



Evaluation of the Pretrial Services Program Administered by the Broward Sheriff's Office

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**Office of the County Auditor
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Executive Summary

This report presents the results of our evaluation of the Pretrial Services Program administered by the Broward Sheriff's Office. On January 27, 2009, the Board of County Commissioners directed the County Auditor to:

- Review Pretrial Services Program expenditures,
- Determine the feasibility of instituting fees to help offset Program costs, and
- Assess the impact of County Ordinance No. 2009-01

In addition, our evaluation addresses the following:

- The Program's impact in controlling jail population growth,
- The effects of the Program's expansion since January 2008,
- The effectiveness of Program services, and
- The status of implementation of new statutory reporting requirements

Review of Program expenditures (See pages 9 to 12)

- Program spending has nearly doubled since Fiscal Year 2005—from actual Fiscal Year 2005 expenditures of \$2.3 million to \$4.5 million projected for Fiscal Year 2009, partly due to the January 2008 Program expansion approved by the Board of County Commissioners;
- The Program's standard supervision services costs are 150% higher than Palm Beach—the Program's average daily per client cost is \$1.90 compared to Palm Beach's \$0.76, mainly due to higher level of supervision services provided by Program staff compared to Palm Beach;
- Program standard supervision staff salaries are higher than peers—the Program's average salary and benefits for 13 FTE staff is \$75,776, whereas Miami Dade's average for 7 FTE staff is \$52,850 (30.3% lower), and Palm Beach's average for 6 FTE staff is \$54,208 (28.5% lower);
- The Program's average standard supervision client to staff ratio is 111.5:1, indicating appropriate staffing levels; and
- Program managers have taken proactive steps to reduce Program costs, including reducing electronic monitoring costs through a 2007 contract rebid, intentionally keeping staff positions vacant, and using technology to achieve efficiencies.

Feasibility of instituting fees (See pages 12 to 13)

- Judges and pretrial experts we interviewed have highly divergent opinions as to whether the Program should charge fees for supervision services. A potential advantage cited by these individuals was cost recovery; potential disadvantages included that the Program should not be punitive, that charging fees would be "inappropriate" and "unconstitutional," and that collecting fees may be difficult and costly to administer.

Impact of County Ordinance No. 2009-01 (See pages 13 to 14)

- Judges have mixed opinions about the County’s Pretrial Release Policy:
 - Four of ten judges responding to our survey believe that a policy is unnecessary because judges have the ultimate discretion in making pretrial release decisions; and
 - The other six judges had generally favorable opinions about the County Policy, indicating that some provisions of the County’s existing policy are “reasonable” and cited at least one provision they believe should be included in the County Policy.

Program’s impact in controlling jail population growth (See pages 15 to 20)

- Slowing the County jail’s population growth while protecting public safety can be a difficult but worthy goal; we found that:
 - The three pretrial release methods (i.e., release on recognizance, posting bond, and the Pretrial Services Program) account for 60% of all inmate releases, thus helping to reduce the County’s jail population at a daily cost of \$109 per inmate;
 - The share of inmates released to the Program is holding steady at around 8%;
 - Judges like the option of releasing inmates to the Program with a bond; and
 - Two specific provisions of a September 2008 initiative should help to further reduce the County jail’s population: (1) more inmates released to the Program at First Appearance, thus spending less time in jail achieving cost savings—25% of all inmates released at First Appearance in Fiscal Year 2007 compared to 68% for the first six months of Fiscal Year 2009, and (2) for the period of January 1, to March 31, 2009, 35 inmates were released to the Pretrial Services Program as a result of the ‘Second Look’ procedure.

Effects of Program expansion (See pages 20 to 23)

- Since January 2008, when the Board of County Commissioners adopted a resolution expanding the Program:
 - Program expenditures increased by 40%;
 - The number of Program staff grew by 70%;
 - The average daily supervised client population went up by 35%;
 - The use of electronic monitoring has gone up by 31%; and
 - The Program has implemented specialized mental health supervision services, which serve an average daily caseload of 170 mentally ill clients, meets industry best practices and recent research indicates helps to reduce recidivism and improve clinical outcomes.
- However, a recent jump in Program clients’ Average Length of Stay (ALOS) will negatively impact the Program’s ability to maximize limited resources; therefore, we recommend that the Board of County Commissioners request the Public Safety Coordinating Council to examine the reasons for recent ALOS increases and to identify and implement feasible remedies.

Program effectiveness (See pages 24 to 32)

- We evaluated the Program’s effectiveness based on its two primary functions: (1) providing “complete, accurate and non-adversarial” information to assist judges in making pretrial release decisions, and (2) supervising Program clients to ensure that “mandated conditions and court ordered special requirements are satisfied;” we found that:
 - While the Program’s risk assessment tool (COMPAS) appears to meet best practice, neither the information nor risk score obtained through its use has been consistently provided to First Appearance judges, who indicated openness to exploring its use. Program managers said they expect to fully implement COMPAS in May 2009. Therefore, we recommend that the Board of County Commissioners request the Public Safety Coordinating Council to oversee COMPAS’ implementation and to validate its use within a year of its implementation.
 - Judges responding to our survey indicated great satisfaction with supervision services; when asked to rate the effectiveness of supervision services on a scale of 1 to 10 (with 1 being “very ineffective” and 10 being “very effective”), nine of ten judges responded, providing responses ranging from “8+” to 10, with an average rating of 9.2.
 - The Program’s performance on commonly used indicators of the success of supervision services compares favorably to peers. For example, the Program generally has better Failure to Appear and Rearrest Rates than Miami Dade and Palm Beach counties.
 - The Program’s Successful Completion Rate has declined slightly in the past few years, but Program managers had not conducted any analysis to identify causes as of April 2009. Therefore, we recommend that the Board of County Commissioners request the Public Safety Coordinating Council to oversee an analysis to identify causes of the declining Successful Completion Rate and to implement feasible solutions.
 - Slightly over one-half of the Program’s successful completions are found guilty, and 81.2% of them are sentenced to Probation or Community Control.

Implementation of New Statutory Reporting Requirements (See pages 32 to 33)

- As of April 2009, the Program was mostly but not yet fully compliant with the reporting requirements of Chapter 2008-224, *Laws of Florida*. Program managers indicated that system enhancements estimated to cost \$103,785 will be needed; these additional funds are not included in the Program’s Fiscal Year 2009 budget or requested in the Fiscal Year 2010 budget.

Purpose and Scope

At its January 27, 2009 meeting, the Board of County Commissioners directed the County Auditor to evaluate the Pretrial Services Program administered by the Broward Sheriff's Office (BSO). Specifically, we were directed to (1) review Program expenditures, (2) determine the feasibility of instituting fees to help offset Program costs, and (3) assess the impact of County Ordinance No. 2009-01.¹ To accomplish our objectives, we:

- Reviewed pertinent performance measurement, general management and criminal justice literature;
- Analyzed available performance data for the Pretrial Services Program;
- Analyzed information provided by Program managers relative to specific management processes and controls;
- Reviewed relevant Pretrial Services Program records and documents;
- Reviewed applicable Florida Statutes, Broward County Ordinances and Administrative Code pertaining to pretrial release services;
- Interviewed appropriate BSO managers and employees;
- Interviewed criminal justice and pretrial experts such as pretrial and corrections professional association officials, researchers, and university professors;
- Interviewed representatives of the bail bonds industry;
- Interviewed pretrial program officials in Miami Dade and Palm Beach counties and obtained available performance reports and other program documents; and
- Surveyed judges of the 17th judicial circuit to obtain their opinions about Program operations and outcomes

Background

The U.S. Constitution, case law, and state and federal statutes grant certain “inalienable rights” to accused persons awaiting trial, including:

- Presumption of innocence,
- Right to counsel,
- Right against self-incrimination,
- Right to due process of law,
- Right to bail that is not excessive, and
- Right to a fair and speedy trial

¹ Broward County Ordinance No. 2009-01, approved by the Board of County Commissioners on January 27, 2009, created Sections 10-127 through 10-130 to Article VII of Chapter 10, Broward County Code of Ordinances, establishing the “Broward County Pretrial Release Policy.”

Florida's Constitution specifies that every person charged with a crime or violation of municipal or county ordinance (except for capital offenses or offenses punishable by life imprisonment and for which the proof of guilt is evident or the presumption is great) shall be entitled to pretrial release on reasonable conditions. There are three general types of pretrial release:

- **Release on recognizance (ROR):** This form of release allows defendants who are deemed to be at low risk of absconding or committing a crime while awaiting trial to be released from jail without posting a bond or being supervised; the defendant is required to provide a promise to appear in court, signed or unsigned, to secure their release pending trial. ROR affords defendants the least restrictive form of release, which is consistent with Florida Statutes, and lessens the use of public funds.
- **Pretrial release programs:** This form of release involves defendants being actively supervised through phone contacts, office and field visits, and/or electronic monitoring until their case is disposed or supervision is revoked. Under supervised release, defendants agree to comply with specific conditions such as regular reporting, no contact with a victim, or drug use monitoring. Judges in some circuits may also require them to post a bond as a condition of release.
- **Posting bond:** This form of release requires defendants to post a cash bond to the court or a surety bond through a private bail bondsman. For a cash bond, the defendant posts the entire amount with the Sheriff's Office. If the defendant shows up for all court appearances, the entire amount is returned to the defendants; if the defendant absconds, funds are forfeited to the court. For a surety bond, the defendant pays a bondsman a non-refundable fee equaling 10% of the bond prior to release and assigns assets equaling 90% of the bond to the bondsman. If the defendant does not appear in court, the bondsman is responsible for paying the entire amount of the bond to the court and the defendant forfeits the 90% asset to the bondsman.

According to the ABA Criminal Justice Standards on Pretrial Release, the purposes of the pretrial release decision include "providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference."

History of Pretrial Services Programs

In 1961, the Manhattan Bail Project became the nation's first pretrial services program. According to the National Institute of Justice, the emergence of pretrial services agencies was the result of two primary factors: (1) perceived inequities of the traditional money bail system, and (2) judicial officers' needs for reliable information to make bail decisions. Today, pretrial services agencies operate in more than 300 U.S. counties and in all 94 federal judicial districts.

According to the Bureau of Justice Statistics, pretrial services agencies operate in a variety of administrative settings, including probation offices, courts, sheriff offices, independent agencies,

and private nonprofit entities. Regardless of their administrative setting, pretrial services agencies have two primary functions:

- **Information gathering and assessment.** Staff conducts a pretrial investigation to assist judicial officers in making release decisions. Information is gathered through voluntary interviews and record checks; collected information typically includes residency, employment status, community ties, criminal record, court appearance record, criminal justice status, mental health status and indications of substance abuse. In most cases, agencies use a risk assessment tool to guide the release decision.
- **Supervision and follow-up.** Staff monitors a defendant's compliance with release conditions, such as testing for drug or alcohol use. A primary purpose of supervision is to ensure court appearance and compliance with special conditions such as no contact with a victim, no possession of firearms, and no illicit or alcohol use.

In the 1980's the role of Pretrial Services Programs grew to assisting with an ever-increasing jail overcrowding problem. Because local jails primarily serve as pretrial holding facilities, these programs were viewed as a tool to release defendants. Expansion of these programs also resulted from laws such as the Comprehensive Crime Control Act of 1984 and the Bail Reform Act of 1984, which required judges to take into account community safety when making pretrial release decisions. Judges needed entities to supervise special conditions on defendants they deemed necessary for public safety that other forms of release, such as ROR and posting a bond, did not provide.

Broward's Pretrial Services Program

Broward County's pretrial services program was created during Sheriff Robert Butterworth's administration (1979 to 1982). During that time, the jail population had a high annual growth rate of between 8% and 14%. Under Sheriff Ron Cochran (1993 to 1997), the program was transferred to Broward County government, but was transferred back to the Broward County Sheriff's Office in 2000 and has been administered by BSO ever since. The program consists of two main services: interview and investigation, and supervision.

- **Interview and Investigation:** Provides "complete, accurate and non-adversarial information" to judges with the intent of improving the "release/detention process in compliance with Florida Statutes and the Rules of Criminal Procedures." Specialists conduct personal interviews, verify and confirm background information through various databases, perform a risk assessment using an automated tool, and provide judges with relevant information to assist in release and detention decisions. In FY 2008, the program implemented a new automated risk assessment tool; staff conducted interviews and investigations for 17,862 defendants.

- Supervision:** Provides two levels of supervision for defendants who are granted release, standard supervision and a more intensive form of supervision, electronic monitoring/house arrest. Standard Supervision consists of monitoring the activities of felony and misdemeanor defendants through phone calls, office and home visits, and court reminder letters. Electronic Monitoring/House Arrest defendants are placed on curfew and not allowed to leave the confines of their residence unless authorized by Program staff.² Defendants are monitored 24 hours per day using various methods such as radio frequency tracking, remote alcohol testing and drive-by monitoring, and active and passive GPS. A total of 5,582 defendants were court ordered into the Program during FY 2008.

Exhibit 1 below summarizes the program’s Fiscal Year 2009 operating budget. As shown, Pretrial Services has a total operating budget of \$6 million and 56 full-time equivalent (FTE) positions, including \$2,037,966 for supervision equipment.³ However, Program managers estimate actual total Fiscal Year 2009 expenditures will be \$4.5 million and supervision equipment expenditures will be \$926,000.

Exhibit 1

Pretrial Services’ Fiscal Year 2009 operating budget is \$6 million, with 56 FTE positions

Unit	# of FTEs	Operating Budget
Interview and Investigation	16	\$1,071,145
Supervision	31	\$2,192,582
Management/Support	9	\$710,733
Supervision Equipment	N/A	\$2,037,966
Total	56	\$6,012,426

Source: Pretrial Services Program

Pretrial Services Program Clients

In Fiscal Year 2008, 5,582 defendants were ordered into the Pretrial Services Program, of which 1,487 (26.7%) also had a condition of bond ordered by the court.⁴

In Fiscal Year 2008, more than one in five Program clients was on electronic monitoring. For example, of the average daily population of 2,056 supervised clients in Fiscal Year 2008, 452 defendants (22%) were electronically monitored (see Exhibit 2 on the next page).

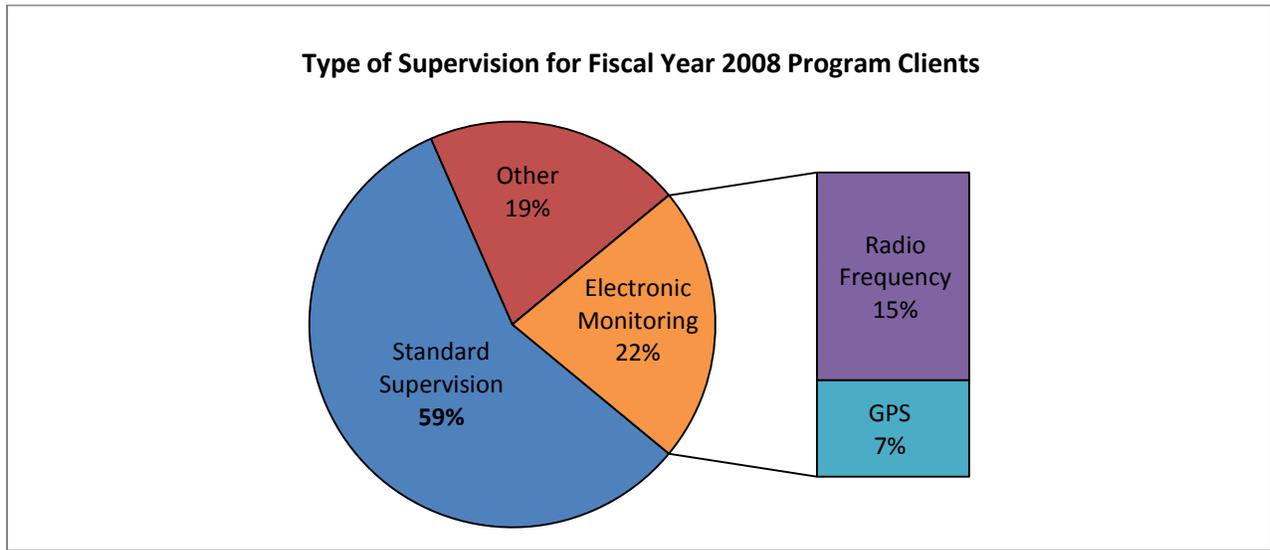
² Equipment used by the Program includes radio frequency monitors, GPS monitors, cellular monitors, alcohol breath sobriety, and GroupGuard monitors.

³ This figure includes \$1.3 million for GPS equipment and \$723,986 for RF equipment.

⁴ For the first six months of Fiscal Year 2009, 44.4% of new Program clients were ordered into the Program with a surety bond.

Exhibit 2

In Fiscal Year 2008, 22% of Program-supervised clients were electronically monitored⁵



Source: Pretrial Services Program

Exhibit 3 shows a basic demographic breakdown of the 2,799 clients in the Pretrial Services Program as of April 13, 2009.

Exhibit 3

Most recent Program clients are males under the age of 40

Demographic	# of Clients	% of Clients
<u>Gender</u>		
Male	2,190	78.2%
Female	609	21.8%
<u>Race/Ethnicity</u>		
Black, non-Hispanic	997	35.6%
White, non-Hispanic	963	34.4%
Hispanic, any race	231	8.2%
Other, non-Hispanic	66	2.4%
Unknown/Unrecorded	542	19.4%
<u>Age at Arrest</u>		
20 or younger	204	7.3%
21-29	880	31.4%
30-39	432	15.4%
40-49	444	15.9%
50 or older	312	11.1%
Unknown/Unrecorded	527	18.8%

Source: Pretrial Services Program

⁵ "Other" includes defendants supervised for the felony Drug Court, those ordered to Pretrial but remaining in custody, and those in Day Reporting and Reentry Division, for which Program staff installs electronic monitor equipment

Review of Program Expenditures

Our analysis of Program expenditures answers the following questions:

- At what rate has Program spending gone up in the past several years?
- How does the cost of providing supervision services compare to peers?
- Is the Program's supervision staffing level appropriate and efficient?
- Has the Program taken reasonable actions to keep Program spending down?

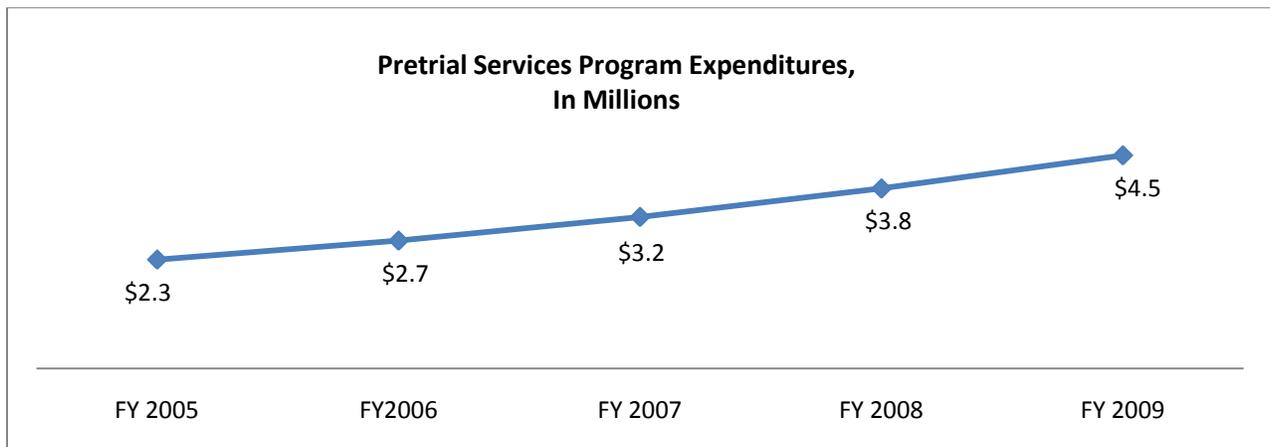
Program Spending has nearly doubled since Fiscal Year 2005

Although the Program's Fiscal Year 2009 operating budget is \$6 million, Program managers project actual Fiscal Year 2009 expenditures will be \$4.5 million, or 25.2% less than the budgeted amount. Program managers anticipate Fiscal Year 2009 spending will be less than budgeted primarily due to intentionally leaving vacant staff positions and lower-than-expected electronic monitoring costs.⁶

Assuming actual Fiscal Year 2009 expenditures are \$4.5 million, Program expenditures will increase by 94.3% from its Fiscal Year 2005 level (see Exhibit 4). This increase can be partially attributed to the Program expansion approved by the Board of County Commissioners in January 2008. (This report includes an assessment of the effects of Program expansion, see pages 15 to 20.)

Exhibit 4

Program expenditures are projected to increase by 94.3% from Fiscal Year 2005 through the end of Fiscal Year 2009



Source: Pretrial Services Program

⁶ As of April 2009, the Program had not filled 4 of 56 budgeted FTE positions and Program managers estimated Fiscal Year 2009 expenditures for supervision equipment such as GPS and Radio Frequency will be \$926,000 rather than the budgeted amount of \$2,037,966

Program's Supervision Services Costs are Higher than Palm Beach

We compared the cost of the Program's supervision services to similar services in Miami Dade and Palm Beach counties. We chose them as peers because all three counties: (1) have similar size populations, (2) are regionally located, (3) serve similar populations, and (4) have similar program goals. However, a true comparative analysis is diminished due to key differences in each program's supervision service delivery methods. Broward's Program provides a higher level of community supervision than the other two counties. For example, supervision services in Miami Dade and Palm Beach counties consists of clients coming into the office in person weekly and/or periodically either calling in or being contacted by phone. On the other hand, Broward's supervision staff has regular caseloads of defendants assigned to them and has more frequent client contacts.

To calculate the cost of supervision services, we obtained Fiscal Year 2009 budget data and projected Fiscal Year 2009 average daily caseloads for the Program and Palm Beach County.⁷ To ensure as fair and accurate comparison as possible, we used Fiscal Year 2009 budgeted salaries and benefits and operating expenses for FTE staff assigned to standard supervision cases only.

We found that the Program's supervision costs are higher than Palm Beach. For example, the Program's average daily cost to supervise each client is \$1.90, which is 150% higher than Palm Beach's costs of \$0.76. A major reason for higher supervision costs, according to Program managers, is the higher level of supervision services provided by Program staff compared to Palm Beach.⁸

A major factor in the Program's relatively high supervision costs appears to be higher salaries and benefits. We obtained salary and benefit data for full-time staff handling standard supervision cases and found the Program's staff is much better paid than comparable staff in other counties. For example, the Program's average salary and benefits for 13 FTE standard supervision staff is \$75,776; whereas Miami Dade's average for 7 FTE staff is \$52,850, which is 30.3% lower, and Palm Beach's average for 6 FTE staff is \$54,208 or 28.5% lower.

Program managers cited two primary reasons for Program staff's higher salaries: (1) Broward has more advanced staff qualifications, including requiring bachelors' degrees and two year's experience for entry level positions; and (2) many Broward supervision staff have many years of service, thus earn higher salaries. A review of other counties' minimum staff qualifications revealed that they also require a bachelor's degree but with less previous work experience. For example, Palm Beach County requires six months experience working in the criminal justice field. In addition, BSO personnel records indicate that 7 of the 13 supervision staff have been employed

⁷ We could not calculate this figure for Miami-Dade because program managers were unable to give us a "definitive answer" to the number of supervised clients in Fiscal Year 2008 or projected to be served in Fiscal Year 2009.

⁸ Program supervision staff has an average client to staff caseload of 111.5:1; whereas Palm Beach supervision staff does not have regular client caseloads, they have once weekly contact with clients via phone or in-office visits.

with the Broward Sheriff's Office for ten years or longer, confirming Program managers' claims about supervision staff's seniority.

Program's Supervision Caseloads appear Satisfactory

Because pretrial programs vary widely in terms of organizational structure, supervision methods, and types of caseloads, industry caseload standards have not been established by professional pretrial associations. To ascertain what an appropriate staff caseload would be, we interviewed eleven pretrial association officials and experts around the country. These individuals' opinions ranged from caseloads of 80 to 125 clients, with several citing a 100:1 client to staff ratio as being ideal.

For the first six months of Fiscal Year 2009, the average caseload of the 13 FTE staff assigned only standard supervision cases is 111.5. This client to staff ratio falls within the parameters expressed by the pretrial officials and experts we contacted, indicating appropriate staffing levels.

Program Managers have taken Proactive Steps to Reduce Program Costs

When requested to submit documentation for actions taken to keep program costs down, Program managers offered the following:

- **Lowering electronic monitoring costs.** In October 2007, the Program rebid its contract for electronic monitoring services to realize cost savings. Prior to October 2007, per day per offender contract rates for GPS and RF monitors was \$9.41 and \$3.41, respectively; the new contract rates with BI, Inc., are \$6.94 for GPS (a drop of 26.2%) and \$2.55 for RF (a 25.2% reduction).
- **Clients pay for own drug testing.** The Program had a cost avoidance of \$40,034 for the past two fiscal years. In Fiscal Years 2007 and 2008 non-indigent clients paid a vendor directly to perform 3,782 and 3,055 drug tests, respectively, that was required as a condition of release.⁹ Similar cost avoidance is expected for the 2009 fiscal year.
- **Field Unit averts need for overtime.** Program managers said that Field Unit staff (four FTE positions as of April 2009) averts the need to have supervision staff on call to respond to electronic monitoring alerts that occur in the evenings. Currently, all supervision staff typically works a daytime shift.
- **Discontinuing electronic monitoring for Drug Court.** In Fiscal Year 2007, the Program provided RF electronic monitoring to an average of 40 Drug Court clients, at a daily per client cost of \$3.41, for a yearly total of \$49,786; representing cost avoidance because the Program no longer provides this service.

⁹ In Fiscal Year 2008, BSO conducted 1,792 drug tests for Program clients who are indigent.

- **Keeping staff positions vacant.** As of April 2009, the Program had four staff position vacancies. Program managers said they intentionally kept these vacancies to allow for new staff to expand their caseloads before hiring additional staff.
- **Keeping electronic monitoring caseload down.** Program managers explained that they work closely with the First Appearance Judge to only order electronic monitoring for defendants who should receive more intensive supervision.
- **Greater use of technology to increase caseloads.** Program managers provided examples of using technology to achieve efficiencies. For example, additional mentally ill clients were allowed to be supervised by using a technology that tethers up to 20 clients to one base unit that requires only one telephone line. Program staff worked with Assisted Living Facilities to implement this technology. In addition, a new VoiceID system was added to the October 2007 contract to enable more efficient telephone calling, when implemented will free up supervision staff time to allow for supervising more clients.

Feasibility of Instituting Supervision Fees

To determine the extent of support to charging fees to clients provided supervision services, and to identify potential benefits and drawbacks to its implementation, we:

- Interviewed Program managers and staff,
- Interviewed eleven nationally recognized pretrial association officials and experts, and
- Solicited opinions through a written survey from judges of the 17th judicial circuit¹⁰

We found highly divergent views about establishing supervision fees. For example, when asked whether they would favor instituting fees for supervision services in Broward County, four judges responded “yes,” four judges responded “no,” and two judges did not provide an answer to the question. Similarly, experts in the pretrial field we interviewed had varying opinions in terms of support and opposition to implementing a fee structure.

There are Pros and Cons to Charging Fees to Increase Program Revenues

In an era of shrinking budgets, some jurisdictions are passing on supervision costs to Program clients. For example, Palm Beach County’s Pretrial Services Program charges a \$10 per week fee to all clients, regardless of indigency status, unless waived by the court. Palm Beach County program officials provided us with data showing that projected fee collections will pretty much fully cover their program’s projected supervision costs of \$325,000 for Fiscal Year 2009.

In October 2008, the Board of County Commissioners instituted a \$5 per day fee for non-indigent electronically monitored clients. The Board’s resolution, which amended Chapter 43, Part II,

¹⁰ We sent written surveys to 38 circuit and county court judges, receiving responses from 10 judges, representing a 26.3% response rate

Broward County Administrative Code, was expected to generate \$500,000 per year in new revenues. The Program did not start collecting this fee until May 1, 2009, because Program managers said they needed to make prerequisite modifications to its case management system, educate the judiciary, and make changes to the court order form.

Exhibit 5 summarizes potential advantages and disadvantages of charging fees, as expressed by knowledgeable persons who provided us with their opinions.¹¹

Exhibit 5

There are potential benefits and drawbacks to charging fees to Program supervision clients

Potential Advantages of Instituting Supervision Fees	Potential Disadvantages of Instituting Supervision Fees
<p>--Recover some or all Program operating costs</p> <p>--"Due to budgetary constraints, charging fees may be the only way to sustain the Program"</p> <p>--"It is proper to recoup the cost of running the program" by having clients pay for services they receive</p>	<p>--"The creation of a class system consisting of those who can afford to pay and be released and those who cannot and remain in custody"</p> <p>--"The purpose of pretrial is to help insure defendant appears in court and to protect public not to be punitive"</p> <p>--Would it be a pretrial violation if the client misses a payment?</p> <p>--Collecting fees from some clients may be difficult and sanctions may be inappropriate</p> <p>--Could be viewed as an "overbroad basis for rejection or perception of rejection from Program"</p> <p>--"Most clients are indigent or become indigent when they pay attorney fees or bond"</p> <p>--"It is wrong to think of the Program as a revenue stream."</p> <p>--Charging fees may be unconstitutional and "open Broward County to a major and costly class action lawsuit"</p> <p>--Would require additional staff to administer, which "would offset any revenue"</p>

Source: Office of the County Auditor analysis

Impact of County Ordinance No. 2009-01

We also solicited judges' opinions about Broward County's Pretrial Release Policy (Article VII of Chapter 10 of the Broward County Code of Ordinances), as amended by Broward County Ordinance No. 2009-01, passed by the Board of County Commissioners on January 27, 2009. Specifically, we asked whether the County's policy should include or exclude each of the following five provisions:

¹¹ We paraphrased some individuals' remarks; however, for the sake of clarity and precision we directly quote comments made by some individuals we interviewed

- Defendants who are not indigent should not be recommended for release at First Appearance unless a bond is also issued;
- Defendants charged with dangerous crimes (Chapter 907, *Florida Statutes*) should not be recommended for release unless a bond is also issued;
- Defendants who were previously revoked from the Program should not be readmitted to the Program for period of 5 years;
- Defendants who willfully and knowingly failed to appear in past year should not be recommended or accepted into Program; and
- Defendants will be eligible for Program admission only once per calendar year

Judges’ Opinions are mixed about Pretrial Release Policy Provisions

Generally, judges expressed two schools of thought: (1) some judges believe there is no need for a policy because making pretrial release decisions is strictly up to judicial discretion, and (2) other judges think that some of these provisions are “reasonable” and should be contained in a written policy. In responding to this question, four of the ten judges marked to exclude all provisions while five judges believed at least one specific provision should be included in a written policy. No judge marked to include the provision: “Defendants who were previously revoked from the Program should not be readmitted to the Program for period of 5 years.” Exhibit 6 illustrates the number of judges who believe each specific provision should be included or excluded in the County’s policy.

Exhibit 6

Judges expressed split opinions on existing provisions of the County’s Pretrial Release Policy

Specific Provision in County’s Existing Pretrial Release Policy	# of Judges Wanting to <u>Exclude</u> Provision	# of Judges Wanting to <u>Include</u> Provision	# of Judges Marking <u>Neither</u> Response
Defendants who are not indigent should not be recommended for release at First Appearance unless a bond is also issued	4	3	3
Defendants charged with dangerous crimes (Chapter 907, <i>Florida Statutes</i>) should not be recommended for release unless a bond is also issued	4	5	1
Defendants who were previously revoked from the Program should not be readmitted to the Program for period of 5 years	4	0	6
Defendants who willfully and knowingly failed to appear in past year should not be recommended or accepted into Program	4	2	4
Defendants will be eligible for Program admission only once per calendar year	4	1	5

Source: Office of the County Auditor survey of judges of the 17th Judicial Circuit

Assessing the Program’s Impact in Reducing Jail Population

Nationally, the number of people in jails has nearly doubled in the past two decades. According to the Bureau of Justice Statistics, the U.S. jail inmate population grew from 405,320 persons in 1990 to 785,555 persons in 2008.¹²

This dramatic growth has led to crowded conditions in many U.S. county jails. As of June 30, 2008, local jails operated at about 95% of their rated capacity. Most of the inmate population in jails consists of persons awaiting trial. For example, 63% of the U.S. jail inmate population as of June 30, 2008, were awaiting court action or had not been convicted of a current charge, which is up from 56% in 2000.

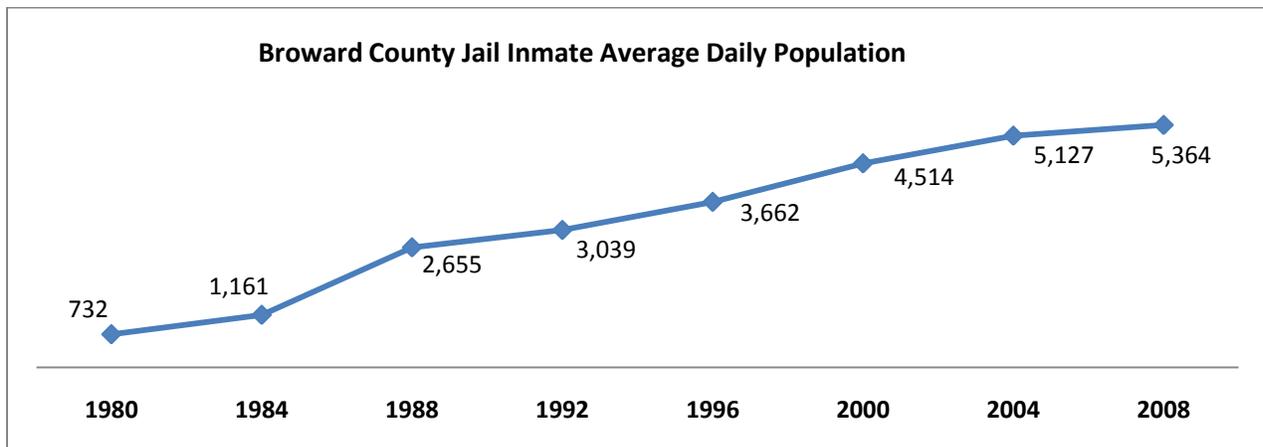
Broward County’s Jail Population

Historically, overcrowding in the Broward County jail has been a problem. For example, a class action suit was filed over 30 years ago alleging severe overcrowding and inhumane conditions of confinement. The County jail has been under a federal court order (i.e., consent decree) since 1994 to cap the inmate population and to make various operational improvements at the jail.

Although Broward County’s jail population increased substantially from 1980 to 2000 growth has slowed considerably since 2000. According to a BSO analysis, the average daily inmate populations at the Broward County jail increased by 324% during the 1980s and by 46% during the 1990s but only by 14% from 2000 to 2008 (see Exhibit 7).

Exhibit 7

Broward County’s jail inmate population growth has apparently slowed over the past decade



Source: Broward Sheriff’s Office

¹² During the same period, the U.S. resident population increased by 21.8%, using U.S. census estimates of 250 million in July 1990 to 304 million in July 2008.

Slower growth has resulted in a steady reduction in the jail's operational capacity. For example, the jail operated at an 86.6% capacity on April 9, 2009. While this rate does not meet the National Institute of Corrections' standard of 85%, it is significantly lower than previous years' rates. In FY 2008, for instance, the jail operated at 95% capacity, with 260 unoccupied beds. Additionally, over the past decade the average jail operating capacity was 94.6%.

Controlling Jail Population Growth

Slowing jail population growth while protecting public safety can be a daunting task. In an April 2008 publication, the Justice Policy Institute made a number of recommendations designed to "lower jail populations, increase public safety, and support healthy communities," including:

- Improving release procedures for pretrial and sentenced populations;
- Developing and implementing alternatives to incarceration such as community-based supervision;
- Diverting people with mental health and drug treatment needs to the public health system and community-based treatment; and
- Changing pretrial release policies and using community-based alternatives such as electronic monitoring and employment and job training programs

A March 2007 study of Broward County's jail and justice system by the National Institute of Corrections (NIC) concluded that the "jail crowding issue" in Broward County was not due to increasing crime, or population growth, or booking practices but to an increase in the inmates' average length of stay in jail. From 2002 to 2006, the average length of stay in Broward's jail increased from 27.2 days to 31.6 days, accounting for nearly 90% of additional beds needed during this period. During this time, the number of offenders admitted to jail stayed relatively constant. To address this ongoing problem, the NIC made recommendations involving law enforcement, the State Attorney's Office, the Public Defender's Office, the judiciary, the Public Safety Coordinating Council, and several BSO departments (refer to Appendix A on page 34). Two relevant recommendations dealt with modifying the first appearance hearing process to enable inmates to be released at the front-end of the system and to expand the Pretrial Services Program to interview and perform a risk assessment on all bondable defendants on the first appearance docket.

BSO officials indicated that significant progress has been made in implementing the NIC recommendations. For example, in a status report dated October 2008, nine of the 22 recommendations had been fully implemented. Of the remaining recommendations, five had been partially implemented, six had not been implemented at all primarily due to lack of funding and two were "ongoing issues" that would never be considered complete.¹³

¹³ Two NIC recommendations dealt with ongoing issues: (1) reduce number of unnecessary case continuances and delays, and (2) attack and eliminate 750-day list and expand attack to those who have been incarcerated for 1.5 years

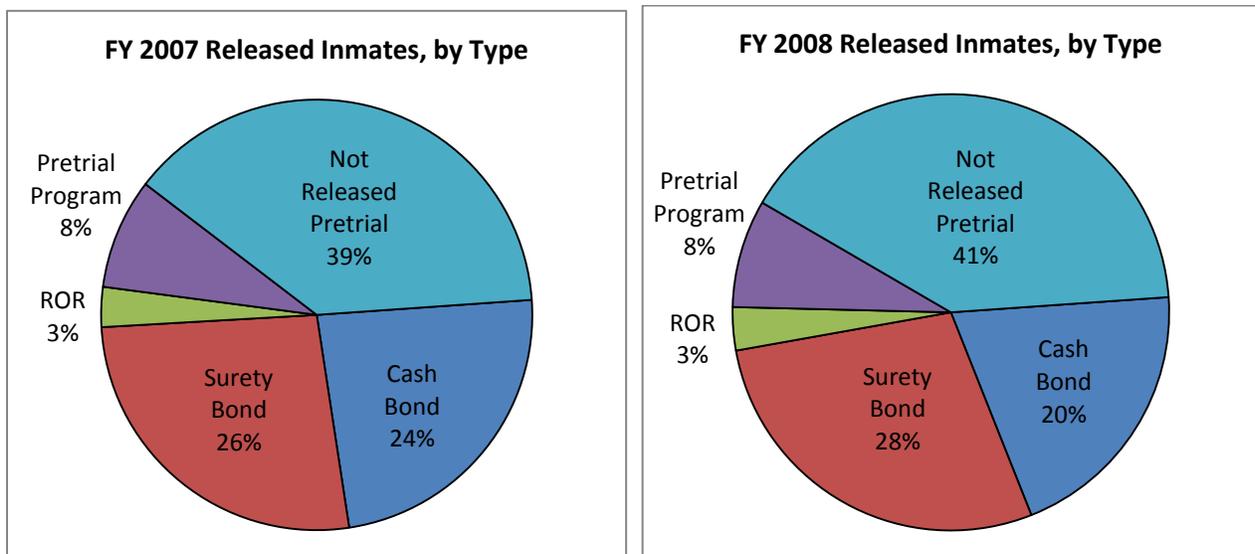
Pretrial Release Helps to Reduce Jail Population

As previously described, there are only two non-monetary ways to release defendants from jail while awaiting trial: release on recognizance (ROR) and the Pretrial Services Program. The other form of pretrial release, posting bond, requires the defendant to come up with cash or some kind of collateral. These pretrial release options help divert defendants from pretrial incarceration, thereby leaving jail beds open for more serious offenders, and allow defendants to stay in the community, thus maintaining employment and familial obligations.

Most inmates released through pretrial methods. These three pretrial release options account for a majority of all jail releases. For example, 41,616 (61.5%) of the 67,690 inmates released during calendar year 2007 and 40,376 (59.5%) of the 67,814 inmates released in calendar year 2008, were released under one of these three release types. Exhibit 8 shows the breakdown of inmates released by type for calendar years 2007 and 2008.

Exhibit 8

Approximately one-half of the jail inmate population is released on surety and cash bonds

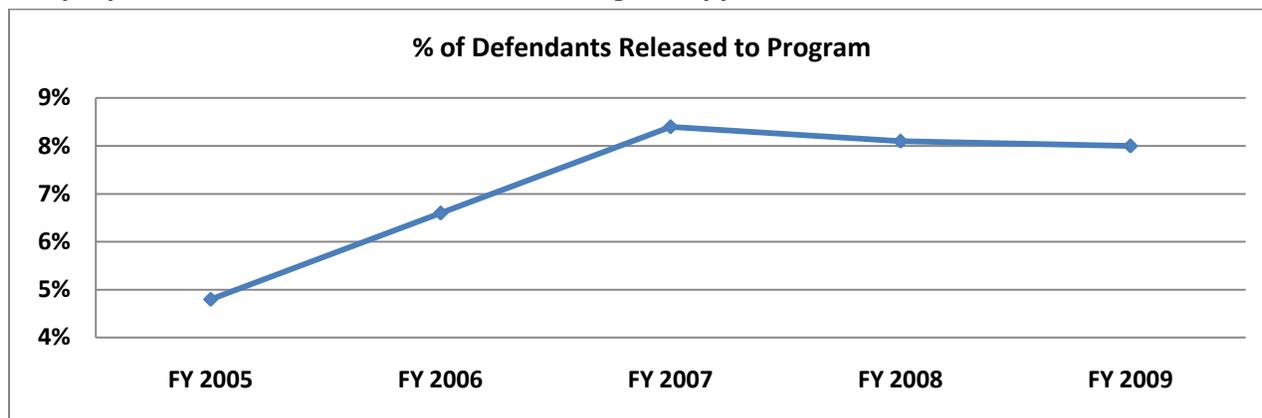


Source: Broward Sheriff's Office

Program client population is remaining stable at 8%. The percentage of inmates who were court ordered into the Program during the 2007 and 2008 fiscal years was 8.4% and 8.1%, respectively. For the first six months of Fiscal Year 2009, this proportion is staying the same, with 2,635 (8%) of the 32,745 inmates released from October 1, 2008, through March 31, 2009, being released to the Program. As shown in Exhibit 9, on the next page, the proportion of inmates released to the Program grew from 4.8% in 2005 to 6.8% in Fiscal Year 2006.

Exhibit 9

The proportion of inmates released to the Program appears to have stabilized at 8%



Source: Broward Sheriff's Office

More Program clients ordered with bond conditions. The percentage of Program clients ordered with a condition of surety bond has grown in recent years. For example, the percentage of Program clients with a surety bond grew from a low of 13.1% in Fiscal Year 2006 to 26.6% in Fiscal Year 2008. Additionally, for the first six months of Fiscal Year 2009, 44.4% of Program clients also had a surety bond. Thus, if the current rate continues, an increasing number of Program clients will be ordered into the Program with a bond, sometimes referred to as 'dual supervision.'

Judges like the Option of Ordering Program Clients with Bonds

Most judges responding to our survey liked having the 'dual supervision' option; typical comments made by judges were:

- "In my opinion, the purpose of both bond and pretrial is so that the defendant has something at risk (with an immediate sanction) in the event he does not comply."
- "It provides a greater level of confidence in protecting the public where there are serious charges or alleged crimes of violence, while respecting the fact that defendants are presumed innocent and in most cases are entitled to bond."
- "If a defendant is a danger to the community, electronic monitoring will ensure a victim's safety (to some degree) and the monetary obligation will ensure they come to court."
- "Bond is usually posted by a family member. The bond provides an extra level of 'supervision.' It is appropriate."
- "Typically a bond assures appearance while pretrial assures appearance and performance. Depending upon the nature of the case and the defendant's criminal history, dual supervision is often appropriate."

However, a couple judges responded that they infrequently ordered both bond and Pretrial Services Program supervision. They indicated generally ordering one or the other, not both. None of the judges said that 'dual supervision' is inappropriate and should never be used.

New Initiatives Should Help to Further Reduce Jail Population

In September 2008, the judiciary implemented a new initiative aimed at further reducing the jail population.¹⁴ Two specific provisions of this initiative appear to have had positive effects on reducing the jail population:

- A “First Appearance Division” was established “so that every arrested person may be taken before a judicial officer as required by law or rule of procedure,” every day, within 24 hours of arrest; and
- A ‘Second Look’ procedure¹⁵ requires incarcerated defendants who have not bonded out after 5 days for misdemeanors and 10 days for felonies to be brought back before the First Appearance judge for reconsideration of reducing bond or placing them in the Pretrial Program.

Effect of having a First Appearance Division

Four of the NIC’s recommendations dealt with Broward’s First Appearance process:

- Shift judicial, prosecutorial, and defense resources to the ‘front-end’ of the system—allowing for earlier case dispositions;
- Modify magistrate court to allow for case preparation time, consideration of pleas, and meaningful bond hearings;
- Pretrial Services should investigate all defendants and provide a pretrial investigation whenever feasible at the initial appearance if a consideration of bail is likely to occur; and
- Establish a bond review procedure for all pretrial misdemeanants still in jail after 3 days and felons after 7 days

Doing this is important because it is costly to keep defendants incarcerated. For example, as of April 2009, the average daily cost of incarceration in the Broward County jail is \$109 (or \$39,785 per inmate annually).

Although it has been in effect for only six months, the First Appearance Division appears to be having a positive effect in releasing inmates from jail more quickly. In Fiscal Year 2007, prior to the new initiative taking effect, 25% of jailed inmates were released to the Pretrial Program at the time of the First Appearance. For the first six months of Fiscal Year 2009, 68% were released to the Program at the time of the First Appearance, indicating that moving bond decisions earlier in the criminal justice process has resulted in more inmates being released earlier, thus spending less time in jail. While the cost savings of implementing this new provision is likely significant, we could not quantify it because data on the amount of fewer days spent in jail by defendants is unavailable.

¹⁴ Order Number 2008-117-Crim, Administrative Order Establishing First Appearance Division, by Chief Judge Tobin, became effective September 1, 2008.

¹⁵ Unofficially begun by the Program in 2005, Program staff began tracking ‘Second Look’ data in January 2009.

Effect of 'Second Look' Procedure

Program managers told us that implementing this new procedure will help further reduce the jail population because on any given day there are at least 1,000 jail inmates who cannot afford to bond out. As an example, a BSO spreadsheet of the jail population on October 20, 2008, indicates 1,289 inmates had set bail amounts yet remained incarcerated.

Program data shows implementation of this new procedure has resulted in the release of additional inmates. For the period of January 1, to March 31, 2009, 35 inmates were released to the Pretrial Program as a result of the 'Second Look' procedure. In addition, Program managers indicated that some inmates are released on lower bonds, but they do not track these numbers. Exhibit 10 shows the number of inmates reviewed under this procedure and released to the Program during the first three months of 2009.

Exhibit 10

'Second Look' procedure has resulted in releasing 35 additional inmates since January 2009

Month	Number of Inmates receiving "Second Look" reviews		Number of those Inmates released to Pretrial Program	
	Misdemeanor	Felony	Misdemeanor	Felony
January 2009	N/A	15	N/A	4
February 2009	N/A	24	N/A	11
March 2009	53	25	12	8
Sub-Totals	53	64	12	23
Totals	<u>117</u>		<u>35</u>	

Source: Pretrial Services Program

Assessing Effects of Program Expansion

Prior to the NIC study, BSO had begun developing strategies to address the "jail population problem." For example, BSO's August 2006 Jail Population Relief Strategic Plan identified potential solutions to reduce jail population growth, consisting of 16 cost neutral strategies and 10 strategies requiring additional funding, one of which related to expanding Pretrial Services to "target inmates who cannot afford to bond out."

In January 2008, BSO submitted to the Board of County Commissioners a proposal to expand the Pretrial Services Program. A major intention of the proposal was to delay the opening of a new jail for at least two years, with a cost avoidance of "at least \$60 million." The Board adopted a budget resolution on January 15, 2008, providing \$2.7 million in additional funds with the goal of increasing staffing by 25.5 FTE positions, supervising 1,000 more defendants, expanding the use of electronic monitoring, and adding specialized mental health supervision services by the end of Fiscal Year 2009.

As of April 2009, the status of the Pretrial Services Program's expansion efforts is as follows:

- **Program expenditures will rise by 40% at end of Fiscal Year 2009.** Actual Fiscal Year 2007 expenditures were \$3,206,067, compared to projected Fiscal Year 2009 expenditures of \$4,499,596,¹⁶ or an increase of 40.3%.¹⁷ Program managers anticipate Fiscal Year 2009 expenditures will be much less than the budgeted amount of \$6 million due to intentionally leaving vacant staff positions pending increased caseloads and lower-than-expected electronic monitoring costs.
- **Size of Program staff grew by 70%.** The number of budgeted FTE positions increased from 33 in Fiscal Year 2007 to 56 in Fiscal Year 2009.¹⁸ As of April 2009, the Program had 4 vacant staff positions.
- **Number of supervised clients went up by 35%.** In January 2008, when the expansion was approved by the Board, the Program's average daily supervised population was 1,986 clients, compared to 2,683 clients in March 2009, meaning that the Program supervises an average of 697 more defendants per day now than before the expansion.¹⁹
- **Number of interviewed clients will go up by 563%.** In Fiscal Year 2007, the Program conducted face-to-face interviews of 3,282 inmates; Program managers estimate staff will perform 21,762 inmate interviews in Fiscal Year 2009.
- **Number of field visits went up by 336%.** In Fiscal Year 2007, the Program conducted 1,712 field visits and Program managers estimate 7,466 field visits will be conducted in Fiscal Year 2009.
- **Use of electronic monitoring has gone up by 31%.** The number of electronically monitored defendants (through the use of Radio Frequency and GPS devices) increased from 462 in January 2008 to 607 in March 2009. For Fiscal Year 2009, Program managers estimate expenditures for electronic monitoring equipment will be \$926,000.
- **Implementation of specialized mental health supervision services.** As a result of the additional funds received in Fiscal Year 2008, the Program established two full-time dedicated mental health specialists to monitor mentally ill clients.²⁰ In March 2009 these two staff had a combined caseload of 170 clients. This new practice is valuable for two primary reasons. First,

¹⁶ Program managers provided analysis showing \$218,199 (17%) of the \$1.3 million increase between fiscal years 2007 and 2009 can be attributed to "normal" cost of living increases for existing staff's salaries and benefits.

¹⁷ Actual FY 2008 expenditures were \$3.8 million, which is 19.5% less than the revised operating budget of \$4.6 million.

¹⁸ Due to budget cuts, the Program eliminated two FTE positions in Fiscal Year 2009.

¹⁹ Program managers estimate the average daily supervised population will be 2,800 by September 30, 2009, which would mean a daily average of 800 more clients served by the Program.

²⁰ Job duties include identifying inmates in need of mental health services and working with community mental health providers to ensure inmates receive appropriate services.

recent studies show that people with mental illness are increasingly occupying jail beds. For example, the April 2008 Justice Policy Institute study concluded that “jails have become the new asylums,” with as many as 60% of the jail population having a mental illness. Second, recent research indicates that specialized services help reduce recidivism and improve clinical outcomes.

Clients’ Average Length of Stay has Recently Increased Considerably

Determining the precise impact of the Pretrial Program’s expansion on reducing the number of jail beds would require a more rigorous, extensive and comprehensive analysis of the entire criminal justice system. There are too many factors affecting jail population, such as how long inmates remain incarcerated (tracked as Average Length of Stay, ALOS) and judicial decisions.

However, there are some basic conclusions that can be drawn from available data:

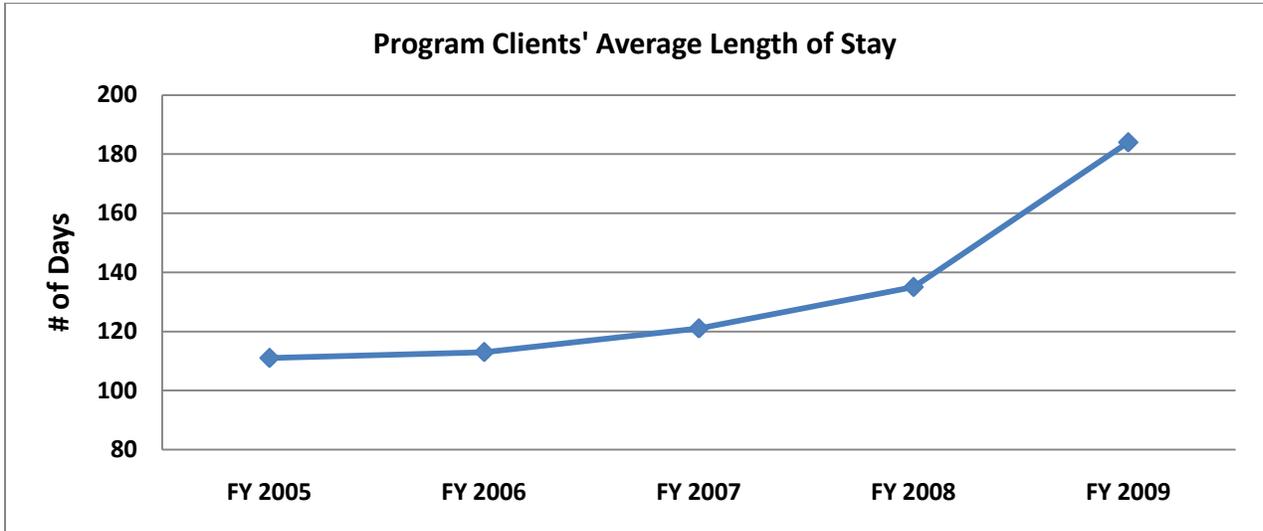
- **Decrease in jail’s average daily inmate population.** Since January 2008, Broward’s jail population has fairly steadily declined. For example, the jail’s average daily population (ADP) decreased by 280 inmates (5.3%), from 5,326 inmates in January 2008, to 5,046 inmates in March 2009, which represents an annualized cost avoidance of slightly more than \$11 million.²¹
- **Program’s ADP increase attributed to new staff.** Since January 2008 the Program’s Average Daily Population increased by 697 clients (and Program managers expect ADP to grow to 800 by the end of the 2009 fiscal year). This increase in Program ADP can be primarily attributed to the addition of seven new supervision specialists, each with a caseload of about 100 clients.
- **Decrease in defendants ordered into Program.** Although Program managers expect the Program’s ADP to grow to 800 by the end of the 2009 fiscal year, the number of defendants who are court ordered to the Program is decreasing. For example, the number of defendants ordered into the Program in Fiscal Years 2007 and 2008 was 5,767 and 5,582, respectively, or a decline of 3.2%. For the first six months of Fiscal Year 2009, 2,635 defendants were ordered into the Program; at this rate the number of defendants ordered into the Program during Fiscal Year 2009 would be 5,270, which would be a drop of 5.6% from the previous fiscal year.
- **Clients staying longer in Program.** Because the Program’s ADP has increased fairly steadily since January 2008, one would expect a corresponding increase in the total number of defendants served in the Program. A major reason why this is not the case appears to be that clients are staying in the Program longer. Clients’ Average Length of Stay, or ALOS, has climbed steadily in the past few years but has risen more considerably in the current fiscal year. As shown in Exhibit 11, on the next page, the Program’s ALOS for the previous four complete fiscal years (2005, 2006, 2007 and 2008) was 111, 113, 121 and 135, respectively. This means that

²¹ According to BSO, the average daily inmate cost for FY 2009 is \$109.

the Program's ALOS increased by 21% from Fiscal Year 2005 to Fiscal Year 2008. However, for the first six months of Fiscal Year 2009, the Program's ALOS is 184, which is a 36.7% increase over the previous fiscal year.

Exhibit 11

Program clients' Average Length of Stay has grown considerably from previous fiscal years



Source: Pretrial Services Program

Reducing Clients' ALOS will Help to Control Jail Population Growth

Just as the 2007 NIC study concluded that reducing the jail's ALOS was critical in reducing the need for additional jail beds, reducing the Program's ALOS would enable more clients to be supervised, thus helping to lessen the need for new jail beds. At its current Fiscal Year 2009 growth rate, the Program's ALOS will significantly reduce the number of Program clients that can be supervised with existing resources. Therefore, it is imperative that the reasons for the Program's ALOS increase be examined and controlled, to the extent possible.

To serve more clients within existing resources, thus enhancing the Program's impact in controlling jail population growth, Program clients should be adjudicated as quickly as possible. Therefore, we recommend that the Board of County Commissioners request the Public Safety Coordinating Council to examine the reasons for recent considerable increases in Program clients' ALOS and to identify and implement feasible remedies.

Evaluating Pretrial Services Program Effectiveness

We evaluated the Program's effectiveness based on its two primary purposes:

- Provide the judiciary with "complete, accurate and non-adversarial" information to "improve the release/detention process" in compliance with Florida law and Rules of Criminal Procedures; and
- "Supervise pretrial defendants in the community in partnership with law enforcement and outside agencies, ensuring that mandated conditions and court ordered special requirements are satisfied."

Effectiveness of Information and Investigation Services

Article I, Section 14, *Florida Constitution*, states that "every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions" unless that person is "charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great." Section 907.041, *Florida Statutes*, states the Legislature's intent to "create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime."

Consequently, an important function of the Pretrial Services Program is to conduct a pretrial investigation to assist judges in making release decisions. Prior to the initial court appearance, the Program gathers information about the defendant, primarily through voluntary interviews and records checks. According to standards published by the Florida Corrections Accreditation Commission in June 2008, at a minimum, the Program should have, or have access to, the following information for each defendant:

- a) Community ties;
- b) Residential history;
- c) Financial status;
- d) Employment history;
- e) Mental health history;
- f) Substance abuse history;
- g) Criminal record;
- h) Failures to appear;
- i) Prior community supervision;
- j) Fingerprint clearance;
- k) Probation/parole/conditional release status; and
- l) Pending charges

According to pretrial literature we reviewed, a risk assessment tool is typically “used to incorporate the information from the pretrial investigation into a score that guides the release decision.” Pretrial experts we interviewed said the main purpose of using a risk assessment tool is to assess (1) “risk of flight,” and (2) “danger to community.” Industry best practice calls for periodic validation of the risk assessment instrument to ensure it provides an accurate and unbiased measure of a defendant’s potential for misconduct if released.

Program’s Risk Assessment Tool Appears to Meet Best Practice

In May 2008, the Program implemented a new risk assessment tool, COMPAS (Correctional Offender Management Profiling for Alternative Sanctions).²² According to Northpointe, the COMPAS software’s vendor, COMPAS is a “statistically based risk assessment designed to assess key risk and needs factors, including prior criminal record and failures to appear, substance abuse history, mental health issues, and family risk and environmental factors.”²³ COMPAS’ primary goals are to: (1) provide “valid measurement and succinct organization of the relevant risk/need dimensions,” and (2) help practitioners “design case-management support systems for offenders in community and institutional placements.”

For the five month period of May to September 2008, Program staff performed 9,193 risk assessments. For the first six months of Fiscal Year 2009, 10,881 risk assessments were performed, of which 6,512 (59.8%) were for felony arrests, 2,773 (25.5%) for misdemeanors and the remaining 1,596 (14.7%) were for domestic violence arrests. As of April 2009, the Program had 16 FTE staff assigned to do risk assessments.

COMPAS has not been fully implemented as of April 2009

Although the data-gathering and scoring features of the COMPAS software appear to reasonably meet industry best practice, it has not been fully implemented. As of April 2009, neither the information nor risk assessment score obtained through COMPAS has been consistently provided to First Appearance judges. Program managers indicated that while the COMPAS information is available to judges they are not accustomed to using such a tool and it will take time for them to become comfortable with how to use information in making release decisions. This is an evolving process and Program managers indicated they are committed to working with judges to fully implement a process for using COMPAS on all cases.

²² Prior to May 2008, 6 FTE Program staff conducted investigations rather than risk assessments. Investigations consisted of three levels of screening intended to identify defendants who are ineligible for the Program based on pre-expansion Program eligibility standards: first level eliminated defendants charged with dangerous crimes; second level eliminated defendants with prior criminal records or failures to appear; and third level involved face-to-face interviews and eliminated defendants with poor community ties.

²³ Established in 1989, Northpointe Institute for Public Management is a national “correctional consulting and research firm providing software products, training and implementation services” to over 275 federal, state and local criminal justice systems and policymakers.

In our interviews with these judges, they seemed satisfied with the information they received and their methods of making pretrial release decisions, but seemed open to exploring using COMPAS.²⁴ In the words of one judge, he was “interested in knowing more” about the COMPAS risk assessment score and would “like to be educated” about how to employ it.

According to the Federal Probation & Pretrial Officers Association, a “pretrial risk assessment instrument should be validated to ensure it is an accurate predictor of pretrial failure in the community in which it is being applied.” Validation involves testing how well risk assessment scores predicted the “likelihood of failure to appear and danger to the community posed by a defendant during the pretrial stage.”

Because conducting a meaningful validation of COMPAS necessitates its use for at least a year, no validation has been performed as of April 2009. However, in January 2009, Northpointe published a study entitled “Evaluating the Predictive Validity of the COMPAS Risk and Needs Assessment System,” which basically concluded that COMPAS had statistically significant “internal consistency” and “predictive validity.”²⁵

Although this study and others conducted by Northpointe provide assurance of this risk assessment tool’s worth, a validation at the local level is still warranted. While Northpointe states that “numerous local validation studies” have found no “statistically significant deviations from the national norm group studies,” it also points out that “it is always prudent to have your own local validation study for use in case of any court challenges.”

To ensure optimal benefits are derived from COMPAS, we recommend that the Board of County Commissioners request the Public Safety Coordinating Council to oversee implementation of COMPAS as soon as possible by consistently providing gathered information and risk scores to the First Appearance judges and to conduct a validation within a year of its implementation.

Effectiveness of Supervision Services

To evaluate the effectiveness of supervision services, we:

- Summarized the opinions of ten circuit and county court judges of the 17th Judicial Circuit responding to our written survey, and
- Analyzed outcome data to ascertain the Program’s performance across time and compared it against peers.

²⁴ At the time of our interviews, these judges did not receive COMPAS information; they indicated using information such as arrest data, probable cause, prior criminal records and community and family ties, some but not all of which has been provided by Program staff.

²⁵ This study was conducted between January 2001 and December 2004 at 18 county-level probation agencies in an eastern state, involving a sample of 2,328 individuals.

Judges appear to be Very Satisfied with Supervision Services

In response to a survey question as to whether they were satisfied with the supervision options the Program offered, nine of 10 judges answered affirmatively. The only judge that responded “no” indicated that Program services should be expanded to “include additional diversionary models of court programs and services” with the intent of working to “reduce juvenile and adult contact and penetration into the local criminal justice and jail system.”

When asked to rate the effectiveness of supervision services on a scale of 1 to 10 (with 1 being “very ineffective” and 10 being “very effective”), nine of 10 judges provided responses ranging from “8+”²⁶ to “10,” with an average response of 9.2. One judge did not answer this question, explaining that they did not have enough Program clients coming before them to have an opinion. Several judges made very positive comments about the Program, including:

- “I have been very pleased with the responsiveness of the Pretrial Services staff.”
- “The Program is excellent—could effectively be used in other areas to promote public safety and reduce disparity in Criminal Justice system.”
- “I feel pretrial is a valuable resource for the Court system and should not be cut back or further restricted.”
- “The Pretrial Services Program is fundamental in addressing the appropriate release of defendants in criminal cases. The program serves many important functions: protecting the public, protecting victims, ensuring the defendant’s appearance, and addressing the jail population. The program is efficient and effective and should retain its important role in our criminal justice system.”
- “The pretrial services program should not be solely viewed as a means of assuring the safe release of arrestees from custody. It is frequently the only means of assuring compliance with conditions of pretrial release and the monitoring of potentially dangerous people who have a right to bond.”

Judges made the following suggestions for improving the Program’s effectiveness:

- **Improve communications between Program staff and the judiciary.** Program staff should more quickly inform judges of violations of court ordered conditions and when warrants are issued. One judge indicated having Program staff’s cell phone number would result in better communications.
- **More training of supervision staff.** It would be helpful if staff received cross-training in “cultural and specified areas of populations” and in “motivational and therapeutic models of monitoring.”
- **Faster processing of cases.** Getting defendants, especially those with drug abuse issues, before judges quicker would help improve the system’s effectiveness.

²⁶ In calculating the judges’ average rating, we used 8 as the rating for the judge whose rating was “8+”

- **Better communications with defendants ordered into the Program.** The Program should modify its current practice of only sending written communications, such as a Failure to Comply letter; it should make more effort to make direct contact with defendants or their relatives by phone.
- **Place more defendants in Program.** One judge wrote that they would “like to use pretrial release more often or just the electronic monitoring portion more often on my defendants in my misdemeanor drug court program who are continuously testing positive, prior to placing them in the in-custody substance abuse program.”
- **Judges should order fewer defendants into Program.** One judge wrote that some judges order pretrial services in “too many cases and in the wrong cases.” He believes that Program managers should contact these judges to encourage them to not place certain defendants in the Program.

Broward’s Pretrial Program Outcomes is Similar to Peers

The most commonly used indicators of the success of supervision services are:

- **Failure to Appear Rate.** Because defendants must appear in court at appointed times, a good measure of the Program’s effectiveness is the extent to which its clients make scheduled court appearances. There are two basic ways of tracking Failure to Appear: (1) appearance-based, which is the number of scheduled court appearances divided by the number of missed appearances; and (2) defendant-based, which is the number of defendants who missed at least one court appearance.
- **Rearrest Rate.** This measure tracks the extent to which Program clients are arrested for new crimes while they are pending trial for the originally charged crime. It is typically reported as the number of Program clients re-arrested while participating in the Program divided by the total number of Program clients during a given period of time (generally a fiscal or calendar year).
- **Successful Completion Rate.** This measure tracks the extent to which Program clients comply with court ordered conditions, such as reporting regularly to Program staff, not having contact with a victim, and abstaining from alcohol and/or drug use. It is typically reported as the number of Program clients who meet all court ordered conditions until their adjudication.

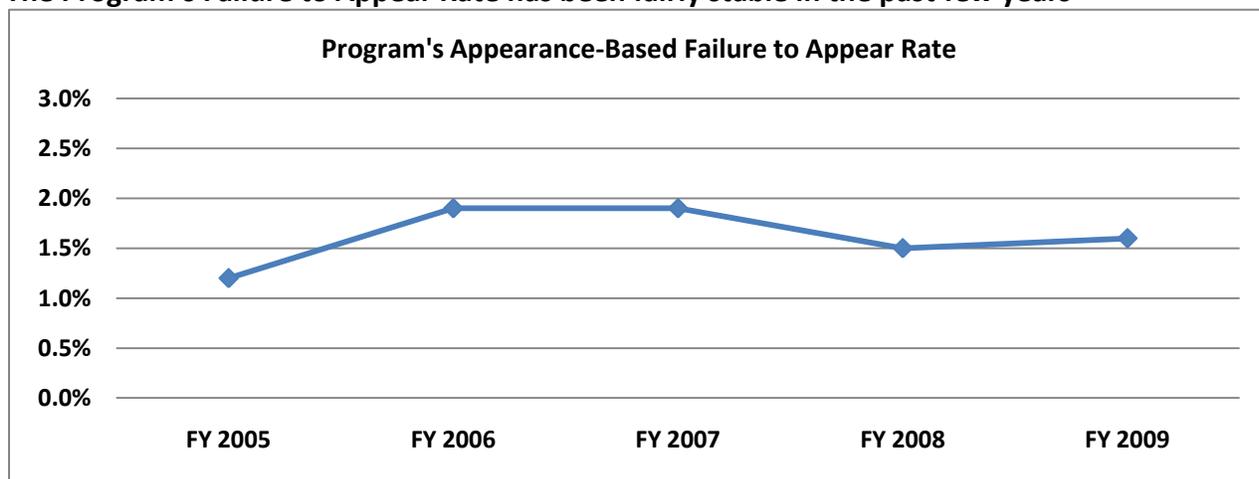
Although no two programs are constituted the same way, several factors make Miami Dade and Palm Beach reasonable choices as peers; all three counties: (1) have similar size populations, (2) are regionally located, (3) serve similar populations, and (4) have similar program goals. The main problem with a comparative analysis is that Broward provides a higher level of community supervision than the other counties. A distinct difference is that Broward’s program includes all Program units (interview, standard supervision and electronic monitoring) within one

organizational unit; whereas the other counties have separate governmental units doing these major functions. Another major difference is that Broward’s Program assigns each defendant to staff that carry a regular client caseload. The programs in Miami Dade and Palm Beach consist of clients coming into the office in person weekly and/or periodically either calling in or being contacted by staff over the phone. Broward’s supervision staff apparently has more frequent client contact and the Program’s field staff goes to clients’ homes to do random checks and perform drug testing, including evenings.

The Program’s Failure to Appear Rate has been fairly constant over the past several years. For example, the defendant-based rate fluctuated from a low of 3% in Fiscal Year 2005 to a high of 4.2% in fiscal years 2007 and 2008. If the current trend continues, its Fiscal Year 2009 rate will be 4.2% as well.²⁷ Similarly, the appearance-based rate was rather stable, varying from 1.2% in Fiscal Year 2005 to 1.9% in fiscal years 2006 and 2007; and if the current rate of 1.6% continues through the end of Fiscal Year 2009. Exhibit 12 shows the Program’s FTA rate since Fiscal Year 2005.

Exhibit 12

The Program’s Failure to Appear Rate has been fairly stable in the past few years



Source: Pretrial Services Program

The Program’s Failure to Appear Rate compares favorably to peers. For example, for Fiscal Year 2008, the Program’s defendant-based rate of 4.2% is slightly lower than Palm Beach County’s Pretrial Services Program’s defendant-based rate of 4.6%.²⁸ The Program’s Fiscal Year 2008 appearance-based rate of 1.5% is quite a bit lower than Miami Dade’s rate of 5.3%.²⁹ These results indicate that the Program may have better outcomes because it provides a more extensive and intensive level of services (see Exhibit 13 on the next page).

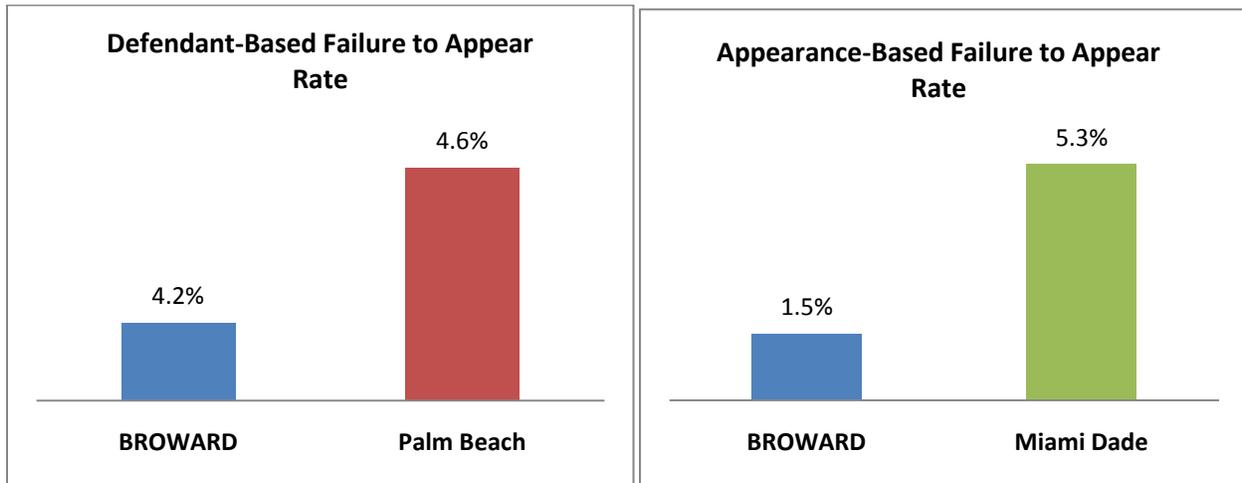
²⁷ For the first six months of FY 2009, 116 of 2,749 defendants (4.2%) failed to make a scheduled court appearance.

²⁸ Palm Beach also keeps a “cumulative running total,” which since Fiscal Year 1995 is 3.7% (2,688 of the 71,799 defendants failed to appear to at least one scheduled court appearance)

²⁹ Palm Beach does not capture FTA rates based on number of appearances and Miami Dade does not track FTA rates based on number of defendants.

Exhibit 13

The Program's Failure to Appear Rate for Fiscal Year 2008 is somewhat better than peers

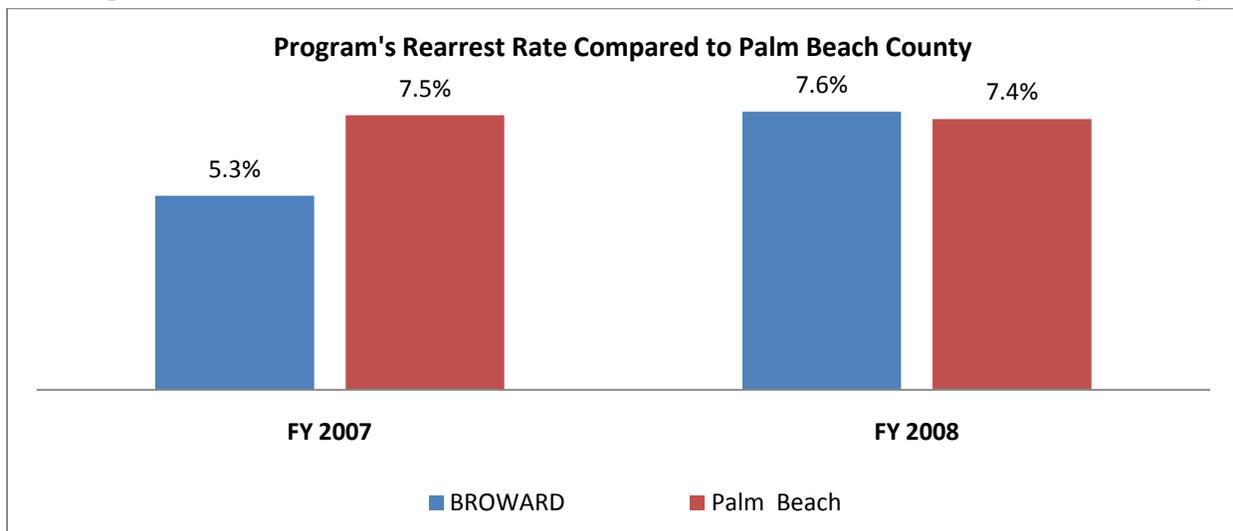


Source: Pretrial Services Program, Palm Beach County and Miami Dade County outcome data

Likewise, the Program's Rearrest Rate is similar to peers. The Program's Rearrest Rate has ranged from a low of 5.3% in Fiscal Year 2007 to a high of 7.6% in Fiscal Year 2008. These rates are comparable to Palm Beach County's rates.³⁰ For example, Palm Beach County's Rearrest Rates for the past two fiscal years were 7.5% and 7.4%. However, if the current trend continues, the Program's Rearrest Rate for Fiscal Year 2009 will be somewhat higher at 8.6%. Exhibit 14 shows a comparison of the Program's Rearrest Rate to peers.

Exhibit 14

The Program's Rearrest Rate for Fiscal Years 2007 and 2008 is similar to Palm Beach County's



Source: Pretrial Services Program and Palm Beach County outcome data

³⁰ We could not obtain Miami-Dade's Rearrest Rate because they could not give us a "definitive answer" to the number of clients supervised during Fiscal Year 2008.

Keeping the Rearrest Rate as low as possible is critical in terms of lessening the adverse effects of crime and victimization and reducing law enforcement, court processing and jail costs. Defendants who are rearrested are likely to remain in jail pending trial, adding to the already high cost of incarceration. While incarcerated, these individuals often lose their jobs, becoming unable to pay bills and support their families, and sometimes also lose their homes and vehicles, making it more difficult to become self-sufficient upon later release.

Successful Completion Rate has Declined Slightly in Past Few Years

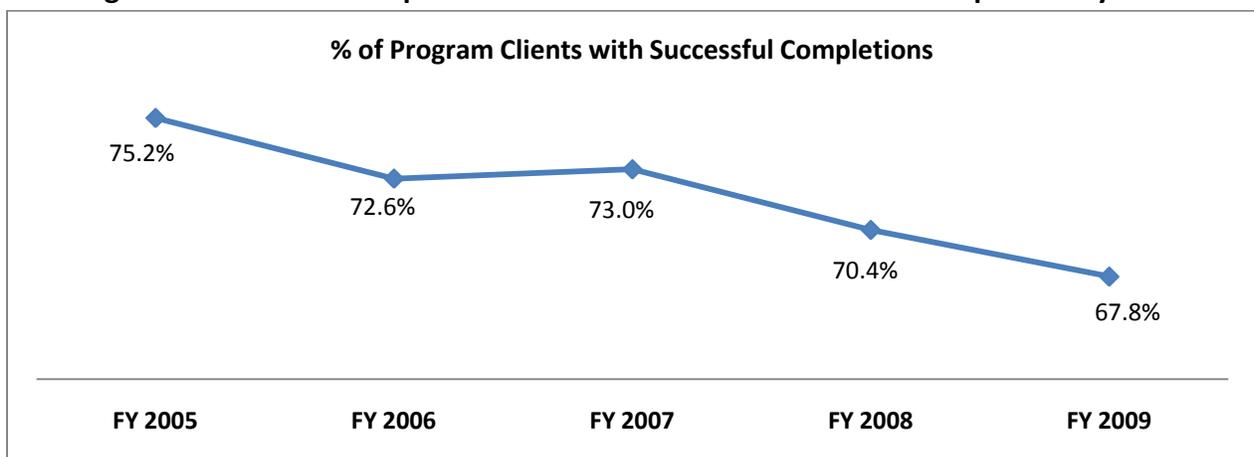
Because a major Program goal is to ensure client compliance with court ordered conditions, it is important for the Program to track the extent to which clients fulfill the court's requirements. The Program collects and reports a Successful Completion Rate, which is the percentage of clients who comply with all conditions of pretrial release until disposition of their case, when supervision ends.

Since Fiscal Year 2005, the Program's Successful Completion Rate has fairly steadily declined. As shown in Exhibit 15 below, the Successful Completion Rate went from 75.2% in Fiscal Year 2005 to 70.4% in Fiscal Year 2008. The rate for the first six months of Fiscal Year 2009 is 67.8%.

As of April 2009, Program managers had not conducted an analysis to identify the causes of a declining Successful Completion Rate. However, Program managers told us they believe that a major reason appears to be that the Program is supervising more mentally ill clients, who are typically revoked several times and placed back in the Program. The Program's Successful Completion Rate is negatively impacted because each revocation is counted as an unsuccessful completion. Therefore, we recommend that the Board of County Commissioners request the Public Safety Coordinating Council to oversee analysis to identify causes of the declining Successful Completion Rate and to implement feasible solutions.

Exhibit 15

The Program's Successful Completion Rate has declined somewhat in the past few years



Source: Pretrial Services Program

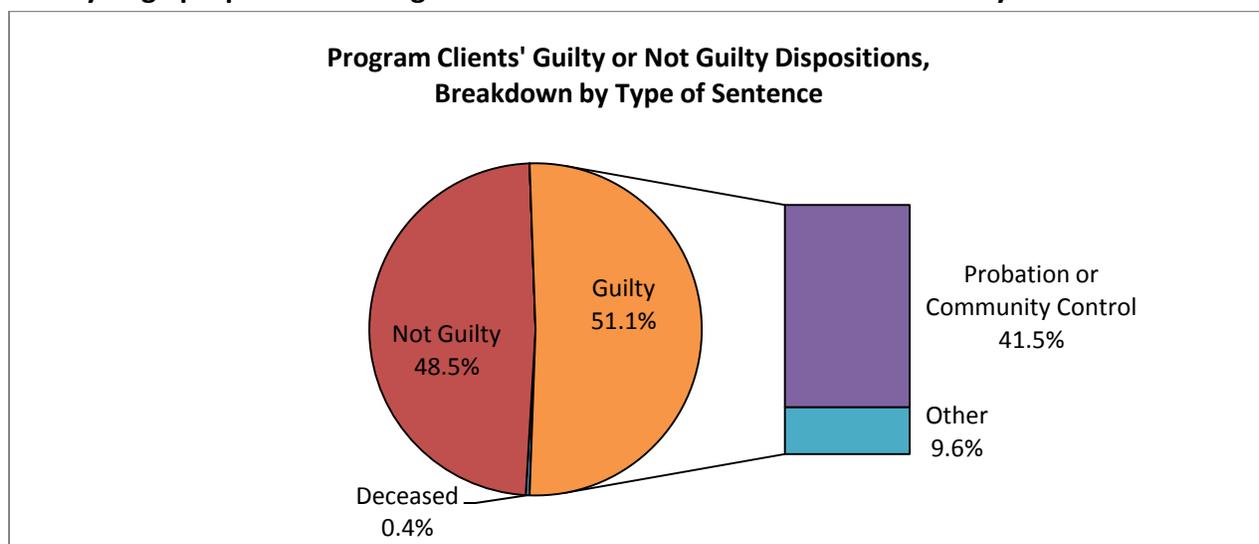
Ultimate Disposition of Program Clients

The Program also collects data on clients' adjudication. For Fiscal Year 2008, there were 3,187 clients who were successful completions. Of these 3,187 clients, 1,630 (51.1%) were found guilty and 1,545 (48.5%) were found not guilty.³¹

Of the 1,630 clients who were found guilty, 1,324 (81.2%) were sentenced to Probation or Community Control. Another 182 clients (11.2%) were sentenced to serve time in State prison or County jail. The remaining 124 clients were either sentenced to the time they had already served or had a fine imposed. Exhibit 16 shows the ultimate disposition of the Program's successful completions in Fiscal Year 2008.

Exhibit 16

A fairly large proportion of Program clients receive Probation or Community Control sentences



Source: Broward Sheriff's Office

Status of Implementation of New Statutory Reporting Requirements

Chapter 2008-224, *Laws of Florida*, requires each pretrial release program to prepare a weekly register showing relevant information about defendants released through the program and to submit an annual report to the Office of State Courts Administrator and to the clerk of circuit court by March 31 of every year. The annual report must contain certain information, including:

- The amount of fees paid by defendants to the program;
- The number of defendants assessed and interviewed for pretrial release;
- The number of defendants recommended for release;

³¹ Another 12 clients (0.4%) died while awaiting adjudication.

- Documentation showing defendants who (1) failed to attend a scheduled court appearance, (2) were issued a warrant for failing to appear, and (3) were arrested for any offense while on release through the pretrial release program; and
- Any additional information deemed necessary by the governing body to assess the performance and cost-efficiency of the pretrial release program.

We requested documentation of the Program's efforts to comply with these new statutory reporting requirements. Program managers provided us with data and records showing implementation status as of April 2009, which we summarize below.

Program is Not Yet Fully Compliant with New Reporting Requirements

As of April 2009, Program managers reported having the capacity to collect and report most of the required data. For example, the Program could report on seven of 11 data elements required for the weekly register and seven of 10 data elements required for the annual report. The remaining data elements and reports necessitate enhancements to the existing Pretrial Case Management System, which the system's vendor estimates will cost an additional \$103,785 to accomplish. Program managers said that these additional funds are not included in the FY 2009 budget or requested in the FY 2010 budget due to the County's request to reduce the Sheriff's budget. Program managers indicated that full compliance with the new statutory requirements will be delayed until funding is available.

Program managers cited two other primary obstacles to full compliance:

- Implementing a new case management system in April 2008 required more time than anticipated, thus delaying the move to incorporate additional data fields; and
- Determining the indigency status of inmates, one of the data elements required by the law, is currently done by the Clerk of Courts, and is staff intensive and time-consuming to accomplish.

Appendix A

Summary of March 2007 National Institute of Corrections' Recommendations

Criminal Justice System Operations Generally
1. Shift judicial, prosecutorial and defense resources to "front end" of system, allowing for earlier case dispositions
2. Modify magistrate court to allow for case preparation time, consideration of pleas, and meaningful bond reviews
3. Reduce number of unnecessary case continuances and delays
4. Attack and eliminate 750 day list and expand attack to those who have been incarcerated for 1.5 years
5. Develop strategies among law enforcement, jail booking, prosecution, defense bar and service providers to maximize diversion from booking and/or prosecution for those who are eligible
6. Develop additional sentenced time cut incentives (often referred to as Sheriff's good time) through program participation for the sentenced population
Bail, Pretrial Services, and other Community Control
7. Pretrial Services should investigate all defendants and provide a pretrial investigation whenever feasible at initial appearance if consideration of bail is likely to occur. The investigation should be provided to the court, prosecutor, and defense during pretrial decision making process, and should include interview with defendant, verification of specified information, local, state and national criminal history record, objective assessment of risk of failure to appear and danger to the community, and recommendation for terms and conditions of bail
8. Establish a bond review procedure for all pretrial misdemeanants still in jail after 3 days and felons after 7 days
9. Allow pretrial services to request a bond hearing when a defendant is deemed eligible for release
10. Expand Drug Treatment Court program to include non-first time offenders and non-drug charges that are drug related
11. Allow for utilization of "reprimand hearings" in lieu of arrest in some probation violation cases
12. Investigate a probation violation docket to expedite disposition of probation violations
Public Safety Coordinating Council (PSCC)
13. Expand mission statement to include management and oversight of the criminal justice system
14. Expand participants to include all critical system stakeholders and relevant community resource and service providers (educators, business and community service groups/activists, tribal/ethnic group leaders, and media)
15. Develop a system-wide philosophy and mission to ensure that all constituents have a shared understanding of what needs to be accomplished and how to accomplish it
16. Use the PSCC as the mechanism for system communication and collaboration. The PSCC should be the lead voice in driving changes to policies and procedures reflecting its mission and goals
17. Develop/identify a mechanism to provide data to inform decision makers
18. Develop a comprehensive, system-wide management and operations plan to include a workload analysis with capacity projections and a detailed initiative to improve programs and services
19. Conduct effective system mapping to identify inefficiencies/delays for each of 7 decision points (decision to arrest, decision to detain pretrial, decision to release from pretrial detention, decision to prosecute, adjudication outcome, sentencing decision, sentence modification decision); examine all factors that impact jail population, as shown below.
Jail Facilities
20. Set an operating capacity of 85% of total rated capacity, with specific operational capacities for each facility
21. Develop a jail population control management function, designed to monitor the inmate population and to help the system manage that population
22. Hire a population control manager (PCM), who should develop and distribute a jail population report to all criminal justice system participants. The PCM should also establish a "Daily Jail Population Count Report" at a single specified time (such as 12:01 AM), which should provide counts for inmates broken down by their status (such as "holding" or "general population (classified)," and further broken down by following subcategories: pretrial, pre-sentenced (or convicted, not yet sentenced) and sentenced

Source: Pretrial Services Program