



**OFFICE OF THE DISTRICT ATTORNEY
SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO**

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DISTRICT ATTORNEY**

February 21, 2020

Re: Data request to committee members

Dear Justice Chávez,

Please find below our responses to your questions. This task proved to be challenging, not only because of the short time frame in which to produce, but also because data are currently captured to facilitate operations. As such, data were often not captured in a manner which could easily address your questions. Ideally, each agency you have requested data from should be able to independently query Odyssey to answer your questions. In that way the queries would derive from the same data set, mitigating the error associated with the inevitable human error that occurs when the same data is entered into multiple systems. Nevertheless, we were able to compile a great deal of responsive information that should inform the ad hoc committee's efforts to improve preventative detention practice in New Mexico.

1. What felony charges were filed in each judicial district regardless of whether a Pretrial Detention Motion was filed.

Please refer to AODA's response to this question.

a. How many cases involve defendants charged with a felony and the defendant was using a deadly weapon?

Please refer to AODA's response to this question. Note, AODA has advised us that the charges with a deadly weapon will be an undercount, because there are some charges where the use of a deadly weapon is likely, but not easily identified in a query, such as in a homicide.

b. How many cases involved charges which authorized a sentence of life in prison without parole?

Please refer to AODA’s response to this question. AODA has advised us that this figure may be an overcount in some respects and an undercount in others. There are very few charges where a sentence of life without parole is available. However, some of those charges rely on the status of the defendant’s previous convictions and the occurrence of specific conditions (as in the subset of a second or subsequent conviction of criminal sexual penetration where life without parole is available). Identifying those instances would require a time-consuming manual look-up.

2. The number of PTD motions that were filed.

According to our internal tracking, 3,149 PTD motions were filed in the Second Judicial District between January 1, 2017 and December 31, 2019. Note, our internal tracking focuses on 5-409 motions filed at the beginning of a case, typically at the time an individual appears for their felony first appearance.

3. The charges that were pending in those cases when a PTD motion was filed.

Top 20 Charges by Frequency

Charge	Number
Aggravated assault (deadly weapon)	995
Receipt, Transportation or Possession of a Firearm or Destructive Device by a Felon	425
Armed robbery	394
Aggravated battery (deadly weapon)	393
Child Abuse (No Death or GBH) (Intentional or Recklessly) (1st Offense)	382
Receiving/Transferring Stolen Motor Vehicles (1st Offense)	369
Possession of a Controlled Substance (Felony)	332
Tampering with evidence (highest crime a third or fourth degree felony)	301
Battery (household member)	289
False imprisonment	270
Aggravated Fleeing a Law Enforcement Officer	265
Resisting, Evading or Obstructing an Officer (Arrest)	230
Aggravated assault (deadly weapon) (household member)	226
Armed robbery - conspiracy	210
Criminal damage to property (over \$1000)	209
Aggravated battery (great bodily harm) (household member)	200
Aggravated assault upon a peace officer (deadly weapon)	178
Aggravated assault (disguised)	168
Trafficking controlled substances (possess with intent)(narcotic or meth)(1st offense)	164
Tampering with evidence (highest crime a capital, first or second degree felony)	156

This list includes all charges filed in a case and therefore does not reflect the breakdown of individual cases.

a. How many cases involve defendants charged with a felony and the defendant was using a deadly weapon?

Total charges: 12,930 across the 3,149 cases.

- 1,772 cases (56.3%) of the 3,149 cases contain a charge that includes the language “deadly weapon,” “shooting,” “firearm,” or “armed robbery” in the charge description. This is likely an undercount, because there are some charges where the use of a deadly weapon is likely, but not explicitly outlined in the charge description, such as in a homicide.
- 56.5% (7,308) of the total charges are considered violent using the definition provided by the Arnold Tool.

b. How many cases involved charges which authorized a sentence of life in prison without parole?

- Murder in the first degree (felony murder) & Murder in the first degree (willful & deliberate): 110 cases

As noted above, this may be both overinclusive regarding murders and underinclusive as to second or subsequent conviction of criminal sexual penetration. Without direct access to the Odyssey database, arriving at more accurate figures would require a time-consuming manual look-up.

4. The length of time between filing the motion and the PTD hearing.

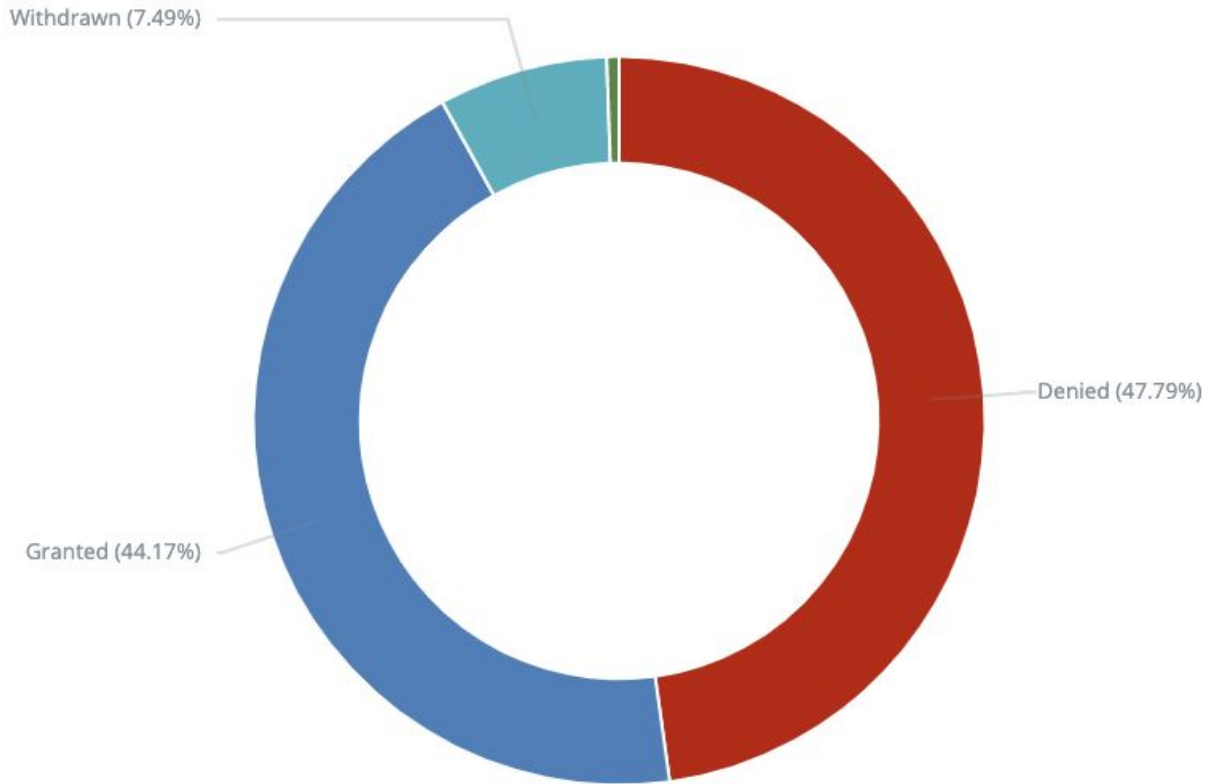
Out of our total list of PTD motions filed, we removed ones that were withdrawn and those that had an outcome of “other.” We also removed outliers, which were any cases with a time between filing and hearing that was greater than 365 days.

Length of time between filing motion and PTD hearing in calendar days:

- Mean: 4.48 days
- Standard Deviation: 5.8 days
- 75% of the cases had a hearing within 5 calendar days of the filing of the PTD motion.

5. How many cases result in the prosecutor putting a detention hold on the defendant and later elect not to pursue detention?

According to our tracking, our office withdrew 236 PTD motions during the time period, constituting only 7.5% of the total motions filed between January 1, 2017 and December 31, 2019.



a. What is the length of time before the defendant is released?

We do not capture data responsive to this request.

b. How many times are charges dismissed by the prosecutor?

Within the set of 236 withdrawn motions there were 761 total charges:

- Nolle Pros/Dismissed by Prosecutor: 254 charges
- Prosecution Declined: 243 charges
- 65.31% of total charges dismissed or declined by prosecutor

c. How many times are charges dismissed for lack of probable cause by the court?

Within the set of 236 withdrawn motions there were 761 total charges:

- Court Dismissed: 22

- 2.89% of total charges dismissed by the court. With the data we can access, we cannot breakdown the reason the court dismissed the case.

d. What are the charges in these cases?

Total charges: 761 across the 236 withdrawn motions.

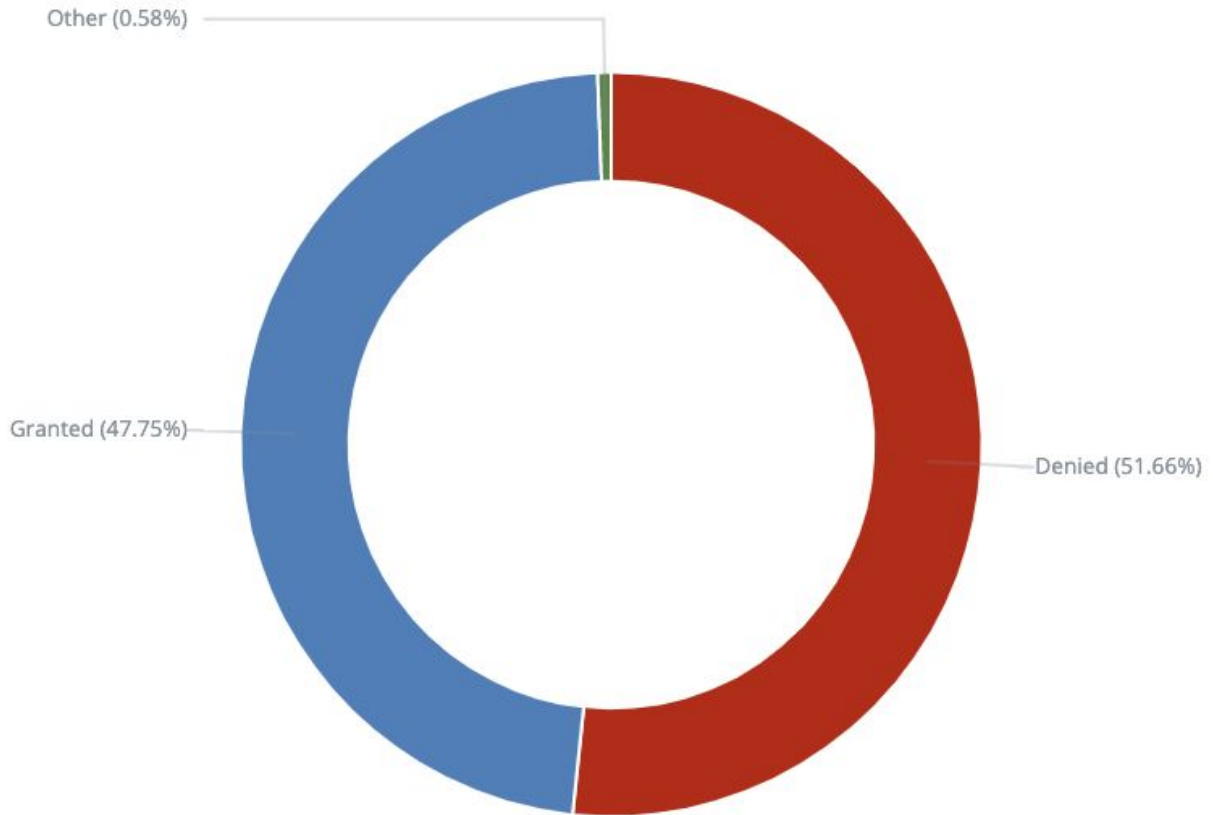
- 21.02% (160 charges) of the total charges include the language of “deadly weapon,” “shooting,” “firearm,” or “armed robbery in the charge description.
- 45.2% (344 charges) of the total charges are considered violent using the definition provided by the Arnold Tool.

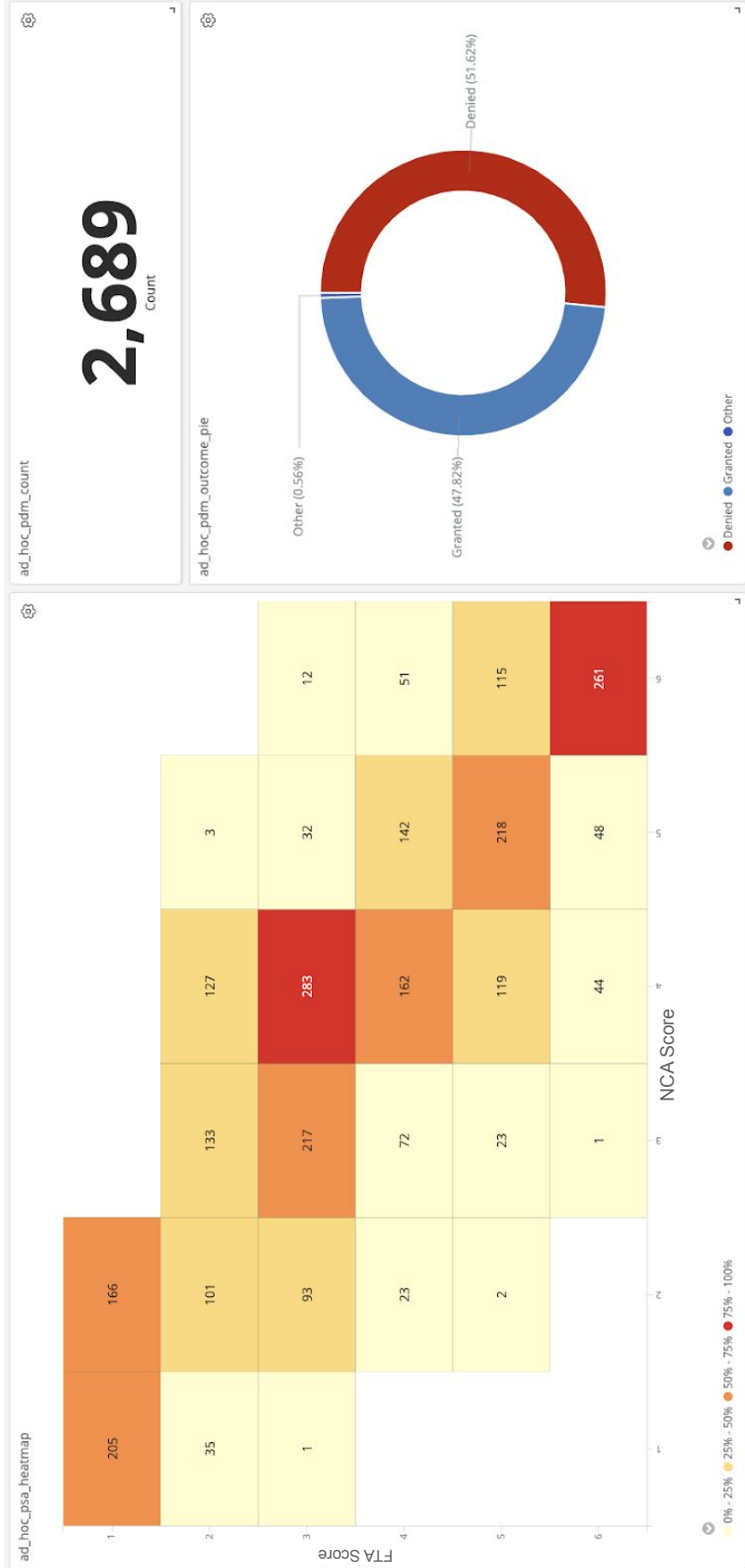
Top 10 Charges by Frequency

Charges	Number
Possession of a Controlled Substance (Felony)	44
Aggravated assault (deadly weapon)	43
Battery (household member)	29
Armed robbery	25
Receiving/Transferring Stolen Motor Vehicles (1st Offense)	21
Aggravated battery (deadly weapon)	18
Child Abuse (No Death or GBH) (Intentional or Recklessly) (1st Offense)	18
Aggravated Fleeing a Law Enforcement Officer	17
False imprisonment	17
Battery upon a peace officer	16

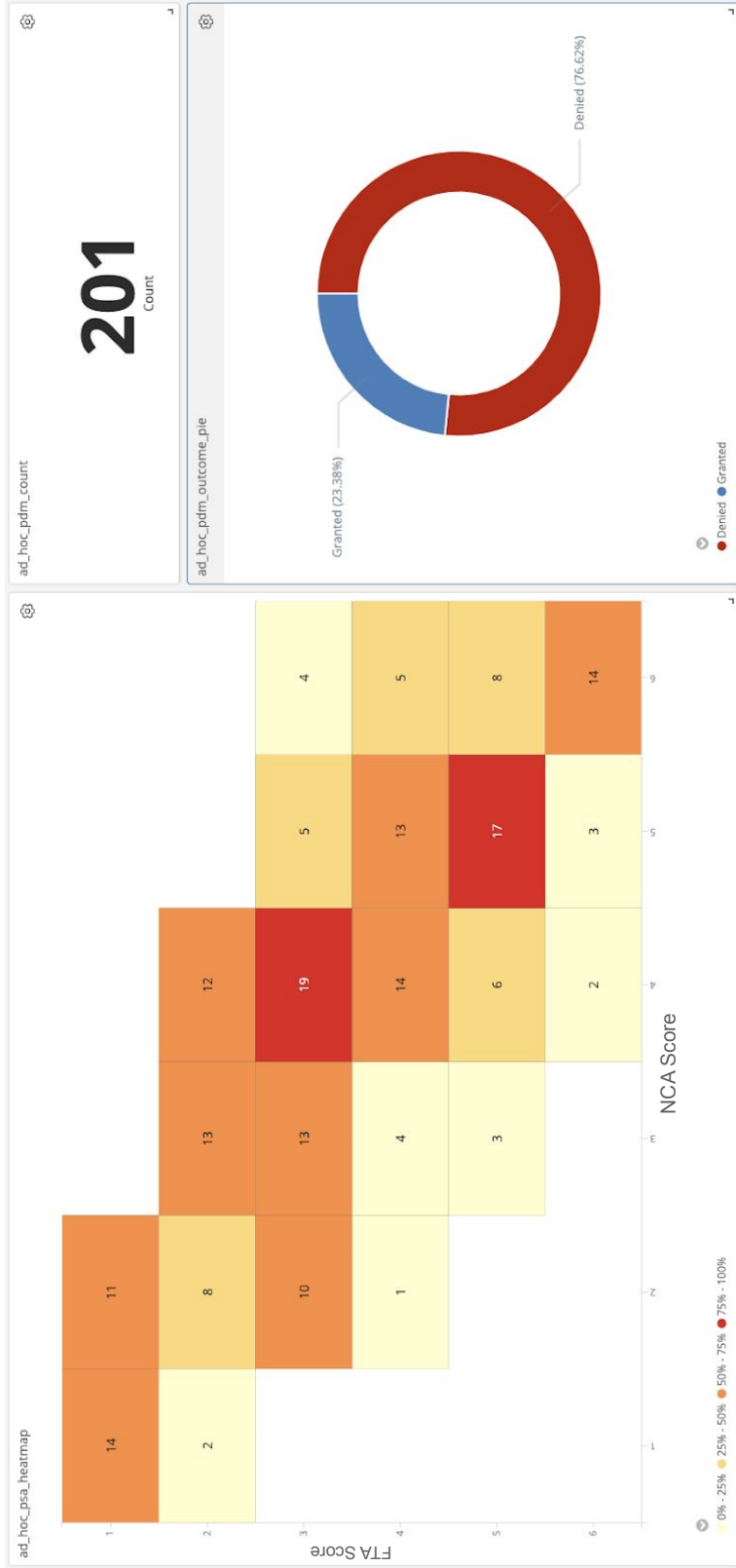
6. The court disposition of the PTD Motion.

The court had 2,913 PTD motions to consider (3,149 filed minus 236 withdrawn).

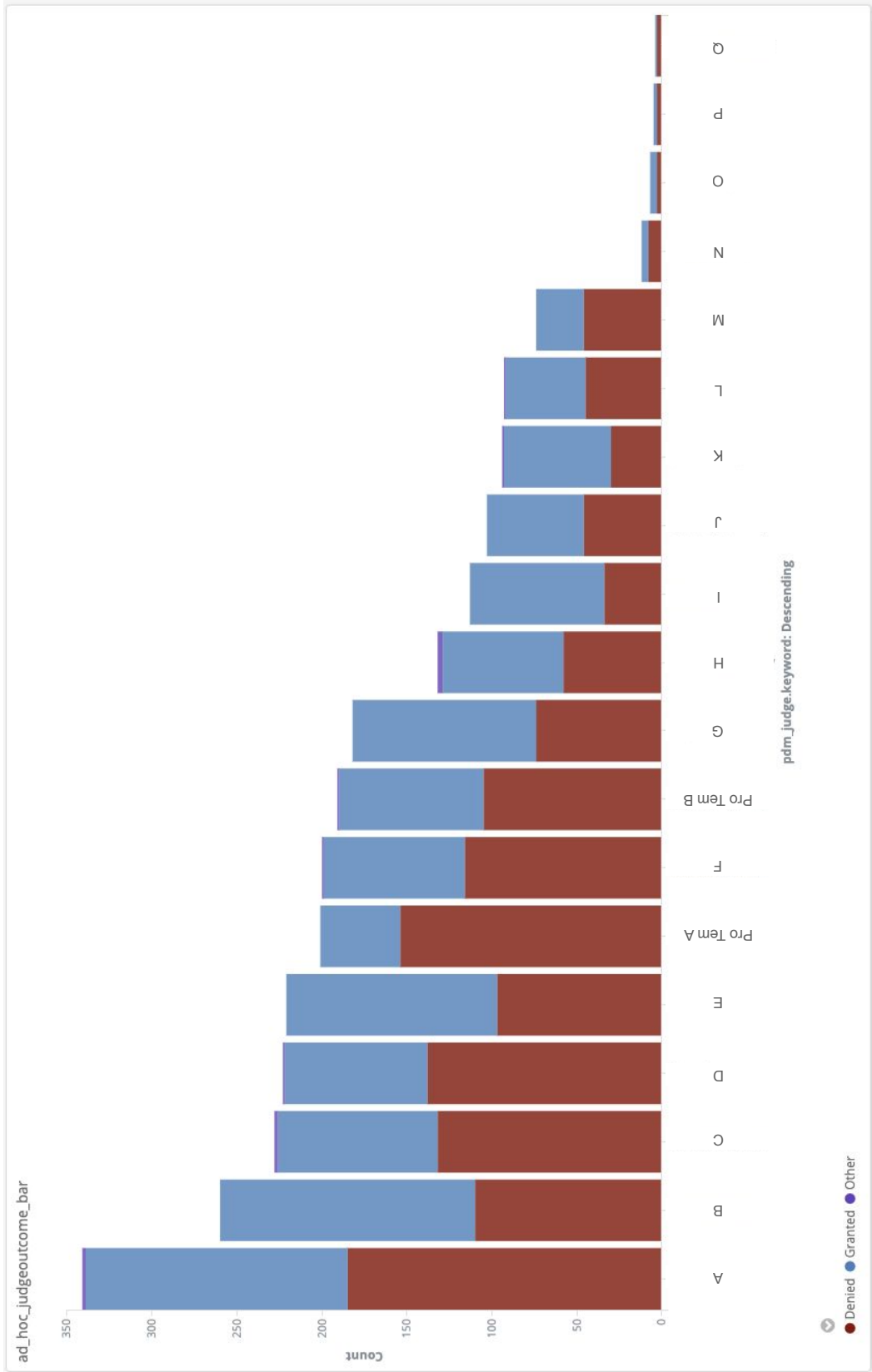




The figure above is the distribution of PSA NCA and FTA scores and PDM decisions made by **elected judges**, in cases for which we have access to a PSA.



The figure above is the distribution of PSA NCA and FTA scores and PDM decisions made by **Pro Tempore Judge A**, in cases for which we have access to a PSA.



The figure above shows PDM decisions by judge where we have a PSA.

a. Number granted

1391 motions granted

b. Number denied

1505 motions denied

Note, there is a remainder of 19 cases we categorize as “Other” where the courts neither granted nor denied the PTD. For example, in some instances the court has not ruled on a PTD motion and instead ordered a defendant to participate in ATP.

c. Conditions of release when detention denied.

We do not capture data responsive to this request.

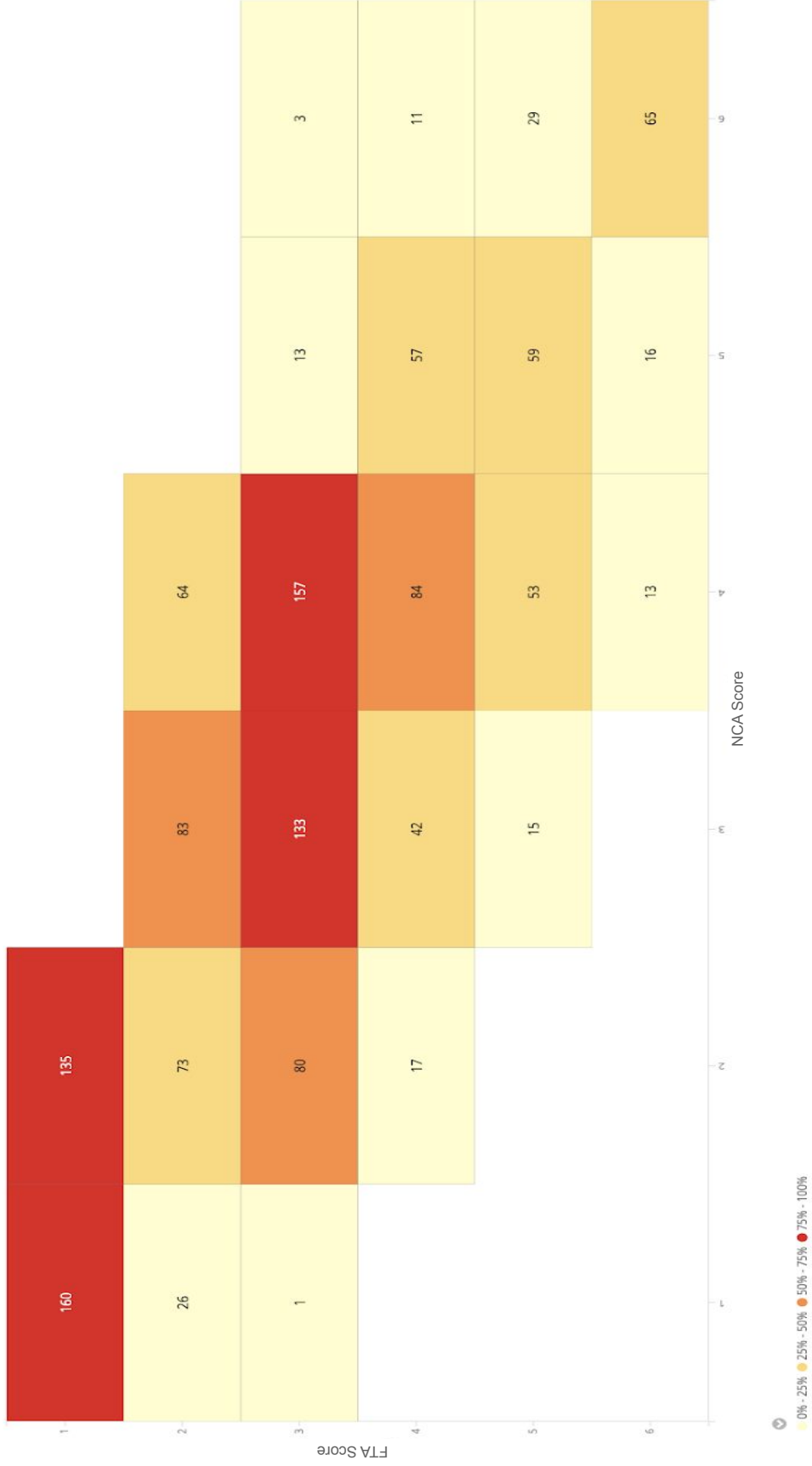
7. For those actually released after a PTD motion was denied

a. The PSA recommendation (for the 2nd Judicial District)

PSA scores were available for 1,388 of the PTD motions that were denied. We are able to provide the raw PSA scores rather than the final PSA recommendation.

- 399 of the above cases have an NCVA flag
- Mean NCA: 3.22
- Mean FTA: 2.9

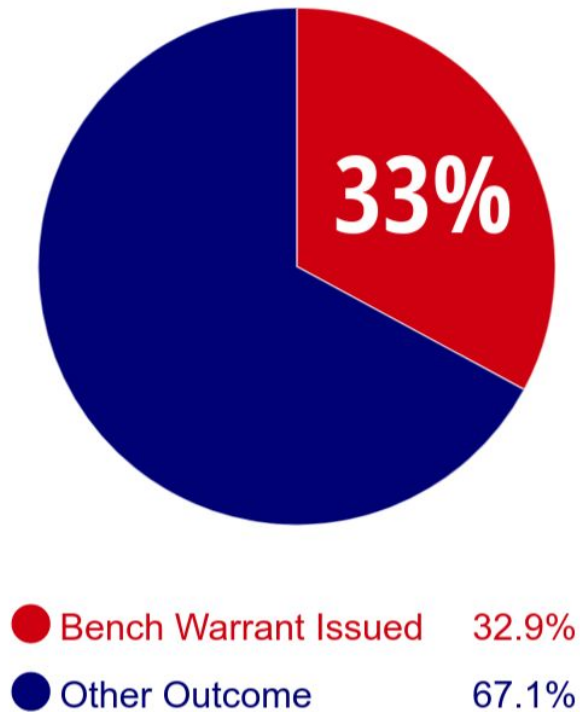
ad_hoc_psa_heatmap



The figure above is the distribution of PDM denials by PSA FTA and PSA NCA score, not taking into consideration the state of the PSA NVCA flag. The count is 1,388.

b. The number of those who FTA

We are unable to provide the number who intersect both sets of PDM denials and FTAs. Within the whole set of out-of-custody defendants at Metro and District Court preliminary hearings between September and December 2019, 33% of defendants failed to appear.



i. Type of offense in the PTD case

We are unable to provide these data for the intersection of sets requested here.

ii. Conditions of release imposed when PTD denied

We are unable to provide these data for the intersection of sets requested here.

iii. Whether the defendant was detained or what their conditions of release were for the re-arrest

We are unable to provide these data for the intersection of sets requested here.

c. The number of those who were accused of new criminal activity

This question reflects a misnomer embedded in the PSA scores. The PSA categories of NCA and NVCA purport to refer to new criminal activity and new violent criminal activity. However, in fact, we are only able to identify when new criminal arrests or charges occur. Our experience with thousands of defendants informs us that for many defendants multiple instances of criminal activity occur before an arrest occurs; indeed, as law enforcement agencies can verify, a large number of violent crimes go unsolved. As a result, it is impossible to speak about instances of new criminal activity; we can only speak about new criminal arrests or charges.

With that caveat, within the set of 1,505 PTD motions that were denied there were 450 unique defendants who returned with new criminal charges (29.9% of the unique defendants in the 1,505 cases with denied motions) after the PTD denial and before the conclusion or final disposition of that original case. Those 450 defendants had 745 cases with new criminal charges (49.5% new criminal arrests for all PTD motions denied). Looking at a subset of this data that includes only the 1,388 cases in which there was a PSA or Arnold score, there were 422 unique defendants who returned with new criminal charges (30.3% of the unique defendants in the 1,388 cases with denied motions) after the PTD denial and before the conclusion or final disposition of that original case.

i. Type of offense in the PTD case

Top 25 Charges by Frequency

Possession of a Controlled Substance (Felony)	102
Receiving/Transferring Stolen Motor Vehicles (1st Offense)	89
Battery (household member)	55
Aggravated assault (deadly weapon)	47
Resisting, Evading or Obstructing an Officer (Arrest)	41
Child Abuse (No Death or GBH) (Intentional or Recklessly) (1st Offense)	39
Use or possession of drug paraphernalia	38
Trafficking controlled substances (possess with intent)(narcotic or meth)(1st offense)	35
Concealing identity	33
Armed robbery	32
Criminal damage to property (over \$1000)	32
Possession of a Controlled Substance (Schedules I - III)	32
Aggravated Fleeing a Law Enforcement Officer	31
Possession of burglary tools	31
Battery upon a peace officer	29
Receipt, Transportation or Possession of a Firearm or Destructive Device by a Felon	29
Tampering with evidence (highest crime a third or fourth degree felony)	29
Burglary (automobile)	27

Unlawful Taking of a Motor Vehicle (1st Offense)	27
Violation of restraining order prohibiting domestic violence	26
Battery	24
Aggravated assault (deadly weapon) (household member)	21
Aggravated assault upon a peace officer (deadly weapon)	20
Aggravated battery (deadly weapon)	20
Resisting, evading or obstructing an officer (Resisting)	20

ii. Conditions of release imposed when PTD denied

We do not capture data responsive to this request.

iii. Category of new criminal activity, misdemeanor, 4th, 3rd, 2nd, 1st degree felony

Top 25 Charges by Frequency

Possession of a Controlled Substance (Felony)	116
Receiving/Transferring Stolen Motor Vehicles (1st Offense)	102
Battery (household member)	61
Aggravated assault (deadly weapon)	55
Trafficking controlled substances (possess with intent)(narcotic or meth)(1st offense)	48
Use or possession of drug paraphernalia	44
Resisting, Evading or Obstructing an Officer (Arrest)	43
Armed robbery	40
Child Abuse (No Death or GBH) (Intentional or Recklessly) (1st Offense)	40
Possession of burglary tools	37
Criminal damage to property (over \$1000)	36
Concealing identity	35
Burglary (automobile)	34
Aggravated Fleeing a Law Enforcement Officer	33
Possession of a Controlled Substance (Schedules I - III)	32
Receipt, Transportation or Possession of a Firearm or Destructive Device by a Felon	31
Tampering with evidence (highest crime a third or fourth degree felony)	30
Unlawful Taking of a Motor Vehicle (1st Offense)	30
Battery upon a peace officer	29
Battery	28

Resisting, evading or obstructing an officer (Resisting)	27
Violation of restraining order prohibiting domestic violence	26
Aggravated assault (deadly weapon) (household member)	21
Aggravated battery (deadly weapon)	21
Distribution/Possession with Intent to Distribute controlled substances (Sch I - IV, except meth or narcotic Sch I-II)(1st offense)	21

iv. Whether the defendant was detained or what their conditions of release were for the re-arrest

We do not capture data responsive to this request.

8. Time to disposition from order detaining the defendant to disposition of the case.

We do not capture data responsive to this question and its subparts. Please refer to the Court's responses, as they have access to the date of each PTD order is entered.

- a. First trial setting**
- b. Actual trial on the merits**
- c. Plea or other disposition**

9. Number of cases that were dismissed by the prosecution

We are unable to provide these data given the time constraints of the data request.

- a. When a motion to detain was filed**
- b. When a motion to detain was not filed**
- c. For each category the reason for the dismissal**
- d. Number of cases refiled**

10. Number of cases where the prosecution did not indict or pursue a preliminary hearing (regardless of the filing of a pretrial detention motion)

Please refer to AODA's response to this question.

11. Number of appeals of PTD orders.

2019: 4 appeals
2018: 1 appeal
2017: 6 appeals

Total 2017-2019: 11 appeals

12. Length of time for appellate disposition of the PTD appeals.

The following data is reported in terms of calendar days.

Average appellate disposition time, 2019: 8 days
Appellate disposition time, 2018: 3 days
Average appellate disposition time, 2017: 64 days*

Average appellate disposition time, 2017-2019: 38 days**

*Please note there are two outlier cases that were held by the Supreme Court pending the issuance of an opinion in *Torrez v. Whitaker*, 2018-NMSC-005. Excluding those two cases, the average for 2017 is 11 days.

**Excluding the outlying cases described above, the average from 2017-2019 is 9 days.

13. Number cases where detention granted and an interlocutory appeal (not regarding detention) was filed.

We do not capture data responsive to this request.

14. Length of time to disposition of interlocutory appeal.

We do not capture data responsive to this request.

a. Specify whether Court of Appeals or Supreme Court

We do not capture data responsive to this request.

For the following questions (15-19), please refer to the previously provided letter from the Association of Prosecuting Attorneys regarding calculating convictions and mistrials.

15. Number of guilty pleas to the highest offense charged.

a. Number of guilty pleas to crimes involving the use of a deadly weapon as the highest charge

16. Number of guilty pleas to lower offenses.

a. Number of guilty pleas to crimes involving the use of a deadly weapon that was not the highest charge

17. Number of convictions of highest offense charged following a trial on the merits.

18. Number of convictions of lesser included offenses charged following a trial on the merits.

19. Number of mistrials.

20. Number of cases flagged by a PSA as NVCA?

We do not capture PSA scores for all cases. We only do so for cases in which we file a PTD motion.

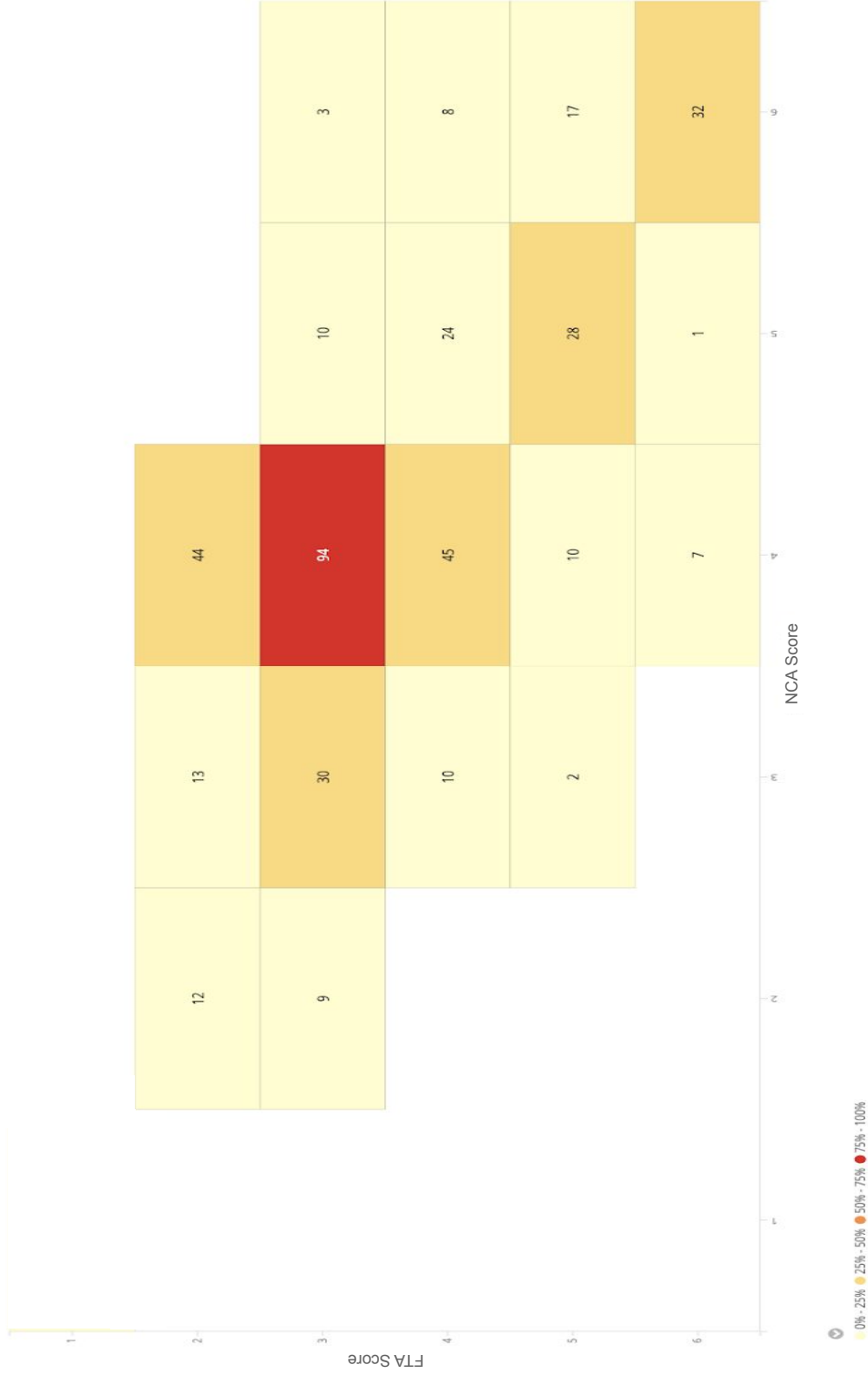
21. Number of PTD motions filed when a PSA flagged NVCA?

We do not capture PSA scores for all cases. We only do so for cases in which we file a PTD motion.

22. Number of defendants flagged as NVCA that were released despite PTD motion being filed?

399 PTD motion denials with an NVCA flag on the original case.
381 unique defendants

a. PSA recommendation for conditions of release



The figure above is the distribution of PDM denials by PSA FTA, PSA NCA score, and where PSA NVCA flag is True. Count is 399.

b. Conditions of released imposed on the defendant

We do not capture data responsive to this request.

c. Number of defendants released who FTA.

We are unable to provide these data for the intersection of sets requested here.

d. Number of defendants that engaged in NCA.

33% of the unique defendants in the 399 original cases had new criminal charges and a case opened in CMS after the PTD denial and before the conclusion or final disposition of that original case.

i. Level of new offense that was charged

Top 20 Charges by Frequency

Charges	Number
Battery (household member)	30
Possession of a Controlled Substance (Felony)	24
Aggravated assault (deadly weapon)	22
Battery upon a peace officer	20
Resisting, Evading or Obstructing an Officer (Arrest)	18
Armed robbery	15
Possession of a Controlled Substance (Schedules I - III)	14
Receiving/Transferring Stolen Motor Vehicles (1st Offense)	14
Concealing identity	12
Criminal damage to property (over \$1000)	12
Aggravated assault (deadly weapon) (household member)	11
Battery	10
Resisting, evading or obstructing an officer (Resisting)	10
Violation of restraining order prohibiting domestic violence	10
Aggravated assault upon a peace officer (deadly weapon)	8
Aggravated battery (great bodily harm) (household member)	8
False imprisonment	8
Use or possession of drug paraphernalia	8
Indecent exposure	7
Receipt, Transportation or Possession of a firearm or Destructive Device by a Felon	7

23. Number of defendants flagged as NVCA but NO PTD was filed.

We do not capture responsive data for this question and its subparts. We only track PSA information for cases in which we file a PTD motion, not overall cases.

- a. PSA recommendation for conditions of release.**
- b. Conditions of released imposed on the defendant.**
- c. Number of defendants released who FTA.**
- d. Number of defendants that engaged in NCA.**
 - i. Level of new offense that was charged**

24. How many cases are remanded to a lower court at the conclusion of a detention hearing in district court?

We do not capture responsive data for this question and its subparts.

- a. In how many of those cases was the lower court asked to change conditions of release?**
- b. In how many of those cases did the lower court**
 - i. Increase conditions of release**
 - ii. Decrease conditions of release**
 - i. No change**

25. In how many cases where the defendant was detained did it take longer than one year to dispose of the case?

We do not capture responsive data for this question and its subparts.

- a. By plea and disposition**
- b. Dismissal of charges by the prosecutor**
- c. Dismissal of charges by the court**
- d. Trial on the merits**

26. In how many cases does the district court have both a motion to revoke conditions of release and a motion to detain?

We do not capture responsive data for this question.

Thank you,



Raúl Torrez