond amount judges ordered was \$13,694, with a median bond amount of \$10,000 (ranging from \$1,000 to \$100,000). However, judges in the underlying criminal case frequently lowered the bond amount. Of the 22 cases where bond was posted, the average amount set was



\$9,652, with an average of \$7,283 actually posted. The range of bond posted was large, with a minimum amount of \$500 up to a maximum of \$25,000.

Among those who remained in detention, the average bond amount ordered by the judge was higher than the average amount of bond ordered for all defendants (\$16,056 vs. \$13,694 for all cases). The minimum bond judges ordered for those who remained in detention was \$1,000 and the maximum was \$50,000. While this suggests that those who cannot afford to pay bond remained in detention, there were eight defendants released without having to pay a bond whose initial amount was much higher. The average initial bond amount for these defendants was \$20,000, ranging from \$2,500 up to \$100,000. Rather than posting bond, these defendants were either released with no bond or on an unsecured bond. Table 2 below displays the amount of secured bond set by the “LR” judge.

*Table 2. Amount of Secured Bond Set*

<i>Amount of Bond Ordered for:</i>	All Cases with Bond	Those Who Paid Bond	Total Amount Paid	Those Who Remained Detained	Those Later Released without paying*
<b>Average</b>	\$13,694	\$9,652	\$7,283	\$16,056	\$20,000
<b>Standard Deviation</b>	\$17,015	\$8,314	\$7,048	\$15,520	\$32,705
<b>Median</b>	\$10,000	\$7,500	\$5,000	\$10,000	\$10,000
<b>Minimum to Maximum</b>	\$1,000-\$100,000	\$1,000-\$30,000	\$500-\$25,000	\$1,000-\$50,000	\$2,500-\$100,000
<b>Total N</b>	48	22	22	18	8

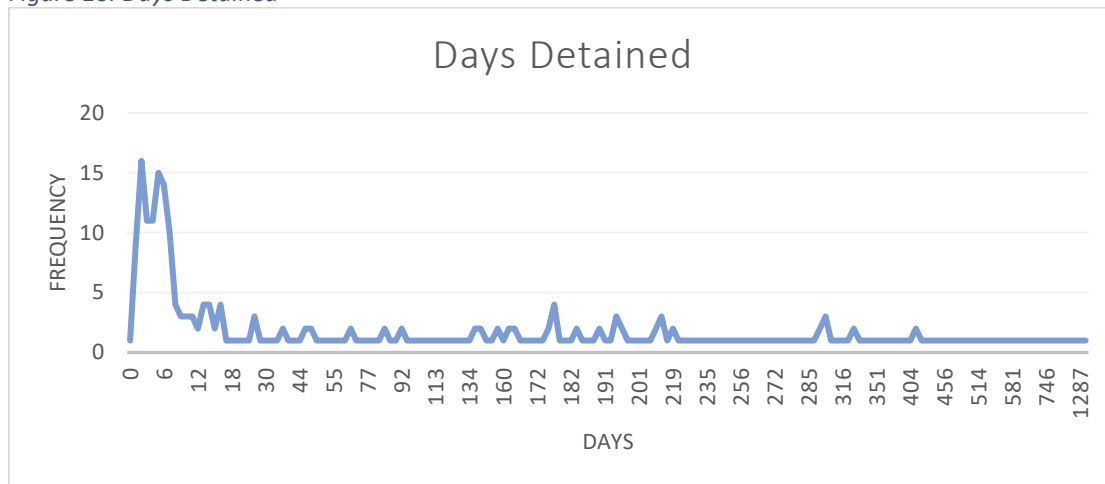
\*Release either without bond or on an unsecured bond.

### How Long were Defendants Detained?

Defendants are typically detained for a few days prior to the preventative detention hearing. State rules require that this should not exceed five days (N. M. R. Crim. P. Dist. Ct. 5-409(F)(1)). A smaller number of defendants are held pending trial. We examined the length of time defendants in our sample were detained pretrial. Figure 10 below illustrates the number of people released by number of days detained. The most common number of days detained was between two and six (the peaks in the figure below). The number of individuals detained for more than six days drops precipitously after this.

In terms of the proportion of the sample detained by days detained, 21% was detained for five days or less. One-third of the sample was detained 11 days or fewer, and half of all defendants were released within 80 days. The average number of days detained was 157 with a median of 82. The maximum number of days detained was 1,372.

Figure 10. Days Detained



n=300

The length of detention varies by the judge's ruling. Figure 11 below displays the mean (average) and median number of days detained by the outcome of the motion. When the mean and median values are very different, it is because there are some outliers who are detained for a long period of time, skewing the average number of days detained.

Perhaps unsurprisingly, defendants who were ordered to preventative detention spent the longest time detained. These defendants spent an average of 275 days detained (median of 212 days). Note that this includes the 17% (n=23) of defendants who were later released. Defendants ordered to pay a bond to secure release spent an average of 142 days in detention (with a median of 77 days). While the average number of days for those whose cases were dismissed by the judge was relatively high (133 days), the median number of days was just eight, indicating that at least half of these 11 defendants spent fewer than eight days in the detention center. In the 32 cases where the prosecutor withdrew the motion, defendants were detained for an average of 15 days, with a median of five days. When the judge denied the motion to detain, defendants spent an average of 10 days in detention, with a median of five.

Figure 11. Average and Median Days Detained by Motion Outcome

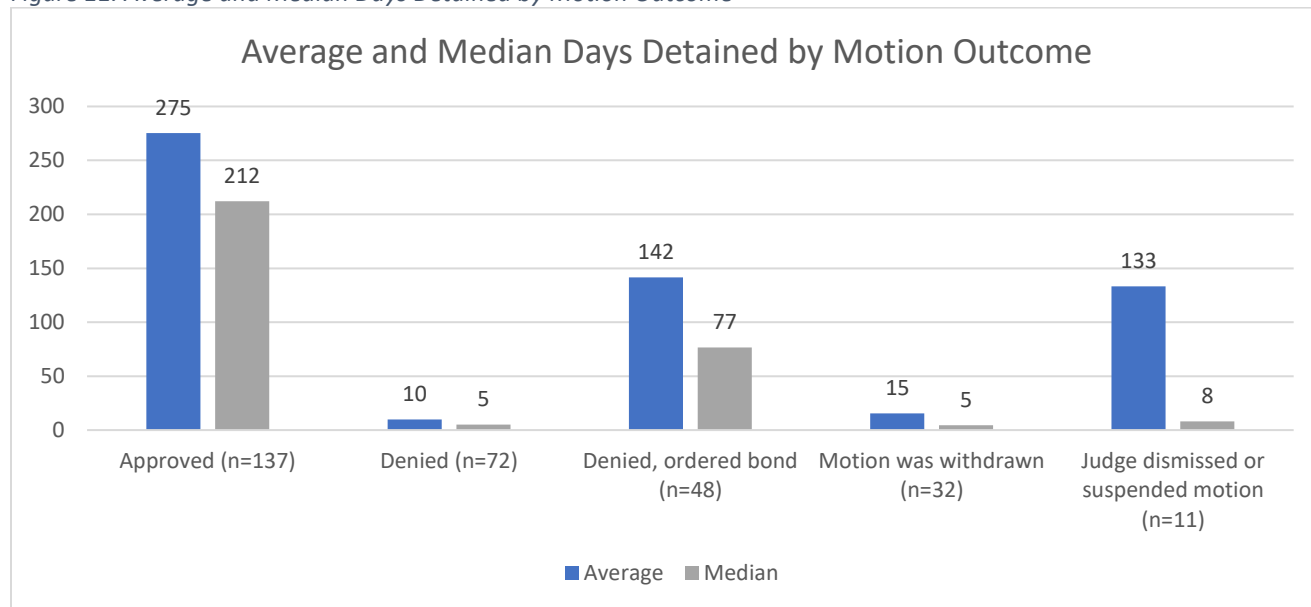
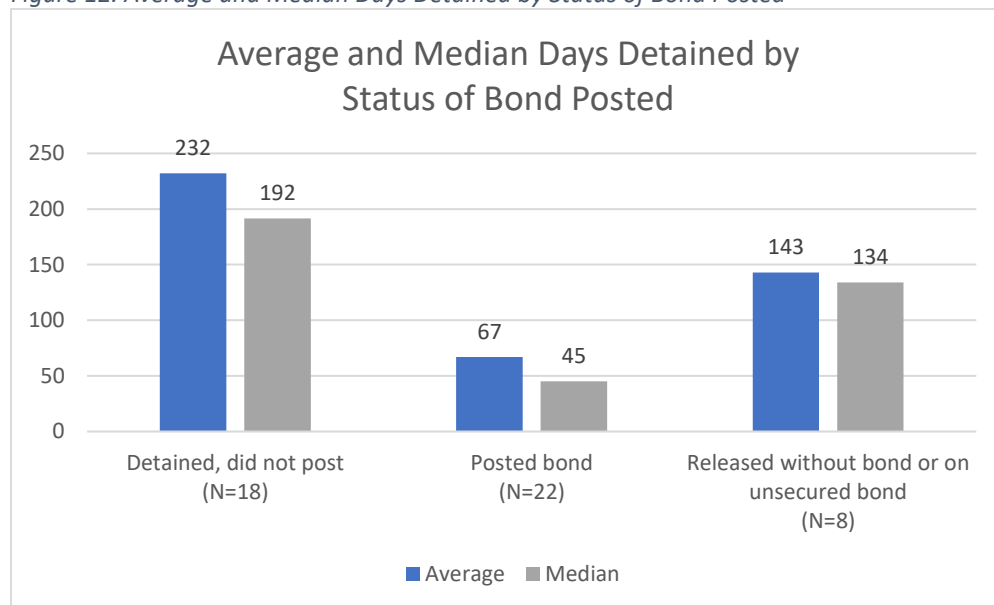


Figure 12 below displays the average and median days detained for defendants ordered to pay a cash or secured bond. Eighteen people did not post bond and were detained for the entire pretrial period. These defendants spent an average of 232 days detained (median of 192 days). For those who posted bond (n=23), the average length of detention was 67 days, with a median of 45 days. Judges released eight defendants without bond or on an unsecured bond. These individuals spent an average of 143 days detained (median of 134 days).

Figure 12. Average and Median Days Detained by Status of Bond Posted



## Pretrial Success and Failure

Defendants may violate one or more conditions of release, including failures to comply (e.g., violation of curfew or another condition) and new offenses. Defendants may also fail to appear at scheduled court hearings. New offenses, failures to comply, and failures to appear are all considered pretrial failures. While the vast majority of pretrial failures involve defendants who have been released, defendants who are detained can also commit pretrial failures. In this section, we examine pretrial failures among both those released and those detained. Released defendants include those cases in which the judge denied preventative detention (n=120) and those preventatively detained but later released (n=25) prior to the disposition of the underlying criminal case. In addition, it includes cases dismissed by the judge (n=5) or withdrawn by the prosecutor (n=23), if the underlying criminal case continued and the defendant was not detained in another case. Excluded are those defendants whose underlying criminal cases were immediately dismissed after judge dismissal or prosecutor withdrawal of the PTD case. Thus, a total of 173 people were “eligible” to fail while released during pretrial period while in the community. Detained defendants may also fail pretrial. We assess pretrial failures among both detained and released groups, but report the results separately.

We used multiple sources to determine whether “failure” occurred. First, we examined the documentation in the current criminal case. Second, if defendants had concurrent cases, we identified failures that occurred in those cases during the pretrial period under observation. Finally, we identified arrests using criminal history data, excluding arrests not associated with a new criminal offense.<sup>6</sup> Note that the failures we include occurred during the pretrial period only; when reviewing the records, we noticed several instances of FTA/absconding after sentencing, which we exclude from analyses.

Among those released, 42% (n=73) had at least one documented failure of some type during the pretrial period, with 35% (n=61) documented in the current case. The most common types of pretrial failure were failure to appear and failure to comply (25% and 24%). Twenty-five defendants (15%) had a new offense, with 13 of these documented in the underlying criminal case. Relatively few defendants had an arrest for a new violent offense, about 5% amongst those released. Rates of pretrial failure among those released are displayed below in Table 3.

*Table 3. Rates of Pretrial Failure Among Those Released*

<b>Pretrial Failure Among Those Released</b>	<b>N with failures documented in current case</b>	<b>N with failures documented elsewhere during pretrial period</b>	<b>N with failure documented anywhere</b>	<b>% with failure documented anywhere</b>
<b>New Offense</b>	13	12	<b>25</b>	<b>14.5%</b>
<b>New Violent Offense</b>	5	3	<b>8</b>	<b>4.6%</b>
<b>FTA</b>	40	3	<b>43</b>	<b>24.9%</b>
<b>FTC</b>	38	4	<b>42</b>	<b>24.3%</b>
<b>Any Pretrial Failure</b>	61	9	<b>73</b>	<b>42.2%</b>

N = 173

While not as common, detainees may also “fail” while detained by refusing to appear at court or picking up new charges in jail (e.g., committing battery on another person). There were six instances of failure

<sup>6</sup> This includes arrests through December 31, 2020.

among detainees (5%). Most often, this was because the defendant picked up new charges for an incident that occurred in the detention center (4%). More than half of these charges were violent in nature (see Table 4 below).

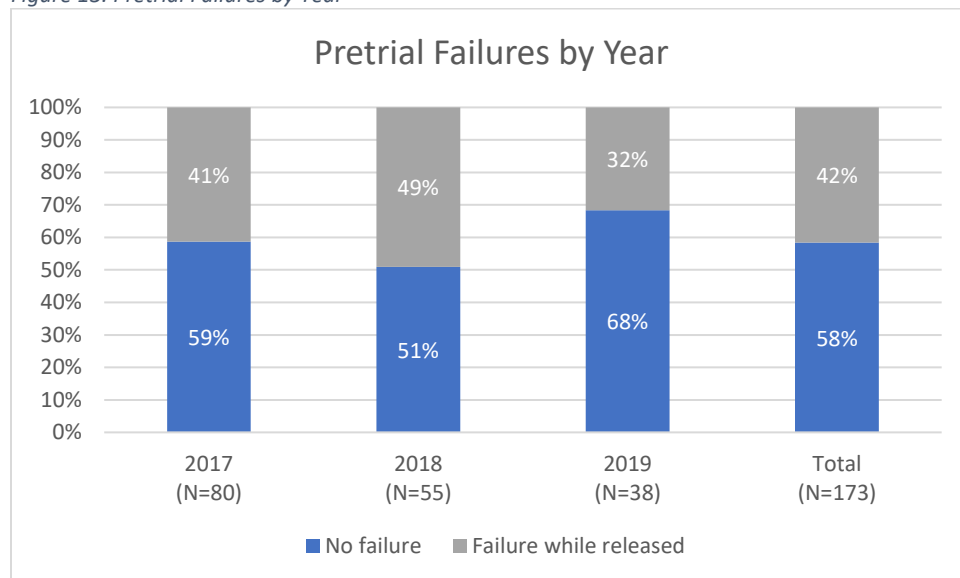
Table 4. Rates of Pretrial Failure Among Those Detained

Pretrial Failure Among Those Detained	N of failures documented in current case	% with failure
<b>New Offense</b>	5	4.4%
<b>New Violent offense</b>	3	2.6%
<b>FTA</b>	1	0.9%
<b>FTC</b>	0	0.0%
<b>Any Pretrial Failure</b>	6	5.3%

N=114

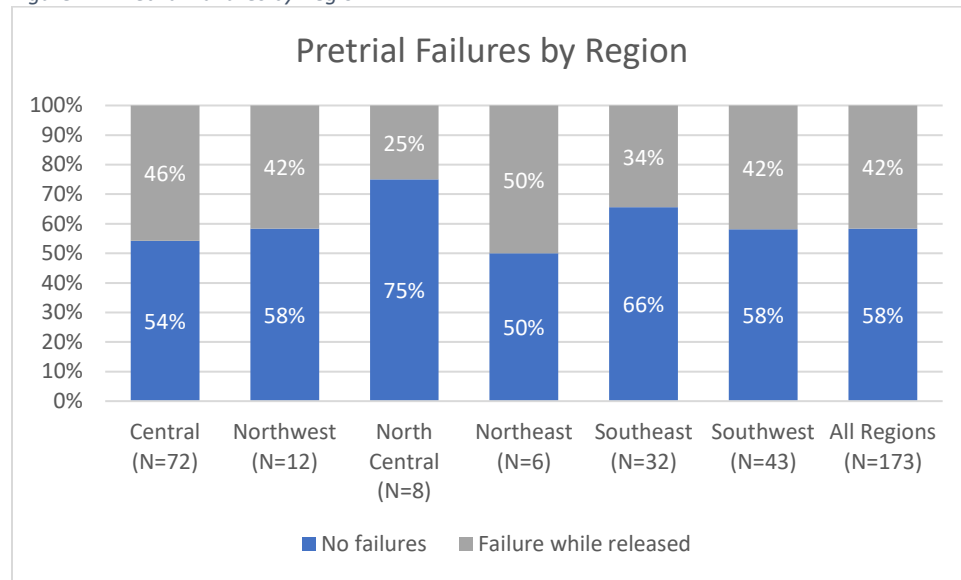
Pretrial failure varied annually and by region. There were fewer pretrial failures overall in 2019 (32%) compared to 2017 (41%) and 2018 (49%) (see Figure 13 below). This may be due to the relatively shorter exposure time (days to disposition).

Figure 13. Pretrial Failures by Year



In terms of region, the highest failure rates occurred in the Northeast (50%), Central (46%), Northwest, and Southwest (42% each) areas of the state. The lowest failure rate was in the North Central area of the state (25%) followed by the Southeast (34%). However, because the number of cases in some regions are so small, these numbers should be interpreted with caution. These differences are illustrated in Figure 14 below.

Figure 14. Pretrial Failures by Region



## Results Part II: Characteristics of Cases and their Outcomes

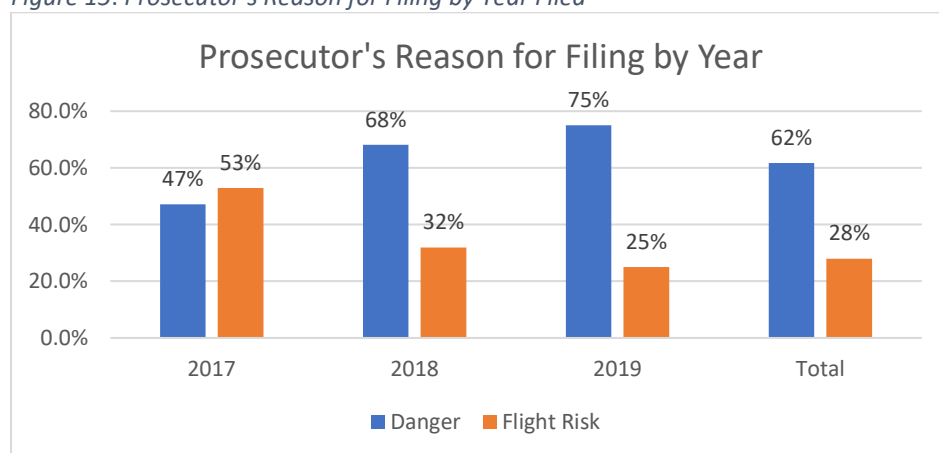
Both prosecutors and judges evaluate cases to determine whether a defendant should be detained pretrial. Following the provisions of the state Constitution, New Mexico Rules of Criminal Procedure require judges to consider a variety of factors when making this choice. These include: the nature and circumstances of the offense charged; the weight of the evidence; the history and characteristics of the defendant; the danger the defendant poses to any person or the community; any facts indicating that the defendant is a flight risk; and any facts indicating that the defendant may commit additional crimes if released (N. M. R. Crim. P. Dist. Ct. 5-401). The information prosecuting attorneys present to support the motion and the justification judges use to support their decisions may differ.

This section seeks to understand why prosecutors choose to file for detention and why judges rule in favor of or against detention. We begin by examining the outcomes of cases by the prosecutor's characterization of danger and flight risk. We then explore the congruence between the prosecutor's assessment of danger and flight risk and the judge's assessment. The remainder of this section examines whether the cases in our sample share common defendant and case characteristics; in other words, whether prosecutors file for detention in cases that share similar characteristics. Further, this section explores whether there are characteristics that differentiate cases resulting in detention or are associated with the decision to order bond.

### Impetus for Filing: Danger, Flight Risk, or Both

Prosecutors file for detention when they believe that a defendant poses a danger to an individual or the community and that no conditions of release can mitigate that risk. They may also seek to prove that the defendant is a flight risk. Judges may order bond as a condition of release in cases where the defendant is not found to be a danger but does pose a flight risk. Prosecutors cite danger alone in the majority of cases (62%, n=185) filed overall; this proportion has increased over time (see Figure 15 below).

Figure 15. Prosecutor's Reason for Filing by Year Filed



n=300, p=.001

There was also variation by region. Prosecutors in the Southwest and Southeast regions of the state were significantly less likely to cite danger alone than those in other regions. Conversely, prosecutors cited only danger in nearly all of the cases filed in the Northwest region (see Table 5).

Table 5. Prosecutor's Reason for Filing by Region

	Central	Northwest	North Central	Northeast	Southeast	Southwest	Total %
<b>Danger</b>	82.5%	93.5%	73.3%	71.4%	34.9%	24.6%	61.7%
<b>Flight Risk, with or without Danger</b>	17.5%	6.5%	26.7%	28.6%	65.1%	75.5%	38.3%
<b>Total N</b>	120	31	15	14	63	57	300

p<.001

There was a strong relationship between the prosecutor's stated reason for filing a petition and the outcome of the motion. Judges approved 52% of cases where prosecutors only cited danger as their reason for filing, compared to 36% of cases where flight risk was noted, either solely or along with danger. The rate at which prosecutors withdrew the motion or judges dismissed or suspended the motion was about the same regardless of the prosecutor's reason for filing.

Table 6. Case Outcome by Prosecutor's Reason for Petition

	Danger only	Flight risk with or without danger*
<b>Approved</b>	51.9%	35.7%
<b>Denied</b>	33.0%	51.3%
<b>Withdrawn, Dismissed, or Suspended</b>	15.1%	13.0%
<b>Total N</b>	185	115

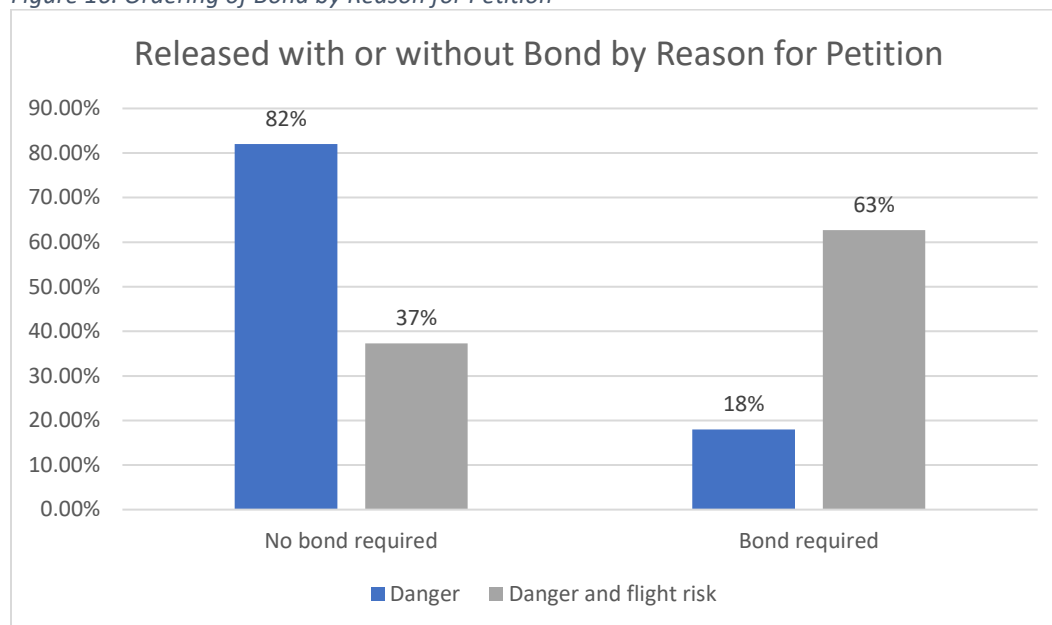
P≤.001

\*All but one case included both danger and flight risk

As might be expected, judges were significantly more likely to require defendants to pay bond when prosecutors argued that the defendant posed both flight risk and danger (63%) than danger alone (18%), illustrated in Figure 16 below. Conversely, judges were much less likely to require defendants to pay a bond when released if the prosecutor argued that the defendant posed a danger only. This indicates that judges order bond to mitigate flight risk.



Figure 16. Ordering of Bond by Reason for Petition



n=237

In Table 7 below, we compare judges' written assessments of the case to the reasons the prosecutors cited for filing the petition. This analysis excludes cases that were withdrawn or dismissed and those that did not document the reason for the judge's decision. This left 237 cases for this analysis. The proportion of cases involving prosecutors' assessments of danger in these 237 cases is higher (59%) than in the sample overall (52%).

Judges frequently agreed that defendants posed a danger when the prosecutor argued for danger only. In most of those cases (79.3%), judges determined the defendant posed a danger only, and in 4.3 %, they found the defendant posed both a danger and flight risk. Thus, in about 84% of cases in which prosecutors argued that the defendant posed a danger only, judges agreed.

Judges were less likely to find danger when prosecutors argued for both danger and flight risk, but more likely to find flight risk. In a total of 65% of cases that prosecutors presented as involving both a danger and flight risk, judges determined the defendant was dangerous, either finding danger only (41.2%) or both danger and a flight risk (23.7%).

Overall, judges were much more likely to find the defendant posed a flight risk when the prosecutor argued that the defendant was both a danger and flight risk. Judges determined that nearly 6% of defendants presented as dangerous only posed either a flight risk only (1.4%) or both danger and flight risk (4.3%). Conversely, they found nearly 45% of those presented as both a danger and flight risk to either be only a flight risk (20.6%) or both a danger and flight risk (23.7%). It is especially notable that the rates of flight risk only are much higher in cases presented as both. Judges determined the defendant posed only a flight risk in 1.4% of cases presented as a danger compared to 20.6% of those presented as both dangerous and a flight risk.

Finally, the rates at which judges found neither danger nor flight risk were nearly the same regardless of how the prosecutor presented the case. Judges stated that the defendant posed neither a danger nor a flight risk in just under 13% of cases (12.9% of those presented as a danger only and 12.4% presented as

both dangerous and a flight risk). In an additional 2% of cases, the judge did not address either danger or flight risk.

Table 7. Judicial Determination of Danger by Prosecutor's Reason for Filing

		Prosecutor's Reason for Filing		
		Danger Only	Flight Risk and Danger <sup>†</sup>	Total
<b>Judge's Findings</b>	Danger found	79.3%	41.2%	63.7%
	Flight risk found	1.4%	20.6%	9.3%
	Both found	4.3%	23.7%	12.2%
	Neither found	12.9%	12.4%	12.7%
	Not stated	2.1%	2.1%	2.1%
	<b>Total N (%)</b>	140 (59.1%)	97 (40.9%)	237

p<0.001

<sup>†</sup> All but one case included both danger and flight risk

In general, both prosecutors and judges pointed to dangerousness to argue for, or justify their decision for, pretrial detention. However, judges were more likely to emphasize dangerousness only, suggesting judges weigh dangerousness more heavily than flight risk. Moreover, judges rarely noted flight risk in their orders unless prosecutors listed it as a reason. This did vary over time and by region, however. Judges cited danger only more often in 2019 than in prior years and cited danger alone least often in the Southeast and Southwest regions, mimicking the findings of prosecutors' representations of cases above (see [Appendix D](#), Tables D.5 and D.6 for more information).

## Case Characteristics and Outcomes

The remainder of Part II explores factors that may lead prosecutors and judges to make the determination that a defendant is dangerous or a flight risk. In this section, we explore select case characteristics and outcomes. Tables display the judge's decision when they ruled on the motion (approved or denied) or when no decision was made (i.e., motion was withdrawn, dismissed, or suspended). Specifically, this section explores offense characteristics, available evidence, criminal history, and current criminal justice involvement. This section does not include an analysis by year or location due to the small number of cases in each subgroup.<sup>7</sup> In the following sections, we report differences in whether judges order bond only when statistically significant.

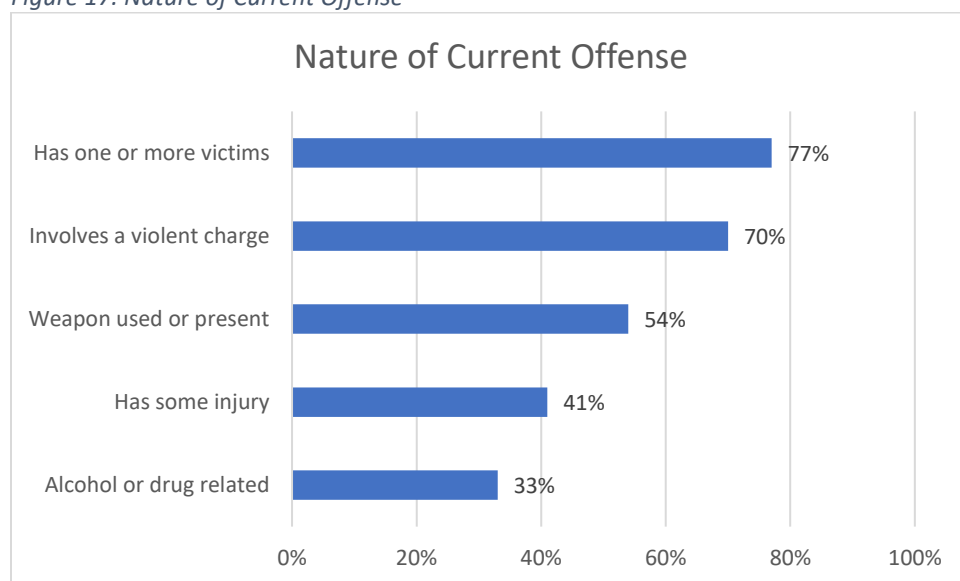
### Nature and Circumstances of the Current Offense

Many of the cases for which prosecutors sought detention shared common characteristics. Seventy-seven percent of cases in our sample had one or more victims noted in the case by either the prosecutor or judge. Approximately 41% of incident resulted in some injury to the victim(s). Prosecutors filed for preventative detention predominantly on violent cases, with 70% of cases in our sample involving a

<sup>7</sup> Also excluded is analysis of race or ethnicity. Court data on race and ethnicity is both unreliable and frequently missing; therefore, we do not include it in our analysis. Table D.4 in [Appendix D](#) illustrates the availability of this information for the sample.

violent charge.<sup>8</sup> In over half (54%) of pretrial detention cases, documents indicate a weapon was either used or present, and one-third (33%) of current offenses involved the use of alcohol or drugs.

Figure 17. Nature of Current Offense



n=300

We found no significant differences in outcomes by whether a weapon or substances were involved, or whether the offense involved a victim. However, judges were slightly more likely to approve detention when one or more victims was a police officer (see Table 8 below). While overall difference was not statistically significant ( $p=.06$ ), likely due to the small number of cases involving officers as victims ( $n=22$ ), the differences are notable. Moreover, these cases were less likely to be withdrawn by the prosecutor or dismissed by the judge.

Table 8. Current Offense by Whether Victim Was a Police Officer

	Victim(s) Included a Police Officer	
	None of the victims were law enforcement	One or more victims were law enforcement
<b>Approved*</b>	43.9%	68.2%
<b>Denied</b>	41%	27.3%
<b>Withdrawn, Dismissed, or Suspended</b>	15.1%	4.5%
<b>Total N</b>	<b>278</b>	<b>22</b>

\* $p<.05$

There were no significant differences found when comparing the outcomes of cases involving a violent crime relative to those that did not. However, we did find significant differences when comparing more nuanced categories (see Table 8 above). Judges most often approved motions in cases involving a violent crime in conjunction with a property or drug crime (61%). By comparison, cases involving violent offenses alone had the lowest approval rate at 38%, although DWI was close (40%). Judges approved

<sup>8</sup> Violent crimes include offenses such as homicide, rape and other sexual assaults, robbery, assault, battery, domestic violence, child abuse, etc.

just under half of motions involving property (49%) or drug offenses (45%) alone. Regardless of offense type, prosecutors withdrew the motion or the judge suspended or dismissed the case at about the same rate, typically between 10% and 13%. However, cases involving only violent offenses had the lowest withdrawal or dismissal rate (6.8%). Table 9 below displays preventative detention outcomes by the category of offense.

Table 9. Outcomes by Offense Type

	Violent Only	Violent and Property/ Drug	Property	Drug	DWI
<b>Approved</b>	38.1%	61.2%	49.0%	45.0%	40.0%
<b>Denied</b>	55.1%	25.4%	39.2%	45.0%	46.7%
<b>Withdrawn, Dismissed, or Suspended</b>	6.8%	13.4%	11.8%	10.0%	13.3%
<b>Total N</b>	147	67	51	20	15

p<.05

While there were no significant differences by whether the victim(s) sustained an injury, there were some differences by the extent of the injury. Specifically, cases involving victims who died were more likely to be approved for pretrial detention than other cases. None of the cases involving injury but not death were withdrawn by the prosecutor or dismissed by the judge. The rates of withdrawal or dismissal were slightly higher in cases without any documented injury (14%) versus those involving the death of a victim(s) (11%), but the differences are not substantial. Table 10 displays motion outcomes by the presence of injury to the victim(s).

Table 10. Outcomes by Whether Victim(s) Noted Injury

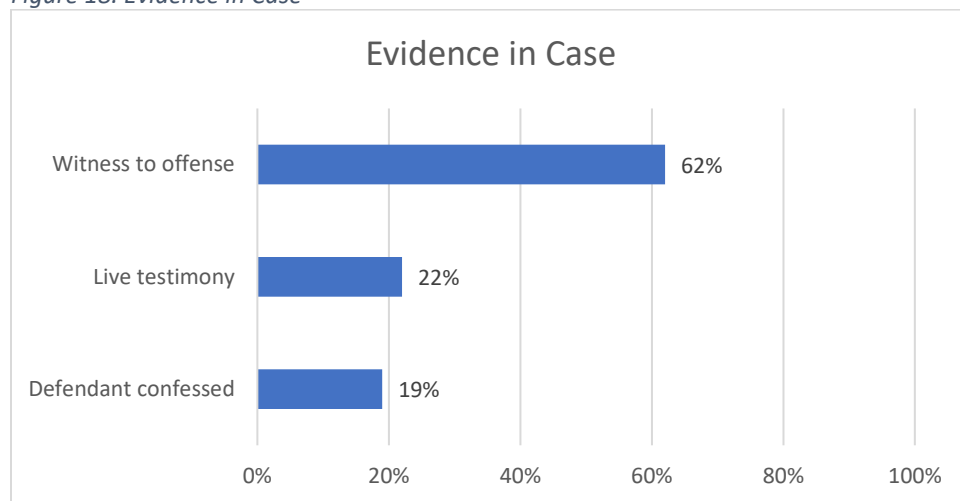
	Victim(s) Noted Injury		
	No injury	Injury, up to Great Bodily Harm	Death
<b>Approved</b>	41.7%	51.2%	63.2%
<b>Denied</b>	44.7%	48.8%	26.3%
<b>Withdrawn, Dismissed, or Suspended</b>	13.6%	0%	10.5%
<b>Total N</b>	199	82	19

p<.01

## Evidence

In addition to the characteristics of the offense, documents revealed some of the evidence available in a case. Prosecutors most often filed for preventative detention in cases with one or more witnesses (62%). Some cases also involved live testimony (22%) from the victim or a witness, or a confession from the defendant (19%). Figure 18 below illustrates the available evidence across the sample of cases.

Figure 18. Evidence in Case



n=300

Although there were no differences in the outcomes of cases by whether there was a witness generally, judges were slightly more likely to approve detention in cases involving police officers as witnesses (53%) than those with citizens as victims or witnesses (45%). However, these differences were not statistically significant. There were also no significant differences by whether the defendant confessed. Judges approved 45% of cases involving a confession by the defendant and 47% of cases in which the defendant did not confess.

Judges approved detention much more frequently when they heard live testimony at the PTD hearing. Judges approved detention in 78% of cases involving live testimony, compared to just 45% of cases that did not include any documentation of live testimony. We found no meaningful differences in approval rates by the type of person testifying (victim, police officer, or other witness), though judges were slightly less likely to approve when the testimony involved the victim compared to those with officer or other witness testimony. Table 11 below displays hearing outcomes by live testimony.

Table 11. Outcome by Whether Offense had Live Victim or Witness Testimony

	Any Live Testimony***		Who Testified?		
	No	Yes	Officer	Victim	Other Witness
<b>Approved</b>	45.2%	77.6%	82.1%	77.3%	83.3%
<b>Denied</b>	54.8%	22.4%	17.9%	22.7%	16.7%
<b>Total</b>	177	58	39	22	12

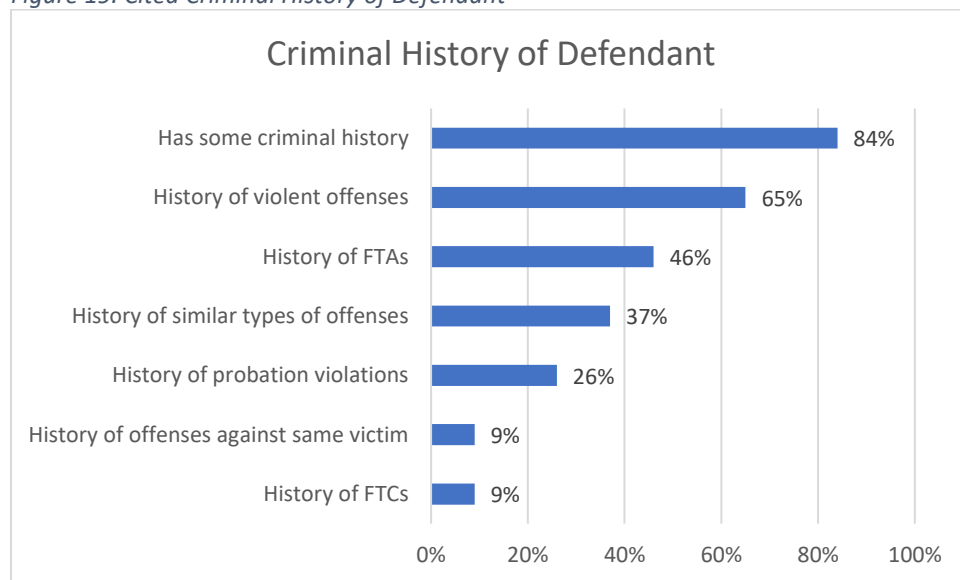
\*\*\*p<.001

## Criminal History

In addition to the circumstances of the current offense, prosecutors and judges frequently reference the defendant's criminal history. Criminal history may support the case that a defendant is likely to commit further crimes if released during the pretrial period. Documentation of criminal history includes history of convictions, arrests, similar offenses, and offenses against the same victim or similar class of victims (e.g., law enforcement). However, the type of information and the detail included in petitions and orders varied. Figure 19 shows aspects of criminal history that were cited in motions and orders for detention.

The vast majority (84%) of defendants had some documented criminal history, and 65% had a documented history of violent offending. Over one-third (37%) had a documented history of similar types of offenses (e.g., DWI or domestic violence) and 9% had a history of offending against the same victim or type of victim. Just over 25% had a history of probation violations and 9% had a history of failures to comply. All of these factors may point to risk of danger. Additionally, just under half (46%) of cases involved a defendant with a documented history of failure to appear at court, typically used as an indicator of flight risk.

Figure 19. Cited Criminal History of Defendant



n=300

Judges were significantly more likely to rule for detention when defendants had some type of prior criminal history. Judges approved detention in just under half (48%) of cases involving defendants with any criminal history, compared to 29% without a criminal history. Cases involving defendants with any type of criminal history were also less likely to be withdrawn or dismissed than those with no documented criminal history. The nature of the criminal history was also related to case outcomes. For example, judges approved motions in 69% of cases involving defendants with a history of committing crimes against the same victim or same type of victim, compared to 43% of cases involving defendants with no such history. Even for the smallest of these differences (history of failure to appear/failure to comply), there was still a 20% gap. Table 12 below displays pretrial outcomes by various types of criminal history.

Table 12. Outcome by Details of Criminal History

	Any criminal history, excluding traffic offenses*		History of offending against same victim *		History of similar offenses ***		History FTA/FTC **		History probation violations ***	
	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
<b>Approved</b>	28.6%	48.4%	42.9%	68.8%	32.7%	61.5%	33.6%	52.3%	37.4%	61.0%
<b>Denied</b>	50.0%	38.4%	42.2%	21.9%	50.3%	27.4%	45.8%	36.8%	45.6%	29.5%

<b>Withdrawn, Dismissed, or Suspended</b>	21.4%	13.2%	14.9%	9.4%	17.0%	11.1%	20.6%	10.9%	17.0%	9.5%
<b>Total N</b>	42	258	268	32	165	135	107	193	195	105

\*p<.05; \*\*p<.01, \*\*\*p<.001

Table 13 illustrates the outcomes of PTD motions by prior offense type. Judges detained a greater proportion of individuals with a history of violent offenses relative to those who did not have such history; however, these differences were not statistically significant. Likewise, judges detained defendants with a history of property and drug offending at higher rates than those without that history; these differences were statistically significant. This pattern holds regardless of offense type history, except for a history of DWI. Instead, judges were less likely to approve preventative detention when the defendant had a history of DWI (40%) than when there was no history of DWI (47%), though this difference was not statistically significant. Additionally, prosecutors withdrew their motions for detention or judges dismissed cases at much higher rates when there was no history of property or drug offenses, but not when the prior offense involved violence or DWI.

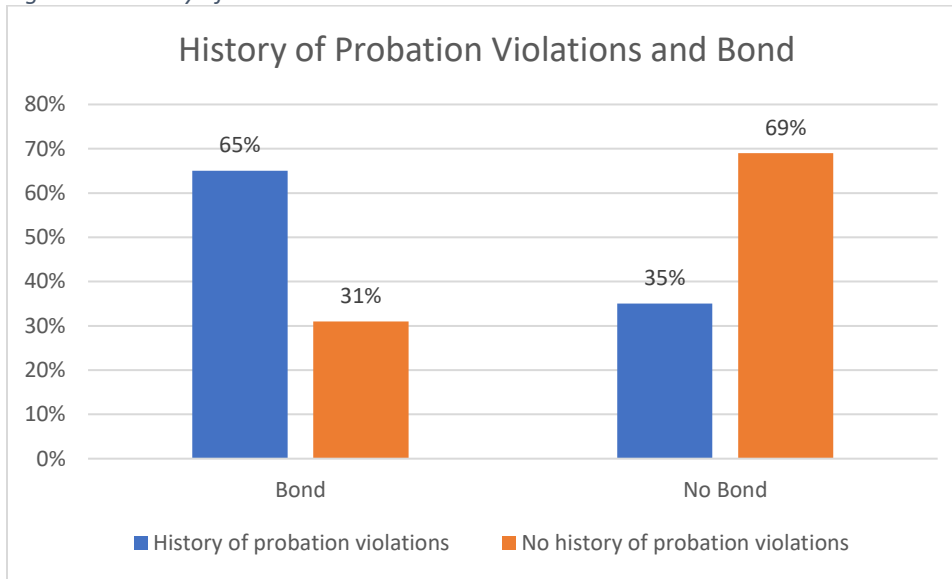
Table 13. Outcomes by History of Prior Offense Type

	History of violent offense		History of property offense**		History of drug offense**		History of DWI	
	No	Yes	No	Yes	No	Yes	No	Yes
<b>Approved</b>	37.9%	49.7%	39.6%	53.4%	38.8%	58.7%	46.6%	40.4%
<b>Denied</b>	48.5%	35.5%	41.4%	38.2%	43.9%	32.7%	39.1%	44.7%
<b>Withdrawn, Dismissed, or Suspended</b>	13.6%	14.7%	18.9%	8.4%	17.3%	8.7%	14.2%	14.9%
<b>Total N</b>	103	197	169	131	196	104	253	47

\*\*p<.01

With one exception, we found no significant differences between release with or without bond by different measures of criminal history. As the exception, judges were significantly more likely to order bond for defendants with a history of probation violations. Less than one-third (31%) of defendants who did not have a history of probation violations were released with bond, while 65% of those with a history of probation violations were ordered to pay a bond to secure release. These differences were statistically significant (p<.001). The relationship between previous probation violations and bond is displayed in Figure 20 below.

Figure 20. History of Probation Violations and Bond Set

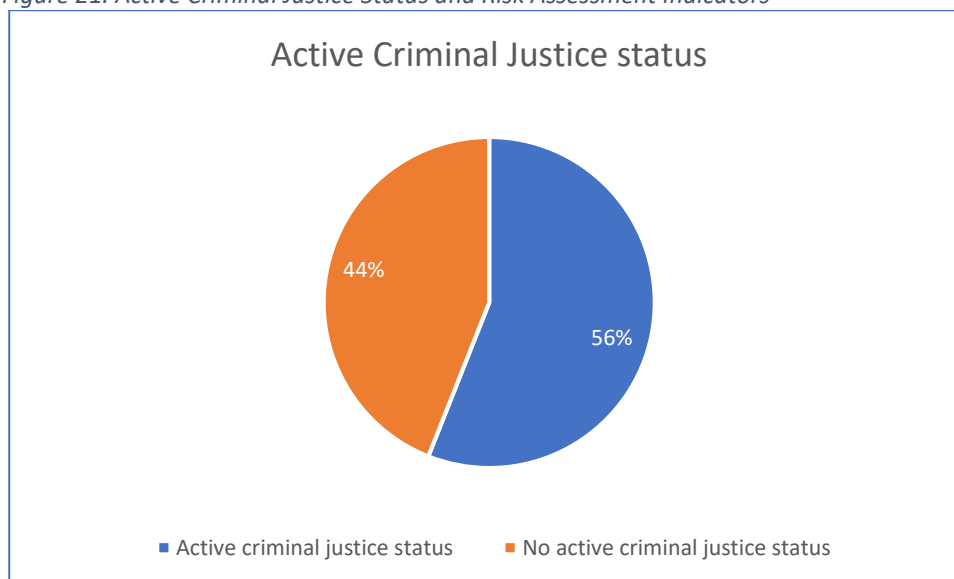


n=300

#### Active Criminal Justice Status and Risk Assessment

Finally, prosecutors and judges took note of the defendant's active criminal justice status. Over half (56%) of the sample involved a defendant who was currently involved in the criminal justice system in one or more ways. Figure 21 summarizes this information. While not illustrated below, most often, defendants had one or more other criminal cases pending at the time of the pretrial detention motion; this occurred in 39% of the cases. In addition, 19% were on probation or parole at the time of the detention motion and 13% had an outstanding warrant.

Figure 21. Active Criminal Justice Status and Risk Assessment Indicators



n=300



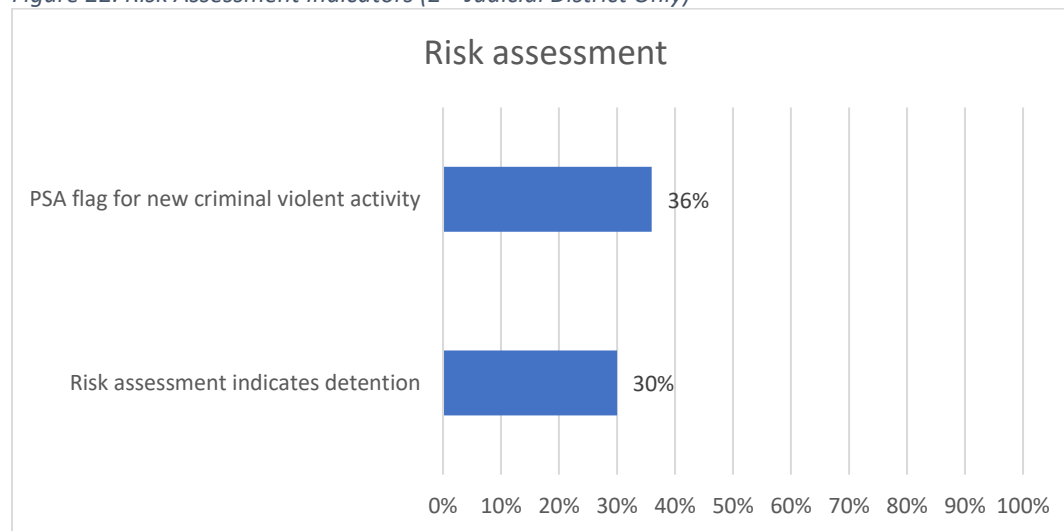
Similar to criminal history, judges were more likely to detain defendants with an active criminal justice status (see Table 14). For instance, any active criminal justice status almost doubled the rate at which judges approved pretrial detention motions (32% vs 57%), implying that judges heavily factor this into their decisions. The only instance in which this pattern was not significant was for those with active warrants, as these motions were almost equally likely to be denied as those with no active warrants.

Table 14. Outcomes by Active Criminal Justice Status

	Active criminal justice status***		Currently on probation**		Pending cases***		Active warrant	
	No	Yes	No	Yes	No	Yes	No	Yes
<b>Approved</b>	31.6%	56.9%	41.6%	63.2%	36.8%	59.3%	45.0%	50.0%
<b>Denied</b>	51.9%	30.5%	44.0%	22.8%	47.8%	28.0%	40.0%	40.0%
<b>Withdrawn, Dismissed, or Suspended</b>	16.5%	12.6%	14.4%	14.0%	15.4%	12.7%	15.0%	10.0%
<b>Total N</b>	133	167	243	57	182	118	260	40

Documentation of a risk assessment instrument occurred in only the 2<sup>nd</sup> Judicial District, where pretrial services administered either the Risk Assessment Instrument (RAI) or Public Safety Assessment (PSA) to help inform judicial decision-making. In the cases where a risk assessment was administered, the tool recommended detention in 30% of cases and had a flag for new violent criminal activity in 36% of cases.

Figure 22. Risk Assessment Indicators (2<sup>nd</sup> Judicial District Only)



n=104 for PSA flag, n=106 for risk assessment overall

Judges in the 2<sup>nd</sup> Judicial District approved over half of the petitions to detain when the risk assessment recommended either the highest level of release (Release on Recognizance – Pretrial Monitoring Level 4 [ROR-PML 4]) or to detain or release with maximum conditions. They were least likely to order detention in cases with a recommendation to release on recognizance. Case outcomes by PSA recommendation are illustrated in Table 15.

Table 15. Outcome by Risk Assessment Recommendation (2<sup>nd</sup> Judicial District Only)

PSA Recommendation*						
	ROR	ROR–PML 1	ROR–PML 2	ROR–PML 3	ROR–PML 4	Detain or release with maximum conditions
<b>Approved</b>	10.0%	50.0%	40.0%	45.8%	66.7%	71.9%
<b>Denied</b>	70.0%	50.0%	53.3%	41.7%	11.1%	21.9%
<b>Withdrawn, Dismissed, or Suspended</b>	20.0%	0.0%	6.7%	12.5%	22.2%	6.3%
<b>Total N</b>	20	6	15	24	9	32

\*p<.05

In the 2<sup>nd</sup> Judicial District, a flag for potential future violent behavior was also a significant predictor of detention. Judges ordered detention in 65% of cases flagged for new violent criminal activity (NVCA), compared to 37% of cases without that flag. A greater proportion of cases with an NVCA flag were withdrawn, dismissed, or suspended than those without an NVCA flag (see Table 16).

Table 16. Outcome by Risk Assessment Flag for New Violent Criminal Activity (2<sup>nd</sup> Judicial District Only)

	No NVCA flag	Flag for NVCA
<b>Approved</b>	37.3%	64.9%
<b>Denied</b>	58.2%	27.0%
<b>Withdrawn, Dismissed, or Suspended</b>	4.5%	8.1%
<b>Total N</b>	67	37

p<.01

## Person Characteristics and Outcomes

For this final section, we examined the demographic characteristics of defendants.<sup>9</sup> The vast majority of defendants were male (92%) and were 33 years old on average. Judges approved detention at essentially the same rate for males (46%) as females (46%). The rate at which motions were withdrawn, dismissed, or suspended was about the same for both males and females (15% vs. 13%). Furthermore, the case outcome did not differ by average defendant age, though the rate of approval was highest for defendants between the ages of 45 and 54. While differences by age grouping were statistically significant, no clear patterns exist to suggest meaningful differences. Case outcomes by sample characteristics are displayed in Table 17 below.

<sup>9</sup> The AOC often does not record race and/or ethnicity information. We did not conduct any analyses with race or ethnicity as we deemed the data incomplete. See Appendix D, Table D.4 for more information.

Table 17. Defendant Sample Representation and Relationship with Case Outcomes

Sample Characteristics		Case Outcome		
		<i>Approved</i>	<i>Denied</i>	<i>Withdrawn, Dismissed, or Suspended</i>
<b>Sex</b>				
Male	92.0%	45.7%	39.9%	14.5%
Female	8.0%	45.8%	41.7%	12.5%
<b>Age (Grouped)*</b>				
24 or Younger	20.3%	42.6%	37.7%	19.7%
25-34	41.3%	46.0%	41.1%	12.9%
35-44	26.7%	45.0%	46.3%	8.8%
45-54	6.3%	73.7%	5.3%	21.1%
55 or Older	5.3%	25.0%	50.0%	25.0%
Average age (standard deviation)	33.2 (11)	33.9 (10)	33.5 (11)	33.2 (13)

\*p<.05, n=300

## Summary and Discussion

This report examined the use of pretrial detention since the implementation of bail reform in New Mexico in 2017. We evaluated the frequency with which prosecutors file for preventative detention and judges rule in favor of pretrial detention. We outlined the factors that prosecutors present when requesting preventative detention, and that judges cite when they rule for preventative detention. Further, we looked at how bonds are set and how much time defendants spend detained pretrial under the new pretrial policies.

Overall, prosecutors filed for preventative detention on 7% to 9% of all felony cases disposed between 2017 and 2020; these numbers vary by year and by region. The lowest rate of filing was in 2017, the year that bail reform went into effect. Since then, the rate of PTD motions has been relatively consistent. Rates of filing varied greatly by region, from about 3% in the Northeast to 12% in the Central region. These variations may reflect differences in offending patterns, differences in prosecutors' perceptions of dangerousness, community expectations and norms, or other factors. In a prior report on the implementation of bail reform (Siegrist et al., 2020), stakeholders noted that prosecutors have wide discretion when deciding whether to seek preventative detention, as there are no rules to define or limit their choices. They may, however, look to the guidance provided for judges in Rule 5-401 when deciding whether the case is appropriate and likely to result in detention (N. M. R. Crim. P. Dist. Ct. 5-401). Individual District Attorney's offices have created their own decision-making frameworks to determine which cases are appropriate for preventative detention. Importantly, in the initial stages of implementation, there was an ambiguity about the process that has largely been resolved. The combination of the lack of uniform guidelines in conjunction with the initial implementation inconsistencies could also account for the variation in filing across regions observed here.

In a sub-sample of 300 PTD cases across three years, we found that judges approved preventative detention in 46% of cases. Judges denied preventative detention in 40% of cases, and the remaining cases were either withdrawn or dismissed. The rate at which judges approved preventative detention varied both annually and geographically. The rate of approval was highest in 2019. This corresponds with prosecutors' increased emphasis on danger alone and judges' corresponding assessments of defendants as dangerous in cases from that year. This suggests that prosecutors refined their decision-making regarding which cases to present for preventative detention (i.e., those who present a danger only). While rates of filing and approval varied by region, there was no clear relationship between the two. In other words, approval rates were not consistently higher or lower in regions with differing filing rates. The highest approval rates were in the Northwest and North Central regions and the lowest were in the Southwest and Northeast; the lowest filing rates were in the Northwest, North Central, and Northeast areas of the state.

Judges ordered defendants to pay bond in 16% of the cases (n=48) in which the judge ordered the defendant to be released. Judges from the Northeast, Southeast, and Southwest regions ordered secured bond at the highest rates; these regions also had some of the lowest rates of PTD. The relationship between ordering bond and denying PTD was not consistent across all regions. In the Central region, the approval rate was less than 50% and judges ordered secured bond in just 10% of denied cases. Generally, though, the correlation seen in other regions suggests that judges may have ordered secured bond in lieu of detention in some areas of the state. If this is the case, the intended purpose of the bail reform amendment to transition away from the use of bond to secure release may not have been fully implemented. However, the number of cases is so small in some of these regions that it is difficult to say with any certainty whether this is the case. Moreover, the rates at which judges

in these regions approved PTD increased over time (as it did in most regions of the state). This may indicate that, even if judges had been relying on secured bond in the early stages of bail reform, they were less apt to do so as bail reform rules were refined and implementation began in earnest. Thus, judges across the state may be setting bond less frequently as implementation continues.

The median length of detention for defendants in our sample was 81.5 days, with about one-fifth of the sample detained for five days or fewer. However, this varied greatly by case outcome. Defendants who were ordered to PTD were detained for the longest time: an average of 275 days, with a median of 212 days. Defendants released without bond spent a median of five days in detention; the average number of days detained for those released without bond was 10 days. We would expect defendants to spend five days or less when the motion is denied, as Rule 5-401(A)(1) states that the case must be heard within five days (N. M. R. Crim. P. Dist. Ct. 5-401(A)(1)). In some cases, the prosecutor may move to continue the hearing, or the hearing could be delayed for other reasons, accounting for the longer than expected period of detention for this subset of defendants.

Another key concern noted in our prior report (Siegrist et al., 2020) as well as the current analysis is the ongoing use of bond and the evaluation of ability to pay. Defendants released with a secured bond spent an average of 142 days detained, with half detained for 77 days or fewer. While bond was often not required of defendants in our sample, over one-third (n=18) of those required to pay bond were held for the entire pretrial period because they did not post bond. A further eight defendants were held until their bond was reconsidered (either lowered, changed to unsecured, or dismissed). This demonstrates that, despite the driving intentions of bail reform and contrary to the state Constitution's provision on bail, some defendants were still being held on an inability to pay that is incongruent with bail reform. According to the written rule, the bonds of those detained for the entire pretrial period should have been reconsidered and dismissed or set at a lower amount. The use of an ability-to-pay calculator or another mechanism for evaluating ability to pay could minimize the number of cases in which a defendant is held pretrial on bond despite preventative detention being denied.

Critics of bail reform are concerned that releasing dangerous defendants results in increased crime; therefore, we examined pretrial failures. To determine pretrial failure, this study relied on multiple sources of information: documentation in the current criminal case (the case associated with the PTD motion), concurrent criminal cases, and DPS arrest data. When relying only on data from the current case, the rates of pretrial failure are lower but these do not capture all of the failures that occur during the pretrial period. Particularly notable are the differences in documentation of new offenses, which is more thorough when supplementing the information in the current case with data from concurrent cases and DPS arrest data. In cases where we found a new offense, the new offense was documented in the current case about half of the time. The remainder of new offenses were largely derived from concurrent cases where the offense date was subsequent to the filing of the PTD motion. Limiting the assessment of failure to only the documentation in the underlying criminal case, without considering concurrent cases and arrests during the release period, underestimates actual pretrial failure, and particularly, new offenses.

Using all sources of data available to us, we found that about 42% of those released pretrial had at least one pretrial failure. Up to 15% of released defendants were charged with a new offense while on release, with 5% charged with a new violent offense. More common were failures to appear in court or to comply with conditions of release. Stakeholders in our previous assessment (Siegrist et al., 2020) expressed concern that adequate services were not available to ensure the safety of the community and the pretrial success of released defendants. Pretrial services vary drastically across county and judicial

district, and the rates of failure to appear or comply indicate that additional services could benefit defendants as well as the community.

The second part of the current study explored prosecutorial reasons for filing, factors that judges cited in their orders, and how case and defendant characteristics relate to outcomes. Key to pretrial decisions is the perception of dangerousness. Prosecutors perceived defendants to pose a danger more often than judges, and judges more often cited dangerousness alone than danger and flight risk when approving detention. Judges ordered release more frequently when they determined the defendant posed both a flight risk and danger.

Prosecutors and judges frequently referenced the danger that a defendant posed as they argued for or justified their ruling in favor of preventative detention; however, finding dangerousness is not clearly linked to a single factor. While a violent offense may indicate danger, we found that crimes of violence in general were not significantly related to detention. Other factors that may indicate dangerousness, such as whether a victim sustained any injury or whether a weapon was involved, were also not related to judicial decision-making. More nuanced categories, though, revealed some different patterns. For example, judges most often ruled for detention when the offense included a combination of a violent crime with a property and/or drug offense. Likewise, as the degree of injury increased, the likelihood of detention also increased. Finally, while the presence of a victim in general was not associated with case outcome, whether the victim was a law enforcement officer was associated with higher detention rates.

One might expect that cases involving violent crimes would result in preventative detention more often than other offenses. As one judge previously explained to us, however, labels used to describe the offense type do not necessarily describe the nature of the offense (Siegrist et al., 2020). For instance, an aggravated assault charge can correspond to a wide range of situations, from a threat to an attempted murder. In fact, according to one judge in our previous study, prosecutors are likely to move forward with a more severe charge in order to leverage a plea deal. Therefore, gleaning the details of the offense rather than ruling based off of the charge is paramount. Moreover, per *State v. Ferry* (2018-NMSC-004, 409 P.3d 918), judges are required to account for factors beyond the charge type in their pretrial decisions. Thus, it is reasonable that offense type alone does not significantly predict case outcome.

Another significant factor in judicial rulings was whether there was live testimony. Judges were much more likely to approve preventative detention when there was live testimony (78%) than when there was not (45%), regardless of who testified. However, other measures of the strength of the evidence in the case, including whether the defendant confessed to the alleged offense and whether there were witnesses, were not significant predictors of pretrial outcomes. Whether live testimony should be required has been a source of contention in the rollout of bail reform, leading to *State ex rel Torrez v. Whitaker* (2018-NMSC-005, 410 P.3d 201). While standard rules of evidence are not applied to pretrial decisions, “clear and convincing evidence” of danger must be found before a defendant can be held pretrial (N. M. R. Crim. P. Dist. Ct. 5-409(A)). *Torrez v. Whitaker* mandated that proffer can be used in lieu of in-person testimony, though stakeholders reported different levels of adherence to this ruling (Siegrist et al., 2020). Despite the ruling that live testimony is not required, these results suggest that judges are swayed more when they are able to listen to and ask questions of witnesses.

Our results indicate that lengthy and severe criminal histories, as well as current criminal justice involvement, contribute to judicial findings of dangerousness. Additionally, where it is available, the Public Safety Assessment appears to guide judicial decision-making.

Criminal history provides important information on the likelihood of a new offense if the defendant is released. Judges and prosecutors relied heavily on criminal history to make their case or justify their ruling. Eighty-four percent of all cases in our sample had some form of criminal history, indicating that this is an important factor in prosecutorial decision-making. Additionally, judges were more likely to approve detention when the defendant had some criminal history, indicating that this is also an important factor in judicial decision-making. All types of criminal history that we measured—history of violent offenses, history of failing to appear, history of similar offenses, history of probation violations, history of failing to comply, and history of offenses against the same victim—were significant predictors of pretrial detention. All cases with these types of criminal history were more likely to be approved than those without that type of criminal history.

In addition to criminal history, active criminal justice status was frequently cited by both prosecutors and judges. More than half of defendants in our sample had an active criminal justice status, such as probation or a pending case. Cases involving those actively involved with the criminal justice system were much more likely to be approved for detention than those without active system involvement. This was true for both those with a concurrent pending case as well as those currently on probation or parole.

In addition to current system involvement, PSA recommendations for detention and flags for violence were significantly related to judicial approval of a pretrial detention motion. The 2<sup>nd</sup> Judicial District was the only district using the PSA at the time of the study cases, and most cases filed in the 2<sup>nd</sup> Judicial District included PSA scores. The PSA weighs both current offense as well as criminal history. Judges' decisions often aligned with the results from the PSA when the defendant had a score of ROR-PML 4 or higher or had a flag for new violent criminal activity. Approximately one-third of PSAs recommended detention and 36% had a flag for new violent criminal activity. These PSA scores are notably higher than those reported in a study of defendants released during the pretrial period in the 2<sup>nd</sup> Judicial District (Ferguson, De La Cerda, and Guerin, 2019). That report noted a recommended detention rate of 18% and flag for new violent criminal activity rate of just 4%. While the latter figures are limited to individuals released during the pretrial period, these differences indicate that the defendants selected for pretrial detention differ from felony defendants released during the pretrial period.

Generally, demographic characteristics were not related to judicial decisions. One exception was that judges ordered detention for defendants between the ages of 45 and 54 significantly more often than those in other age groups. However, we found no significant differences by average age nor by sex of the defendant. While there may be differences by race or ethnicity, the data were incomplete and we thus did not analyze that data.

While we found numerous characteristics associated with the decision to detain or release, we found only one that was significantly associated with the decision to order bond. Given that judges ordered bond more often when the prosecutor presented the defendant as posing both a danger and flight risk, we might expect that bond would be ordered more often for those with a history of failures to appear. Instead, judges ordered bond significantly more often for those with prior probation violations. Prior research shows that the most common type of probation or parole violation is a drug offense, followed by absconding/failure to report (Denman, Willits, & Dole, 2017). While we do not know the nature of the probation/parole violations among the defendants in the sample, we can surmise that at least some portion of those ordered to pay bond had a history of absconding and would therefore pose a flight risk.



Overall, the results from this study indicate that prosecutors select only a small portion of felony cases for preventative detention, and in some regions, seeking preventative detention is rare. The characteristics of most of the cases are largely as may be expected: violent offenses involving victims, and defendants with a criminal history and/or currently involved in the criminal justice system. While not all cases chosen for PTD can be characterized this way, it is notable that most can. Judges are more convinced that preventative detention is warranted when the defendant presents a danger to the community only and not both a flight risk and a danger. While bond is still ordered, the frequency with which it is ordered has declined.

## Limitations and Future Studies

This report adds to our understanding of the implementation of bail reform in New Mexico. However, there are a number of limitations with the present research. First, this study includes only cases involving a motion to detain. Therefore, our sample represents a portion of the estimated 9% of felony cases involving a PTD motion. Whether the characteristics and pretrial successes observed in these cases differ significantly from cases that do not involve a PTD is unknown.

Second, this study examines only one route to pretrial detention; defendants may also be detained when they violate conditions of release. A key difference, though, is that preventative detention is based on what might happen; revocation of conditions of release is based on failures during pretrial release. Future studies should examine the frequency with which release is revoked, and whether the prosecutor filed a petition for preventative detention.

Third, when examining outcomes and case details, this study does not include cases filed in 2020 when the COVID-19 pandemic began. COVID-19 may have altered pretrial detention outcomes. In particular, judges may have been less inclined to detain defendants due to the transmissibility of the virus within jails. In addition, jury trials were delayed due to COVID-19, likely extending the length of detention for those who were being preventatively detained.

Fourth, while a sample size of 300 is large enough to assess statistical significance, the number of cases in some counties and districts is small. Subsequent statewide studies should consider gathering a larger sample or oversample in regions with fewer cases to allow for more in-depth analysis of these areas. For example, there are regional differences in the type of offenses on which PTD motions were filed. While we noted some of these differences, such as high rates of DWIs in the Northwest and Southwest regions of the state, our sample did not allow for comprehensive comparisons across regions. With a larger sample size and representation across regions, future research could delve into these patterns.

Finally, this study does not tell us whether bail reform has resulted in changes to pretrial detention outcomes. We cannot say with these results whether pretrial detention is more or less common, whether judges order defendants to pay bail more or less often, or whether pretrial detention is longer or shorter. We are currently engaged in a study that will assess changes for some counties in the state (see Dole et al., 2019 for baseline measures). Future research should assess statewide changes. Despite these limitations, this study provides insight into cases involving PTD filings and their outcomes and adds to our understanding of bail reform implementation in New Mexico.



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- State of New Mexico v. Ferry*, 2018-NMSC-006, 410 P.3d 193.

# Appendix

## Appendix A: Distribution of Population vs. Sample Cases

Table A.1. Comparison of Population and Sample PTD Cases by Year

Year	Definite and Likely PTD Cases in Population	% Definite and Likely PTD Cases in Population	PTD Cases in Sample, Filing Date	% PTD Cases in Sample by Filing Date	Cases in Sample, Disposition Date	% Cases in Sample by Disposition Date
<b>2017</b>	812	16.7%	121	40.3%	85	28.3%
<b>2018</b>	2,250	46.0%	91	30.3%	113	37.7%
<b>2019</b>	1,825	37.3%	88	29.3%	102	34.0%
<b>Total</b>	4,887	100%	300	100%	300	300

Table A.2. Comparison of Population and Sample PTD Cases by District

District	Definite and Likely Cases in Population*	% Cases in Population	Cases in Sample	% Cases in Sample
<b>1</b>	205	4.1%	15	5.0%
<b>2</b>	2,825	56.3%	120	40.0%
<b>3</b>	489	9.7%	48	16.0%
<b>4</b>	30	0.6%	4	1.3%
<b>5</b>	312	6.2%	29	9.7%
<b>6</b>	68	1.4%	5	1.7%
<b>7</b>	43	0.9%	4	1.3%
<b>8</b>	71	1.4%	6	2.0%
<b>9</b>	339	6.8%	27	9.0%
<b>10</b>	36	0.7%	4	1.3%
<b>11</b>	392	7.8%	25	8.3%
<b>12</b>	151	3.0%	7	2.3%
<b>13</b>	61	1.2%	6	2.0%
<b>N</b>	5,022	100.0%	300	100.0%

\*2017-2020

Table A.3. Comparison of Population and Sample PTD Cases by Region

Region	Definite and Likely Case Population*	% Cases in Population	Cases in Sample	% Cases in Sample
<b>Central</b>	2,896	58%	127	42%
<b>Northwest</b>	399	8%	26	9%
<b>North Central</b>	271	5%	20	7%
<b>Northeast</b>	66	1%	9	3%
<b>Southeast</b>	807	16%	63	21%
<b>Southwest</b>	583	12%	55	18%
<b>Total</b>	5,022	100%	300	100%

\*2017-2019

## Appendix B: Examples of Standard Forms

### EXAMPLE 1: 2<sup>ND</sup> JUDICIAL DISTRICT

#### EXPEDITED MOTION FOR PRETRIAL DETENTION

The state moves this Court for an order detaining Defendant under Rule 5-409 NMRA and Article II, § 13 of the New Mexico Constitution while trial in this case is pending. Such an order is appropriate because there are no release conditions for Defendant that will reasonably protect the safety of the community.

The State intends to show that the defendant should be detained for the following reasons:

1. This defendant is charged with a felony;
2. \_\_\_\_\_  
*See* Rule 5-401(C)(1) (“the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug.”);
3. \_\_\_\_\_  
*See* Rule 5-401(C)(2) (“the weight of evidence against the person.”);
4. \_\_\_\_\_  
*See* Rule 5-401(C)(4) (“the nature and seriousness of the danger to any person or the community that would be posed by the person’s release.”);
5. \_\_\_\_\_  
*See* Rule 5-401(C)(3) (“the history and characteristics of the person, including (a) the person’s character and physical and mental condition;(b) the person’s family ties;(c) the person’s employment status, employment history and financial resources;(d) the person’s past and present residences;(e) the length of residence in the community;(f) any facts indicating the possibility that the person will commit new crimes if released;(g) any facts indicating the possibility that the person will commit new crimes if released;(h) the person’s past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearance at court proceedings; and (i) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal or completion of an offense under federal, state, or local law.”); and
6. \_\_\_\_\_  
*See* Rule 5-401(C)(5) (“any other facts tending to indicate that the person is[un]likely to appear.”).

#### **Conclusion**

For these reasons, the State requests that this Court:

Dated: \_\_\_\_\_

Respectfully Submitted,  
\_\_\_\_\_

#### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing  
was sent to counsel for the defense/  
Public Defender’s Office on the  
\_\_ day of \_\_\_\_\_, \_\_\_\_\_

EXAMPLE 2: 9<sup>TH</sup> JUDICIAL MAGISTRATE COURT

STATE'S MOTION FOR PRETRIAL DETENTION

COMES NOW the State of New Mexico, by and through the Office of the District Attorney, and pursuant to the provisions of New Mexico Constitution, Article II, Section 13, and NMRA 6-409 and NMRA 5-409 respectfully requests that the above named Defendant be held in pretrial detention pending trial. Defendant poses a danger to the community and is a flight risk. In support of this motion, the State submits the following:

- 1) In November of 2016, New Mexico Constitution, Article II, Section 13, was amended to read, in relevant part, that:  
Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.
- 2) At a hearing in this matter, the State will establish, by clear and convincing evidence that no release condition imposed on the Defendant will reasonably protect the safety of any other person or the community.
- 3) The State intends to establish the following:
  - a. The Defendant is charged with the felony offense of \_\_\_\_\_. This crime:
    - \_\_\_ Is a Crime of Violence.
    - \_\_\_ Is a sexual offense.
    - \_\_\_ Is a sexual offense of a child.
    - \_\_\_ Is a sexual offense against a child under the age of thirteen (13).
    - \_\_\_ Was committed against a child.
    - \_\_\_ Was committed against the elderly.
    - \_\_\_ Involved the use of a firearm.
    - \_\_\_ Involves a narcotic drug.
    - \_\_\_ Involves violation of an order of protection or condition of release.
    - \_\_\_ Involved flight or resistance of Law Enforcement Officers.
    - \_\_\_ Involved an attempt on the part of the defendant to conceal his identity.
    - \_\_\_ the nature and circumstances of the offense charged show that it was committed in a dangerous manner: \_\_\_\_\_
  - b. the weight of the evidence against the person:
    - \_\_\_ Contains recorded audio evidence of the offence.
    - \_\_\_ involves an admission by the defendant.
    - \_\_\_ Was observed by multiple witnesses.
  - c. the history and characteristics of the person:
    - \_\_\_ Defendant has prior felony convictions.
    - \_\_\_ Defendant has prior acts of violence.
    - \_\_\_ Defendant has prior misdemeanor convictions.
    - \_\_\_ Defendant is currently pending charges;
      - \_\_\_ In this jurisdiction.
      - \_\_\_ In another jurisdiction \_\_\_\_\_.
      - \_\_\_ In multiple cases at the same time.
    - \_\_\_ Defendant is like to commit new crimes and has been charged with \_\_\_ cases within the past twelve (12) months.
    - \_\_\_ Defendant has failed to appear in prior cases.
    - \_\_\_ Defendant is presently on probation or parole.
    - \_\_\_ Defendant has mental health issues.

- d. The nature and seriousness of the danger to any person or the community that would be posed by the person's release;
- \_\_\_ Defendant inflicted an injury on the victim.
  - \_\_\_ Defendant inflicted Great Bodily Harm on the victim.
  - \_\_\_ Defendant threatened the victim or any witness.
  - \_\_\_ Defendant has previously been charged with offenses against the same victim.
  - \_\_\_ Defendant would or does reside in close proximity to the victim.
  - \_\_\_ Defendant has committed offenses against multiple victims.
  - \_\_\_ Defendant's crime involves the distribution of drugs into the community.
- e. any other facts \_\_\_\_\_

WHEREFORE, the State requests that this Honorable Court to transfer this matter to the District Court for further proceedings.

Respectfully Submitted,

\_\_\_\_\_

## Appendix C. Maps of District and Regions

Figure C.1. *Map of New Mexico Regions*

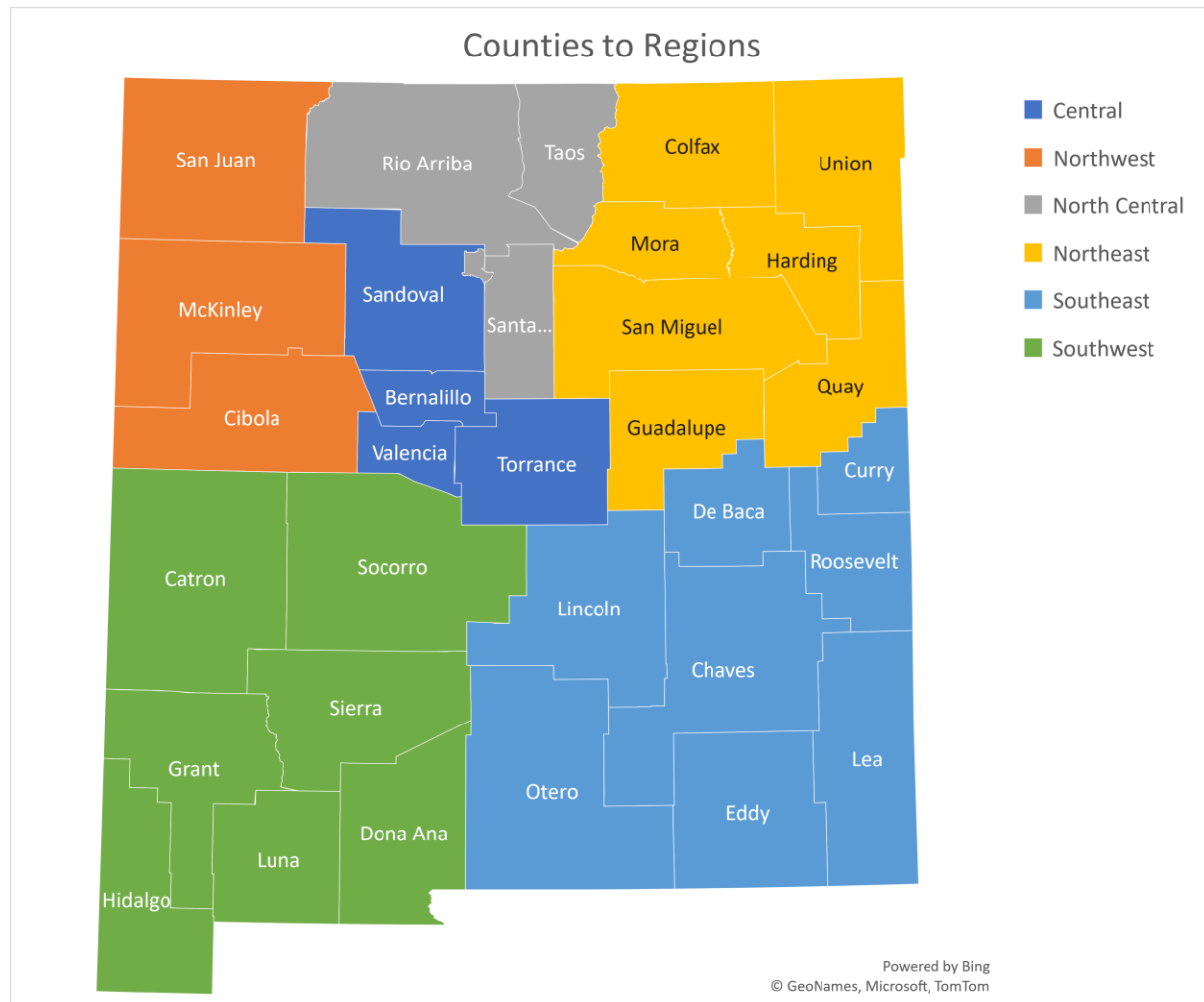
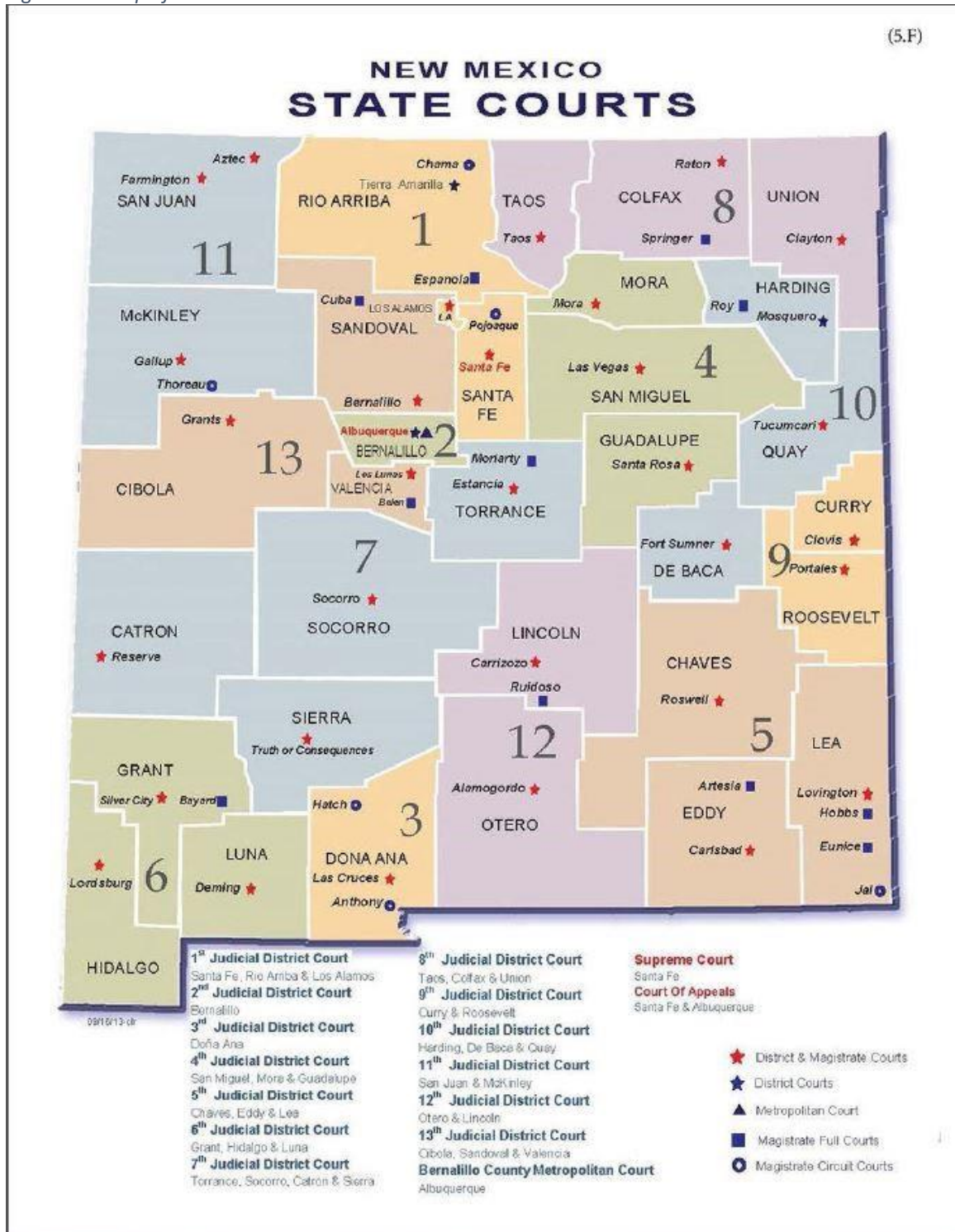


Figure C.2. Map of New Mexico Judicial Districts



## Appendix D: Supplementary Tables and Figures

Table D.1. *Rate of Estimated Preventative Detention Cases by District, 2017-2020*

Districts	Total Definite and Likely	Overall Felony Cases (N)	% Total Definite and Likely PTD Motions to Felony
1	280	7,181	3.9
2	3,486	23,303	15.0
3	705	4,544	15.5
4	43	2,025	2.1
5	443	8,518	5.2
6	112	2,776	4.0
7	64	2,236	2.9
8	94	2,341	4.0
9	440	2,994	14.7
10	66	724	9.1
11	480	8,924	5.4
12	169	2,996	5.6
13	101	7,939	1.3
<b>N</b>	<b>6,483</b>	<b>76,501</b>	<b>8.5</b>

Table D.2. *Geographic Representation of Sample by Region Among Possible PTD Hearings*

Region	Definite and Likely Cases in Population*	% Cases in Population	Cases in Sample	% Cases in Sample
<b>Central</b>	2,896	58%	127	42%
<b>Northwest</b>	399	8%	26	9%
<b>North Central</b>	271	5%	20	7%
<b>Northeast</b>	66	1%	9	3%
<b>Southeast</b>	807	16%	63	21%
<b>Southwest</b>	583	12%	55	18%
<b>Total</b>	<b>5,022</b>	<b>100%</b>	<b>300</b>	<b>100%</b>

\*2017-2019



Table D.3. *Geographic Representation of Sample by District Among Possible PTD Cases, 2017-2019*

District	Definite and Likely Cases in Population	% Cases in Population	Cases in Sample	% Cases in Sample
1	205	4.1%	15	5.0%
2	2,825	56.3%	120	40.0%
3	489	9.7%	48	16.0%
4	30	0.6%	4	1.3%
5	312	6.2%	29	9.7%
6	68	1.4%	5	1.7%
7	43	0.9%	4	1.3%
8	71	1.4%	6	2.0%
9	339	6.8%	27	9.0%
10	36	0.7%	4	1.3%
11	392	7.8%	25	8.3%
12	151	3.0%	7	2.3%
13	61	1.2%	6	2.0%
N	5,022	100.0%	300	100.0%

\*2017-2019

Figure D.1. *Motion Disposition by Region and Years in Sample*

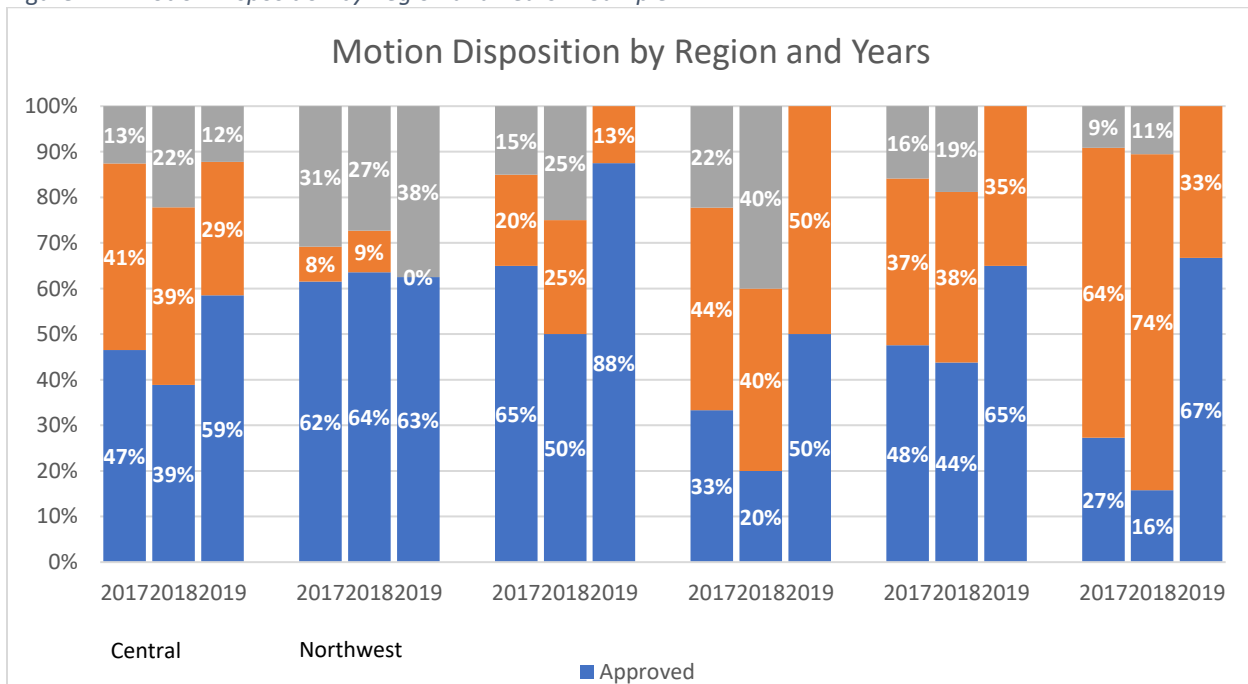


Table D.4. Representation of Race in Sample Compared to Census Data and Court Data

Race/Ethnicity	Sample*	Census for State (adults)**
White, Non-Hispanic	39%	36.8%
Hispanic, Any Race	19%	49.3%
Black/African-American, Non-Hispanic	6%	2.6%
Native American, Non-Hispanic	7%	11.0%
Asian, Non-Hispanic	<1%	1.8%
Pacific Islander, Non-Hispanic	<1%	0.2%
Two or More Races, Non-Hispanic	1%	2.6%
Missing Information	27%	0.0%
Total N	300	

\*Court recording of race and ethnicity is unreliable; therefore, we do not include it in our analyses.

\*\*Retrieved from New Mexico Census Data:

<https://www.census.gov/quickfacts/fact/table/NM/RHI125219#RHI125219>

Table D.5. Court Findings of Risk by Region

	Central	Northwest	North Central	Northeast	Southwest	Southeast	Total %
Danger	71.3%	100.0%	91.7%	72.7%	32.0%	58.0%	63.7%
Flight Risk	1.1%	0.0%	0.0%	9.1%	34.0%	6.0%	38.3%
Danger and Flight Risk	6.4%	0.0%	0.0%	18.2%	26.0%	16.0%	12.2%
Found Neither	18.1%	0.0%	8.3%	0.0%	6.0%	18.0%	12.7%
Not Stated	3.2%	0.0%	0.0%	0.0%	2.0%	2.0%	2.1%
Total N	94	20	12	11	50	50	237 (100%)

p<.001

Table D.6. Court Findings of Risk by Year Filed

	2017	2018	2019	Total %
Danger	58.0%	60.0%	75.0%	72.7%
Flight Risk	14.0%	10.8%	1.4%	9.3%
Danger and Flight Risk	14.0%	10.8%	11.1%	12.2%
Found Neither	11.0%	18.5%	9.7%	12.7%
Not Stated	3.0%	0.0%	2.8%	2.1%
Total N	100	65	72	237 (100%)