



Innovation:
Broward County
Pretrial Release
Ordinance

Background: In December, 2007 with the Broward County, Florida jail at 92 percent capacity and rapidly growing,¹ a court ruling demanded the county address jail overcrowding. County officials had two options, either build a new \$70 million facility or create a measure to alleviate overcrowding.² As nearly a quarter of every tax dollar was already spent on the criminal justice system in Broward County, an increase in spending for a new facility would have met significant resistance.³ In order to address overcrowding without having to build a new jail, in 2008 county officials passed an ordinance⁴ to expand the county's pretrial release program and reduce the number of people held in county jail on low-level, nonviolent crimes due to their inability to post bail or qualify for release on their own recognizance.⁵

Expanding the pretrial release program saved over \$70 million in construction and operational costs of a new jail.

\$1,000.⁶ The pretrial expansion policy was created to provide fair and equal access to pretrial release, while ensuring the detention of people who pose

A study by the National Institute of Corrections noted that in Broward County in 2008, 975 people were detained for their entire pretrial period due to their inability to post bonds of \$5,000 or less, including 381 with bonds under

a threat to the community.⁷ It specifically targets indigent persons awaiting trial who are unable to post bail.

How it works: The policy established a pretrial program to assist those were assigned bail but remained in jail for three or more days due to their financial inability to pay the set bail amount. After a person remains in jail for three days after a bail assignment a personal assessment occurs to determine eligibility for the pretrial release program. Basic qualifications for the pretrial release program include: strong community ties (i.e. employment and close family network), no prior violent criminal record, and no history of missed court appearances. If a person fulfills all of these requirements they are then recommended to the magistrate court judge to be released into the pretrial program.⁸

The implementation of this policy also included the creation of a specialized mental health pretrial supervision service, including the hiring of two full-time pretrial officers who have been trained as mental health specialists. Those awaiting trial that have been found to have mental health conditions are now diverted into the specialized program.⁹

Results:

- After the implementation of the pretrial expansion the number of beds filled in Broward County's jail fell from 95 percent of capacity in 2008 to 86 percent capacity in 2009.¹⁰ One thousand fewer people were in jail in 2009, and the average length of stay fell to 26.79 days, the lowest it has been in over 5 years.¹¹

- The use of pretrial release within Broward County more than doubled, increasing from 1,013 participants in 2005 to nearly 3,000 participants in 2010.¹²
- As a result of the expanded pretrial release program, Broward County was able to reduce jail overcrowding and avoid construction of a new jail, saving the county over \$70 million in construction and operational costs.¹³

Challenges: In order to partake in the pretrial release program, participants must pay a \$5 per week fee (excluding people who are indigent). This fee can be prohibitive for any participant who is already experiencing collateral consequences of justice involvement, such as difficulty obtaining a job or stable, affordable housing. It may also have a disproportionate impact on people with less income who do not qualify for indigent status but still have trouble making the fees. This can have an even more significant impact depending on the sanctions for not paying fees—violations or detention, for example. Broward County should eliminate these fees to make the services they provide more accessible to those who need it.

In 2010, Broward County’s pretrial release program that had received such high acclaim and positive results saw its funding cut and the program’s size decrease.¹⁴ This loss in funds could mean a return to past policies and practices that result in more people being held in jail while awaiting trial simply because they cannot afford to post bail.

Policy Implications: Recent studies have shown that as many as 60 percent of those in jail have a mental illness. Specialized mental health programs can reduce the number of people in jail, help lower recidivism rates and improve the clinical outcomes for people with a mental illness.¹⁵ Fewer people being held in jail while awaiting trial means less costs and better

outcomes for individuals who are able to remain with their families and continue to work or go to school. Research indicates indigent people awaiting trial with strong community ties are just as likely to appear in court when released in pretrial programs as those who are able to post their own monetary bond.¹⁶ People who are held pretrial lose ties to their community, and are more likely to be convicted¹⁷ and receive a sentence of incarceration than people who are released.¹⁸

Pretrial release also saves money. In Broward County the cost in 2010 of placing a person into the pretrial release program is \$1.48 per day, compared with a day in jail at \$107.71. The cost disparity means the county saves over \$100 a day for each person moved out of jail and placed in a pretrial program.¹⁹ Over the course of a year this leads to significant cost savings of about \$4 million for every 100 people diverted into pretrial supervision.²⁰

For more information on the Broward County Pretrial Release Ordinance, please visit

http://sheriff.org/about_bso/dodcc/court/pretrial.cfm

¹ Scott Wyman, “To save money, Broward to expand pretrial release program: Program to save money, put off need for new jail,” *Tribune Business News*, January 16, 2008.

² Evan A. Lukic, *Evaluation of the Pretrial Services Program Administered by the Broward Sheriff’s Office* (Broward, Florida: Office of the County Auditor, 2009). www.broward.org/Auditor/Documents/pretrial_final060909.pdf

³ Alex Piquero, *Cost-Benefit Analysis for Jail Alternatives and Jail* (Tallahassee, Florida: College of Criminology and Criminal Justice, Florida State University, 2010) www.criminologycenter.fsu.edu/p/pdf/pretrial/Broward%20Co.%20Cost%20Benefit%20Analysis%202010.pdf

⁴ County Ordinance No. 2009-01

⁵ Breanne Gilpatrick, “Broward extends out-of-jail program to save space,” *Tribune Business News*, January 16, 2008.

⁶ Kimberly Maroe, "Broward County Commissioner Ken Keechl Named Vice Chair Of Public Safety Coordinating Council," *Broward County*, February 18, 2008.

⁷ Municode, "Broward County Pretrial Release Policy," March 2011.

http://library.municode.com/HTML/10288/level3/PTIICO_OR_CH10COLESE_ARTVIIBRCOPRREPO.html

⁸ Laura Sullivan, "Bondsmen Lobby Targets Pretrial Release Programs," *NPR*, January 22, 2010.

www.npr.org/templates/story/story.php?storyId=122725849

⁹ Evan A. Lukic, 2009

¹⁰ Evan A. Lukic, 2009

¹¹ Alex Piquero, 2010

¹² Alex Piquero, 2010

¹³ Scott Wyman, January 16, 2008.

¹⁴ Laura Sullivan, January 22, 2010.

¹⁵ Evan A. Lukic, 2009

¹⁶ John Clark, "Solving the Riddle of the Indigent Defendant," *Trail Briefs* (2007): 31-34.

¹⁷ See, for example, Anne Rankin, "The Effect of Pretrial Detention," *New York University Law Review* 39 (1964): 641-

655; Michael R. Gottfredson and Don M. Gottfredson, *Decision Making in Criminal Justice: Toward a Rational Exercise of Discretion* (New York: Plenum Press, 1988);

Williams, "The Effect of Pretrial Detention on Imprisonment Decisions," 299-316; C. E. Frazier and J.K.

Cochran, "Detention of Juveniles: Its Effects on Subsequent Juvenile Court Processing and Decisions,"

Youth and Society 17, no. 3 (1986): 286-305

¹⁸ Rod Morgan, "England/Wales," in Dünkel and Vagg, *Waiting for Trial*, 198.

¹⁹ Alex Piquero, 2010

²⁰ BI Electronic Monitoring Technology, *Broward County Expands its Pretrial Services Program* (Boulder, Colorado: BI Electronic Monitoring Technology, 2008)

<http://ns2.bi.com/pdf/casestudy/BrowardCoFL.pdf>