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Pretrial Release Programs Generally Comply with Statutory Data Collection Requirements

at a glance

During 2010, 29 Florida counties had pretrial release programs that supervised defendants who had been released from jail while awaiting disposition of their criminal charges. No program reported receiving state general revenue, with most programs (27) primarily funded through county funds. In addition, four programs received state or federal grants.

Eight programs were able to provide a breakdown of the nature of defendants' criminal history, which varied among programs. For these programs, the percentage of defendants with violent felony convictions ranged from 0.9% to 29.7%. Twenty-four programs reported that judges in their circuits have the discretion to assign a bond and require supervision by pretrial release programs to provide an additional layer of accountability.

Most programs reported that few defendants they served failed to appear in court or were arrested while in the program. As in prior years, programs reported varying outcomes for failures to appear, warrants for failure to appear, and defendant arrests.

Programs have generally complied with statutory requirements, as most (26) submitted an annual report to OPPAGA and reported that they maintain the required weekly registers. Most programs (27) also responded to OPPAGA's survey that requested additional information.

Some programs' annual reports do not contain all outcome data required by law. Some reporting requirements do not apply to programs that do not make release recommendations. Programs also could not report some criminal history information due to state and federal restrictions.

Scope

Section 907.044, *Florida Statutes*, part of the Citizens' Right to Know Act, directs OPPAGA to annually evaluate Florida's pretrial release programs.¹ This report assesses the programs' compliance with statutory reporting requirements for the Calendar Year 2010.

Background

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges. Pretrial release is a constitutional right for most people arrested for a crime, and is generally granted in one of three ways.²

¹ Prior annual reports are *Pretrial Release Programs Vary Across the State; New Reporting Requirements Pose Challenges*, OPPAGA [Report No. 08-75](#), December 2008; *Pretrial Release Programs' Compliance With New Reporting Requirements Is Mixed*, OPPAGA [Report No. 10-08](#), January 2010; and *Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*, OPPAGA [Report No. 10-66](#), December 2010.

² Article I, Section 14, *Florida Constitution*, provides that unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. Further, s. 907.041, *F.S.*, states that it is the intent of the Legislature 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. Dangerous crimes are described in s. 907.041(4), *F.S.*, and include offenses such as arson, aggravated assault, aggravated battery, child abuse, abuse of an elderly person or disabled adult, kidnapping, homicide, manslaughter, sexual battery and other sex offenses, robbery, carjacking, stalking, and domestic violence.

- Release on recognizance allows defendants to be released from jail without posting a bond. These defendants are not supervised.
- Bond allows defendants to be released by monetary payment to the court (cash bond) or to a private bondsman (surety bond).³ A surety bond requires defendants to pay a nonrefundable fee to the bondsman of 10% of the bond set by the court. If the defendant does not appear in court, the bondsman is responsible for paying the entire bond amount. Bondsmen are not required to supervise defendants but have a vested interest in ensuring that their clients keep their court dates and do not abscond. Judges in some circuits required defendants who posted bond to also be supervised by a pretrial release program as an added layer of accountability.
- Local pretrial release programs allow defendants to be released under the program’s supervision. During 2010, 29 counties had pretrial release programs. The programs supervised defendants through various methods such as phone contacts, office visits, and electronic monitoring. Judges typically assigned defendants to a program, but some programs can select the defendants that participate in their program. Judges generally allow defendants to be released to the program without a bond; however, in some counties, judges may require defendants to also post bond when assigned to a program.

This review addresses four questions.

- How are Florida’s pretrial release programs funded?
- What is the nature of the charges and criminal history of defendants in pretrial release programs?

³ A cash bond is paid directly to the court/jail for the total amount of the bond, in cash. If the arrestee does not appear after posting a cash bond, the money will be forfeited. If a not guilty verdict is rendered or the case is dismissed, or at the conclusion of the trial proceedings, bond money will be refunded minus any fines and court costs.

- How many defendants served by pretrial release programs were issued warrants for failing to appear in court or were arrested while in the program?
- Are pretrial release programs complying with statutory reporting requirements?

Questions and Answers –

How are Florida’s pretrial release programs funded?

During 2010, no pretrial release program reported receiving state general revenue, and 27 of the 29 programs were primarily funded through county funds.⁴ In addition, four programs received grants. The programs in Escambia and Okaloosa counties received grants from the Florida Department of Children and Families and the programs in Leon and Manatee counties received federal Justice Assistance Grants.^{5,6} Details on reported program budgets are included in Appendix A.

Twelve programs reported that they charged fees to defendants. Counties used these fees to support program budgets, pay vendors for services rendered to defendants, or fund county general revenue. As shown in Appendix B, programs most commonly charged fees for electronic monitoring.

What is the nature of the charges and criminal history of defendants in pretrial release programs?

Judges have broad discretion to place defendants in pretrial release programs, including those with more serious charges and criminal histories.⁷ As a result, programs can

⁴ Jackson County did not provide an annual report or respond to our survey request, so we were unable to determine how the program was funded. Seminole County did not provide budget information in its annual report or survey response.

⁵ The Escambia County grant was for a forensic mental health specialist. The Okaloosa County grant was for a mental health pretrial officer.

⁶ The Manatee County program received three federal Justice Assistance Grants. Two grants were received directly and a third was received by the state and passed on to the program.

⁷ As discussed in previous OPPAGA reports, pretrial release programs that screen defendants for their programs generally

serve defendants with violent charges, such as domestic and aggravated battery and sex offenses.

Eight programs were able to provide a breakdown of the nature of defendants' criminal history, which varied among programs.⁸ For example, as shown in Exhibit 1, Citrus County's program reported that 35.6% of its defendants had non-violent felony criminal histories and 29.7% had violent felony convictions. Hillsborough County's program reported that 72.9% of its defendants had non-violent felony criminal histories while only 0.9% had violent felony convictions.

**Exhibit 1
Most Defendants Served by Select Pretrial Release Programs Had No Prior Violent Felonies**

County	Criminal History of Majority of Defendants	Percentage of All Defendants Who Had Violent Felony Convictions
Citrus	Non-violent felony (35.6%)	29.7%
Collier	Misdemeanors only (90.8%)	6.9%
Duval	Non-violent felony (68.8%)	1.7%
Hillsborough	Non-violent felony (72.9%)	0.9%
Leon	First offense (58.7%)	13.5%
Miami-Dade	No prior convictions (54.8%)	10.7%
Palm Beach	Non-violent felony (44.9%)	23.9%
Sarasota	First offense (59.9%)	5.9%

Source: OPPAGA analysis of pretrial release program survey responses.

As shown in Exhibit 2, 24 programs reported that judges in their circuits have the discretion to assign a bond and require supervision by pretrial release programs for an additional layer of accountability.

restrict eligibility to defendants with less serious criminal charges.

⁸ Section 907.044, F.S., requires OPPAGA to report on the nature of criminal convictions of defendants accepted into the programs. However, programs are not required to report this information in the annual reports that they submit. Therefore, we requested the number of defendants who had criminal histories of violent felonies, non-violent felonies, misdemeanors only, and first offenses. Most programs reported that they did not collect data at that level as it is not statutorily required or they did not categorize data in that manner.

**Exhibit 2
Judges in 24 Counties May Require Defendants to Pay a Bond in Addition to Being Supervised by the Pretrial Release Program¹**

County	Defendants Accepted in 2010	Percentage of Who Also Paid a Bond
Alachua	752	2%
Bay	890	<10%
Brevard	3,049	DNP
Broward	5,058	30%
Charlotte	295	DNP
Duval	2,161	DNP
Escambia	1,786	DNP
Highlands	359	48%
Hillsborough	468	3.4% ²
Lee	1,998	0.5%
Leon	1,243	60%
Manatee	2,223	DNP
Miami-Dade	11,648	1%
Monroe	960	DNP
Okaloosa	1,079	80%
Orange	4,881	72%
Osceola	2,824	67%
Palm Beach	4,019	DNP
Polk	5,499	80%
Santa Rosa	152	DNP
Sarasota	2,212	DNP ³
Seminole	79	8%
St. Lucie	549	66%
Volusia	4,313	53%

¹ Programs in 24 counties indicated that judges may require defendants to pay a bond in addition to being supervised by the pretrial release program. DNP denotes that the program 'did not provide' the percentage of defendants accepted in 2010 who also paid a bond.

² In Hillsborough County, judges can only order both bond and pretrial release if there are multiple charges.

³ The Sarasota County program reported that 24% of the 1,906 defendants given pretrial release at first appearance also paid a bond.

Source: OPPAGA analysis of pretrial release program survey responses.

How many defendants served by pretrial release programs were issued warrants for failing to appear in court or were arrested while in the program?

Most pretrial release programs reported that few defendants they served failed to appear in court or were arrested while in the program. As shown in Appendix A, programs reported varying outcomes for failures to appear and warrants for failure to appear. For example, the programs in Charlotte and St. Lucie counties reported that none of their defendants

were issued warrants for failure to appear, while the programs in Orange and Miami-Dade counties reported that 245 (4%) and 1,982 (11%) defendants, respectively, were issued such warrants.

Programs also had varying outcomes for defendant arrests. For example, the program in Collier County reported that only one defendant was arrested for any offense while in the program, while the programs in Broward and Miami-Dade counties reported that 492 (6%) and 2,501 (14%) defendants, respectively, were arrested for any offense while in the program. The offenses resulting in an arrest included failing to appear in court, committing new crimes, and failing to comply with program rules.

Are pretrial release programs complying with statutory reporting requirements?

Section 907.043, *Florida Statutes*, requires pretrial release programs to prepare a register, which must be updated weekly, displaying descriptive information about the defendants released through the program. Additionally, no later than March 31 of every year, each pretrial release program must submit an annual report for the previous calendar year to the governing body and to the clerk of the circuit court in the county where the pretrial release program is located. In 2010, pretrial release programs generally complied with these statutory requirements, as most (26 of 29 programs) submitted an annual report to OPPAGA and reported that they maintain the required weekly registers.⁹ Most (27) also responded to OPPAGA's survey that requested additional information.¹⁰

However, some programs' annual reports did not contain all outcome data required by law.¹¹ While some programs did not disclose why they did not provide the data, many programs

cited similar reasons. The primary reason was that some data elements did not apply to all programs. For example, eight programs reported that they did not recommend defendants for pretrial release; seven programs reported that they did not recommend against nonsecured release; and nine programs reported that they did not recommend defendants for nonsecured release. As a result, these programs could not report data for these required elements.

Also, several programs did not provide criminal history data required in the weekly register due to state and federal restrictions.¹² Florida statutes require pretrial release programs to disclose the nature of prior criminal convictions of defendants accepted into their programs; however, in 2010, the Florida Department of Law Enforcement (FDLE) determined that s. 907.043, *Florida Statutes*, does not and cannot authorize or permit reporting national criminal history information to the public.¹³ FDLE advised that the Federal Bureau of Investigation could limit or deny access by Florida criminal justice agencies to national criminal history information if it is released in violation of federal restrictions. This revocation could extend to all law enforcement and public safety entities in the state.

Appendix C describes program compliance with s. 907.043, *Florida Statutes*.

Agency Comments ———

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of OPPAGA's report was submitted to the pretrial release programs and to the Office of State Courts Administrator for review.

⁹ Jackson, Monroe, and Polk counties did not provide an annual report.

¹⁰ Jackson and Wakulla counties did not respond to our survey.

¹¹ There is no statutory penalty for programs that fail to meet reporting requirements.

¹² One program that provided criminal history data limited the information to a summary of the total number of felonies and misdemeanor cases. Another program provided the criminal history information for Florida adult convictions.

¹³ Federal law restricts access to this information, as provided in s. 943.054, *F.S.*, and 28 *Code of Federal Regulations (C.F.R.)* s. 20.33.

Appendix A

Pretrial Release Program Budget and Outcome Information

As shown in Exhibit A-1, pretrial release programs' reported budgets and outcomes varied. Comparisons of budgets should be made with caution because of differences in caseloads and responsibilities. For example, Citrus County's program, which served 101 defendants in 2010, electronically monitored pretrial defendants but did not conduct investigations of pretrial detainees, make pretrial release recommendations to the court, or supervise pretrial defendants. Broward County's program, which served 7,660 defendants in 2010, conducted investigations of pretrial detainees, supervised pretrial defendants, and electronically monitored pretrial defendants.

Exhibit A-1

Pretrial Release Programs' Budgets and Outcomes Varied¹

County	Calendar Year 2010 Total Budget	Total Accepted in 2010	Total Served in 2010	Issued a Warrant for Failing to Appear in Court	Arrested for Any Offense While in the Program
Alachua	\$943,079	752	992	47	41
Bay	60,000	890	1,222	20	28
Brevard ²	696,985	3,049	3,049	110	196
Broward ³	5,825,257	5,058	7,660	235	492
Charlotte	406,741	295	386	0	12
Citrus	54,350	DNP	101	3	8
Collier ²	90,780	52	82	1	1
Duval	787,993	2,161	2,161	20	53
Escambia	449,557	1,786	4,666	68	52
Highlands	87,861	359	749	DNP	48
Hillsborough	371,157	468	539	7	22
Jackson	Did not submit a survey response or an annual report				
Lee ²	2,227,985	1,998	2,521	51	102
Leon	1,069,059	1,243	1,732	60	65
Manatee	640,428	2,223	2,223	DNP	119
Miami-Dade	5,461,770	11,648	17,364	1,982	2,501
Monroe	496,008	960	1,213	15	25
Okaloosa	397,979	1,079	1,079	28	10
Orange ⁴	2,708,984	4,881	6,654	245	222
Osceola ²	584,245	2,824	2,824	131	190
Palm Beach	1,525,025	4,019	5,525	190	394
Pinellas ⁵	1,421,476	3,361	6,304	149	396
Polk	1,042,797	5,499	5,499	344	431
Santa Rosa	114,171	152	789	5	117
Sarasota ²	1,412,753	2,212	2,651	120	139
Seminole	DNP	79	92	3	7
St. Lucie	819,140	549	694	0	22
Volusia ⁶	1,357,180	4,313	6,109	108	433
Wakulla ⁷	146,161	Did not submit a survey response			

¹ DNP denotes that the program 'did not provide' that information.

² Brevard, Collier, Lee, Osceola, and Sarasota counties provided Fiscal Year 2009-10 budget information. Sarasota County also provided an estimate of \$1,393,708 for its calendar year 2010 budget. The program arrived at this figure by using 75% of its Fiscal Year 2009-10 budget and 25% of their Fiscal Year 2010-11 budget.

³ Broward County's budget included \$1,905,022 for risk assessment unit personnel and operating costs, \$2,469,461 for supervision unit personnel and operating costs, and \$1,450,774 for electronic monitoring equipment lease and monitoring costs. In regards to defendants issued a warrant for failing to appear in court, the program reported that in many cases defendants were issued a warrant, but judges rescinded the warrant without an arrest. The program also noted that the 492 defendants arrested for any offense while in the program were those who were arrested for a new charge and not for any technical violation of pretrial release conditions.

⁴ Orange County's budget included \$1,501,011 for inmate identification, court information, and release processing of nonsecured releases. The budget also included \$1,207,973 for post release supervision of nonsecured releases, which included pretrial supervision and electronic monitoring.

⁵ Pinellas County's budget provided services for three programs: pretrial services, day reporting for sentenced offenders, and electronic monitoring for sentenced offenders. The program estimated that the functions associated with pretrial services made up approximately 55% of the budget.

⁶ The number of defendants arrested for any offense while in the program includes notices to appear and arrests. Volusia County's program technology does not capture these separately.

⁷ Wakulla County's budget is not separated into pretrial release and probation services. An operating budget in the amount of \$8,725 includes probation and pretrial release annual operating fees.

Source: Pretrial release program annual reports and survey responses.

Appendix B

Pretrial Program Defendant Fees

Exhibit B-1 lists the 12 counties that reported charging fees to defendants. Counties used these fees to support program budgets, pay vendors for services rendered to defendants, or fund county general revenue. Programs most commonly charged fees for electronic monitoring.

**Exhibit B-1
Twelve Programs Charge Defendants Fees^{1,2}**

County	Service	Fee Amount	Total Collected	Fee Assessment	Recipient of Fees
Alachua ³	Electronic/GPS Monitoring	Sliding	\$36,457	Fee Schedule	Vendor
	Urine Testing	\$15/test	\$540	Fee Schedule	General Fund
Brevard ⁴	Pretrial Community Supervision Administrative Fees	\$10/week	DNP	Required unless waived	Program revenue
Broward	Electronic Monitoring	\$5/day	\$136,835	Mandatory unless indigent	County general fund
Charlotte	GPS Monitoring/GPS with Alcohol Monitor	\$12/day	DNP	Mandatory unless waived	Vendor
	Drug Testing	\$5/test	DNP	When court-ordered	County
	Alcohol (ETG) Testing	\$15.75/test	DNP	When court-ordered	County
	Synthetic Drug Testing	\$30/test	DNP	When court-ordered	County
Citrus	DNP	DNP	DNP	DNP	DNP
Leon	Monthly Administrative Fees	\$40/month	\$105,766	Mandatory unless waived	Program revenue
	Active GPS Monitoring Fees	\$12/day	\$20,293	Mandatory unless waived	Program revenue
	Passive GPS Monitoring Fees	\$10/day	\$8,340	Mandatory unless waived	Program revenue
	SCRAM Monitoring Fees	\$12/day	\$25,488	Mandatory unless waived	Program revenue
Okaloosa	Electronic Monitoring	\$12/day	\$49,356	Mandatory	General revenue fund
Orange	Electronic Monitoring Cost of Supervision Fee	\$6/day	\$9,782 (non-secured releases)	Mandatory unless waived	County general revenue
	Drug Testing Fees	\$17/one-time fee	\$13,594 (non-secured releases)	Mandatory unless waived	County general revenue
	Pretrial Supervision Telephone Reporting Fee	\$6/month	\$13,137 (non-secured releases)	Mandatory unless waived	County general revenue
Osceola	Electronic Monitoring	\$2.70/day	DNP	When court-ordered	Vendor
	GPS Monitoring	\$4.90/day	DNP	When court-ordered	Vendor
Palm Beach	Cost of Supervision	\$10/week	\$262,050	Mandatory unless waived	County
Santa Rosa	Administrative Fee	\$25/one-time fee	\$12,127	Mandatory unless waived	Program revenue
	Drug/Alcohol Testing	\$15/test	\$5,213 (estimated)	When tested	Program revenue
St. Lucie	GPS/Supervision	\$2/week to \$30/week	\$5,425	When court-ordered	County general revenue

¹ DNP denotes that the program 'did not provide' that information.

² Miami-Dade County's program noted that defendants were not charged fees to participate in the pretrial release program. However, electronic monitoring was provided by the Miami-Dade Corrections and Rehabilitation Department Monitored Release Program and defendants were required to pay a cost of supervision fee. Pinellas County's program noted that pretrial defendants were not charged a fee unless ordered by the court.

³ Alachua County pretrial defendants were not charged fees to participate in the program; however, they were charged for services provided. All monies collected were charged in accordance with the county's established fee schedule. Not all defendants who paid for urine testing were Alachua County pretrial defendants. In addition to Alachua County pretrial defendants, fees were collected for those defendants under supervision in other counties when asked (e.g., if another jurisdiction collected fees and Alachua County provided courtesy supervision, Alachua County collected fees for the jurisdiction). Most of the urine testing completed for Alachua County pretrial defendants was done at no cost to the defendant. Electronic/GPS monitoring fees were collected by pretrial staff; however, the monies were made payable to the vendor. Having the pretrial staff act as the collection agent reduces the fees charged to the defendants.

⁴ Brevard County's program noted that there were no fees charged for pretrial release participation, only pretrial community supervision administrative fees.

Source: Pretrial release program survey responses.

Appendix C

Compliance with Statutory Reporting Requirements

Section 907.043, *Florida Statutes*, requires pretrial release programs to prepare a register, which must be updated weekly, displaying descriptive information about the defendants released through the program. Additionally, by March 31 every year, each pretrial release program must submit an annual report for the previous calendar year. All but three programs (Jackson, Monroe, and Polk) complied with the annual report requirement. In addition, all but two programs (Jackson and Wakulla) responded to our survey and provided additional information. Some programs’ annual reports did not contain all outcome data required by law. While some programs did not disclose why they did not provide the data, many programs cited similar reasons. The primary reason was that some data elements did not apply to all programs. Also, some criminal history data could not be released due to state and federal restrictions.

Exhibit C-1 summarizes the number of programs that met the requirements to maintain and update a weekly register and provide an annual report.

Exhibit C-1 Programs Did Not Provide All Requirements

Weekly Register Requirements (s. 907.043(3)(b), <i>F.S.</i>)	Number of Programs That Provided Data	Number of Programs That Did Not Provide Data ¹
Number of defendants assessed and interviewed for pretrial release.	25	4
Number of indigent defendants assessed and interviewed for pretrial release.	20	9
Names and number of defendants accepted into the pretrial release program.	26	3
Names and number of indigent defendants accepted into the pretrial release program.	21	8
Charges filed against and the case numbers of defendants accepted into the pretrial release program.	25	4
Nature of any prior criminal conviction of a defendant accepted into the pretrial release program.	21	8
Court appearances required of defendants accepted into the pretrial release program.	23	6
Date of each defendant’s failure to appear for a scheduled court appearance.	20	9
Number of warrants issued for a defendant’s arrest for failing to appear at a scheduled court appearance.	19	10
Number and type of program noncompliance infractions committed by a defendant in the pretrial release program and whether the pretrial release program recommended that the court revoke the defendant’s release.	21	8
Annual Report Requirements (s. 907.043(4)(b), <i>F.S.</i>)	Number of Programs That Provided Data	Number of Programs That Did Not Provide Data ¹
Number of defendants assessed and interviewed for pretrial release.	27	2
Number of defendants recommended for pretrial release.	16 ²	5
Number of defendants for whom the pretrial release program recommended against nonsecured release.	15 ³	7
Number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release.	15 ⁴	5
Number of defendants assessed and interviewed for pretrial release that were declared indigent by the court.	20	9
Name and case number of each person granted nonsecured release who failed to attend a scheduled court appearance.	22	7
Name and case number of each person granted nonsecured release that was issued a warrant for failing to appear.	23	6
Name and case number of each person granted nonsecured release who was arrested for any offense while on release through the pretrial release program.	24	5

¹ Programs that did not provide an annual report or survey response are included in the figures in this column.

² An additional eight programs reported that they did not recommend defendants for pretrial release.

³ An additional seven programs reported that they did not recommend against nonsecured release.

⁴ An additional nine programs reported that they did not recommend defendants for nonsecured release.

Source: Pretrial release program annual reports and survey responses.

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



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