Failure to Appear and New Criminal Activity: Outcome Measures for Preventive Detention and Public Safety Assessments

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Introduction

This report reviews the impact of preventive detention motions on the Failure to Appear (FTA) and New Criminal Activity (NCA) rate for individuals in Bernalillo County charged with felony crimes and for which the Public Safety Assessment (PSA) was administered and used in the pretrial release decision making process from the Bernalillo County Metropolitan Detention Center (MDC).

This report contains several sections. Following this introduction, we include a brief description of the sample of court cases used in this review. Next, we discuss PSA recommendations and charges, the PSA and pretrial detention motions, pretrial detention motions and FTA and NCA rates, and NCA and charges.

The pretrial phase occurs at the beginning of the court process, accounting for the time between when the defendant is arrested and the disposition of the case. In 2017, several changes in the criminal justice system occurred that affect pre-trial release among felony defendants.

Beginning 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 nearly always filed in Bernalillo County Metropolitan Court (BCMC). 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 motion is granted, the defendant remains in custody on the PTD motion until the case is tried or otherwise resolved.

In June 2017, the Public Safety Assessment (PSA) was implemented for use on felony cases in Bernalillo County. The PSA was developed by Arnold Ventures in partnership with leading criminal justice researchers. The PSA uses evidence-based, neutral information to estimate the likelihood that a criminal defendant will commit a new crime

Highlights:

- A Pre-Trial Detention motion was more likely to be granted for cases with more restrictive PSA recommendations.
- Preventive Detention Motions were not associated with failure to appear to court or new criminal activity.
- As PSA recommendation categories became more restrictive FTA rates and NCA rates increased.
- The most serious charge for BCMC cases were violent (35%), property (30%), and drug (27%).
- ROR release recommendations accounted for 32.7% of violent charges recommendations. RORs had an FTA rate of 8.5% and an NCA rate of 8.3%.
- PSA recommendation categories were not evenly distributed between violent and non-violent charges.
- Preventive detention motions have been filed for all PSA recommendation categories, including 18.7% with a ROR.
- Higher FTA and NCA rates were associated with drug offenses, property offenses and public order offenses.
- Over half of new criminal activity was comprised of 4th degree felonies, misdemeanors accounted for 23% of new criminal activity, and less than 1% of new criminal activity was 1st degree felonies.

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while on pretrial release and to estimate the likelihood that a criminal defendant will fail to return for a future court hearing while on pretrial released. 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. The PSA does not replace judicial discretion. It is currently used only for felony cases and is used in both BCMC and SJDC. (See Appendix A for additional information on the PSA and the Decision-Making Framework [DMF]).

This report is a preliminary review of cases in BCMC with a PSA with additional detail on PTD motions during this time period. For eligible cases, several measures are calculated, including the failure to appear (FTA) rate and the new criminal activity (NCA) rate. These measures are calculated based on data provided both electronically and gathered manually from several sources, include BCMC, SJDC, and the Metropolitan Detention Center (MDC).

Sample

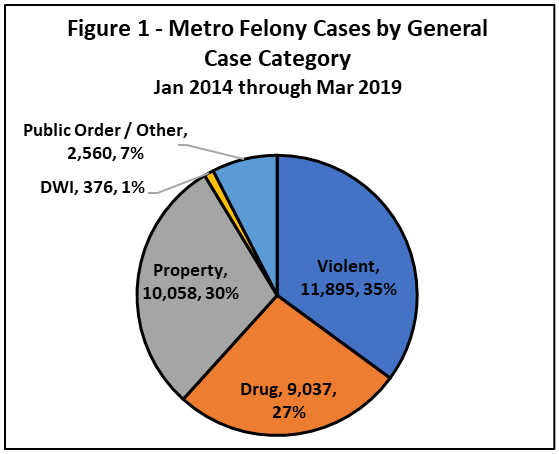
BCMC provided electronic data for felony cases filed from January 2014 through March 2019. There were approximately 33,926[1] cases filed during this time period. The cases were reviewed to determine what type of criminal charges were filed against each defendant. The criminal charges were reviewed and assigned to a charge category. Charges were identified as violent or non-violent. Non-violent charges were further divided into a series of categories, including drug, property, DWI, and public order/other offenses. These categories were assigned based on prior work categorizing charges and involved input from various criminal justice partners. Each case was assigned a category based on the most serious charge overall. For each case a highest charge category was assigned, with violent being the most serious and public order/other being the least serious.

Table 1. Charge Description Categories

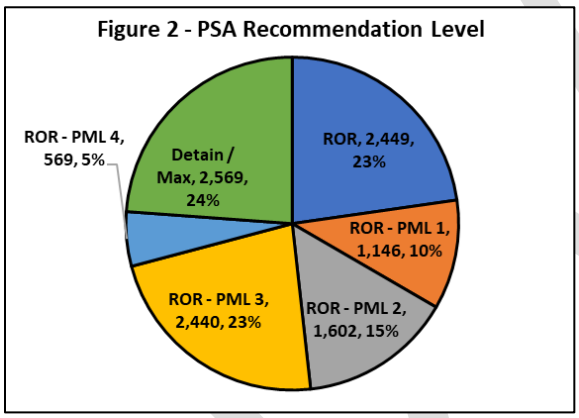
Violent	Violent
Non-Violent	Drug
Non-Violent	Property
Non-Violent	DWI
Non-Violent	Public Order / Other

Of the 33,926 cases in the BCMC electronic data, just over one third (11,895 or 35%) included a violent charge (see Figure 1). The remaining 65% (22,031 cases) had non-violent charges only. The number of cases in the non-violent categories varied greatly (see Figure 1). The largest percent of non-violent charges were for drug offenses (27% or 9,037) and property offenses (30% or 10,058). Public order/other offenses and DWI offenses comprised the remainder of cases at 7% and 1%, respectively.

[1] There were a small number of cases (18) missing from the BCMC electronic data. It is unclear why these cases were not in the electronic data provided.



There were 10,775 BCMC cases in the electronic data with a PSA[2]. Of the twenty-five possible combinations based on the FTA and NCA scores, there are six categories of release recommendations: ROR, ROR with PML 1, 2, 3, or 4, and detain or release with maximum conditions (see Figure 2). Of these six categories, ROR, ROR – PML 3, and detain/max conditions account for nearly 3 of 4 recommendations (23%, 23%, and 24%, respectively). ROR – PML 2 accounted for 15% of cases and ROR – PML 1 accounted for an additional 10% of cases. ROR – PML 4 accounted for the smallest portion of cases (5%).



The Public Safety Assessment and Charge Categories

Violent charges comprised between 26.6% and 52% of all charges by PSA recommendation category. Violent charges accounted for more than half of those with a ROR recommendation (52.9%) and a large portion of those with a ROR – PML 1 (41.8%). The violent nature of the charged offense itself does not increase either the FTA or NCA score, which are the scores that drive the recommendation category. Factors other than the charged offense are the primary determinants of the PSA score.

[2] The PSA was only included if it was administered for release decision making, not solely for selecting a level of supervision for pretrial services.

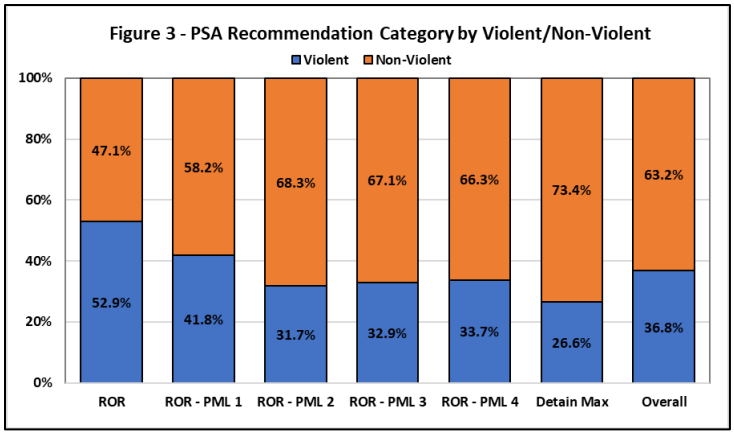
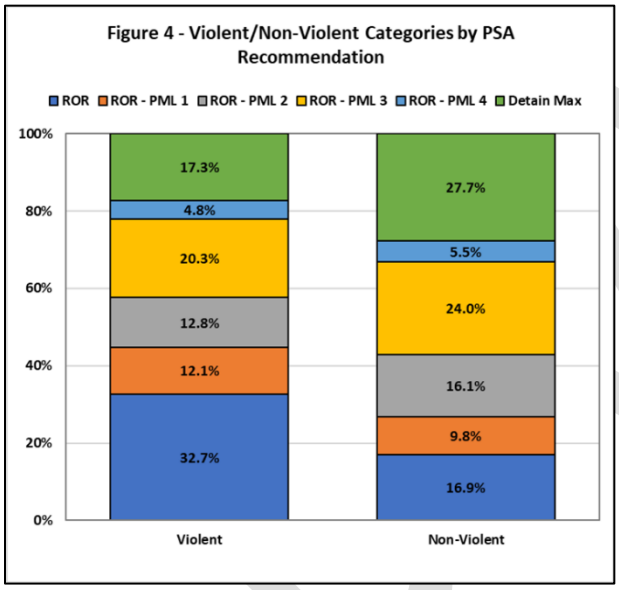
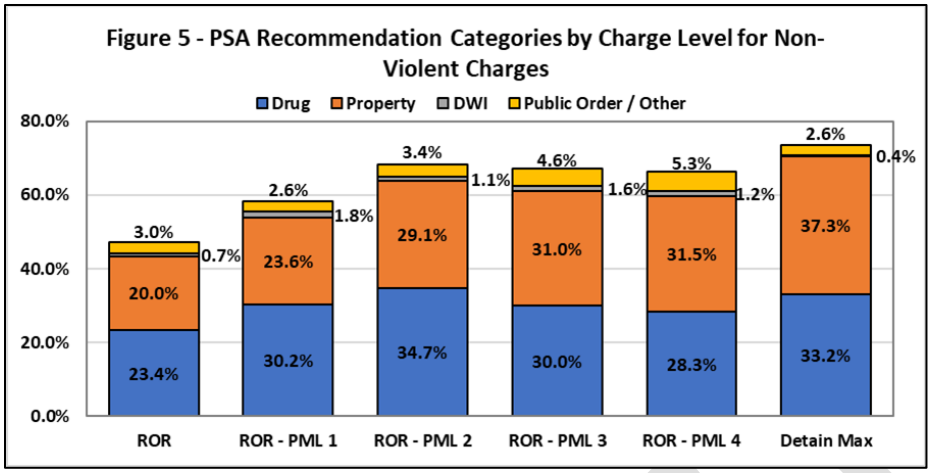


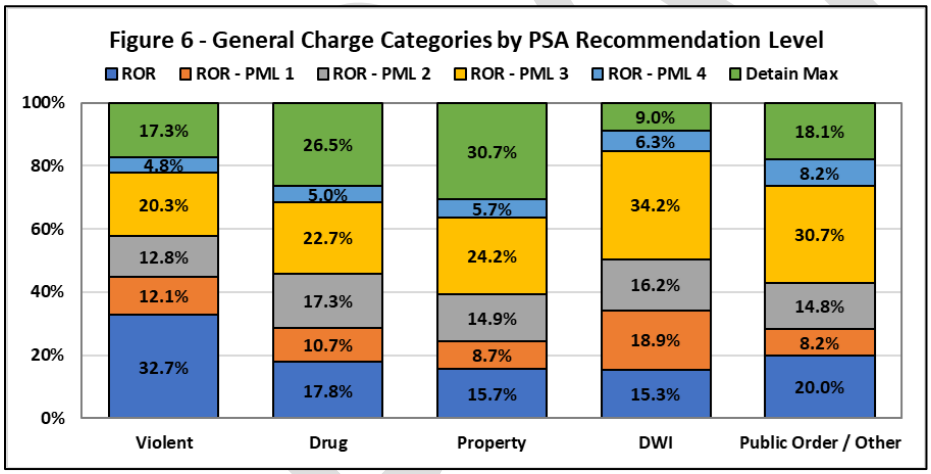
Figure 4 compares the PSA recommendation categories to the case violent/non-violent charge categories. The percent of violent cases with a ROR was 32.7%, nearly double the 16.9% for non-violent cases. The percent of cases with detain/max conditions for non-violent cases was more than 10% higher than violent cases (27.7% compared to 17.3%). The variation in the other PSA recommendation categories was smaller, 0.7% for ROR – PML 4 to 3.3% for ROR – PML 1 and ROR – PML 2.



Among non-violent charges, there was variation in the more specific categories (see Figure 5). Drug offenses accounted for between 23.4% and 34.7% of recommendation categories while property offenses ranged from 20.0% to 37.3%. DWI offenses and public order offenses varied slightly.



The differences between categories is even more apparent when comparing the recommendations by category (see Figure 6). Violent offenses have a ROR recommendation for 32.7% of cases while DWI offenses have a ROR recommendation in 15.3% of cases. Property offenses and drug offenses have a detain/max condition recommendation more often than DWI offenses (30.7% and 26.5% compared to 9.0%). Because the PSA considers a variety of factors to derive the recommendation level, including age at current arrest, prior felony convictions, prior violent convictions, and prior failures to appear, this finding is not unexpected.



The Public Safety Assessment and Pre-Trial Detention Motions

This section discusses the PSA and PTD motions. Almost 19% of the 10,775 felony court cases with a PSA had a motion filed for PTD[3]. The filing of a PTD motion is initiated by the District Attorney's office and results in a hold for the defendant until a detention hearing is held in SJDC. As a result of the hearing PTD motions are granted, denied, withdrawn at or before the hearing, or the motion can be pending or have a case resolution in lieu of an order on the PTD motion.

[3] The 2,029 cases with a PTD motion do not include motions filed during the SJDC portion of the case or defendants without a PSA.

Figure 7 reports PTD motions by PSA recommendation category. Interestingly, 19% of the cases recommended for ROR (380 cases) had a PTD motion filed by the DA. ROR – PML 1 and ROR – PML 2 comprised 8% (167 cases) and 12% (250 cases) of the cases with motions filed. ROR – PML 3 comprised 25% (496) of the cases with a PTD motion. ROR – PML 4 accounted for 144 (7%) of cases. Detain/release with maximum conditions cases accounted for 29% (592) of the cases with a PTD motion filed.

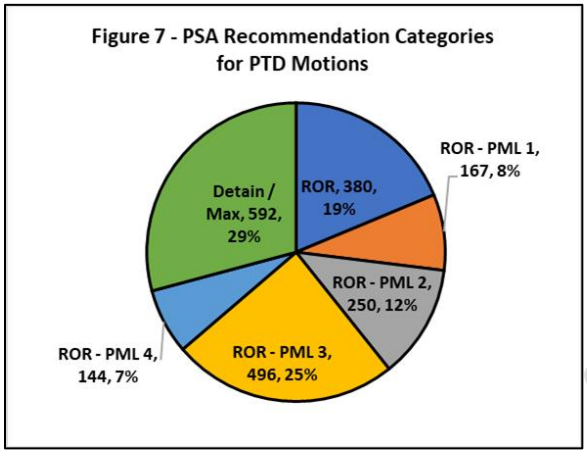
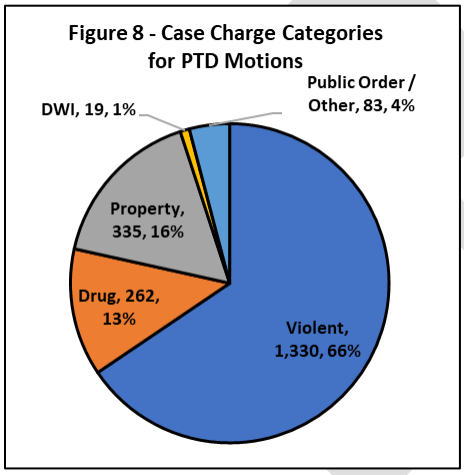


Figure 8 reports the PTD motions by PSA recommendation category and charge type category. The majority of cases with a PTD motion were cases with a violent charge (66% or 1,330 cases). Drug and property offenses with a PTD motion comprised 13% and 16%, respectively, of the cases with a motion filed. The remaining cases were accounted for by public order/other cases (4%) and DWI (1%).



The 1,330 cases with a highest violent charge and a PTD motion represent 33.6% of the total cases with a violent offense (see Table 2). A smaller portion of other charge types have PTD motions filed. For public order/other offenses, 22.7% of the cases had a PTD motion filed. Of the DWI offenses, 17.1% of cases had a PTD motion filed. Cases with property offenses had PTD motions filed on 10.7% of cases and drug offenses had a motion on 8.1% of cases.

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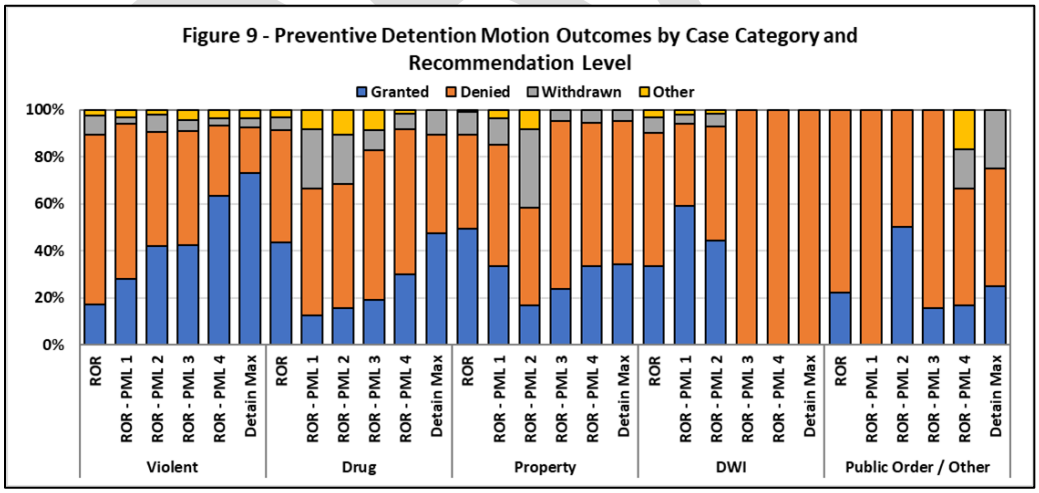
Table 2. Case Categories and PTD Motions Filed

	No PTD Motion		PTD Motion		Total
	Count	%	Count	%	
Violent	2,630	66.4%	1,330	33.6%	3,960
Drug	2,958	91.9%	262	8.1%	3,220
Property	2,784	89.3%	335	10.7%	3,119
DWI	92	82.9%	19	17.1%	111
Public Order / Other	282	77.3%	83	22.7%	365
Total	8,746	81.2%	2,029	18.8%	10,775

Figure 9 reports PTD motion results by PSA recommendation level and charge category. PTD motions can either be granted, denied, withdrawn, or "other"[4]. In general, motion outcomes follow a similar pattern across the charge categories. As the PSA recommendations become more restrictive, the percent of cases granted increased. This is an expected finding. We expected judges to be more likely to grant PTD motions as PSA scores increased.

Among cases with a violent charge, the percent granted was 17% for those with a ROR recommendation while the percent granted for those recommended for detain/release with maximum conditions was 73.1%. While the variation is not as large for drug offenses, there is still a large increase, from 12.5% granted for RORs to 49.5% granted for detain/release with maximum conditions. For property offenses the percent granted was 16.7% for ROR recommendations and 59.1% for recommendations for detain/release with maximum conditions. There were very few DWI cases with a PTD motion and of the 19 filed, three were granted (two ROR – PML 3 and one detain/release with maximum conditions). Public order/other offenses had a lower percent of motions granted for ROR and ROR with any PML level, ranging for 12.5% to 25% granted, and 63.2% of the cases with detain/release with maximum conditions were granted.



[4] Granted motions included cases for which there was a no bond hold issued in lieu of a granted motion. Denied motions included those for which conditions of release were set or for which the motion was denied by the courts. The other category is comprised of pending motions or motions for which there was case resolution in lieu of order on the PTD motion.

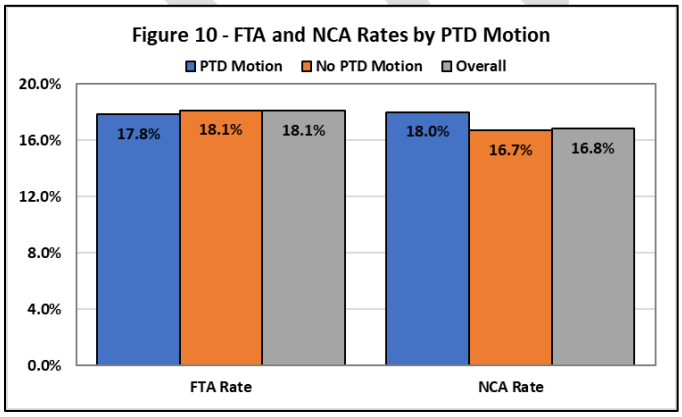
Pre-Trial Detention Motions and FTA and NCA Rates

A total of 2,029 motions filed in BCMC had a PSA, and only a portion of these cases were reviewed for two outcome measures: failure to appear (FTA) warrants and new criminal activity (NCA). Cases were excluded when the defendant was not in custody for the FFA (14), pending cases (774), or a case that was closed but the inmate was in custody during the pretrial period of the case (551). There were 690 cases with a PTD motion and a PSA on a closed case with some time spent by the defendant in the community during the pre-trial period. There were 5,504 cases with a PSA that fit the same parameters as the PTD cases[5].

FTA and NCA rates were calculated for those with a PTD motion and exposure (which usually indicates a denied or withdrawn motion) and those with no PTD motion. For those with a PTD motion, the FTA rate was 17.8% and 18.1% for those without a PTD motion (see Figure 10). The NCA rate for those with a PTD motion was 18.0% and the rate for those with no motion was 16.7%.

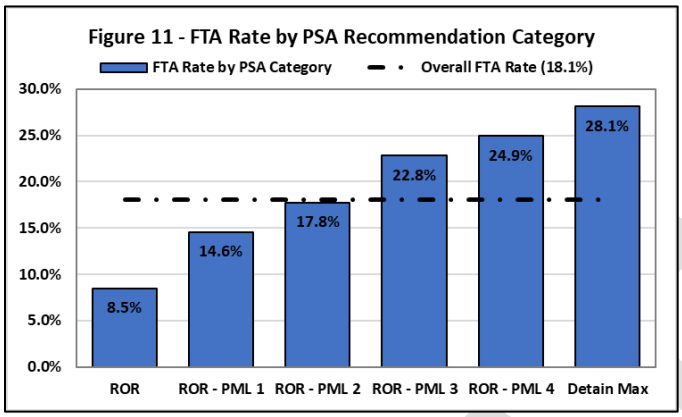
A Chi-Square (X^2) Test of Independence was performed to determine if there was a relationship between the outcome measures and the presence of a PTD motion. A Chi-Square Test is a statistical test that is used to determine if two categorical variables are independent of one another or if the relationship between the variables is statistically significant, that is not occurring by chance alone. If the variables are independent of one another, then knowledge of one does not improve the ability to predict the other.

The results of this test indicated the association between the FTA rate and PTD motion was not significantly significant [X^2 (1, N=6,194) = .034, p=.853]. While there was a 1.3% difference between the NCA rates for PTD motion and no PTD motion, a chi-square test did not find a statistically significant association between a PTD motion and the NCA rate, so any variation was by chance [X^2 (1, N=6,194) = .732, p=.392]. In both cases, knowing if there was a PTD motion associated with a court case did not improve the ability to estimate if an FTA or NCA would occur. This indicates that an defendant with a PTD motion that results in a release from custody during the pretrial period is no more likely than an inmate without a PTD motion to miss a court appearance or commit new criminal activity. (See Table 3 for complete chi-square results summary.)

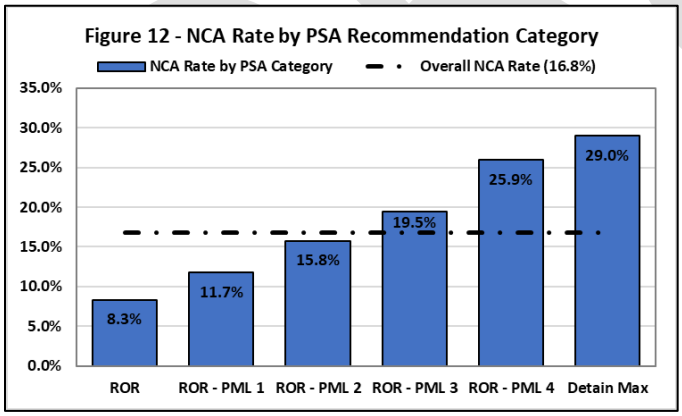


[5] Cases could either terminate their pretrial period during the BCMC portion of the case or they may be indicted to SJDC during this pretrial period. This extends the exposure time and provides additional opportunities for failures. The outcome rates for the cases considered separately is very different, but is reported in the aggregate.

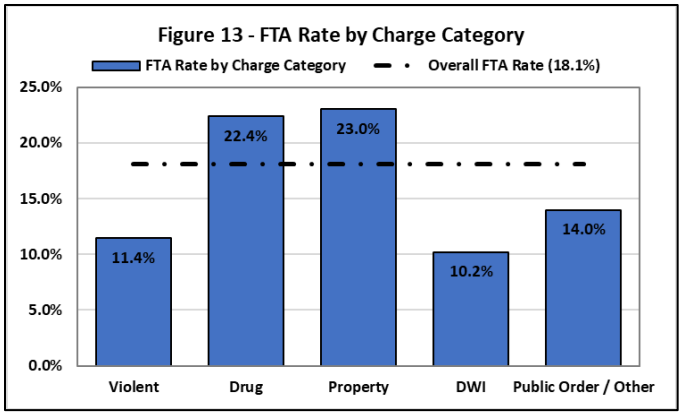
The FTA rates by PSA recommendation category increased as the recommendation category became more restrictive. For the 6,194 cases with an assessment and exposure, the overall FTA rate was 18.1%. For those with a recommendation of ROR, the FTA rate was 8.5% (see Figure 11). The FTA rate was 14.6% for those with a PML 1, 17.8% for PML 2, 22.8% for PML 3, and 24.9% for PML 4. Among those recommended to detain or release with max conditions, the FTA rate was 28.1%. The differences between the PSA recommendation category and the FTA rate was statistically significant. [X^2 (5, N=6,194) = 213.597, p<.01].



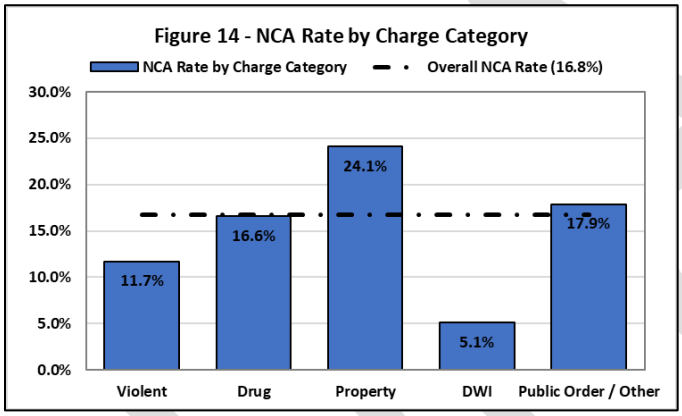
Similar to the FTA rates, the NCA rates increased as the recommendation category became more restrictive. For the 6,194 cases with an assessment and exposure, the overall NCA rate was 16.8% (see Figure 12). For those with a recommendation of ROR, the NCA rate was 8.3%. The NCA rate was 11.7% for those with a PML 1, 15.8% for PML 2, 19.5% for PML 3, and 25.9% for PML 4. Among those recommended to detain or release with max conditions, the NCA rate was 29.0%. Like the FTA rate, the differences between PSA recommendation category and the NCA rate was statistically significant. [X^2 (5, N=6,194) = 237.609, p<.01].



FTA rates varied by charge category. DWI offenses had the lowest FTA rate at 10.2% followed by violent offenses at 11.4% and public order / other offenses at 14.0% (see Figure 13). The FTA rate was highest among drug and property offenses at 22.4% and 23.0%, respectively. A chi-square test demonstrated a statistically significant association between the case category and the FTA rate [X^2 (4, N=6,194) = 126.320, p<.01]. Drug and property offenses were more likely to have an FTA compared to violent, DWI and public order/other charges.



NCA rates also varied by offense category. DWI offenses had the lowest FTA rate at 5.1% followed by violent offenses at 11.7% and drug offenses at 16.6% (see Figure 14). The NCA rate for public order/other offenses was 17.9% and the highest NCA rate was for property offenses (24.1%). A chi-square test found a statistically significant association between the case category and the NCA rate [X^2 (4, N=6,194) = 115.889, p<.01]. Property charges were much more likely to be associated with new criminal activity, followed by public order/other offenses and drug offenses. DWI were least likely to have an NCA.



Overall, chi-square results indicated some variables were related to the FTA rate and NCA rate. Preventive detention motions were not associated with either the FTA rate or NCA rate. Both the PSA recommendation category and the charge category were significantly related to both the FTA rate and NCA rate, indicating that both of these variables help to estimate the likelihood of a failure of both types.

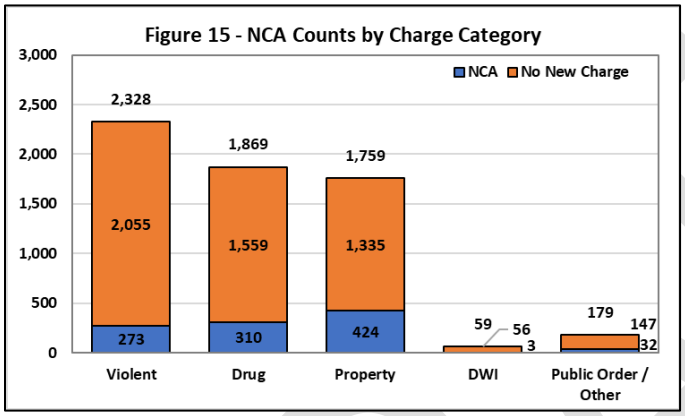
Table 3. Chi-Square Results Summary Table

	df	N	x^2	Sig.
FTA Rate * PTD Motion	1	6,194	0.034	n/a
NCA Rate * PTD Motion	1	6,194	0.732	n/a
FTA Rate * PSA Recommendation Category	5	6,194	213.597	p<.01
NCA Rate * PSA Recommendation Category	5	6,194	237.609	p<.01
FTA Rate * Charge Category	4	6,194	126.320	p<.01
NCA Rate * Charge Category	4	6,194	115.889	p<.01

New Criminal Activity and Charge Categories and Levels

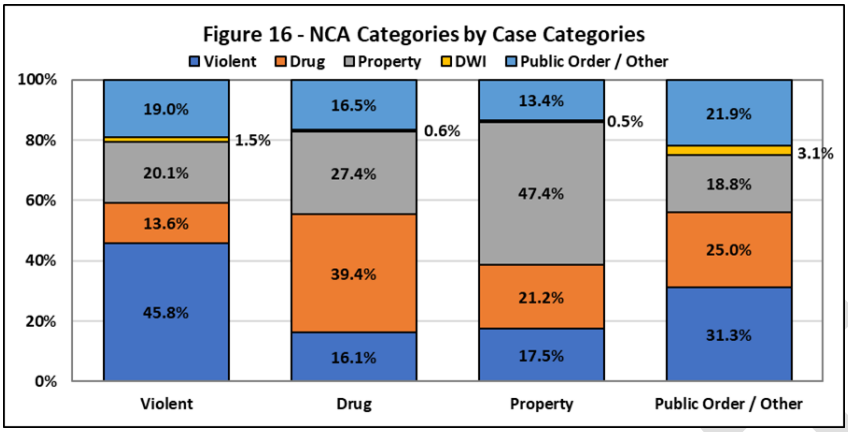
New criminal activity occurred in 16.8% of assessed cases with exposure. In order to create a comparison between the assessed cases and the NCA cases, the cases were reviewed and assigned a charge category and the highest charge level.

Figure 15 shows the NCA, non-NCA, and total counts for cases in each charge category. The most unique cases where an NCA occurred in the pre-trial period was for cases with property offenses. For DWIs, the smallest group of cases (59 total) there were three cases with new charges. While the DWI category is too small for analysis, the remaining charge categories were reviewed to categorize the new criminal activity that occurred during the pretrial period.



The NCAs were categorized into the same charge category types as the assessed case charges. While NCA fell into all charge categories, there was some consistency in the type among violent, drug, and property offenses. Among the violent cases, the largest category of charges was violent charges (45.8%) with the remaining 54.2% of NCA comprised of drug, property, DWI, and public order/other offenses. For drug offenses, the top category of new charges was drug charges (39.4%) with the remaining 60.6% in other charge categories. For cases with property offenses the top category of new charges was property offenses (47.4%) with the remaining 52.6% in other categories. Public order cases were more evenly distributed among categories, with the largest being violent offenses (31.3%)[6]. Overall, this indicates that new criminal activity during the pretrial period for those with violent, drug, or property offenses was more likely to be the same kind of crime as the original assessed case than any other individual category. In addition, the percent of NCA that was public order/other was similar regardless of the charge category, ranging from 13.4% to 21.9%.

[6] With the inclusion of additional cases, the distribution of public order / other cases may change substantially.



The charge levels were compared for the assessed cases and NCA cases. Of the 1,042 cases with new charges, just under 1% (10) had a 1st degree felony. Felonies that were 2nd or 3rd degree comprised 5% (51) and 9% (92) of the new charges. The largest category was for 4th degree felonies[7] (52% or 539). Misdemeanors accounted for the next largest portion of new charges, accounting for 23% (243) cases. Petty misdemeanors comprised 10% (107) of the NCAs.

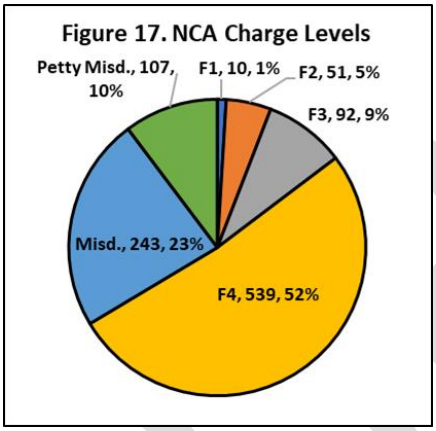
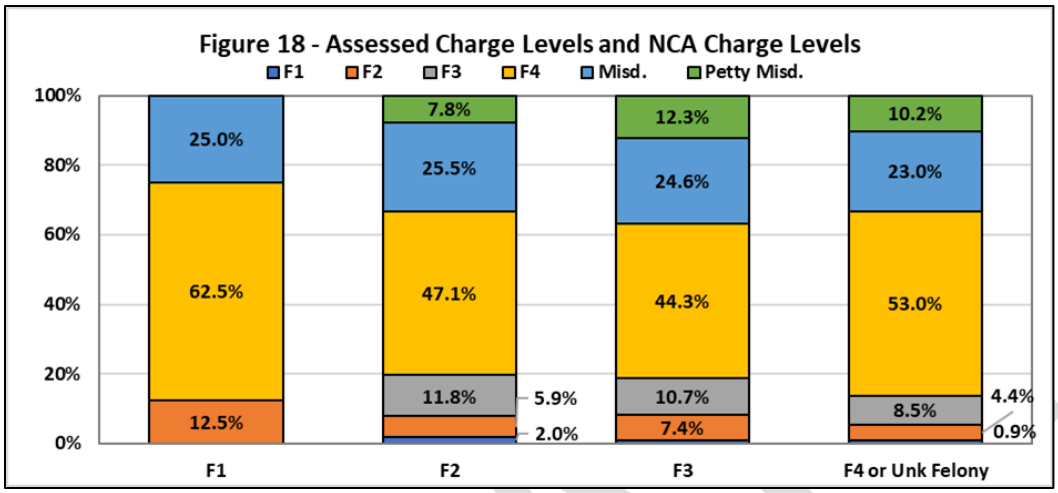


Table 4 and Figure 18 show the comparison between the charge level of the assessed case and the NCA charge level. Regardless of the assessed charge level, F4s accounted for the largest portion of cases, from 44.3% for F3s to 62.5% for F1s. Misdemeanors accounted for approximately one in four new charges for all charge categories, 23% for F4s and 25.5% for F2s. Out of the 1,042 NCA cases, 440 (42.2%) were of a lower charge level than original assessed case and another 472 (45.3%) had NCA of the same charge level.

[7] The 4th degree felonies includes 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.

Table 4: Assessed Case Charge Levels and NCA Charge Levels

Assessed Case Charge	F1	F2	F3	F4	Misd.	Petty Misd.	Total
F1	0	1	0	5	2	0	8
F2	1	3	6	24	13	4	51
F3	1	9	13	54	30	15	122
F4	8	38	73	456	198	88	861
Total	10	51	92	539	243	107	1,042



Conclusion

This review presented the FTA rate and NCA rate for cases assessed using the PSA in BCMC. These outcome measures were calculated by the filing of a PTD motion on the case, the recommendation category, and the charge category.

The relationship between the FTA and NCA rates and the PSA recommendation categories was significant, so knowledge of the PSA category improves the ability to estimate the likelihood of failures of either type. Similarly, the charge category is also significantly associated with the FTA and NCA rates, with the highest rates of failure among drug offenses, property offenses, and public order/other offenses. This could be for a variety of reasons, such as a difference in the number of hearings, the length of cases, and the likelihood of indictment.

The FTA rate for cases with a PTD motion was 17.8% and 18.1% for those without a PTD motion. The NCA rate for those with a PTD motion was 18.0% and the rate for those with no motion was 16.7%. The difference between these groups was not statistically significant, indicating that the PTD motion is not associated with failure. While the PSA recommendation and charge category improved the ability to estimate the likelihood of failure, the PTD motion – or lack thereof – is not a good indicator of future failure. Instead, the PSA recommendation and charge category provide the most accurate means to estimate future failure.

For the NCA that occurred, the new criminal activity was of a different category more than half the time for violent, drug, and property offenses, although the largest single category corresponded with the original charge. Additionally, the majority of new criminal activity was for 4th degree felonies (539 or 51.7%) followed by misdemeanors (243 or 23.3%). For the NCA, 42.2% of the cases had a lower charge

than the assessed case and an additional 45.3% are of the same level. Overall, NCA occurred for fewer than one in five cases and was primarily for charges of a lower or equivalent level as the assessed case.

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Appendix A: Decision Making Framework

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).

Table A1. Risk Factors and Pretrial Outcomes

Risk Factor	FTA	NCA	NVCA
1. Age at current arrest		X	
2. Current violent offense			X
Current violent offense & 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	
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 (DMF) 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 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

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

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