

The Public Safety Assessment, Preventive Detention, and Rebuttable Presumptions in Bernalillo County, Report in Brief



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Prepared by: Institute for Social Research, Center for Applied Research and Analysis

Elise Ferguson, M.A., Helen De La Cerda, B.A., Alise O'Connell, B.A., and Paul Guerin, Ph.D.

In June 2017, Bernalillo County implemented the Public Safety Assessment (PSA) for felony cases. In January 2017, the County began using preventive detention (hereafter PTD) after voters approved a constitutional amendment in November 2016. In addition, while the current procedure for PTD requires the filing of a motion by the District Attorney's office, an alternative proposal was presented in 2021, House Bill 80 (HB80), would instead mandate the use of rebuttable presumptions (RPs). These are a series of charges and circumstances that would result in the denial of bail and detention of the defendant. HB80 includes a wide variety of defendants, and its terms are not explicitly defined or constrained by a time limit. A basic interpretation may result in the detention of a large number of defendants for both serious violent offenses (SVOs) and a series of Optional SVOs (OSVOs), the majority of whom are at a low risk of offending. If used in addition to the current PSA, HB80 would add detention on nearly 3,000 additional cases, with over 80% having no new charges filed during the pretrial period (see Table 1). While these individuals are in custody, they face the possibility of lost employment, loss of housing, and other negative social outcomes. In addition to PTD, the defendant may be required to participate in substance abuse treatment, for which there may be consequences should the person fail to complete the program. And finally, the impetus is placed on the defendant to prove that he or she does not qualify for detention. Another proposal includes firearms-related charges as a means to select defendants for detention. The use of a firearm can be difficult to distinguish and, in some circumstances, the presence of a firearm is not related to any charge whatsoever.

This report in brief summarizes the full report that analyzes Bernalillo County Metropolitan Court (BCMC) cases to determine differences in pretrial detention and outcomes measures for proposed rebuttable presumptions.

Court cases that were filed between July 1, 2017, and June 31, 2021, were selected from BCMC electronic data. During this time period, 26,310 felony cases were opened in BCMC. Cases were selected for review if a PSA was completed, if the inmate was in custody for the Felony First Appearance (FFA), and the defendant was assigned conditions of release.

The remaining 23,345 cases met the criteria of having a PSA and the individual was in custody for the release decision. The PTD motions, the exposure for the cases, and the outcome measures for the released cases are included for the current PSA outcomes, the addition of HB80 criteria to the cases released under the current system, a separate firearm option, and the use of the data available in the PSA in lieu of other rebuttable presumption options.

There are several options for rebuttable presumptions that, if used in addition to the current system, would result in the detention of more defendants, a portion of who (as evidenced by the safety rate) would not have been charged with additional crimes during the pretrial period. HB80 would result in the largest number of additional detentions at nearly 3,000, the majority of whom would have no Failure to Appear (FTA), New Criminal Activity (NCA), or New Violent Criminal Activity (NVCA). Firearm charges would result in cases with the fewest additional detention (559). While the portion of cases with no FTA or NCA is still high, the prediction of

NVCAs is not as accurate. Using the current PSA and recommending cases with a detain / ROR – PML 4 (this is the most currently the restrictive recommendation on the current PSA) and a NVCA

flag for detention would result in 710 detentions. The Appearance and Public Safety Rate is lowest for these cases and the NVCA rate is highest, so the prediction of NVCAs for this group is highest.

Table 1. Rebuttable Presumption Options, PTD Motions, and Outcomes

	HB80		Firearms Charges	PSA: Detain / ROR PML - 4 with NVCA Flag
	SVO	OSVO		
Total cases	2,385	2,850	1,348	1,954
Percent of cases with a PTD Motion currently Filed by the DA's office	54.0%	28.5%	66.7%	38.4%
Additional detainees under proposed rebuttable presumptions (currently closed and released)	1,142	1,784	559	710
	(2,926 Total)			
Outcomes for Proposed Detainees:				
Proposed detention would negatively impact current pretrial success.				
	Appearance Rate: the rate at which individuals attend all scheduled court appearances.			
Rate	83.4%	80.3%	82.3%	68.9%
Proposed Detainees (no current FTA)	952	1,433	460	489
	Public Safety Rate: the rate at which individuals do not have a new offense during the pretrial stage of a case.			
Rate	81.8%	80.7%	79.4%	72.4%
Proposed Detainees (no current NCA)	934	1,439	444	514
Higher NVCA Rates equate to an improved ability to detain Violent Offenders				
	NVCA Rate: The portion of cases with a NVCA, which would be accurately identified and possibly delayed or prevented.			
Rate	8.4%	8.8%	4.8%	11.8%
The fiscal and social cost associated with proposed detention (detaining large numbers of inmates with no FTAs, NCAs, or NVCAs) should be carefully weighed against potential benefits				

Overall, the implementation of the recently proposed options for rebuttable presumptions is not clearly reflected in the current use of preventive detention nor does the data suggest that HB80 is useful in addition to the current method of assessment and release/detainment. The data suggests that to date, the best predictor of the likelihood of commitment of new criminal activity and new violent criminal activity is a combination of the recommendation of the PSA and the violence flag. While options may be available to improve the Release Conditions Matrix, broad sweeping mandates for pretrial detention would result in an increased burden on the courts. Implementing these charges should be studied, both to confirm the outcomes on a smaller scale as well as to gauge the impact on both the courts and the MDC. An evidence-based decision has the greatest chance for success.