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NEW MEXICO.

# **Bernalillo County Second Judicial District Court Preventive Detention Motion Review**

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**Prepared for:**

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October 2024

In June 2017, the Public Safety Assessment (PSA) was implemented for felony cases in Bernalillo County. The PSA developed by Arnold Ventures in partnership with leading criminal justice researchers uses evidence-based, neutral information to estimate the likelihood that a criminal defendant will fail to return for a future court hearing while on pretrial release and the likelihood that a criminal defendant will commit a new crime while on pretrial release. In addition, it flags those defendants who present an elevated risk of committing a violent crime while on pretrial release. The PSA is a decision-making tool for judges to help gauge the risk a defendant poses and does not replace judicial discretion.

In January 2017, the option for the filing of preventive detention (PTD) motions began. These motions are filed by the District Attorney's office and are typically filed in the Bernalillo County Metropolitan Court (BCMC) at the Felony First Appearance but can be filed by the District Attorney's office at any point in the felony criminal proceeding. As a result of these motions, a no bond hold is placed on the defendant until the PTD is heard by a Second Judicial District Court (SJDC) judge. If the defendant is in-custody at the time of the filing of the pretrial detention motion, a no bond hold is placed on the defendant until the PTD motion is heard by the District Court Judge. If the motion is granted, the defendant generally remains in custody on the PTD motion until the case is resolved.

This report is a review of felony court cases in the Second Judicial District Court with a PSA and a PTD motion filed between July 2017 and June 2023. This dataset contains 6,698 cases in which a PTD was filed. Each court case includes the PSA category, the new criminal activity (NCA) and fail to appear (FTA) scale score, the new violent criminal activity (NVCA) flag, the most serious charge, the defendant's date of birth, the Bernalillo County Metropolitan Court (BCMC) felony first appearance (FFA) date, the BCMC case close date, the Second Judicial District Court (SJDC) case open date (if the case was indicted), the SJDC case close date, the length of the court case in days separately for the BCMC and SJDC case disposition, the total length of the court case accounting for the BCMC and SJDC portion of each case, the case disposition type, the Metropolitan Detention Center (MDC) arrival and release date, the pretrial detention (PTD) motion file date, the PTD hearing date, and the PTD hearing result.

It is important to note this review includes the time of the COVID-19 pandemic. The World Health Organization declared the outbreak as a global pandemic on March 11, 2020. New Mexico's Governor announced a statewide stay at home order March 23, 2020 and on March 31, 2023 the final order was issued that rescinded all previous orders related to the COVID-19 public health emergency. The COVID-19 pandemic likely had some impact on case filings, time to case dispositions, and jails admissions and lengths of stay.

Figure 1 graphs the 6,698 cases by the month they were filed. The number of cases ranged from 34 cases (January 2018) to 173 cases (June 2018) and averaged 93 cases per month. The six months between March 2018 and August 2018 accounted for 12.6% of all motions and 8.3% of the reporting period months.

**Figure 1 Total Motions Filed by Month and Year**

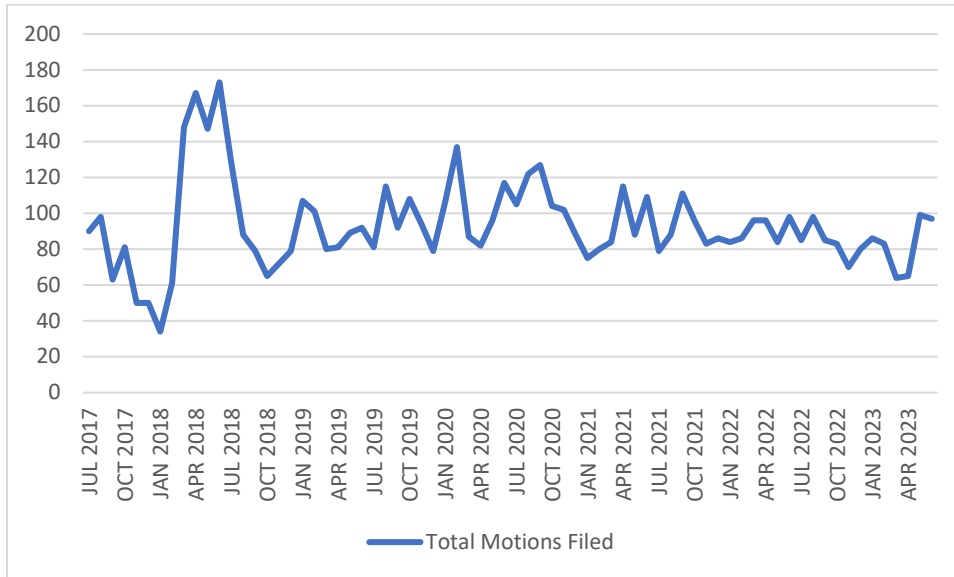


Figure 2 reports total motions, granted motions, and denied motions. On average 41.6 motions were denied a month and 44.4 were granted. In 43 of the 72 months more motions were granted than denied.

**Figure 2 Total Motions, Granted Motions, and Denied Motions by Month and Year**

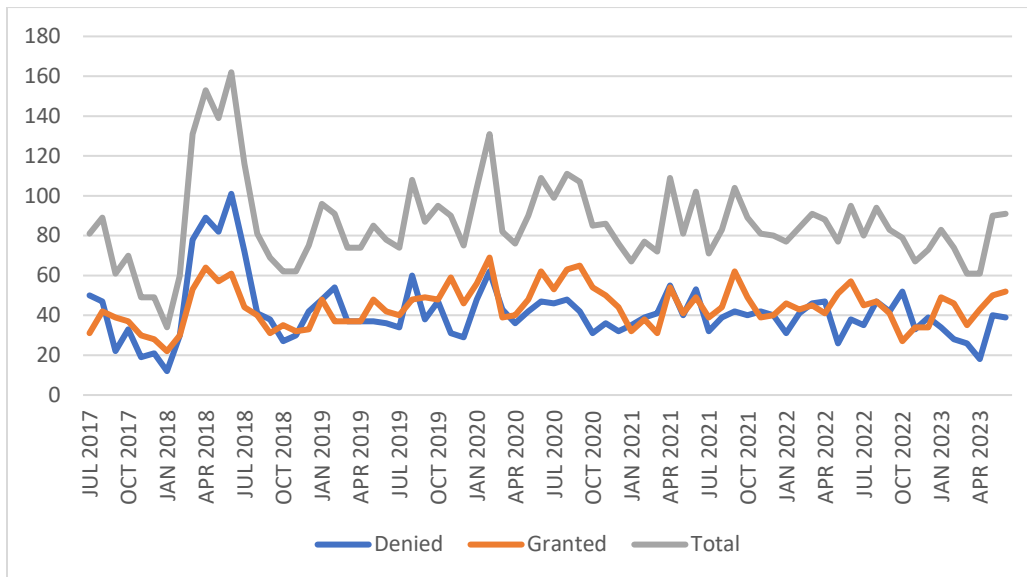


Table 1 reports the results of the filed motions. Slightly more than 92% of cases had motions that were granted (47.7%) or denied (44.7%). A small number of cases were withdrawn (278), a small number of cases were resolved prior to the detention hearing (222), and 8 cases were pending prior to the

detention hearing (8). In total 508 cases or 7.6% were not granted or denied. These data include motions filed in the Metropolitan Court and District Court.

**Table 1 Preventive Detention Motion Results**

Motion Results	N	Percent
Granted	3,195	47.7
Denied	2,995	44.7
Withdrawn	278	4.2
Case Resolved	222	3.3
Pending	8	0.1
Total	6,698	100.0

Table 2 reports granted and denied motions only. Later tables that report on preventive detention motion results typically report on these 6,190 cases. A slightly larger percent of cases with a preventive detention motion were granted (51.6%) compared to denied motions (48.4%)

**Table 2 Preventive Detention Motion Results**

Motion Results	N	Percent
Granted	3,195	51.6
Denied	2,995	48.4
Total	6,190	

Table 3 reports the case types of the study cases. Almost 70% of PTD motions were filed on violent crime cases. The fewest PTD motions were filed on drug and DWI cases.

**Table 3 Case Types**

Case Type	N	Percent
Violent	4,591	68.5
Property	941	14.0
Drug	295	4.4
DWI	68	1.0
Public Order/Other	803	12.0
Total	6,698	100.0

The FTA and NCA scale scores are reported in Table 4. Most frequently pretrial detention motions were filed on cases with an FTA score of 3 (25.9%) and NCA score of 4 (25.9%). Least frequently motions were filed for FTA cases with a 6 (13.4%) and NCA cases with a 1 (11.4%).

**Table 4 FTA and NCA Scale Scores**

Scale Score	FTA		NCA	
	N	Percent	N	Percent
1	1,145	17.1	766	11.4
2	1,072	16.0	1,168	17.4
3	1,736	25.9	1,178	17.6
4	1,003	15.0	1,736	25.9
5	1,010	15.1	950	14.2
6	732	10.9	900	13.4

Table 5 through Table 9 report on preventive detention motion results and report on the number of cases shown in Table 2.

Table 5 reports case types by detention motion result. Unsurprisingly, since the largest number and percent of cases in which a motion were filed were violent the large majority of cases that were denied or granted were violent.

**Table 5 Case Type by Preventive Detention Motion Result**

Case Dispositions	Denied		Granted	
	N	Percent	N	Percent
Violent	2,049	68.4	2,216	69.4
Property	380	12.7	492	15.4
Drug	160	5.3	100	3.1
DWI	28	0.9	37	1.2
Public Order/Other	378	12.6	350	11.0

The FTA scale score is reported in Table 6 by detention motion result. As the FTA score increased a smaller number and percent of motions were denied.

**Table 6 FTA Scale Score by Motion Result**

FTA Scale Score	Denied		Granted	
	N	Percent	N	Percent
1	768	25.6	287	9.0
2	580	19.4	401	12.6
3	841	28.1	771	24.1
4	392	13.1	534	16.7
5	271	9.0	661	20.7
6	143	4.8	541	16.9

Table 7 reports the NCA scale score by motion result. Similar to FTA scale scores as the NCA score increased a smaller number and percent of motions were denied and a smaller number and percent were granted when scores were lower.

**Table 7 NCA Scale Score by Motion Result**

NCA Scale Score	Denied		Granted	
	N	Percent	N	Percent
1	510	17.0	199	6.2
2	783	26.1	295	9.2
3	576	19.2	509	15.9
4	703	23.4	905	28.3
5	255	8.5	622	19.5
6	169	5.6	665	20.8

PSA motion results by whether there was a violence flag are shown in Table 8. Slightly more than 70% of motions without a violence flag were denied and 54% of motions with a violence flag were granted.

**Table 8 PSA Violent Flag by Motion Result**

Case Dispositions	Denied		Granted	
	N	Percent	N	Percent
Violent Flag	847	28.3	1,725	54.0
No Violent Flag	2,146	71.7	1,469	46.0

Missing 3

Table 9 reports how long defendants spent in jail by motion result. At the time of the study 240 individuals were held in the MDC and 3 cases were missing this information. These cases are excluded from this analysis. Granted motion cases spent on average almost 259 days in jail compared to 29 days for cases with a denied motion.

**Table 9 MDC Length of Stay by Pretrial Motion Result**

Motion	Mean	Median	N	Std dev
Denied	29.3	8.5	2,981	77.3
Granted	258.8	206.9	2,969	222.9
Other	48.8	8.4	505	109.5
Total	198.3	30.1	6,455	198.3

As of approximately July 31, 2023, 76.8% of the cases on which a preventive detention motion had been filed had been closed and 23.2% had not been closed. Table 10 reports these cases.

**Table 10 Court Case Status on Approximately July 31, 2023**

Case Status July 31, 2023	N	Percent
Open	1,555	23.2
Closed	5,143	76.8
Total	6,698	

Table 11 documents the 5,143 cases reported as closed in Table 10 by closed case type. This table does not report on open cases. This table includes all preventive detention motion types reported in Table 1 and not just motions that were granted or denied. Sentenced cases made up 53.1% of closed cases and included cases that received a deferred sentence, cases with a conditional discharge, and sentenced cases. This table includes cases that were dismissed or nolle'd. There is a substantive legal difference between the terms in that a dismissal involves the court's discretion and a nolle involves the prosecutor's discretion. Dismissals are cases dismissed by the Court and nolle's are cases dismissed by the prosecution. Dismissed cases (23.8%) included cases dismissed by the court for many reasons that include when defendants were declared incompetent and the case could not proceed, cases in which the state was not ready for trial, the failure to comply with a court order, discovery violations, speedy trial violations, and lack of probable cause, among other reasons. Nolle'd (22%) is used as an abbreviation of Nolle prosequi which from Latin to English translates to "wish to not prosecute" and indicates the prosecutor has voluntarily decided to end a case. Cases are nolle'd by the prosecution for a variety of reasons including because defendants are incompetent, agreements to nolle in one case because of a plea in another case, because the prosecution might decide to go forward in federal court instead of state court, and numerous other discretionary reasons, including uncooperative witnesses, witnesses that can no longer be located, and the lack of evidence or flawed evidence. Because the data does not readily contain more detailed information, we are unable to report more precisely the reasons cases were dismissed or nolle'd or on how cases were sentenced (i.e., jail sentences, prison sentences, and terms of probation). In addition, dismissals may be without prejudice, meaning the case can be brought again at a later date, or with prejudice, meaning the state is barred from re-prosecuting the case. These data do not capture this difference. Without further detailed review it is also not possible to correct any data entry errors between dismissed and nolle'd cases. It is likely there are errors in the categorization of dismissed and nolle'd cases.

The “Other” category contained 61 cases (1.1%) and included cases in which the defendant was deceased, the defendant was acquitted, and 3 unknown cases.

**Table 11 Closed Case Type**

Closed Cases	N	Percent
Sentenced	2,729	53.1
Dismissed	1,223	23.8
Nolled	1,130	22.0
Other	61	1.1
Total	5,143	

Table 12 reports the case disposition results of the 4,763 closed cases with a denied or granted preventive detention motion and excludes cases from Table 1 that were withdrawn, resolved, or pending. More than 55% of all closed cases were sentenced, 22.1% were dismissed by the Court, and 21.4% were nolled by the prosecution. In 24 cases the defendant was deceased, in 30 cases the defendant was acquitted, and the disposition was unknown in 2 cases.

**Table 12 Closed Cases Results**

Closed Cases	N	Percent
Sentenced	2,634	55.3
Dismissed	1,052	22.1
Nolled	1,021	21.4
Other	56	1.2
Total	4,763	

Table 13 thru Table 17 reports on pretrial preventive detention motion cases that were closed as of approximately July 31, 2023, with either a granted or denied motion and the case had either a sentenced status (2,634), dismissed status (1,052), or nolled status (1,021) (see Table 12). In the time frame of this review 4,707 cases with a granted or denied motion status had been sentenced, dismissed, or nolled as of approximately July 31, 2023.

Table 13 reports case dispositions by whether the pretrial detention motion was denied or granted and the case was sentenced or dismissed. The majority of granted motions were sentenced (62.9%), 19.3% were dismissed and 17.8% were nolled. This pattern was somewhat different for cases with denied motions with a smaller percent being sentenced. In denied motion cases 25.7% were dismissed, 25.9% were nolled and 48.4% were sentenced.



**Table 13 Case Dispositions by Motion Result**

Case Dispositions	Denied		Granted	
	N	Percent	N	Percent
Sentenced	1,091	48.4	1,543	62.9
Dismissed	578	25.7	474	19.3
Nolled	583	25.9	438	17.8
Total	2,152		2,455	

Table 14 thru Table 17 report the median court case length in days and median MDC length of stay in days. The median length of stay measures the middle point at which half the data is above and half the data is below. The median is sometimes used as an alternative to the mean or “average” because it gives a better sense of a “typical” value when the data is skewed. Court case length and the MDC length of stay is skewed because there are a small number of cases with very long lengths of stay and these large values have a big impact, making the mean larger than the actual distribution of the data would suggest. The standard deviation (Std dev) which is reported in these tables provides a measure of how the length of stay is distributed with higher numbers indicating court case length and MDC length of stay are spread out.

As mentioned earlier this review includes the time of the COVID-19 pandemic and the pandemic likely had some impact on case filings, time to case dispositions, and jails admissions and lengths of stay.

Table 14 reports the median court case length in days and includes both Bernalillo Court Metropolitan Court and Second Judicial District Court cases and days. The table reports cases by motion results and includes cases that were denied or granted and were closed as either sentenced, dismissed, or nolled.

Court cases in which a preventive detention motion was denied had similar median lengths of stay in days compared to cases that were granted.

**Table 14 Court Case Length in Days by Pretrial Motion Result**

Motion	Median	N	Std dev
Denied	216	2,250	280.0
Granted	204	2,454	250.8

Missing 3

Table 15 reports the court case length in days and includes the Bernalillo County Metropolitan Court and Second Judicial District Court case length. For sentenced cases the median court length in days was 280 days compared to dismissed cases with a median length of stay of 97 and nolle cases with 140 days. Sentenced court cases length was twice as long in days compared to nolle cases and approximately 3 times longer than dismissed cases.

**Table 15 Court Case Length in Days by Case Disposition**

Motion	Median	N	Std dev
Sentenced	280	2,633	275.0
Dismissed	97	1,051	210.3
Nolled	140	1,020	213.8

Missing 3

Table 16 reports the MDC median length of stay in days by case disposition type. The median length of stay of sentenced cases was 120.5 days in MDC compared to dismissed cases with a median length of stay of 17.7 days and nolle cases with a median of 18.1 days.

**Table 16 MDC Length of Stay by Case Disposition**

Motion	Median	N	Std dev
Sentenced	120.5	2,620	223.4
Dismissed	17.7	1,046	145.1
Nolled	18.1	1,020	146.3

Missing 21

Table 17 reports the length of stay of cases in the court system and in MDC in more detail. Length of stay is reported as the median and includes the number of cases and the standard deviation. Court cases with a denied pretrial detention motion spent a median of 8.4 days in the MDC if the case was nolle, 8.2 days if the case was dismissed, and 8.7 days in the MDC if the case was sentenced. Sentenced court cases with a granted motion spent 259.7 days in the MDC compared with dismissed cases with a median of 121 days and nolle cases with a median of 123.6 days.

Sentenced court cases with a granted motion spent a median of 256 days in the court system compared to 125 days for cases with a granted motion that were dismissed and 114 days for nolle cases. Sentenced cases with a denied motion spent 310.5 days in the court system, dismissed cases 81 days, and nolle cases 161 days.

When court length of stay is viewed in tandem with MDC length of stay we see that court cases with granted motions had similar median lengths of stay based on whether the case was sentenced or dismissed. Interestingly, the median MDC length of stay was slightly longer than the court case length. This may occur for a variety of reasons. First, because some cases receive jail sentences the MDC length of stay will be longer. Second, it may take a number of days to release an individual from the MDC following the disposition of the case to either prison if sentenced to a term of prison or to the community if sentenced to probation. For this report we were not able to distinguish between these two reasons.

**Table 17 Court Length of Stay and MDC Length of Stay by Motion Type and if the Case was Sentenced or Dismissed**

Motion	Court LOS			MDC LOS		
	Median	N	Std dev	Median	N	Std dev
Granted						
Sentenced	256	1,543	257.0	259.7	1,530	224.6
Dismissed	125	474	227.3	121.0	468	173.5
Nolled	114	437	155.9	123.6	437	181.3
Denied						
Sentenced	310.5	1,090	294.3	8.7	1,090	91.2
Dismissed	81	577	192.5	8.2	578	78.5
Nolled	161	583	246.3	8.4	583	62.1

Case charge type by case disposition is shown in Table 18. Slightly more than 50% of all violent cases that were disposed were sentenced. Twenty six percent were dismissed and 22.5% were nolled. Interestingly, a similar percent of violent cases was sentenced (51.4%) compared to dismissed (26%) and nolled cases (22.5%). As shown in Table 2 68.9% of all cases with a preventive detention motion filed were cases where the highest charge was violent. Two-thirds of all property cases were sentenced and 51.8% of all drug/DWI cases and 50.4% of all public order cases were sentenced.

**Table 18 Case Charge Types by Case Disposition Type**

Case Dispositions	Violent		Property		Drug/DWI		Public Order	
	N	Percent	N	Percent	N	Percent	N	Percent
Sentenced	1,746	51.4	526	66.7	141	51.8	316	50.4
Dismissed	883	26.0	148	18.8	64	23.5	128	20.4
Nolled	765	22.5	115	14.6	67	24.6	183	29.2

p=<.001

**Summary**

This review included 6,698 cases with a preventive detention motion that was filed between July 2017 and June 2023. Further this review reports on the 5,143 cases with a court disposition as of approximately July 31, 2023. Sentenced cases made up 53.1% of closed cases and included cases that received a deferred sentence, case with a conditional discharge, and sentenced cases. Dismissed and nolled is meant to distinguish between cases dismissed by the Court and cases dismissed by the prosecution. Dismissed cases (23.8%) and nolled cases (22%) accounted for 45.8% of the closed cases. Other types of case closures accounted for the remaining 1.1% of court cases with a disposition.

A slightly larger percent of cases with a preventive detention motion were granted (47.7%) compared to denied motions (44.7%). In total 508 cases or 7.6% were not granted or denied. Almost 70% of PTD motions were filed on violent crime cases. The fewest PTD motions were filed on drug and DWI cases. Unsurprisingly, since the largest number and percent of cases in which a motion were filed were violent the large majority of cases or almost 70% that were denied or granted were violent.

Also, unsurprisingly as the FTA score increased a smaller number and percent of motions were denied. Only 4.8% of cases with an FTA score of 6 were denied and an FTA score of 6 accounted for 16.9% of all granted motions. Like FTA scale scores as the NCA score increased a smaller number and percent of motions were denied and a smaller number and percent were granted when scores were lower.

As of approximately July 31, 2023, 76.8% of the cases on which a preventive detention motion had been filed had been closed. Unreported before now this review includes an analysis of how cases with a preventive detention motion were disposed. Of the 4,763 closed cases with a denied or granted preventive detention motion more than 55% were sentenced, 22.1% were dismissed by the Court, and 21.4% were nolle'd by the prosecution.

The majority of cases in which motions were granted led to a conviction and were sentenced (62.9%) but 19.3% of these cases were dismissed and 17.8% were nolle'd. This pattern was somewhat different for cases with denied motions with a smaller percent being sentenced. In denied motion cases 25.7% of the cases were eventually dismissed, 25.9% were nolle'd and 48.4% were sentenced. Court cases with a granted motion were more likely to be convicted and sentenced but whether the preventive detention motion was granted or dismissed a large percent of cases were eventually dismissed or nolle'd.

Sentenced court case average length in days in the court system was twice as long as nolle'd cases and approximately 3 times longer than dismissed cases. This was an expected finding. Sentenced court cases also had much longer lengths of stay in the MDC compared to dismissed cases and nolle'd cases. The median length of sentenced court cases with a granted motion was 256 days and for court cases with a denied motion 310.5 days.

Court cases with a denied pretrial detention motion spent approximately 8 days in the MDC regardless of disposition type (sentenced, dismissed or nolle'd). Sentenced court cases with a granted motion spent 259.7 days in the MDC compared with dismissed cases with a median of 121 days and nolle'd cases with a median of 123.6 days.

This review found that a slightly higher percent of court cases on which a preventive detention motion was filed was granted compared to denied motions. The study confirms other research that cases with higher FTA and NCA scores are more likely to have granted motions and that motions were most likely to be filed on cases with violent charges. Importantly we found that only 55% of closed cases had a conviction and were sentenced and that 43.5% were dismissed or nolle'd and so did not result in a conviction. This was surprising given that these cases were considered serious enough by the prosecution to have warranted a preventive detention motion. Cases with denied preventive detention motions spent few days in the MDC regardless of their disposition. Cases with a granted motion that were eventually dismissed or nolle'd spent slightly more than 120 days in the MDC and a similar number of days in the court system. As described earlier dismissals and nolle's occur at the case level for a variety of reasons including uncooperative witnesses, lack of probable cause, and some cases might be refiled in the Federal court system. Various criminal justice system level reasons may also exist. This includes the volume of crime and arrests with resulting court case filings, the complexity of cases, and staffing among the various agencies. This finding deserves further study. Because cases for which the prosecution files a preventive detention motion are considered to be more serious cases by the prosecution we expected

higher conviction rates. Further these cases take up significant criminal justice system resources as indicated by how long cases take to dispose or close in the court system and how long cases, particularly granted motion cases that are dismissed or nolloed spend in the MDC.

This preliminary review of preventive detention motion cases in the Second Judicial District Court is the first of its kind to report on the disposition of cases with a preventive detention motion. In the future more sophisticated and detailed analyses and reporting could occur that further detail the relationship between PSA scores, preventive detention motions and results, and court case dispositions. This could include cost data.