

Public Safety Assessment Risk Factor and Definitions – New Mexico

The Public Safety Assessment (PSA) is a pretrial outcome assessment that uses nine risk factors to assess the likelihood of new criminal activity (NCA), including new violent criminal activity (NVCA), and failure to appear (FTA) pending case disposition. The assessment is intended to be used to assess the likelihood of NCA, NVCA, and FTA for defendants who have been arrested in the community, a release decision will be made with least restrictive conditions and are pending the disposition of their cases.

The PSA is not intended to be used to detain of for defendants who are charged with an offense while already incarcerated (e.g., an inmate assaults a corrections officer or another inmate). All pretrial risk factors are answered based on the defendant's adult criminal history. Juvenile records are not considered when completing the assessment. In addition, all criminal history and failure to appear related factors include only traffic and criminal charges that carry a potential penalty of incarceration (jail or prison). Charges that carry a potential penalty of incarceration (jail or prison) are those for which the state statute allows for a sentence of incarceration upon conviction. Local city/county ordinances/codes are not counted as misdemeanor convictions. Further, city/county ordinance/code violations are not counted as pending, or as related to a sentence of incarceration or a failure to appear (FTA). RISK FACTORS

1. AGE AT CURRENT ARREST

Document the defendant's age in years at the time of the current arrest. This is the time of the current arrest; not the time of the alleged criminal activity. If there was not an arrest or the arrest date is unknown, use the defendant's age at the time the PSA was completed. Based on the defendant's age at current arrest, answer whether the defendant is 20 or younger, 21 or 22, or 23 or older.

2. CURRENT VIOLENT OFFENSE

Generally, offenses are considered violent when a person causes or attempts to cause physical injury to another person. The most common violent offenses include the following: Murder, Homicide, Manslaughter, Kidnapping, Abduction, Robbery, Carjacking, Assault involving physical injury including Domestic Assault (misdemeanor or felony), and person to person related Sex Offenses (e.g., Rape, Sexual Assault/Battery, Indecent Liberties with Child, Forcible Sodomy). A charge of attempt (e.g. attempted murder, attempted rape), solicitation, and conspiracy to commit any of these offenses is considered a violent offense. Threats, harassment, and alike are not considered violent offenses. See Appendix for applicable New Mexico Criminal Code offenses that are considered violent for the purpose of risk assessment. In New Mexico, some statutes have subsections that involve violent activity and subsections that do not involve violent activity. Those statutes and subsections are listed in the Appendix. If the subsection is identified in the charging document or court data base, use the list in the Appendix to identify whether it is violent or not. If the subsection is not available in Odyssey, use the default listed in the Appendix. If any of the current offenses are violent, answer yes to this risk factor

2a. CURRENT VIOLENT OFFENSE & 20 YEARS OLD OR YOUNGER

If one or more of the current offenses is violent as defined in risk factor 2 above AND the defendant was 20 or younger at the time of the current arrest (not at the time of the alleged conduct) defined in risk factor 1 above, answer yes to this risk factor.

3. PENDING CHARGE AT THE TIME OF THE ALLEGED OFFENSE

Pending means any charge that has a future pre-disposition related court date, or has not been disposed of due to the defendant's failure to appear, or that is in some form of deferred status (e.g., deferred prosecution, diversion, first offender, withheld finding, held in abeyance). Charges include any criminal or traffic offense that carries a potential penalty of incarceration (jail or prison). A pending charge for a city/county ordinance/code is not counted. The pending charge must have been pending at the time of the alleged offense for the current case, which is an indication that the defendant was on some form of pretrial release when the current offense allegedly occurred. It is possible for an alleged offense to be significantly earlier than the assessment. In which case, it is necessary to determine whether there was a charge pending at the time of the alleged offense, not at the time of the assessment. If the current arrest is for a failure to appear for a pre-disposition related court appearance, the underlying charge for the failure to appear is counted as a pending charge. If the defendant had a pending criminal or traffic charge that carried a potential penalty of incarceration (jail or prison) at the time the current offense allegedly occurred, answer yes to this risk factor.

4. PRIOR MISDEMEANOR CONVICTION

A misdemeanor includes any criminal or traffic offense defined by state statute (not city/county ordinance/code) as a misdemeanor that carries a potential penalty of incarceration (jail or prison). A conviction includes any guilty plea or finding of guilt. A charge that is in some form of deferred status (e.g., deferred prosecution, diversion, first offender, withheld finding, held in abeyance) is not considered a conviction. If the defendant has pled guilty or been found guilty as an adult of one or more criminal or traffic misdemeanor offenses that carries a potential penalty of incarceration, answer yes to this risk factor.

5. PRIOR FELONY CONVICTION

A felony includes any criminal or traffic offense defined by state statute as a felony. A conviction includes any guilty plea or finding of guilt. A charge that is in some form of deferred status (e.g., deferred prosecution, diversion, first offender, withheld finding, held in abeyance) is not considered a conviction. If the defendant has pled guilty or been found guilty as an adult of one or more criminal or traffic felony offenses, answer yes to this risk factor.

5a. PRIOR CONVICTION

If the defendant has a prior misdemeanor conviction as defined in risk factor 4 above or the defendant has a prior felony conviction defined in risk factor 5 above, answer yes to this risk factor.

6. PRIOR VIOLENT CONVICTION

Generally, offenses are considered violent when a person causes or attempts to cause physical injury to another person. The most common violent offenses include the following: Murder, Homicide, Manslaughter, Kidnapping, Abduction, Robbery, Carjacking, Assault involving physical injury including Domestic Assault (misdemeanor or felony), and person to person related Sex Offenses (e.g., Rape, Sexual Assault/Battery, Indecent Liberties with Child, Forcible Sodomy). A charge of attempt (e.g. attempted murder, attempted rape), solicitation, and conspiracy to commit any of these offenses is considered a violent offense. Threats, harassment, and alike are not considered violent offenses. See Appendix for applicable New Mexico Criminal Code offenses that are considered violent for the purpose of risk assessment. In New Mexico, some statutes have subsections that involve violent activity and subsections that do not involve violent activity. Those statutes and subsections are listed in the Appendix. If the subsection is identified in prior conviction, use the list in the Appendix to identify whether it is violent or not. If the subsection is not available in Odyssey, use the default listed in the Appendix to determine whether the prior conviction was violent. Examine the defendant's adult criminal history and determine the total number of violent charges that resulted in a conviction on one of the state statutes listed in the Appendix as violent. A conviction includes any guilty plea or finding of guilt. A charge that is in some form of deferred status (e.g., deferred prosecution, diversion, first offender, withheld finding, held in abeyance) is not considered a conviction. Based on the total number of violent convictions, answer whether the defendant had none, 1, 2, or 3 or more prior violent convictions.

7. PRIOR FAILURE TO APPEAR PRETRIAL IN PAST 2 YEARS

A failure to appear includes any pre-disposition court appearance for which the defendant failed to appear and a bench warrant for arrest was issued. The court appearance must be for a pending (pre-disposition) criminal or traffic offense that carries a potential penalty of incarceration (jail or prison). A failure to appear for a city/county ordinance/code violation is not counted. Post-disposition court appearances such as hearings for non-payment/failure to pay, violations of supervision and violations of other court ordered obligations are not counted. A failure to appear for a single court appearance is counted once regardless of the number of charges or warrants issued related to the single court appearance. A failure to appear is not counted if there is confirmation that the defendant was in custody (jail or prison) when the failure to appear occurred. Examine the defendant's adult criminal history and determine the total number of times in the past two years the defendant failed to appear in court for a pre-disposition related court appearance and a warrant for arrest was issued. The two-year time frame includes the two year period prior to the date of the current arrest. If there was not an arrest or the arrest date is unknown, the two-year time frame includes the two year period prior to the PSA completion date. Based on the total number of prior failures to appear in the past two years, answer whether the defendant had none, 1, or 2 or more prior failures to appear.

8. PRIOR FAILURE TO APPEAR PRETRIAL OLDER THAN 2 YEARS

A failure to appear includes any pre-disposition court appearance for which the defendant failed to appear and a bench warrant for arrest was issued. The court appearance must be for a pending (pre-disposition) criminal or traffic offense that carries a potential penalty of incarceration (jail or prison). A failure to appear for a city/county ordinance/code violation is not counted. Post-disposition court appearances such as hearings for non-payment/failure to pay, violations of supervision and violations of other court ordered obligations are not counted. A failure to appear for a single court appearance is counted once regardless of the number of charges or warrants issued related to the single court

appearance. A failure to appear is not counted if there is confirmation that the defendant was in custody (jail or prison) when the failure to appear occurred. Examine the defendant's adult criminal history and determine if the defendant failed to appear for court for a pre-disposition related court appearance and a warrant for arrest was issued more than two years from the time of the current arrest. If there was not an arrest or the arrest date is unknown, use the PSA completion date to determine if the failure to appear for court occurred more than two years from the time of the PSA completion date. If the defendant failed to appear for court and a warrant was issued for arrest more than two years from the time of arrest or PSA completion date, answer yes to this risk factor.

9. PRIOR SENTENCE TO INCARCERATION

A sentence to incarceration includes any sentence to jail or prison of 14 days or more, imposed by a judge at the time of sentencing or re-sentencing (e.g., supervision violation hearing, revocation of suspended sentence). A sentence of 14 days or more is included only if it is imposed as a single sentence and not a combination of multiple lesser sentences. Incarceration in lieu of payment of fines or costs, suspended sentences, and sanctions imposed by non-judges (e.g., probation officers) are not considered sentences to incarceration. Incarceration for a city/county ordinance/code violation is not counted as a prior sentence to incarceration. If the defendant previously received a sentence of incarceration to jail or prison of 14 days or more as a single sentence imposed by a judge, answer yes to this risk factor.

rape), solicitation, and conspiracy to commit any of these offenses is considered a violent offense. Threats, harassment, and alike are not considered violent offenses. See Appendix for applicable New Mexico Criminal Code offenses that are considered violent for the purpose of risk assessment.