Bernalillo County Public Safety Assessment Review – July 2017 to March 2022

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Prepared by:

Elise Ferguson, M.A.
Helen De La Cerda, B.A.
Paul Guerin, Ph.D.

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Sentencing Commission

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Introduction

Bernalillo County implemented the Public Safety Assessment (PSA) for felony cases in June 2017 to provide additional information to judges during release decision-making. During the pretrial phase of a case the defendant is presumed innocent and is entitled to due process of law (U.S. Constitution, amend. V), and is also entitled to reasonable conditions of release, specifically either "bailable by sufficient sureties" or via relief through the courts for those unable to post a bond (N.M. Constitution, art. II, §13). Historically, release decisions have been based on the seriousness of the crime and prior criminal history. Judges are often required to make pretrial release decisions in a short period of time with incomplete information (Steffensmeier, Ulmer and Kramer, 1998). Limited information coupled with limited decision-making time can result in disparate treatment of minorities and the poor during their pretrial period, release decision-making, and pretrial incarceration (Schlesinger, 2005). As limitations and challenges in pretrial release decision-making have become more prominent, there has been increased interest in the development and use of pretrial risk assessment instruments (Pretrial Justice Institute, 2015).

In FY22 the New Mexico Legislature provided funds to the New Mexico Sentencing Commission and the Center for Applied Research and Analysis at the Institute for Social Research (ISR) for two reports. The first report was a review of Bernalillo County Metropolitan Court (BCMC) cases and analyzed cases eligible for potential detention under a recently proposed rebuttal presumption bill. This was completed in December 2021 (Ferguson, De La Cerda, O'Connell, Guerin, 2021b). This report reviews felony cases and the overall use of the PSA in Bernalillo County through March 2022 for both the BCMC and the Second Judicial District Court (SJDC).

Background on the PSA

Arnold Ventures developed the PSA in partnership with leading criminal justice researchers using approximately 750,000 cases from 300 jurisdictions across the United States (Arnold Ventures, 2019; AdvancingPretrial.org, 2020). The tool was validated for over half a million cases nationally and has been re-validated at locations such as Mecklenburg County, North Carolina, Kentucky (PSApretrial.org, 2019), and Bernalillo County in 2021 (Ferguson, De La Cerda, Moore, Guerin, 2021a). The PSA was designed to use evidence-based, neutral information, to predict the likelihood that an individual will be charged with a new crime if released before trial (New Criminal Activity [NCA]), and to predict the likelihood that he/she will fail to return for a future court hearing (Failure to Appear [FTA]). In addition, it flags individuals who present an elevated risk of being charged with a violent crime during their pretrial period (New Violent Criminal Activity [NVCA]). The FTA, NCA, and NVCA are referred to as outcome measures. By extension, these outcome measures are related to measures of pretrial success. The inverse of the FTA rate is the Appearance rate and is defined as the rate at which individuals attend all scheduled court appearances.[1] The inverse of the NCA rate is the Public Safety rate and it is defined as the rate at which individuals do not have a new offense during the pretrial stage of a case. As the focus of the PSA turns more towards pretrial success rather than pretrial failure, there will be continued shifts in how information is presented and

structured. The FTA, NCA, and NVCA will be referred to as the outcome measures herein. This report also reviews and discusses the Adherence rate – the degree to which conditions of release ordered correspond with the PSA recommendation category. The Adherence rate is compared to the outcome measures to determine if using conditions of release in line with the PSA recommendation reduces FTAs and NCAs. Finally, the Release rate is included, which is the rate at which individuals are released during the pretrial stage of a case and have exposure to fail or succeed.

During the implementation process, each jurisdiction makes decisions regarding information that will be used to assess defendants and recommend conditions of release. These include identifying what cases are eligible for assessment, the selection of violent statutes from the statutes in the jurisdiction, and development of and the modification of the Decision-Making Framework[2] (DMF) or Release Conditions Matrix (RCM). Different jurisdictions may not have the same list of violent charges; for instance, Bernalillo County considers all arson charges to be violent and other jurisdictions may. In addition, part of the DMF development involves selecting what types of conditions should be assigned to what level of risk and this is based on a variety of factors, including what conditions are available. There are other differences in Bernalillo County that make it unique. While other jurisdictions that have implemented the PSA use it for individuals facing misdemeanor and felony charges, in Bernalillo County, only those with felony charges are assessed. Felony charges are more serious than misdemeanor charges and individuals may have higher FTA and NCA scores, longer periods of pretrial release, differing release rates, and higher failure rates in Bernalillo County. For this reason, the findings in Bernalillo County are not comparable to other jurisdictions that have implemented the PSA.

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

The PSA is designed to predict a defendant's likelihood for failing to appear at future court hearings and the likelihood of committing a new criminal offense during their pretrial period. The PSA is scored by reviewing a defendant's criminal history, current cases, and age to create an FTA score and an NCA score as well as a flag for NVCA. (See Appendix A for additional information on the PSA and the RCM).

Using the FTA and NCA scales, a release recommendation for each defendant is assigned using the DMF. The DMF provides recommendations that range from release on own recognizance (ROR), ROR with various levels of pre-trial supervision, and up to a recommendation to detain or release with maximum conditions. The level of pretrial supervision, or pretrial monitoring

level (PML), ranges from level 1 to level 4 with increasing degrees of supervision and conditions[3]. As aforementioned, the DMF in Appendix A was tailored for Bernalillo County by a PSA Implementation Team involving key stakeholders.

The next several sections report the sample, the PSA recommendation categories and the PSA outcome measures: the FTA rate, the NCA rate, and the NVCA rate. A failure to appear warrant was considered valid if it was issued during the study period for failure to appear at a court hearing[4]. New criminal activity does not include City or County ordinances or traffic offenses per decisions made with local stakeholders and Arnold Ventures. Stakeholders also identified violent criminal activity, which consists of offenses such as murder, kidnapping, or any offense or conspiracy to commit such offense, which causes physical injury to another person.[5]

Sample

The cases included in this study were provided by BCMC and SJDC. The data included all court cases, filing dates, hearing dates, PSA scores, and closing dates. Fugitive cases were also excluded as they are not considered eligible for assessment[6]. Cases in this sample included:

- Felony cases[7] that were filed between July 1, 2017[8] and March 31, 2022
- Had a PSA completed
- The defendant was in custody for either the Felony First Appearance (FFA) or the Felony Arraignment (FA)
- The case was closed (case status) and no longer pending on March 31, 2022
- The defendant was released during the pretrial period between FFA or FA and final case disposition.

Both BCMC and SJDC provided electronic data, however there is often overlap between the cases due to an indictment during the BCMC pretrial period. In Bernalillo County, most felony cases begin in BCMC, with a very small number being filed directly in SJDC Once the case is opened, the prosecution has 60 days from the defendant's FFA and pretrial release to charge the defendant, either through a grand jury indictment or through a preliminary hearing where a judge may decide if there is enough evidence to indict. Once the case is indicted, the BCMC case is linked to the SJDC case and the case proceeds in SJDC. When the BCMC and SJDC cases overlapped, it was considered one pretrial period and analyzed as a single unit. Oftentimes, the BCMC case is resolved in BCMC and never gets indicted. These cases were analyzed as BCMC only. When an indictment occurs after the BCMC pretrial period, the SJDC case is analyzed as a separate unit with its own pretrial period. Findings, including outcome measures and adherence, are reported in the aggregate rather than by case categorization.

Case Status

The case status was collected, and cases were identified as either closed or pending. A case was considered closed when there was a final disposition, such as a sentence, dismissal, or plea bargain on or by March 31, 2022. The initial[9] court case close date was used as the overall close date for the case. In a number of cases, the BCMC court cases remained open beyond the 60 days allowed by court rule. This date is the deadline for which the defendant must be indicted, or the case must be dismissed. In these cases, a proxy close date was calculated 60 days from the FFA hearing date and this date was used as the close date for the BCMC portion of the case. When the defendant was indicted within the 60 days, it was considered a BCMC-SJDC case. If the indictment either occurred outside of this time period[10] or did not occur at all, the cases were BCMC or SJDC respectively, with separate pretrial periods. If not indicted within the 60 days, it was considered BCMC only. Cases were considered pending if they were still open on March 31, 2022 and were excluded. Only cases opened and closed between July 1, 2017and March 31, 2022 are included in this study.

Exposure

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

A Release rate was calculated by dividing the number of closed cases with exposure with the total number of closed cases. The Release rate was 67.7%.

Final Sample

Table 1 reports the number of court cases excluded from the BCMC sample by type of exclusion. There were 30,522 cases in the electronic file. First, 1,188 fugitive and other ineligible cases, such as those that were deleted from the court system for unknown reasons were excluded (3.9%). Second, cases were excluded if there was no PSA (1,253 or 4.1%). Third, 1,274 cases were excluded due to a release prior to the FFA, no conditions of release set at the FFA, a dismissal at the FFA, or a similar issue (4.2%). Fourth, 2,087 (6.8%) cases were excluded because they were pending (not closed) on March 31, 2022. Finally, 7,522 (24.6%) cases were excluded that had been closed but for which the defendant did not spend time in the community during the pretrial period. The final sample consisted of 17,305 assessed, closed cases with exposure in the community, or 56.7% of the original cases.

Table 1. *BCMC Case Exclusions*

Reason for Exclusion	Count	Percent
Fugitive and Other, Ineligible	1,188	3.9%
No PSA	1,253	4.1%
No FFA Date, no Conditions of Release, Dismissal at FFA or Other Issue, NIC for Assessment	1,167	4.2%
Pending	2,087	6.8%
Closed, No Exposure	7,522	24.6%
Closed, Exposure	17,305	56.7%
Total	30,522	100.0%

Following a similar process as the BCMC sample (Table 1), Table 2 reports the number of cases excluded from the SJDC sample. The original SJDC data extract consisted of 16,195 cases opened during the study timeframe. A small number of fugitive and ineligible cases were removed from analysis (14 or 0.1%). A large portion of the SJDC court cases were excluded from because they were part of an overlapping BCMC case (7,305 or 45.1%). Just over a third of cases (5,810 or 35.9%) were excluded because there was no PSA. This occurs more frequently in the SJDC as a larger number of defendants are not in custody at the beginning of the case. An additional 1,182 cases (7.3%) were excluded because the defendant was not in custody for the PSA or the FA, or there was some other issue such as a case resolved prior to any FA hearing. Cases were excluded that were pending as of March 31, 2022, (415 or 2.6%) and finally, 924 cases (5.7%) were closed but there was no exposure during the pretrial period. The final sample consisted of 545 cases, 3.4% of the original cases provided.

Table 2. *SJDC Case Exclusions*

Reason for Exclusion	Count	Percent
Fugitive and Other, Ineligible	14	0.1%
Attached to BCMC Case	7,305	45.1%
No PSA	5,810	35.9%
NIC for PSA, FA, or Other FA issues or Other Issue	1,182	7.3%
Pending	415	2.6%
Closed, No Exposure	924	5.7%
Closed, Exposure	545	3.4%
Total	16,195	100.0%

There were 17,743 BCMC and SJDC cases available for analysis during the study timeframe.

PSA Recommendation Categories

The NCA and FTA score from the PSA result in 25 options for release recommendation categories, which consist of conditions for ROR[11], ROR – PML 1, ROR – PML 2, ROR – PML 3, ROR – PML 4, or to detain if constitutional requirements are met or release with maximum conditions (ROR with PML 4).

Table 3 shows the recommendation categories for the 17,743 cases. The three most commonly assigned categories were 12.2% (2,167) in the (A) ROR category, 9.8% (1,732) in the (I) ROR –

PML 2 category, and 8.2% (1,457) in (J) ROR – PML 3. The three least commonly assigned categories were 3 cases in (G) ROR – PML 4, 13 cases in (L) detain or ROR - PML 4, and 40 cases in (R) ROR – PML 2. Each of these three categories accounted for less than 1% of all cases.

Table 3. *PSA Recommendation Categories*

		New Criminal Activity Scale											
		1		2		3		4		5		6	
		Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
FTA Scale	1	(A) ROR 2,167	12.2%	(B) ROR 1,233	6.9%								
	2	(C) ROR 406	2.3%	(D) ROR 1,061	6.0%	(E) ROR - PML 1 953	5.4%	(F) ROR - PML 3 510	2.9%	(G) ROR - PML 4 3	0.0%		
	3			(H) ROR - PML 1 1,069	6.0%	(I) ROR - PML 2 1,732	9.8%	(J) ROR - PML 3 1,457	8.2%	(K) ROR - PML 4 118	0.7%	(L) Detain / ROR - PML 4 13	0.1%
	4			(M) ROR - PML 1 331	1.9%	(N) ROR - PML 2 734	4.1%	(O) ROR - PML 3 882	5.0%	(P) ROR - PML 4 675	3.8%	(Q) Detain or ROR - PML 4 131	0.7%
	5			(R) ROR - PML 2 40	0.2%	(S) ROR - PML 2 296	1.7%	(T) ROR - PML 3 1,039	5.9%	(U) Detain or ROR - PML 4 957	5.4%	(V) Detain or ROR - PML 4 457	2.6%
	6							(W) Detain or ROR - PML 4 285	1.6%	(X) Detain or ROR - PML 4 296	1.7%	(Y) Detain or ROR - PML 4 908	5.1%

Table 4 shows the number of total cases in the PSA recommendation categories. The largest category was ROR, which accounted for 4,857 (27.4%) cases. There were an additional 2,353 cases (13.3%) that had a ROR - PML 1 and another 2,802 cases (15.8%) with PML 2. The second largest category was ROR - PML 3, accounting for 3,888 (21.9%) cases. Recommendations with ROR – PML 4 accounted for the fewest cases, 796 or 4.5%. Finally, there were 3,047 (17.2%) cases for which the recommended condition was to detain or release with maximum conditions.

Table 4. *Felony Cases by Collapsed PSA Category*

Category	Count	Percent
ROR	4,857	27.4%
ROR - PML 1	2,353	13.3%
ROR - PML 2	2,802	15.8%
ROR - PML 3	3,888	21.9%
ROR - PML 4	796	4.5%
Detain (Const Req) / ROR - PML 4	3,047	17.2%
Total	17,743	100.0%

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

PSA Outcome Measures

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

Failure to Appear

Any warrant issued for FTA at a scheduled court appearance was considered a valid warrant and applied to the FTA rate. The overall FTA rate for the 17,743 cases was 23.8% with a corresponding Appearance rate of 76.2%. (Figure 1). As the FTA score increased, the FTA rate increased. Defendants who score higher on the PSA are considered higher risk to FTA than defendants who scored lower on the PSA. The FTA rate increased from 10.3% for those assessed with an FTA 1 to 42.7% with an FTA 6. The FTA score, which is one of two scores used in the decision-making framework, shows a clear pattern in which those with higher FTA scores have higher
FTA rates.
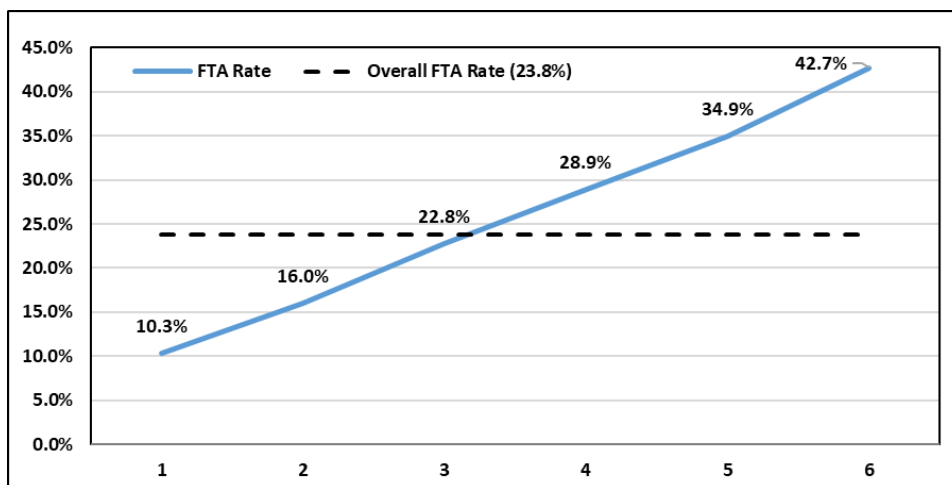
Figure 1. *FTA Rate by FTA Score*

Figure 2 shows the FTA rates by PSA recommendation categories. Cases with a ROR had an FTA rate of 11.0% and Appearance rate of 89.0%. The FTA rate for PML 1 and PML 2 were 18.3% and 26.5% respectively. Cases with a PML 3 had an FTA rate of 28.6%. The rate for PML 4 and those with detain or maximum conditions were 29.0% and 38.6%. The difference in the Appearance rate from the least restrictive to most restrictive PSA category was from 89.0% to 61.4%. While some categories were similar, overall, the pattern held. Defendants in the least restrictive categories had lower FTA rates and those in more restrictive categories had higher FTA rates.
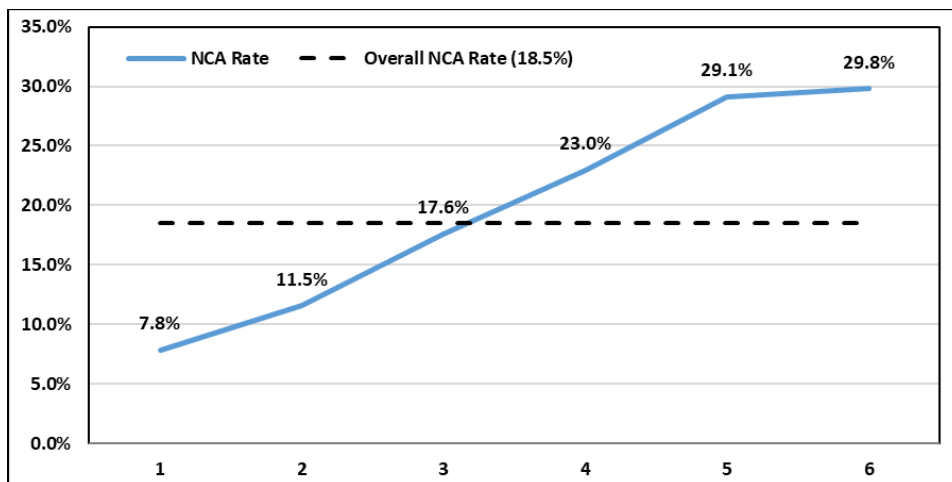
Figure 2. *FTA Rate by Collapsed PSA Recommendation Category*
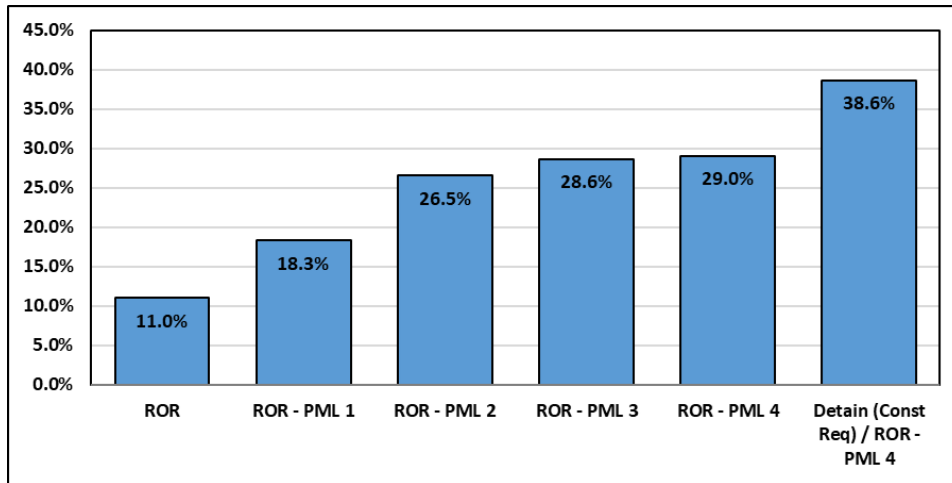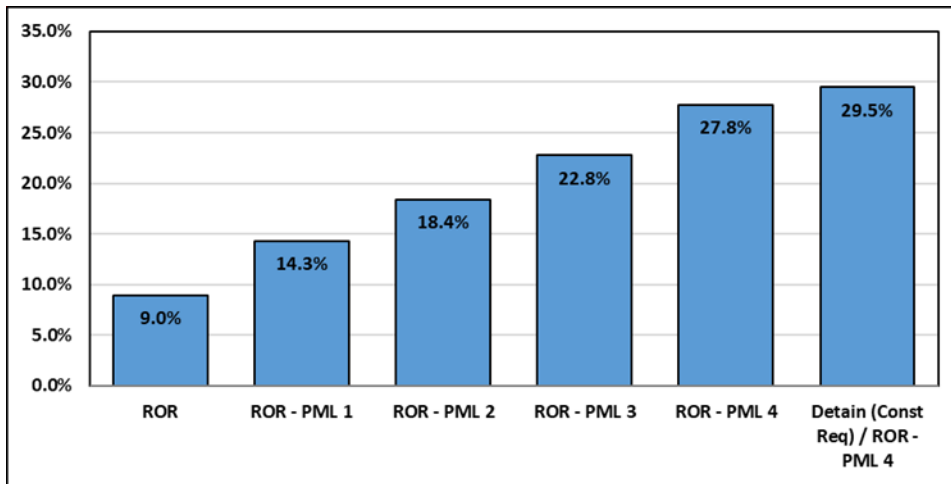

New Criminal Activity

Court data was reviewed to determine if there was an NCA during the pretrial period of each case. As noted earlier, City and County ordinances were not considered new criminal activity[12.] The NCA rate for all cases was 18.5% with an Appearance rate of 81.5%. Overall, the NCA rate increased as the NCA score increased, but the increase varied by NCA score. The NCA rate (see Figure 3) for those with a score of 1 was 7.8%. For cases with an NCA 2, the NCA rate was 11.5% and for an NCA 3 it was 17.6%. Those with an NCA score of 4 had a rate of 23.0%. The highest NCA rates were for NCA 5 and NCA 6 and were nearly identical at 29.1% and 29.7%, respectively.

Figure 3. NCA Rate by NCA Score

Similar to the FTA rate, the NCA rate varied by recommendation category, and generally increased as the category increased. Figure 4 shows the NCA rates by the collapsed PSA recommendation categories. Similar to the FTA rates, defendants who were in more restrictive recommendation categories had higher NCA rates than those who were lower risk. Cases with a ROR had an NCA rate of 9.0%. The NCA rate for PML 1 was 14.3% and for PML 2 was 18.4%. Cases with a PML 3 had an NCA rate of 22.8%. The rate for PML 4 was 27.8%. Those with detain or ROR PML 4 had an NCA rate of 29.5%. The difference in the Safety rate from the least to most restrictive recommendation categories was from 91.0% to 70.5%, a decrease of 20.5%. In general, as the recommendation category became more restrictive, the NCA rate increased.

**Figure 4.** *NCA Rate by Collapsed PSA Recommendation Category*

New Violent Criminal Activity

Statutes were identified as violent by the PSA Implementation Team with Arnold Ventures and defined as when a person causes or attempts to cause physical injury to another person. These offenses include murder, kidnapping, robbery, assault, sex offenses such as rape and sexual assault, arson, and conspiracy to commit these offenses.

While the NVCA flag is related to the PSA recommendation category because it is created using some of the same factors, it identifies defendants at a higher risk of committing new violent criminal activity. Judges may use this to help determine the conditions of release at the FFA or FA. For the 17,743 individuals in the sample, 16.6% or 2,940, had the NVCA flag.

The NVCA rate for cases where there was an NVCA flag on the PSA assessment was over twice as high as cases where there was no flag (see Figure 5). The overall NVCA rate was 5.1%. The NVCA rate for cases with no flag was 4.2% and the rate for those with a flag was 9.5%, 102.4% higher than those with no NVCA flag.

Figure 5. NVCA Rate by NVCA Flag
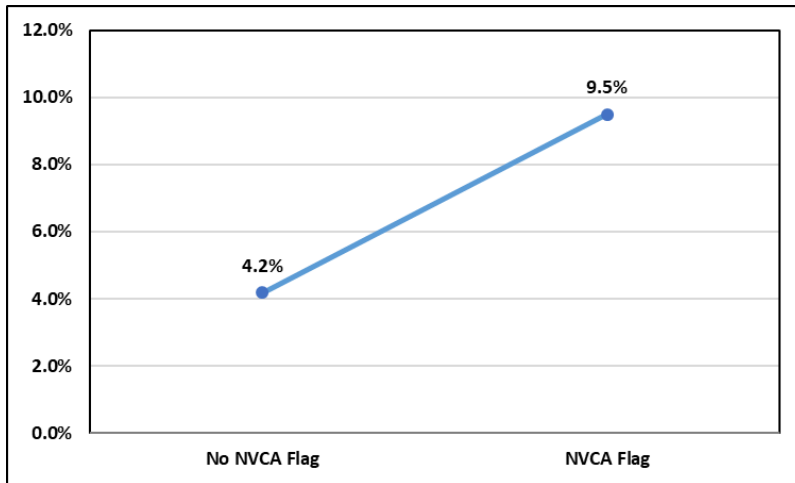
There were some increases in the NVCA rate as the recommendation categories became more restrictive. As the NCA and FTA scores increased, so did the NVCA rates, as shown in Figure 6 below. Defendants with a higher score had higher rates of NVCA. For those ordered to ROR, the NVCA rate was 3.0% and increased to 4.0% among those cases with a PML 1. The NVCA rate increased to 4.9% for PML 2 and to 5.4% for the PML 3. Cases with a recommendation of PML 4 had an NVCA rate of 7.9% and cases with detain or release with maximum conditions had an NVCA rate of 8.2%. While the rate was unexpectedly high for those with a ROR recommendation, the remaining categories had an NVCA rate that increased as the restrictiveness of the recommendation category increased.

Figure 6. *NVCA Rate by Collapsed PSA Recommendation Category*
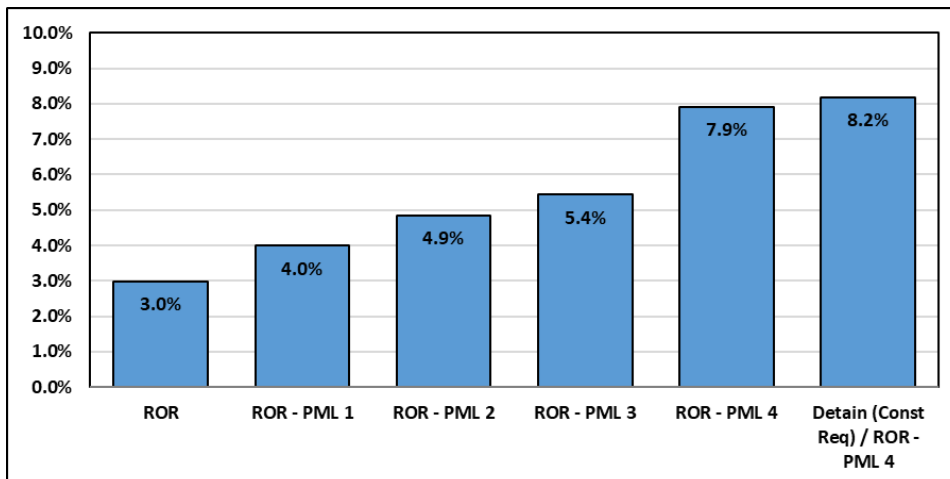
New Criminal Activity and Charge Details

The NCA charges were compared to the highest charge in the source case. The case for which the individual was assessed on is referred to as "source case" in Table 5 below. Table 5 compares the 3,290 cases that had NCA by the highest charge on the source case. Almost half of the cases with an NCA (48.7%) had a charge level lower than the cases for which they were assessed and over a third (39.1%) had a charge level equivalent to the assessed case. This indicates that for the 18.5% of cases that had NCA during the pretrial period, for 87.8% of cases the new case had either a lower or equivalent charge level than the source case.

Table 5. *Source Charge Level and NCA Charge Level Comparisons*

Source Charge Level	NCA Charges Lower than Source Case		NCA Charges Same as Source Case		NCA Charges Higher than Source Case		Total
	Count	Percent	Count	Percent	Count	Percent	
F1	16	100.0%	0	0.0%	N/A	N/A	16
F2	217	91.9%	17	7.2%	2	0.8%	236
F3	470	81.7%	69	12.0%	36	6.3%	575
F4	898	36.5%	1,202	48.8%	363	14.7%	2,463
Total	1,601	48.7%	1,288	39.1%	401	12.2%	3,290

New criminal activity was ranked by highest charge level. The highest charge level was selected and is shown in Table 6 below. The charge levels were recorded as either a 1st degree felony (F1), a 2nd degree felony (F2), a 3rd degree felony (F3), a 4th degree felony (F4), misdemeanor (MD), and petty misdemeanor (PM).[13] The majority of cases in the sample, 81.5%, did not have an NCA. Only 0.1% of cases had an NCA with an F1 and an additional 0.9% had an F2. There were 1.9% of cases with an F3 as the highest charge and 8.8% with an F4. Finally, 4.9% of cases had a misdemeanor and 2.0% had a petty misdemeanor.

Table 6. *Highest Charge Level of NCA Case*

Level	Count	Percent
F1	17	0.1%
F2	154	0.9%
F3	334	1.9%
F4	1,562	8.8%
MD	870	4.9%
PM	353	2.0%
No NCA	14,453	81.5%
Total	17,743	100.0%

New criminal activity was also ranked by highest charge category. The highest category was selected and is shown in Table 7 below. The charge categories were recorded as either a violent, drug, property, DWI, or public order/other[14]. Violent offenses comprised 5.1% of cases in the sample. An additional 4.3% had NCA consisting of drug offenses. The largest charge

category was property offenses, accounting for 7.2% of cases in the sample. NCA consisting of DWIs accounted for 0.3% of charges and public order/other cases comprised 1.7% of cases.

Table 7. *Highest Charge Category of NCA Case*

Category	Count	Percent
Violent	898	5.1%
Drug	770	4.3%
Property	1,274	7.2%
DWI	46	0.3%
Public Order / Other	302	1.7%
Total	14,453	81.5%

Table 8 below shows the charge level by recommendation category. The majority of cases without NCA scored in the ROR category (30.6%) and the PML 3 category (21.9%). Cases with a recommendation of constitution requirements are met or ROR - PML 4 and ROR - PML 3 had higher rates of NCA for the majority of recommendation categories including F2s, F3s, F4s, MD, and PM.

Table 8. *NCA Charge Level by PSA Recommendation Category*

	ROR	ROR - PML 1	ROR - PML 2	ROR - PML 3	ROR - PML 4	Detain (Const Req) / ROR - PML 4	Total
F1 or CF	35.3%	11.8%	17.6%	11.8%	11.8%	11.8%	100.0%
F2	13.0%	10.4%	14.3%	29.2%	11.0%	22.1%	100.0%
F3	16.2%	9.9%	17.7%	25.1%	6.0%	25.1%	100.0%
F4	11.2%	9.6%	15.9%	29.4%	6.7%	27.2%	100.0%
MD	14.8%	11.4%	14.8%	24.1%	6.6%	28.3%	100.0%
PM	14.4%	10.2%	15.0%	24.1%	5.9%	30.3%	100.0%
No NCA	30.6%	14.0%	15.8%	20.8%	4.0%	14.9%	100.0%
Total	27.4%	13.3%	15.8%	21.9%	4.5%	17.2%	100.0%

Correlation Results

A chi-square (X^2) test of independence was performed to determine if there was a correlation between the outcome measures and the collapsed PSA recommendation categories. The results are shown in Table 9 below. The results indicate that the correlation between the outcome measures and the PSA recommendation category is significant rather than occurring by chance alone. This correlation means that knowledge of the PSA recommendation category improves the ability to predict the FTA, NCA, and NVCA rates.

Table 9. *Chi-Square Results Summary Table*

	df	N	x^2	Sig.
FTA Rate * PSA Recommendation Category	5	17,743	920.427	p<.001
NCA Rate * PSA Recommendation Category	5	17,743	655.479	p<.001
NVCA Rate * PSA Recommendation Category	5	17,743	126.389	p<.001

Adherence

For the adherence review of cases between July 1, 2019 and March 31, 2022, conditions of release at a defendant's FFA or FA were compared to the PSA recommendation. In order for conditions set in a case to be considered adhering to the PSA recommendation, the two had to match. Cases that are applicable for adherence are cases for which there is a PSA Recommendation and the judge sets conditions. Therefore, cases for which there is a Preventive Detention (PTD) motion filed would not qualify as there is no condition set by the BCMC judge. There were 2,037 cases excluded from BCMC and 29 cases excluded from SJDC for adherence analysis for this reason. With the PTD cases excluded, there were 15,677 cases available for adherence review. The Adherence rate or deviation from the PSA rate was calculated by PSA recommendation category and by conditions of release (see Appendix B). The FTA, NCA and NVCA rates were also calculated and tested for statistical significance.

PSA Recommendations

Table 10 reports the number of cases used for adherence analysis by PSA recommendation and the Adherence for each category. The overall Adherence rate was 79.1%. The largest percent of cases received a ROR (26.6%) followed by PML 3 at 22.2%, followed by detain or ROR – PML 4 at 17.5%. The least assigned recommendation category was PML 4, at 4.6%.

In the ROR PML 1 recommendation category, less restrictive conditions were ordered 31.5% of the time. In ROR PML 2, less restrictive conditions were ordered in 14.3% of cases, and decreased in ROR PML 3 to 7.6% of cases. In ROR PML 4 less restrictive conditions were ordered 6.2% of the time and decreased to 4.8% for detain if constitutional requirements were met. The highest rate of adherence (82.6%) was in the ROR PML 3 category, followed by ROR (82.4%). The lowest rate of adherence (65.0%) was in the ROR PML 1 category. Finally, cases in the ROR category had the highest rate of more restrictive conditions, or 17.6%.

Table 10. *Adherence or Deviation Rate by PSA Recommendat*ion

Category	Total	Percent of all Adherence Cases	Less Restrictive	Adherence	More Restrictive
ROR	4,135	26.4%	n/a	82.4%	17.6%
ROR - PML 1	2,052	13.1%	31.5%	65.0%	3.5%
ROR - PML 2	2,536	16.2%	14.3%	79.7%	6.0%
ROR - PML 3	3,435	21.9%	7.6%	82.6%	9.8%
ROR - PML 4	706	4.5%	6.2%	79.7%	14.0%
Detain (const req) / ROR – PML 4	2,813	17.9%	4.8%	79.8%	15.4%
Total	15,677	100.0%	9.2%	79.1%	11.6%

Adherence and Deviation Outcome Measures

For the 15,677 cases in the adherence review, Failure to Appear and New Criminal Activity rates were calculated by Adherence rate. As a comparison, the rates from the outcome measure sample (17,743 cases) above were: 23.8% for the FTA rate, 18.5% for the NCA rate, and 5.1% for the NVCA rate.

Table 11 shows the FTA rates by adherence. For those who had less restrictive conditions set, the FTA rate was 20.9%. For those who had conditions set that matched the PSA recommendation, the FTA rate was 24.4%. In the instances that more restrictive conditions were set, the FTA rate increased to 27.1%. The overall FTA rate among the adherence sample was 24.4%.

Table 11. *FTA Rates by Adherence or Deviation*

	Less Restrictive	Adherence	More Restrictive	Total
No FTA	1,146	9,382	1,330	11,858
FTA	302	3,023	494	3,819
Total	1,448	12,405	1,824	15,677
FTA Rate	20.9%	24.4%	27.1%	24.4%

Table 12 shows the NCA rates by adherence or deviation[15]. When less restrictive conditions were set, the NCA rate was 14.6%. For those who had conditions set that matched the PSA recommendation, the NCA rate was 18.2%. Similar to the FTA outcomes, the NCA rate increased in the cases with more restrictive conditions set, up to 21.5%. The overall NCA rate among the adherence sample was 18.2%.

Table 12. *NCA Rates by Adherence or Deviation*

	Less Restrictive	Adherence	More Restrictive	Total
No NCA	1,236	10,151	1,433	12,820
NCA	212	2,254	391	2,857
Total	1,448	12,405	1,824	15,677
NCA Rate	14.6%	18.2%	21.4%	18.2%

Table 13 reports the NVCA rate by adherence. As with the FTA and NCA rate, the NVCA rate was lowest in cases with less restrictive conditions, at 4.2%. In the instances that the conditions matched the PSA recommendation, the NVCA rate was 4.8%, increasing to 5.0% when conditions were more restrictive. The overall NVCA rate among the adherence sample was 4.8%.

Table 13. *NVCA Rates by Adherence or Deviation*

	Less Restrictive	Adherence	More Restrictive	Total
No NVCA	1,387	11,813	1,732	14,932
NVCA	61	592	92	745
Total	1,448	12,405	1,824	15,677
NVCA Rate	4.2%	4.8%	5.0%	4.8%

Tables 11, 12, and 13 show that when deviating from the PSA recommendation to more restrictive categories, defendants were more likely to fail to appear and more likely to commit new criminal activity. When adhering more closely to the PSA recommendation, the FTA and NCA rates were lower. Regarding pretrial release decision-making, setting more restrictive conditions is neither a means to guarantee a defendant's appearance at future hearings, nor a guarantee that the defendant will not commit new criminal activity. Less restrictive conditions have FTA and NCA rates even lower than cases with conditions that adhere to the PSA.

In general, the more restrictive the conditions, the higher the FTA and NCA rate and the more likely the defendant failed to appear or committed new criminal activity. A binomial logistic regression analysis was conducted to determine if the correlation between adherence and the outcome measures was statistically significant, that is not occurring by chance alone. This statistical test was selected because of the nature of the adherence variable, specifically that it is a categorical variable which is non-numeric. For FTAs, the logistic regression model was statistically significant for those with both more ($p<.05$) and less restrictive ($p<.01$) conditions (see Table 14). The Cox & Snell R-square values for this model indicates that adherence only explains a very small portion of the associated failure rates (.1%). For NCAs, the logistic regression model was statistically significant. The correlation between the NCA rate and both less and more restrictive conditions was statistically significant. For those with less restrictive conditions, the likelihood of having NCA was .77 compared to those with adherence while those with more restrictive conditions were 1.22 times more likely to have NCA. The logistic regression model for the NVCA was not statistically significant, indicating that knowledge of the type of adherence does not improve the ability to predict NVCA. The Cox & Snell R-square values for these models indicate that adherence only explains a small portion of the associated failure rates (.3% and .4%). It seems likely that there may be additional variables that may contribute to these models to some degree.

Table 14. *Binomial Logistic Regression Outcomes*

FTA Rate				
	B	S.E.	df	Exp(B)
Adherence (Reference)			2	
Less Restrictive	-0.201**	0.068	1	0.818
More Restrictive	0.142*	0.057	1	1.153
Constant	-1.133***	0.021	1	0.322
NCA Rate				
	B	S.E.	df	Exp(B)
Adherence (Reference)			2	
Less Restrictive	-0.258***	0.078	1	0.772
More Restrictive	0.206***	0.062	1	1.229
Constant	-1.505***	0.023	1	0.222
NVCA Rate				
	B	S.E.	df	Exp(B)
Adherence (Reference)			2	
Less Restrictive	-0.131	0.137	1	0.878
More Restrictive	0.058	0.115	1	1.060
Constant	-2.993***	0.042	1	0.050

Conclusion

This study examined Bernalillo County Metropolitan Court and Second Judicial District Court felony cases that were filed between July 2017 and March 2022 with a PSA. Of the 30,522 cases from both courts, there were 17,743 cases in the outcome sample and 15,677 cases in the adherence sample.

The outcome measures for the assessed cases were calculated for the 17,743 cases in the study by recommendation category. As the FTA and NCA scores increased, so did the percentage of failures. The overall FTA rate was 23.8% and the Appearance rate was 76.2%. The FTA rate generally increased as the FTA score from the PSA increased. The NCA rate also increased as the NCA score increased, with an overall NCA rate of 18.5% and a Safety rate of 81.5%. This finding is important as it demonstrates that the PSA identifies and scores both high- and low-risk individuals. For cases with the NVCA flag, the rate is more than double the NVCA rate in cases without the flag, 9.5% and 4.2%, respectively.

The majority of cases (14,453 or 81.5%) had no new criminal activity during the pretrial period. There were 3,290 cases with NCA during the pretrial period, the bulk of which were comprised of 4th degree felonies (1,562 or 47.5%) or misdemeanors (870 or 26.4%). There were 1,274 or 38.7% of NCAs were property crimes, followed by violent crimes (898 or 27.3%). There were 770 cases of 23.4% that were drug crimes. Public order and DWI charges accounted for the remaining 10.5% of NCAs. When the highest charge on the NCA case was compared to the highest charge on the source case (see Table 5), 48.7% were charged with a lower level offense and 39.1% were charged with an offense of the same level. These findings are important and suggest that while 18.5% of cases have new criminal activity occurring during the pretrial phase

of the case, these charges are often lower level charges and a large portion of this activity is comprised of property and drug crimes.

Adherence or deviation rates were calculated for 15,677 cases. Cases that did not have any conditions of release set were excluded. The overall Adherence rate was 79.1%. FTA, NCA and NVCA rates were highest when conditions of release were more restrictive than what the PSA recommended. The lowest outcome measure rates were observed when conditions of release were less restrictive than what was recommended. The FTA rate was 20.9% when less restrictive conditions were ordered, 24.4% when conditions were adhered to, and 27.1% when more restrictive conditions were ordered. Similarly, the NCA rate was significantly lower in the instances that less restrictive conditions were ordered – 14.6% compared to 18.2% (adherence), and 21.4% (more restrictive). The NVCA rates differed less significantly but the lowest rate remained for cases with less restrictive conditions – 4.2% compared to 4.8% (adherence) and 5.0% (more restrictive).

Overall, the key findings of this report indicate that while new criminal activity occurs, it is generally of lower level or the same level as the assessed case and a large portion of the cases are property or drug crimes. While failures occur regardless of the type of conditions recommended, adhering more closely to the PSA will likely improve the FTA and NCA rates for assessed cases. The PSA provides useful information to assist rather than replace judicial decision-making and identifies and scores both high- and low-risk individuals.

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Appendix A

The PSA recommendation category is assigned based on the risk scores for new criminal activity (NCA) and failure to appear (FTA). These scores are generated based on a series of risk factors including age, current offense information, prior convictions, prior failures to appear, and prior sentencing (see Table A1) (Laura and John Arnold Foundation, 2016).

Table A1. *PSA Risk Factors and Pretrial Outcomes*

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

As the NCA and FTA scores increase, the release recommendation category becomes more restrictive (see Table A2). These recommendations are part of the Decision-Making Framework or Release Conditions Matrix used to assign recommended conditions of release. These conditions include: ROR with no supervision, ROR with supervision at several levels, or detain if constitutional requirements are met or release with maximum conditions. The supervision level is ordered by the judge or determined by Pretrial Supervision program staff.

Table A2. *Decision-Making Framework in Bernalillo County*

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

Appendix B

Table B1 shows the matrix of the PSA recommendation and the conditions of release. Conditions not commonly used that are normally categorized as "other" are assessed as either adhering or deviating from the recommendation on a case by case basis.

Table B1. *PSA Recommendation by COR Match or Deviation for Reference*

PSA Recommendation	Conditions of Release					
	ROR	ROR, PTS	TPC	NBH	Bond	Bond and/or TPC
ROR	=	↑	↑	↑	↑	↑
ROR PML 1	↓	=	↑	↑	↑	↑
ROR PML 2	↓	=	↑	↑	↑	↑
ROR PML 3	↓	=	↑	↑	↑	↑
ROR PML 4	↓	=	↑	↑	↑	↑
Detain/Max	↓	=	=	=	↑	↑

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[1] In general, a warrant is typically issued if a defendant does not attend a hearing, but in some instances, this may not occur. For this study, the issuance of a warrant is used as the primary measure of attendance of the hearing.

[2] These terms have been renamed over time. Currently, this is the Release Conditions Matrix (RCM) and was formerly known as the Decision-Making Framework.

[3] The PML level indicates to what degree the defendant should be supervised, including the frequency and types of contacts with PTS (phone versus office visits), electronic monitoring, and the frequency of UAs.

[4] While in some circumstances the warrant is issued in error or a cancellation is issued based on stipulation with the courts, this study does not distinguish between the two.

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

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

[7] While the PSA is designed to be used for release decision-making for all arrests resulting in a booking into jail, Bernalillo County only uses the PSA for felony cases and not for misdemeanor cases.

[8] The month of PSA implementation, June 2017, was excluded to allow a brief period of time to adjust for implementation.

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

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

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

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

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

[14] This includes charges such as judicial interference charges, prostitution, contributing to the delinquency of a minor, and animal abuse charges.

[15] As calculated in the outcome measures sample, the NCA rate includes both violent and non-violent charges.