

# Buncombe County's Public Safety Assessment Reference Guide

There is considerable research to support the need for improvement in Pretrial Justice as well as overwhelming support from the public – 70% of Americans believe that risk assessments should be used to determine release over the ability to pay a secured bond. **By using risk assessment tools, as well as supervision and monitoring of defendants, we protect public safety and the integrity of the court process, all at a lower cost.** Research shows that those who are deemed appropriate for release through risk assessment are likely to make all their court appearances and are unlikely to reoffend.<sup>i</sup>

The majority of people who remain in custody due to an inability to pay a money bond are low risk<sup>ii</sup>, including many whose charges will ultimately be dropped. A study completed by the state of Colorado shows that unsecured bonds are as effective as secured bonds at achieving public safety and court appearance.<sup>iii</sup>

By adopting commonsense policies that detain only higher risk people, the money saved could pay for other needed services.

**Buncombe County** began using an evidence based risk assessment, the Virginia Pretrial Risk Assessment Instrument (VPRAI) in 2010. The VPRAI was the first evidence based risk assessment in the field of Pretrial Release. There has been much research focused on Pretrial Risk Assessments since that time. In order to continue to build a strong Program supported by evidence based practices Pretrial Services will be adopting a new Risk Assessment, the Public Safety Assessment (PSA). **PSA was developed using the largest, most diverse set of pretrial records ever assembled, 750,000 from 300 jurisdictions.** Researchers analyzed the data to determine which factors were most predictive of the likelihood a person would fail to appear at future court appearances or would commit a new crime – or a new violent crime – while awaiting trial.

## WHY WE USE A RISK ASSESSMENT TOOL IN BUNCOMBE COUNTY:

- (1) Increase public safety and confidence
- (2) Reduce costs
- (3) Avoid the unnecessary collateral consequences that occur for defendants and their families, when someone is unable to effect release from custody

## PRETRIAL DETENTION RESULTS IN WORSE COUTCOMES, WHEN COMPARING SIMILAR DEFENDANTS. DEFENDANTS HELD FOR THE ENTIRE PRETRIAL PERIOD:

- Are 4x more likely to be sentenced to jail
- Are 3x more likely to be sentenced to prison
- Receive 3x longer jail sentences
- Receive 2x longer prison sentences
- Moderate- & high-risk defendants do better under pretrial supervision

## WHY DOES BUNCOMBE COUNTY NEED A NEW ASSESSMENT TOOL AND WHY IS IT BEING IMPLEMENTED AT THE MAGISTRATE LEVEL:

- Jail population in Buncombe County is nearing capacity with existing detention beds
- Uniform data driven decision-making enhances equity
- Based on current research and evidence based practices
- Increase collaboration among stakeholders involved in the “pretrial phase” of the court process

## EXPECTED OUTCOMES:

- Increased number of unsecured bonds set at the Magistrate Level for Misdemeanors
- Reduced number of secured bonds set at the Magistrate Level
- Improved Bond Reports that include a violence flag, and separate scores for fail to appear and new criminal activity
- Reduced use of jail beds for failure to appear, technical violations and misdemeanor crimes

<sup>i</sup> Pretrial Justice Institute, “Guidelines for Champions and Spokespeople”, 2014

<sup>ii</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Jail Inmates at Midyear 2014, by Todd D. Minton and Zhen Zeng, June 2015, NCJ 248629; “The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration,” Vera Institute of Justice, May 2015.

<sup>iii</sup> Pretrial Justice Institute, “Unsecured Bonds: The as Effective and Most Efficient Pretrial Release Option”, 2013



# Risk Factors and Pretrial Outcomes

Risk Factor	Pretrial Outcome		
	FTA	NCA	NVCA
1. Age at current arrest		✓	
2. Current violent offense			✓
2a. Current violent offense and 20 years old or younger			✓
3. Pending charge at the time of the offense	✓	✓	✓
4. Prior misdemeanor conviction		✓	
5. Prior felony conviction		✓	
5a. Prior conviction	✓		✓
6. Prior violent conviction		✓	✓
7. Prior failure to appear pretrial in past 2 years	✓	✓	
8. Prior failure to appear pretrial older than 2 years	✓		
9. Prior sentence to incarceration		✓	
FTA = Failure to Appear; NCA = New Criminal Activity; NVCA = New Violent Criminal Activity			

This document (Risk Factors and Pretrial Outcomes) is used with the Guide to the First Team Meeting when implementing the Public Safety Assessment. See [psapretrial.org](http://psapretrial.org) for more information and a list of all implementation guides.

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# PSA Points and Scales

## Points and Scales/Flag

Calculate points by using the Risk Factor tables. Then convert total points to scaled score/flag.

Failure to Appear (FTA)			
Risk Factor	Points	Total FTA Points	FTA Scaled Score
Pending charge at the time of offense	No = 0	0	= 1
	Yes = 1		
Prior conviction (misdemeanor or felony)	No = 0	1	= 2
	Yes = 1		
Prior failure to appear in past 2 years	0 = 0	2	= 3
	1 = 2		
Prior failure to appear older than 2 years	2 or more = 4	3	= 4
	0 = 0		
Prior failure to appear older than 2 years	No = 0	4	= 4
	Yes = 1		
Prior failure to appear older than 2 years	No = 0	5	= 5
	Yes = 1		
Prior failure to appear older than 2 years	No = 0	6	= 5
	Yes = 1		
Prior failure to appear older than 2 years	No = 0	7	= 6
	Yes = 1		

New Violent Criminal Activity (NVCA)			
Risk Factor	Points	Total NVCA Points	NVCA Flag
Current violent offense	No = 0	0	= No
	Yes = 2		
Current violent offense AND 20 years old or younger	No = 0	1	= No
	Yes = 1		
Pending charge at the time of the offense	No = 0	2	= No
	Yes = 1		
Prior conviction (misdemeanor or felony)	No = 0	3	= No
	Yes = 1		
Prior violent conviction	0 = 0	4	= Yes
	1 = 1		
Prior violent conviction	2 = 1	5	= Yes
	3 or more = 2		
Prior violent conviction	0 = 0	6	= Yes
	1 = 1		
Prior violent conviction	2 = 1	7	= Yes
	3 or more = 2		

New Criminal Activity (NCA)			
Risk Factor	Points	Total NCA Points	NCA Scaled Score
Age at current arrest	23 or older = 0	0	= 1
	22 or younger = 2		
Pending charge at the time of offense	No = 0	1	= 2
	Yes = 3		
Prior misdemeanor conviction	No = 0	2	= 2
	Yes = 1		
Prior felony conviction	No = 0	3	= 3
	Yes = 1		
Prior violent conviction	0 = 0	4	= 3
	1 = 1		
Prior violent conviction	2 = 1	5	= 4
	3 or more = 2		
Prior failure to appear in past 2 years	0 = 0	6	= 4
	1 = 1		
Prior failure to appear in past 2 years	2 or more = 2	7	= 5
	0 = 0		
Prior sentence to incarceration	No = 0	8	= 5
	Yes = 2		
Prior sentence to incarceration	No = 0	9	= 6
	Yes = 2		
Prior sentence to incarceration	No = 0	10	= 6
	Yes = 2		
Prior sentence to incarceration	No = 0	11	= 6
	Yes = 2		
Prior sentence to incarceration	No = 0	12	= 6
	Yes = 2		
Prior sentence to incarceration	No = 0	13	= 6
	Yes = 2		

This document (PSA Points and Scales) is used with the Guide to the First Team Meeting when implementing the Public Safety Assessment. See [psapretrial.org](http://psapretrial.org) for more information and a list of all implementation guides.

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# 11A PSA Scoring Manual

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## Suitability for Assessment

Prior to completing the PSA, confirm that you should use it for the individual.

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"><li>• The PSA was developed to assess <b>adults</b> who have been arrested in the community, booked into jail, and are pending the disposition of their cases.</li><li>• The PSA is used for people who are arrested on a warrant for failure to appear.</li><li>• It should <b>not</b> be used for people who are charged with an offense while already incarcerated (in jail or prison).</li></ul>	<p><b>Q:</b> The defendant was arrested and a PSA was completed. He is in custody and the charges have been modified. Should I update the existing PSA, complete a new one, or do nothing?</p> <p><b>A:</b> A PSA should be updated when charges related to the same incident/offense date are modified. Upgrading, downgrading, adding, or dismissing charges can affect the Current Violent Offense risk factor (and that could also affect the subfactor Current Violent Offense and 20 years or Older. Do not update other parts of the PSA unless you determine that they were scored incorrectly based on the person's status at the time of the arrest.</p>

## Relevant Data

To complete the PSA, you should use only certain data.

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"> <li>• Use only a person’s adult criminal history and adult court appearance history.                             <ul style="list-style-type: none"> <li>○ Do <b>not</b> use a person’s juvenile history.</li> </ul> </li> <li>• Use only traffic and criminal charges that carry a potential penalty of incarceration (such as jail or prison).                             <ul style="list-style-type: none"> <li>○ Do <b>not</b> use civil traffic violations.</li> <li>○ Do <b>not</b> use local ordinance violations.</li> </ul> </li> <li>• Use only administrative data.                             <ul style="list-style-type: none"> <li>○ Do <b>not</b> use any information the person self-reports (such as through an interview).</li> </ul> </li> </ul>	<p><b>Q:</b> Should I complete the PSA if the statewide system or the NCIC criminal history database is down?</p> <p><b>A:</b> No. If the data systems from which the PSA data are drawn are not accessible, do not complete the PSA. Completing the PSA without statewide and NCIC data would result in less predictive results.</p>



## Risk Factor 1: Age at Current Arrest

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"> <li>• Use the person’s age at the time of the arrest.</li> <li>• Do <b>not</b> use the person’s age at the time the alleged offense was committed.</li> <li>• If the arrest date is unknown, use the person’s age at the time you are completing the PSA.</li> </ul> <p><b>Scoring</b></p> <ul style="list-style-type: none"> <li>• Determine whether the person’s age is 23 or older, 21 or 22, or 20 or younger.</li> </ul>	<p><b>Q:</b> What date of birth (DOB) should I use if the defendant has been arrested multiple times and has used multiple DOBs?</p> <p><b>A:</b> Typically, the default DOB is the one listed in the jail’s data system. But if there is clear and convincing evidence that a defendant has an incorrect DOB documented in the jail system for the current arrest, use the DOB from the statewide and/or NCIC criminal history that appears to be most accurate. For instance, consider a scenario in which records show two DOBs for a defendant—suggesting that she is either 21 (DOB in jail system) or 31 (DOB in statewide/NCIC criminal history)—and she has an adult arrest record spanning 10 years. This would be clear and convincing evidence that the more accurate age is 31 and that you should use the corresponding DOB.</p> <p><b>Q:</b> What age do I use when a PSA has been completed, the defendant is arrested again on the same case (such as after failing to appear), and he is older than he was when he was first arrested?</p> <p><b>A:</b> The age at the time of the current arrest is always used to calculate the risk factor Age at Current Arrest. This is true even when someone has been arrested multiple times for the same case. For example, a defendant was 22 years old at the time of the initial arrest. He then failed to appear at a pretrial court appearance and a warrant was issued. When he was arrested on the FTA warrant, he was 23 years old. Because the defendant was 23 at the time of the current arrest (the FTA warrant), you would mark Age at Current Arrest as 23 or older.</p>

## Risk Factor 2: Current Violent Offense

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"> <li>• For purposes of the PSA, an offense is categorized as violent if a person causes or attempts to cause physical injury through use of force or violence against another person.</li> <li>• A charge of attempt (such as attempted murder or attempted robbery), being an accessory before the fact, party to a crime, solicitation, or conspiracy to commit any of these offenses is considered a violent offense.</li> <li>• Negligence and recklessness offenses are usually <b>not</b> categorized as violent offenses.</li> <li>• Use the charge at the time of booking. <ul style="list-style-type: none"> <li>○ Check to see whether any of the defendant’s current charges are included in your jurisdiction’s <b>PSA Violent Offense List</b>.</li> </ul> </li> </ul> <p><b>Scoring</b></p> <ul style="list-style-type: none"> <li>• If any of the current charges are considered violent, mark this risk factor as <b>Yes</b>.</li> </ul>	<p><b>Q:</b> When a defendant is arrested on an FTA warrant for a pre-disposition court event, how do I determine whether there is a Current Violent Offense?</p> <p><b>A:</b> For a bench warrant return, examine the underlying charge for which the warrant was issued. For example, if the defendant failed to appear for a charge of robbery, you would mark the risk factor Current Violent Offense as Yes. If the defendant failed to appear for a charge of theft, you would mark the risk factor as No. Examine all new and underlying charges related to the warrant to determine whether any of them are considered violent for purposes of scoring the PSA.</p> <p><b>Q:</b> When a defendant is arrested on multiple charges, which charge do I look at to determine whether there is a Current Violent Offense?</p> <p><b>A:</b> For this risk factor, look at <b>all</b> of the charges related to the current arrest. If any charge related to the current arrest is considered violent per your jurisdiction’s PSA Violent Offense List, mark this risk factor as Yes. This is true even when the most serious charge (a felony) is nonviolent but a less serious charge (a misdemeanor) is violent. The charge level (misdemeanor or felony) and the charge class are not considered when scoring this risk factor.</p>



## Risk Factor 2a: Current Violent Offense and 20 Years Old or Younger

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"> <li>• If one or more current charges is violent (as defined in risk factor 2) <b>and</b> the defendant was 20 years of age or younger at the time of the arrest (as defined in risk factor 1), mark this risk factor as <b>Yes</b>.</li> <li>• This subfactor is usually auto-scored based on responses for other risk factors.</li> </ul>	

## Risk Factor 3: Pending Charge at the Time of the Offense

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"> <li>• A pending charge is any charge that has not reached final disposition.</li> <li>• It is a pending charge if any of the following are true:               <ul style="list-style-type: none"> <li>○ The person has a pre-disposition court appearance (any hearing after arrest and prior to and including sentencing) scheduled for the charge; or</li> <li>○ The charge has not been disposed of due to the person's failure to appear pending trial or sentencing; or</li> <li>○ The case is in some form of deferred status.</li> </ul> </li> <li>• A charge that is in some form of deferred status is considered a pending charge.               <ul style="list-style-type: none"> <li>○ <i>[Consider inserting the specific names of your jurisdiction's deferred status options.]</i></li> </ul> </li> <li>• <i>Note:</i> If the answer to <b>all</b> of the following questions is Yes, a person has a pending charge:               <ul style="list-style-type: none"> <li>○ Was the person previously cited or arrested for an offense?</li> <li>○ Was the person released and allowed to stay in the community pending trial?</li> <li>○ Did the person allegedly commit the current offense while released and in the</li> </ul> </li> </ul>	<p><b>Q:</b> The defendant had no pending charges when the PSA was completed, but 12 hours later she was served with warrants that the Sheriff then discovered. Should we update the PSA?</p> <p><b>A:</b> Yes. The PSA should be updated if the warrants are for pending charges or the pending charges include a failure to appear. Do not update other parts of the PSA unless you determine that they were scored incorrectly based on the person's status at the time of the arrest.</p> <p><b>Q:</b> If the defendant was arrested on a bench warrant for failure to appear, does that mean there is a pending charge?</p> <p><b>A:</b> Yes. The bench warrant is the current charge. The charge that underlies the bench warrant is the pending charge.</p> <p><b>Q:</b> While being detained for the current charge, the defendant was served with a warrant he had no knowledge about due to lack of notification. Is that considered a pending charge?</p> <p><b>A:</b> No. If the defendant has not previously gone through a release process or been served with a summons for the charge, it is not considered a pending charge.</p> <p><b>Q:</b> We have NCIC data but it's unclear whether the out-of-state offense is a pending charge or a prior conviction. How do we score this?</p> <p><b>A:</b> If you are unable to determine the status of a charge on the out-of-state record, do not include it when scoring the PSA. If it is a recent or serious charge, you may choose to report it to the court and attempt to follow up with the court of record.</p> <p><b>Q:</b> If a person was referred to and is participating in a pre-charge diversion program, does that count as a pending charge?</p> <p><b>A:</b> No. If there was no related criminal complaint, this would not be considered a pending charge.</p> <p><b>Q:</b> The defendant was previously arrested and is participating in a deferred prosecution program. Now that he has been arrested</p>



Definition	Frequently Asked Questions (FAQs)
<p>community pending trial for the first charge?</p> <p><b>Scoring</b></p> <ul style="list-style-type: none"> <li>○ If the person has a pending charge, mark this risk factor as <b>Yes</b>.</li> </ul>	<p>again, it is likely that the deferred prosecution will be converted to a conviction. Is this considered a prior conviction or a pending charge?</p> <p><b>A:</b> It remains a pending charge. The deferred status has not yet been converted and the previous offense is still considered a pending charge.</p>

## Risk factors 4 and 5: Prior Misdemeanor and Felony Convictions

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"> <li>• The <b>prior misdemeanor</b> conviction must be for a traffic or criminal offense defined by statute as a misdemeanor <b>and</b> which carries a potential penalty of incarceration.</li> <li>• The <b>prior felony</b> conviction must be for a traffic or criminal offense defined by statute as a felony <b>and</b> which carries a potential penalty of incarceration.</li> <li>• A conviction includes any guilty plea or finding of guilt.</li> <li>• You <b>must</b> check the person's out-of-state criminal history.</li> <li>• Do <b>not</b> count the following as a prior conviction:             <ul style="list-style-type: none"> <li>○ any case for which the defendant was found not guilty by reason of insanity; or</li> <li>○ any case that was expunged.</li> </ul> </li> </ul> <p><b>Scoring</b></p> <ul style="list-style-type: none"> <li>• If the person has one or more <b>prior misdemeanor convictions</b>, mark risk factor 4 as <b>Yes</b>.</li> <li>• If the person has one or more <b>prior felony convictions</b>, mark risk factor 5 as <b>Yes</b>.</li> </ul>	<p><b>Q:</b> The defendant was previously charged with a misdemeanor or felony and successfully completed a deferred prosecution program. Is that considered a prior conviction?</p> <p><b>A:</b> No. Provided that the prior charge was dismissed upon successful completion of the program, it is not considered a prior conviction.</p> <p><b>Q:</b> The defendant was previously convicted of a misdemeanor or felony offense that is no longer defined in the same way by state statute; instead, the misdemeanor is now considered an infraction [or the felony is now considered a misdemeanor]. Is this still considered a prior conviction?</p> <p><b>A:</b> Yes. The status of the conviction as a misdemeanor or felony is determined according to the date of the conviction, regardless of any subsequent classification changes.</p> <p><b>Q:</b> The defendant was previously convicted of a felony offense. In the same case, he was also convicted of a misdemeanor offense. Does this count as just a prior felony conviction or does it count as both a prior felony conviction and a prior misdemeanor conviction?</p> <p><b>A:</b> The PSA is scored based on each prior charge, not prior cases. Score this person as having both a prior felony conviction <i>and</i> a prior misdemeanor conviction.</p> <p><b>Q:</b> An out-of-state record shows a conviction for an offense, but it does not indicate whether it is a misdemeanor or a felony. How should I count it?</p> <p><b>A:</b> Most state statutes are available online and can be quickly accessed. If the specific code section is provided and the statutes are online for the state in question, you can easily determine whether the conviction was for a misdemeanor or felony. If a general code section is provided and a conviction under that code section can be for either a misdemeanor or felony, the conviction should be counted as a misdemeanor. If no code section is provided or you cannot find the code section for that state online, count the conviction as a misdemeanor <i>unless and only if</i> there is</p>



Definition	Frequently Asked Questions (FAQs)
	no doubt that the conviction would have been a felony if it had been a conviction in your state.

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## Risk Factor 5a: Prior Conviction

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"><li>• If the person has a prior misdemeanor conviction as defined in risk factor 4 <b>or</b> a prior felony conviction as defined in risk factor 5, mark this risk factor as <b>Yes</b>.</li><li>• This subfactor is usually auto-scored based on responses for other risk factors.</li></ul>	



## Risk factor 6: Prior Violent Conviction

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"> <li>• An offense is categorized as violent for purposes of the PSA if a person causes or attempts to cause physical injury through use of force or violence against another person.</li> <li>• A charge of attempt (such as attempted murder or attempted robbery), being an accessory before the fact, party to a crime, solicitation, or conspiracy to commit any of these offenses is considered a violent offense.</li> <li>• Each prior violent conviction is counted separately, even if multiple convictions were related to the same incident and/or were disposed of the same day.</li> <li>• Check to see whether the criminal code of any in-state prior conviction is included in your jurisdiction's PSA Violent Offense List.</li> <li>• You <b>must</b> check the person's out-of-state criminal history.</li> <li>• Do <b>not</b> count the following as a prior conviction: <ul style="list-style-type: none"> <li>○ any case in which the defendant was found not guilty by reason of insanity; or</li> <li>○ any case that was expunged.</li> </ul> </li> </ul> <p><b>Scoring</b></p> <ul style="list-style-type: none"> <li>• Determine whether the number of prior violent convictions the person has is none, one or two, or three or more.</li> </ul>	<p><b>Q:</b> We have NCIC data about a defendant, but it is unclear whether his out-of-state conviction is for a violent offense. How should we score this?</p> <p><b>A:</b> Use the following guidance to help determine whether out-of-state convictions are for violent offenses:</p> <ul style="list-style-type: none"> <li>○ Review the language of the out-of-state criminal code. The easiest way to find this language is through an internet search, using the statutory code as the search query. The language of the code may make it clear that the offense is a violent one.</li> <li>○ Use Nlets (<a href="http://www.nlets.org">www.nlets.org</a>)—a platform for exchanging information about public safety, criminal justice, and law enforcement—to submit inquiries to the jurisdiction where the conviction took place.</li> <li>○ If the prior conviction is from a jurisdiction that has implemented the PSA, you may be able to review that state's PSA Violent Offense List. To obtain a state's PSA Violent Offense List, please contact the PSA Help Desk by logging in at <a href="http://www.psapretrial.org">www.psapretrial.org</a>.</li> <li>○ If it remains unclear whether the conviction is for a violent offense, do <b>not</b> count it as a prior violent conviction. However, this should be investigated further and the answer be made available to score future PSAs.</li> <li>○ If you request information from another state and find out after scoring the PSA that the prior conviction is a violent offense, you should update the PSA.</li> </ul> <p><b>Q:</b> The defendant has an in-state prior conviction for an offense that appears to be violent but the code is not on our PSA violent offense list. How should we score this?</p> <p><b>A:</b> It is possible that the prior conviction offense code may have been repealed or reclassified into another code section on the violent list. If your PSA implementation team did not capture repealed or reclassified codes when it developed the PSA Violent Offense List, use the following guidance to help determine whether a prior conviction is violent or not.</p>

Definition	Frequently Asked Questions (FAQs)
	<ul style="list-style-type: none"> <li>○ Begin by doing an online search of the state statute code sections. The search results may tell you whether the code was repealed or reclassified.</li> <li>○ If the code section was not repealed or reclassified, you should assume that the PSA implementation team considered the charge and decided that it did not belong on the PSA violent offense list. You may wish to inform your supervisor for further consideration at a later time.</li> <li>○ If the code section was repealed or reclassified, the code section you are searching for will not have a charge description. In the absence of a charge description, there will be the date of the repeal and the reclassified code section. If the reclassified code section is on the current PSA violent offense list then the prior conviction is considered violent for purposes of scoring the PSA. Document your findings on the PSA Assessor Worksheet. Inform your supervisor to add the reclassified code section to the "Repealed or Reclassified – PSA Violent Offense List."</li> </ul>



## Risk factor 7: Prior Failure to Appear Pretrial in Past Two Years

## Risk factor 8: Prior Failure to Appear Pretrial Older Than Two Years

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"> <li>• To count a failure to appear when scoring these risk factors, it must be for a pre-disposition court appearance for a traffic or criminal offense that carries a potential penalty of incarceration (jail or prison) and for which the court took an action, such as issuing a bench warrant or capias. <i>Note:</i> A pre-disposition court appearance is any hearing after arrest and prior to and including sentencing.</li> <li>• When scoring the PSA, do not count post-sentence failures to appear, such as an FTA at a hearing on a violation of probation supervision.</li> <li>• Do <b>not</b> count the failure to appear if:             <ul style="list-style-type: none"> <li>○ There is confirmation that the defendant was in custody (jail or prison) when the failure to appear occurred; or</li> <li>○ The warrant or capias is issued and withdrawn on the same day.</li> </ul> </li> <li>• A failure to appear for a single court appearance is counted once, regardless of the number of charges or warrants issued related to that appearance.</li> <li>• For risk factor 7, the failure to appear must have occurred within two years of the current arrest date. For risk factor 8, the failure to appear must have occurred more than two years before the current arrest date. If you do not know the current arrest date, use the date the PSA is completed.</li> </ul>	<p><b>Q:</b> It is difficult to score the failure to appear risk factors because our record system does not indicate the reason why a bench warrant or capias was issued. It could be for a failure to appear in court for either a pre- or post-disposition event or a failure to comply with other terms set by the court. How do we score the PSA?</p> <p><b>A:</b> If the reason for the bench warrant or capias is not captured in the data record, the staff scoring the assessment will have to take the following steps:</p> <ul style="list-style-type: none"> <li>• First, staff will have to manually compare the date of the bench warrant or capias with the conviction date of the underlying charge and determine whether it is a pre- or post-disposition event. Only pre-disposition events qualify as a failure to appear for purposes of the PSA risk factors.</li> <li>• Second, staff will need to determine if the warrant/capias was issued for a failure to appear or for the failure to comply with other terms set by the court. This can be determined by examining the court record and identifying a scheduled court appearance that coincides with the issuance of the warrant/capias.</li> </ul> <p><b>Q:</b> The court records indicate that a defendant failed to appear at a pre-disposition court event, but those records do not indicate that the court took any action. Does this still count as a failure to appear?</p> <p><b>A:</b> No. For the purposes of the PSA, a failure to appear includes any pre-disposition court appearance for which the defendant failed to appear <i>and</i> the court took an action such as issuing a warrant or capias.</p> <p><b>Q:</b> Do I count all warrants for failure to appear as Prior Failures to Appear Pretrial?</p> <p><b>A:</b> No. Count only the warrants for pre-disposition court appearances for traffic or criminal offenses that carry a potential penalty of incarceration. Do <b>not</b> count post-disposition court appearances such as hearings for nonpayment/failure to pay, violations of supervision, and violations of other court-ordered</p>

Definition	Frequently Asked Questions (FAQs)
<p><b>Scoring</b></p> <ul style="list-style-type: none"> <li>For risk factor 7, determine whether the number of the person’s pretrial failures to appear in the past two years is none, one, or two or more.</li> <li>For risk factor 8, if the defendant has had one or more pretrial failures to appear more than two years ago, mark this risk factor as <b>Yes</b>.</li> </ul>	<p>obligations. And do <b>not</b> count failures to appear at civil traffic or local ordinance hearings.</p> <p><b>Q:</b> The defendant did not appear pretrial, but the records indicate that he was in prison at the time. Does that count?</p> <p><b>A:</b> No. A failure to appear pretrial is not counted if there is confirmation that the person was in custody (such as jail or prison) when the FTA occurred.</p> <p><b>Q:</b> The records indicate that the defendant failed to appear pretrial, but he told me during an interview that he was in the hospital at the time of the court appearance and was physically unable to attend. Is the failure to appear still counted?</p> <p><b>A:</b> Yes, it is still counted as a failure to appear. The only exception is being in custody (such as in jail or prison). This information can be brought to the judge’s attention.</p> <p><b>Q:</b> The defendant failed to appear on a case that included two felony charges. Does that count as two failures to appear?</p> <p><b>A:</b> No. This risk factor is counted <b>per court appearance</b>, not per charge. In this scenario, the defendant would have only one failure to appear.</p> <p><b>Q:</b> Every judge has a different practice when it comes to failures to appear. Some judges immediately issue a bench warrant, even if the defendant is appearing at the same time in the court next door. Other judges give defendants a 24-hour grace period before they issue a warrant. Does the PSA take this into account?</p> <p><b>A:</b> If a bench warrant was issued and then canceled, withdrawn, or quashed <b>on the same day</b>, it should not be counted. Other than that, count all failures to appear for which a bench warrant was issued. If someone has a failure to appear on his record and extenuating circumstances warrant consideration, this information can be brought to the judge’s attention.</p>



## Risk factor 9: Prior Sentence to Incarceration

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"> <li>• The prior sentence to incarceration—either to jail or prison—must be for a period of 14 or more days.</li> <li>• This includes incarceration as a result of a resentencing (such as for a probation revocation, and/or imposition of a suspended or stayed sentence).</li> <li>• The sentence must be imposed by a judicial officer. It does <b>not</b> include any time spent in jail by order of a probation or community supervision officer.</li> <li>• Count the prior sentence to incarceration if either of the following is true:               <ul style="list-style-type: none"> <li>○ The court activates a suspended or stayed sentence of 14 or more days; or</li> <li>○ The court revokes a person’s probation and orders the defendant to 14 or more days of incarceration.</li> </ul> </li> <li>• Do <b>not</b> count the prior sentence to incarceration if either of the following is true:               <ul style="list-style-type: none"> <li>○ The sentence of incarceration is in lieu of payment of fines or costs; or</li> <li>○ The judge stayed or suspended the sentence and placed the defendant on probation.</li> </ul> </li> </ul>	<p><b>Q:</b> The defendant was previously sentenced to 90 days in jail but received “credit for time served.” Does this count as a prior sentence to incarceration?</p> <p><b>A:</b> Yes. Count a sentence that is “credit for time served,” provided that the sentence was for 14 days or more. Look for a sentence, not whether the person served the time before or after the sentence was imposed.</p> <p><b>Q:</b> The defendant was previously sentenced to two years in prison, but the sentence was suspended and the defendant was placed on probation. Does this count as a prior sentence to incarceration?</p> <p><b>A:</b> No. A sentence that the court stays or suspends and does not result in the person serving 14 or more days is not considered a sentence to incarceration.</p> <p><b>Q:</b> The defendant was previously sentenced to 20 days in jail, but it appears that he received “good time” credit and was released after serving 10 days in jail. Does this count as a prior sentence to incarceration of 14 or more days?</p> <p><b>A:</b> Yes, it is counted as a prior incarceration. The length of the imposed sentence is the pertinent factor, not the amount of time served.</p> <p><b>Q:</b> The defendant was sentenced for several charges on the same date, and although his total sentence amounted to more than 14 days, each sentence was shorter than 14 days. Does that count?</p> <p><b>A:</b> No. The pertinent factor is whether a court sentenced a person to 14 days or more on a single sentence, not if a combination of multiple sentences resulted in a sentence of 14 days or more.</p> <p><b>Q:</b> The defendant was sentenced to serve 20 days in jail and was allowed to serve it over a period of 10 weekends. Does that count as a sentence of 14 days or more?</p> <p><b>A:</b> Yes. A sentence of 14 days or more counts even if the days are not served consecutively.</p>
<p><b>Scoring</b></p>	

Definition	Frequently Asked Questions (FAQs)
<ul style="list-style-type: none"><li>• If there is a prior sentence to incarceration, mark this risk factor as <b>Yes</b>.</li></ul>	





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## List of References

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This document (List of References) is used with the Guide to Assessor Training when implementing the Public Safety Assessment. See [psapretrial.org](http://psapretrial.org) for more information and a list of all implementation guides.

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## Buncombe County Release Conditions Matrix:

Buncombe County uses a locally validated actuarial tool, the Public Safety Assessment (PSA), which “examines nine factors based on a person’s age, current charge, and criminal history to produce two risk scores: one that predicts risk of failure to appear for future court appearances, and a second that predicts risk of committing a new crime if released before trial. The PSA calculates its scores on a scale of one to six, with higher scores indicating a higher level of risk. The risk assessment also indicates an elevated risk of committing a new violent crime.”<sup>1</sup> When a judicial official grants release, the Matrix serves as a guide to setting release conditions consistent with the statutory presumption of release with non-secured conditions G.S. § 15A-534 (b). In considering the presumptive release conditions in this Matrix, the court is encouraged to assess the totality of circumstances to decide appropriate release conditions in each individual case including additional assessments that may be available in some instances, for example in domestic violence cases.

Buncombe County Release Conditions Matrix						
New Criminal Activity (NCA) Scaled Score						
Failure to Appear (FTA) Scaled Score	1 (90% No New Criminal Activity)	2 (85% No New Criminal Activity)	3 (77% No New Criminal Activity)	4 (70% No New Criminal Activity)	5 (52% No New Criminal Activity)	6 (45% No New Criminal Activity)
1 (90% Appear to Court)	WPA or Unsecured (no pretrial supervision)	WPA or Unsecured (no pretrial supervision)				
2 (85% Appear to Court)	WPA or Unsecured (no pretrial supervision)	WPA or Unsecured (no pretrial supervision)	WPA or Unsecured (no pretrial supervision)	Unsecured or Administrative	Standard	
3 (80% Appear to Court)		WPA or Unsecured (no pretrial supervision)	WPA or Unsecured (no pretrial supervision)	Unsecured or Administrative	Standard	Standard or Intensive
4 (69% Appear to Court)		WPA or Unsecured (no pretrial supervision)	Unsecured or Administrative	Administrative or Standard	Standard	Intensive
5 (65% Appear to Court)		WPA or Unsecured (no pretrial supervision)	Unsecured or Administrative	Administrative or Standard	Standard or Intensive	Intensive
6 (60% Appear to Court)				Standard	Standard or Intensive	Intensive

**Additional Notes:**

1. The presence of a violence flag indicates a 92.8% chance of no new violent activity, and a 7.2% chance of future violent criminal during the pretrial phase of the court proceeding.
2. When the judicial official refers a defendant, the Pretrial Services Agency will monitor the defendant in accordance with the supervision level listed in this Release Conditions Matrix. Where the Matrix lists two levels of supervision, the Pretrial Services Agency will monitor the defendant at the lower level listed unless otherwise ordered.
3. See Buncombe County’s Pretrial Services’ Directives for a full description of supervision levels and response to compliance and non-compliance protocols.

<sup>1</sup> Psapretrial.org



## Buncombe County Release Conditions Matrix

		New Criminal Activity (NCA) Scaled Score					
Failure to Appear (FTA) Scaled Score		1	2	3	4	5	6
		(90% No New Criminal Activity)	(85% No New Criminal Activity)	(77% No New Criminal Activity)	(70% No New Criminal Activity)	(52% No New Criminal Activity)	(45% No New Criminal Activity)
<b>1</b>	<b>WPA or Unsecured</b> (no pretrial supervision)	<b>WPA or Unsecured</b> (no pretrial supervision)	<b>WPA or Unsecured</b> (no pretrial supervision)	<b>WPA or Unsecured</b> (no pretrial supervision)	<b>Unsecured or Administrative</b>	<b>Standard</b>	
<b>2</b>	<b>WPA or Unsecured</b> (no pretrial supervision)	<b>WPA or Unsecured</b> (no pretrial supervision)	<b>WPA or Unsecured</b> (no pretrial supervision)	<b>WPA or Unsecured</b> (no pretrial supervision)	<b>Unsecured or Administrative</b>	<b>Standard</b>	
<b>3</b>			<b>WPA or Unsecured</b> (no pretrial supervision)	<b>WPA or Unsecured</b> (no pretrial supervision)	<b>Unsecured or Administrative</b>	<b>Standard</b>	<b>Standard or Intensive</b>
<b>4</b>			<b>WPA or Unsecured</b> (no pretrial supervision)	<b>Unsecured or Administrative</b>	<b>Administrative or Standard</b>	<b>Standard</b>	<b>Intensive</b>
<b>5</b>			<b>WPA or Unsecured</b> (no pretrial supervision)	<b>Unsecured or Administrative</b>	<b>Administrative or Standard</b>	<b>Standard or Intensive</b>	<b>Intensive</b>
<b>6</b>					<b>Standard</b>	<b>Standard or Intensive</b>	<b>Intensive</b>

WPA - Written Promise to Appear

v.2 December 2019

Note: If there is a violence flag present on the PSA report, the level of pretrial supervision should be bumped up to the next level.



## Release Activities Conditions

Release Activities and Conditions	Pretrial Release Level		
	Administrative	Standard	Intensive
Weekly Automated Check-In	Yes	Yes	
Court Date Reminders	Yes	Yes	Yes
In-Person Check in after Court		Yes	Yes
Weekly Live Call-In			Yes
Field Supervision			Yes
Other Case Specific Conditions		If ordered by the court	If ordered by the court



NORTH CAROLINA STATUTES – CHAPTER 14: CRIMINAL LAW		
STATUTE	DESCRIPTION	CLASS
<b>Article 3A</b>	<b>Terrorism</b>	
14-10.1	Terrorism	One class higher
<b>Article 5A</b>	<b>Endangering Executive and Legislative, and Court Officers</b>	
14-16.6	Assault on Executive, Legislative, or Court Officer	F-F, I
<b>Article 6</b>	<b>Homicide</b>	
14-17	Murder in the First Degree and Second Degree Defined; Punishment	F-A, B1, B2
14-18	Punishment for Manslaughter <i>Voluntary, Involuntary</i>	F-D, F
<b>Article 6A</b>	<b>Unborn Victims</b>	
14-23.2	Murder of an Unborn Child; Penalty	F-A, B1, B2
14-23.3	Voluntary Manslaughter of an Unborn Child; Penalty	F-D
14-23.4	Involuntary Manslaughter of an Unborn Child; Penalty	F-F
14-23.5	Assault Inflicting Serious Bodily Injury on an Unborn Child; Penalty	F-F
14-23.6	Battery on an Unborn Child	M-A1
<b>Article 7A</b>	<b>Rape and Other Sex Offenses</b>	
14-27.2	First-degree Rape	Re-codified
14-27.2A	Rape of a Child; Adult Offender	Re-codified
14-27.3	Second-degree Rape	Re-codified
14-27.4	First-degree Sexual Offense	Re-codified
14-27.4A	Sexual Offense with a Child; Adult Offender	Re-codified
14-27.5	Second-degree Sexual Offense	Re-codified
14-27.5A	Sexual Battery	Re-codified
14-27.7	Intercourse and Sexual Offenses with Certain Victims	Re-codified
14-27.7A	Statutory Rape or Sexual Offense of Person who is 13, 14, or 15 Years Old	Re-codified
<b>Article 7B</b>	<b>Rape and Other Sex Offenses</b>	
14-27.21	First-degree Forcible Rape	F-B1
14-27.22	Second-degree Forcible Rape	F-C
14-27.23	Statutory Rape of a Child by an Adult	F-B1
14-27.24	First-degree Statutory Rape	F-B1
14-27.25	Statutory Rape of Person who is 15 Years of Age or Younger	F-C, B1
14-27.26	First-degree Forcible Sexual Offense	F-B1
14-27.27	Second-degree Forcible Sexual Offense	F-C
14-27.28	Statutory Sexual Offense with a Child by an Adult	F-B1
14-27.29	First-degree Statutory Sexual Offense	F-B1
14-27.30	Statutory Sexual Offense with a Person who is 15 Years of Age or Younger	F-C
14-27.31	Sexual Activity by a Substitute Parent or Custodian	F-E
14-27.32	Sexual Activity with a Student	F-G, I
14-27.33	Sexual Battery	M-A1
<b>Article 8</b>	<b>Assaults</b>	
14-28	Malicious Castration	F-C
14-29	Castration or Other Maiming Without Malice Aforethought	F-E
14-30	Malicious Maiming	F-C
14-30.1	Malicious Throwing of Corrosive Acid or Alkali	F-E
14-31	Maliciously Assaulting in a Secret Manner	F-E

NORTH CAROLINA STATUTES – CHAPTER 14: CRIMINAL LAW		
STATUTE	DESCRIPTION	CLASS
14-32	Felonious Assault with Deadly Weapon with Intent to Kill or Inflicting Serious Injury; Punishments	F-C, E
14-32.1	Assaults on Handicapped Persons; Punishments	F-F; M-A1
14-32.2	Patient Abuse and Neglect; Punishments	F-C, E, F, H
14-32.3	Domestic Abuse, Neglect, and Exploitation of Disabled or Elder Adults	F-F, G, H, I
14-32.4	Assault Inflicting Serious Bodily Injury; Strangulation; Penalties	F-F, H
14-33	Misdemeanor Assaults, Batteries, and Affrays, Simple and Aggravated; Punishments	M-A1, 1, 2
14-33.2	Habitual Misdemeanor Assault	F-H
14-34	Assaulting by Pointing Gun	M-A1
14-34.1	Discharging Certain Barreled Weapons or a Firearm into Occupied Property	F-C, D, E
14-34.10	Discharge Firearm Within Enclosure to Incite Fear	F-F
14-34.2	Assault with a Firearm or Other Deadly Weapon Upon Governmental Officers or Employees, Company Police Officers, or Campus Police Officers	F-F
14-34.4	Adulterated or Misbranded Food, Drugs, or Cosmetics; Intent to Cause Serious Injury or Death; Intent to Extort	F-C
14-34.5	Assault with a Firearm on a Law Enforcement, Probation, or Parole Officer or on a Member of the North Carolina National Guard, or on a Person Employed at a State or Local Detention Facility	F-E
14-34.6	Assault or Affray on a Firefighter, an Emergency Medical Technician, Medical Responder, and Hospital Personnel	F-F, H, I
14-34.7	Certain Assaults on a Law Enforcement, Probation, or Parole Officer or on a Member of the North Carolina National Guard, or on a Person Employed at a State or Local Detention Facility; Penalty	F-F, I
14-34.9	Discharging a Firearm from Within an Enclosure	F-E
<b>Article 10</b>	<b>Kidnapping and Abduction</b>	
14-39	Kidnapping	F-C, E
14-41	Abduction of Children	F-F
14-43.3	Felonious Restraint	F-F
<b>Article 10A</b>	<b>Human Trafficking</b>	
14-43.11	Human Trafficking	F-C, F
14-43.12	Involuntary Servitude	F-C, F
14-43.13	Sexual Servitude – Child Victim and Adult Victim	F-C, D
<b>Article 13</b>	<b>Malicious Injury of Damage by Use of Explosive or Incendiary Device or Material</b>	
14-49(a)	Malicious Use of Explosive or Incendiary; Punishment	F-D
14-49.1	Malicious Damage of Occupied Property by Use of Explosive or Incendiary; Punishment	F-D
<b>Article 14</b>	<b>Burglary and Other Housebreakings</b>	
14-51	First Degree Burglary	F-D
<b>Article 15</b>	<b>Arson and Other Burnings</b>	
14-58	Punishment for Arson <i>First Degree</i>	F-D
14-58.2	Burning of Mobile Home, Manufactured-Type House or Recreational Trailer Home	F-D



NORTH CAROLINA STATUTES – CHAPTER 14: CRIMINAL LAW		
STATUTE	DESCRIPTION	CLASS
14-69.3	Arson or Other Unlawful Burning that Results in Serious Injury to a Firefighter or Emergency Medical Technician	F-E
<b>Article 17</b>	<b>Robbery</b>	
14-87	Robbery with Firearms or Other Dangerous Weapons	F-D
14-87.1	Punishment for Common-Law Robbery	F-G
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