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Pretrial Release Programs' Data Collection Methods and Requirements Could Improve

at a glance

Twenty-eight Florida counties have locally funded pretrial release programs that supervise defendants who have been released from jail while awaiting disposition of their criminal charges. The programs have generally complied with statutory requirements to provide annual reports and maintain a weekly register of the defendants they serve.

However, 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 common reasons. Some requirements do not apply to programs that do not make release recommendations. Some programs did not report criminal history information because doing so would conflict with federal regulations. The Legislature could consider modifying reporting requirements to improve accuracy and data uniformity, streamline reporting requirements, and reduce local costs. These revisions would minimize administrative requirements that impede programs' ability to screen and supervise defendants.

Pretrial release programs reported that few participants failed to appear in court or committed additional offenses while supervised. However, it cannot be determined whether the programs are more effective than other forms of pretrial release (e.g., posting bond and release on recognizance) as there is no comparative statewide data on the outcomes of those release mechanisms.

Not all of Florida's programs meet the statutory definition of a pretrial release program. Section 907.043, *F.S.*, defines "pretrial release program" for purposes of the Citizens' Right to Know Act as "an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants." However, not all of Florida's programs conduct all of the activities listed in statute.

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 Calendar Year 2009.

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

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, and *Pretrial Release Programs' Compliance With New Reporting Requirements Is Mixed*, OPPAGA [Report No. 10-08](#), January 2010.

² Article I, Section 14, *Florida Constitution*, provides that unless

- 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 may be responsible for paying a portion or all of the 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 may require defendants who post 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 programs' supervision. Twenty-eight counties have pretrial release programs. The programs supervise defendants through various methods such as phone contacts, office visits, and electronic monitoring. Judges typically assign defendants to a program, but some programs can select their participants. 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.

Questions and Answers —

How are Florida's pretrial release programs funded?

None of Florida's 28 pretrial release programs received state general revenue. Five programs received grants. For example, Okaloosa County's program received a grant from the Florida Department of Children and Families and Manatee County's program received a federal Justice Assistance Grant. As shown in Appendix A, program budgets ranged from \$60,000 in Bay County to \$5.3 million in Broward County.

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

Programs' overall cost per defendant varied greatly, ranging from approximately \$64 in Bay County to \$1,670 in St. Lucie County.⁴ However, comparisons of budgets should be made with caution because of differences in caseloads, responsibilities, and supervision requirements. For example, Bay County's program, which served 934 participants in 2009, does not electronically monitor defendants and only makes release recommendations and attends first appearance hearings when asked by the court. St. Lucie County's program, which served 517 participants in 2009, uses GPS monitoring, but does not make release recommendations to the court and only attends first appearance hearings when requested by the court.

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.

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.

⁴ To calculate the cost per defendant, we divided each program's total budget by the number of defendants it served in 2009.

What is the nature of criminal charges 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.⁵ As a result, programs can serve defendants with violent charges, such as domestic and aggravated battery and sex offenses.

Seven programs were able to provide a breakdown of the nature of participants' criminal history, which varied among programs.⁶ While Citrus County's program reported that approximately 70% of its participants had prior violent felonies, the other six programs reported that most of their participants had no prior violent felonies. For example as shown in Exhibit 1, Leon County's program reported that approximately 82% of its defendants had no prior offenses and 4% had prior violent felony convictions. Collier County's program reported that approximately 93% of its participants had only prior misdemeanors and 4% had prior violent felonies.

**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	Violent felony (69.6%)	69.6%
Collier	Misdemeanors only (92.6%)	4.2%
Hillsborough	Non-violent felony (56.9%)	22.7%
Leon	First offense (81.9%)	4.4%
Miami-Dade	No prior convictions (65.1%)	12.4%
Monroe	Misdemeanor only (62.7%)	6.3%
Palm Beach	Non-violent felony (41.5%)	27.5%

Source: Analysis of program survey responses.

As shown in Exhibit 2, 23 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.

**Exhibit 2
Judges in 23 Counties May Require Defendants to Pay a Bond in Addition to Being Supervised by the Pretrial Release Program**

County	Defendants Accepted in 2009	Percentage of Defendants Who Also Paid a Bond
Alachua	721	1%
Bay	934	Less than 10%
Broward	5,689	42%
Charlotte	268	Unavailable
Citrus	Unavailable	Unavailable
Duval	2,063	Unavailable
Escambia	1,678	15-20%
Highlands	284	50%
Lee	1,995	Less than 1%
Leon	1,398	50%
Manatee	2,130	Approximately 25%
Miami-Dade	13,240	Less than 1%
Monroe	391	Unavailable
Okaloosa	1,114	Unavailable
Orange	7,932	42%
Osceola	2,642	60%
Palm Beach	5,322	24%
Polk	5,533	85-90%
Santa Rosa	883	Unavailable
Sarasota	2,816	25%
Seminole	Unavailable	Unavailable
St. Lucie	388	58%
Volusia	5,060	54%

Source: Program survey responses.

⁵ As discussed in last year's annual report, pretrial release programs that screen defendants for their programs generally restrict eligibility to defendants with less serious criminal charges.

⁶ 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 program participants 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.

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

Pretrial release programs reported that few participants 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 no defendants were issued warrants for failure to appear, while the programs in Orange County and Miami-Dade County reported that 520 and 1,861 defendants, respectively, were issued such warrants. Programs also had varying outcomes for defendant arrests. The offenses resulting in an arrest included failing to appear in court, committing new crimes, and failing to comply with program rules.

However, we cannot determine whether the programs are more effective than other forms of pretrial release (e.g., posting bond and release on recognizance) as there is no comparative statewide data on the outcomes of those release mechanisms.⁷ In addition, there are no national performance standards for this outcome.

Are pretrial release programs complying with statutory reporting requirements?

The programs have generally complied with statutory requirements, as most (25) of Florida’s 28 pretrial release programs submitted an annual report to OPPAGA and reported that they maintain the required weekly registers.⁸

⁷ Miami-Dade County is the only program that reported that it tracks failure to appear rates for the three release methods.

⁸ The three programs that did not provide an annual report were Citrus, Jackson, and Polk. Citrus County’s program submitted a document that included one of the annual report’s statutory requirements. Polk County’s program reported that it could not provide a 2009 annual report because the clerk’s office was in the process of implementing its new data system; implementation was completed and the program was able to respond to the survey and reported that it will be able to produce a 2010 annual report.

Most (26) also responded to OPPAGA’s survey that requested additional information.

However, some programs’ annual reports did not contain all outcome data required by law.⁹ While some programs did not disclose why they did not provide the data, many programs cited common reasons. The primary reason was that some data elements do not apply to all programs. For example, 11 programs do not make recommendations to the court regarding the release of arrestees and therefore could not report on data elements such as the number of defendants recommended for pretrial release.

Also, most programs did not provide criminal history data required in the weekly register due to state and federal restrictions. The law requires pretrial release programs to disclose the nature of prior criminal convictions of defendants accepted into their programs; however, the Florida Department of Law Enforcement (FDLE) has determined that s. 907.043, *Florida Statutes*, does not and cannot authorize or permit reporting national criminal history information to the public.¹⁰ 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*.

Options

The Legislature could consider amending ss. 907.043 and 907.044, *Florida Statutes*, to improve accuracy and data uniformity, streamline reporting requirements, and reduce local costs. These revisions would minimize administrative requirements that impede

⁹ There are no statutory penalties for programs that fail to meet reporting requirements.

¹⁰ 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.

programs’ ability to screen and supervise defendants. They would also address the violation of federal regulation and avoid the risk of access being revoked from all law enforcement and public safety entities in the state.

Revise statutory definition. Not all of Florida’s programs meet the statutory definition of a pretrial release program. Section 907.043, *F.S.*, defines “pretrial release program” for purposes of the Citizens’ Right to Know Act as “an

entity, public or private that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants.” However, not all of Florida’s programs conduct all of the activities listed in statute. As highlighted in Exhibit 3, only 9 of the 28 programs perform all four activities.

Exhibit 3

Only 9 of Florida’s 28 Pretrial Release Program Meet the Statutory Definition Under the Citizens’ Right to Know Act

County	Conducts investigations of pretrial detainees	Makes pretrial release recommendations to a court	Supervise pretrial defendants	Electronically monitors pretrial defendants
Alachua	Yes	Yes	Yes	Yes
Bay	Yes	Yes	Yes	No
Brevard	Yes	Yes	Yes	No
Broward	Yes	Yes	Yes	Yes
Charlotte	Yes	Yes	Yes	Yes
Citrus	No	No	No	Yes
Collier	Yes	Yes	Yes	No
Duval	Yes	Yes	Yes	No
Escambia	Yes	Yes	Yes	Yes
Highlands	Yes	Yes	Yes	No
Hillsborough	Yes	No	Yes	Yes
Jackson ¹	-	-	-	-
Lee	Yes	Yes	Yes	Yes
Leon	Yes	No	Yes	Yes
Manatee	Yes	No	Yes	Yes
Miami-Dade	Yes	Yes	Yes	No
Monroe	Yes	Yes	Yes	Yes
Okaloosa	Yes	Yes	Yes	Yes
Orange	Yes	No	Yes	Yes
Osceola	Yes	No	Yes	Yes
Palm Beach	Yes	No	Yes	No
Pinellas	Yes	Yes	Yes	Yes
Polk	Yes	Yes	Yes	Yes
Santa Rosa	Yes	Yes	Yes	No
Sarasota	Yes	No	Yes	No
Seminole ¹	-	-	-	-
St. Lucie	No	No	Yes	Yes
Volusia	Yes	No	Yes	Yes
Total Conducting Activities	24	15	25	17

¹Did not respond to the survey.

Source: Program survey responses.

If the Legislature wishes that all 28 pretrial release programs maintain weekly registers and produce annual reports, it could consider revising the statutory definition to state that “Pretrial release program” means an entity, public or private, that supervises or electronically monitors pretrial-released defendants. This would prevent those programs that do not conduct all four inclusive activities from being exempt from providing information on the grounds that the law does not technically apply to them.

Modify criminal history requirements. As discussed, the law requires programs to disclose to the public the nature of any prior criminal conviction of a defendant accepted into their programs. However, this requirement violates federal regulations, which jeopardizes Florida’s law enforcement and public safety entities’ access to federal criminal history. To address this issue, the Legislature could consider removing the requirement that programs display specific criminal histories of defendants in their weekly registers and instead require programs to provide an aggregate summary of criminal convictions. For example, the programs could provide in the annual report the total number of defendants who have convictions for prior violent felonies.

Revise requirements. The information that programs are required to maintain in their weekly is not consistent with the information they must report in their annual reports. Similarly, the information in the annual report that they must submit to OPPAGA is not consistent with the information that OPPAGA is required to provide in its annual evaluation of the programs. Due to these inconsistencies, OPPAGA must request additional information

from the program each year. The Legislature could consider revising statutes to make programs’ weekly and annual requirements and OPPAGA’s requirements directly correlate. The Legislature could also require programs to report data on a monthly rather than weekly basis, which could increase compliance by resource-limited programs, but would still enable OPPAGA, the state, and citizens to evaluate outcomes and identify program trends.

Appendix D outlines these and other suggestions for revising reporting requirements. The suggestions would improve accuracy and data uniformity, reduce local costs, and better correlate required information. For example, the element requiring the “number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release” could be modified to instead require the “number of defendants accepted into the program by type of release (secured/nonsecured).” Many programs reported that they do not make release recommendations, and most of those that do make recommendations do not recommend the type of release.

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 to review. While the programs were not required to respond to the report, several provided comments and feedback, which were considered in the final version of the report.

Appendix A

Pretrial Release Program Budget and Outcome Information

As shown in Table A-1, pretrial release programs' budgets varied greatly, ranging from \$60,000 in Bay County to \$5.3 million in Broward County. Outcomes also varied; for example, the programs in Charlotte and St. Lucie counties reported that no defendants were issued warrants for failure to appear, while the program in Miami-Dade County reported 1,861 such warrants.

Table A-1
Pretrial Release Programs' Annual Report Requirements¹

County	Calendar Year 2009 Total Budget ²	Total Accepted in 2009	Total Served in 2009	Issued a Warrant for Failing to Appear in Court	Arrested for Any Offense While in the Program
Alachua	\$817,038	721	887	39	52
Bay	60,000	934	934	4	22
Brevard	744,914	2,326	2,326	230	197
Broward	5,358,619	5,689	8,017	230	510
Charlotte	398,952	268	268	0	8
Citrus	DNP	92	92	DNP	3
Collier	107,300	134	189	3	8
Duval	787,993	2,063	2,063	34	47
Escambia	481,632	1,678	2,096	112	83
Highlands	100,526	284	351	12	19
Hillsborough	249,992	339	422	4	17
Jackson	Did not submit a survey response or an annual report				
Lee	1,760,956	1,995	4,191	90	104
Leon	721,725	1,398	1,965	69	73
Manatee	383,788	2,130	2,453	82	64
Miami-Dade	5,262,000	13,240	16,342	1,861	1,504
Monroe	500,000	391	490	36	DNP
Okaloosa	410,908	1,114	1,367	30	47
Orange	3,729,395	7,932	10,250	520	263
Osceola	584,245	2,642	2,642	136	125
Palm Beach	1,507,326	5,322	6,786	172	437
Pinellas	1,637,384	3,684	6,966	147	308
Polk	966,778	5,533	7,356	410	446
Santa Rosa	109,513	883	DNP	DNP	DNP
Sarasota	1,406,259	2,816	2,943	173	156
Seminole	Did not submit a survey response and the annual report did not contain these outcomes				
St. Lucie	863,863	388	517	0	16
Volusia	1,418,910	5,060	5,221	62	193

¹ DNP denotes that the program 'did not provide' that information. Programs reported various reasons for not reporting information, typically because they did not track the information. Some programs did not disclose why they did not provide the data.

² Collier County's program reported Fiscal Year 2008-09 budget information and Osceola County's program reported Fiscal Year 2009-10 budget information.

Source: Program survey responses.

Appendix B

Program Participant Fees

Table B-1 lists the 12 counties that reported that they charge fees to program participants. Counties use these fees to support program budgets, to pay vendors for services rendered to defendants, or to fund county general revenue. Programs most commonly charge fees for electronic monitoring.

**Table B-1
Twelve Programs Charge Defendants Fees¹**

County	Service	Fee Amount	Total Collected	Fee Assessment	Recipient of Fees
Alachua	Electronic Monitoring	\$7.96/day	\$31,058	Mandatory unless waived	Vendor
	GPS Monitoring ²	\$10.85/day			
Broward	Electronic Monitoring ³	\$5/day	\$48,597	When court-ordered	County general revenue
	Drug Testing	\$16/test	Unavailable	When court-ordered	Vendor
Charlotte	GPS Monitoring	\$12/day	Unavailable	Mandatory unless waived	Vendor
	Drug Testing	\$5/test	Unavailable	When court-ordered	County general revenue
Citrus	Electronic Monitoring	\$8/day	\$6,958	When court-ordered	County for program
Escambia	Electronic Monitoring (GPS & SCRAM)	\$15/day	\$217,111	When court-ordered	Vendor, County ⁴
Leon	Monthly Administrative Fees	\$40/month	\$142,288	Mandatory unless waived	Program
	Active GPS Monitoring Fees	\$12/day	\$43,900	Mandatory unless waived	Program
	Passive GPS Monitoring Fees	\$10/day	\$9,002	Mandatory unless waived	Program
	SCRAM Monitoring Fees	\$12/day	\$27,957	Mandatory unless waived	Program
Okaloosa	Electronic Monitoring	\$12/day	\$56,529	When court-ordered	County general revenue
Orange	Electronic Monitoring	\$6/day	\$125,953	Mandatory unless waived	County general revenue
	Telephone Monitoring	\$6/month	\$28,642 ⁵	Mandatory unless waived	Vendor (\$4), County general revenue (\$2)
	Urinalysis (Pre-Trial)	\$17/one-time fee	\$28,665	Mandatory unless waived	County general revenue
	Urinalysis (Electronic Monitoring)	\$17/one-time fee	\$3,006	Mandatory unless waived	County general revenue
Osceola	Kiosk Reporting Fees	\$10/month	Unavailable	Mandatory unless waived	Vendor
	Electronic Monitoring/RF	\$2.70/day	Unavailable	When court-ordered	Vendor
	GPS Monitoring	\$4.90/day	Unavailable	When court-ordered	Vendor
Palm Beach	Costs of Supervision	\$10/week	\$317,908	Mandatory unless waived	Program
Santa Rosa	Administrative Fee	\$25/one-time fee	Unavailable	When court-ordered	Program
	Drug/Breath Testing	\$15/test	Unavailable	Per test	Program
	Lab fee	\$20/test	Unavailable	When necessary	Program
St. Lucie	GPS/Supervision	Range - \$1/day to \$25/week	\$6,731	When court-ordered	County general revenue

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

² Alachua County's program reported a combined total of \$31,058 for GPS and electronic monitoring.

³ Broward County's program began collecting fees in May 2009.

⁴ Escambia County's program generated \$217,111 in fees in 2009. Of these fees, the county sent \$108,355 to the vendor and \$108,757 to the Community Confinement Program. This revenue did not go to the pretrial release program's budget.

⁵ This total only includes the \$2 fee that goes to county general revenue.

Source: Program survey responses.

Appendix C

Program Compliance

Section 907.043, *Florida Statutes*, requires pretrial release programs to maintain and update a weekly register containing information about the defendants released to the program. All but three programs (Citrus, Jackson, and Polk) complied with the statutory requirement to provide annual reports. In addition, all but two programs (Jackson and Seminole) responded to our survey for additional information. However, some programs did not report all outcomes for several reasons. While some programs did not disclose why they did not provide the data, many programs cited common reasons. The primary reason was that some data elements do not apply to all programs. Most programs did not provide criminal history data due to state and federal restrictions. Table C-1 summarizes the number of programs that met the requirements to maintain and update a weekly register and to provide an annual report.

Table 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 ⁴
Number of defendants assessed and interviewed for pretrial release.	24	4
Number of indigent defendants assessed and interviewed for pretrial release.	19	9
Names and number of defendants accepted into the pretrial release program.	25	3
Names and number of indigent defendants accepted into the pretrial release program.	19	9
Charges filed against and the case numbers of defendants accepted into the pretrial release program.	24	4
Nature of any prior criminal conviction of a defendant accepted into the pretrial release program.	18	10
Court appearances required of defendants accepted into the pretrial release program.	19	9
Date of each defendant's failure to appear for a scheduled court appearance.	17	11
Number of warrants issued for a defendant's arrest for failing to appear at a scheduled court appearance.	18	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.	18	10
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 ⁴
Number of defendants assessed and interviewed for pretrial release.	25	3
Number of defendants recommended for pretrial release.	16 ¹	3
Number of defendants for whom the pretrial release program recommended against nonsecured release.	15 ²	3
Number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release.	16 ³	3
Number of defendants assessed and interviewed for pretrial release that were declared indigent by the court.	18	10
Name and case number of each person granted nonsecured release who failed to attend a scheduled court appearance.	19	9
Name and case number of each person granted nonsecured release that was issued a warrant for failing to appear.	21	7
Name and case number of each person granted nonsecured release who was arrested for any offense while on release through the pretrial release program.	22	6
Name and case number of each person granted nonsecured release that was issued a warrant for an offense while on release through the pretrial release program.	21	7

¹An additional nine programs reported that they do not recommend defendants for pretrial release.

²An additional 10 programs reported that they do not recommend against nonsecured release.

³An additional nine programs reported that they do not recommend defendants for nonsecured release.

⁴Two of the 28 programs (Jackson and Seminole) did not provide a survey response and are included in the figures in this column.

Source: Program survey responses.

Appendix D

Suggested Revisions to Statutory Language

The Legislature could consider amending ss. 907.043 and 907.044, *Florida Statutes*, to improve accuracy, data uniformity and correlation of required information. These revisions would minimize administrative requirements that impede programs’ ability to screen and supervise defendants. As currently written, some requirements can be interpreted in a number of ways that comply with the law, but impair our ability to compare programs.

**Table D-1
Requirements Could be Revised to Address Several Concerns**

Program Definition (s. 907.043, F.S.)	
(2)(b)	<p>Current: “Pretrial release program” means an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants.</p> <p>Suggested: “Pretrial release program” means an entity, public or private, that supervises or electronically monitors pretrial-released defendants.</p> <p>Reasoning: As written, the statute requires only pretrial release programs that conduct all four activities to comply with the Citizens’ Right to Know Act. All responding pretrial release programs supervise or electronically monitor pretrial defendants. However, only 9 of the 28 programs reported that they conduct all four activities.¹</p>
Program Weekly Register Reporting Requirements (s. 907.043, F.S.)	
(3)(a)	<p>Current: Each pretrial release program must prepare a register displaying information that is relevant to the defendants released through such a program. A copy of the register must be located at the office of the clerk of the circuit court in the county where the program is located and must be readily accessible to the public.</p> <p>Suggested: <i>No change.</i></p> <p>Reasoning: Acceptable as written.</p>
(b)	<p>Current: The register must be updated weekly and display accurate data regarding the following information:</p> <p>Suggested: The register must be updated monthly and display accurate data regarding the following information:</p> <p>Reasoning: A monthly reporting requirement could increase compliance by resource-limited programs, but would still enable OPPAGA, the state, and citizens to evaluate outcomes and identify program trends.</p>
1.	<p>Current: The name, location, and funding source of the pretrial release program.</p> <p>Suggested: The name, location, and funding sources of the pretrial release program.</p> <p>Reasoning: Technical revision; many programs have multiple funding sources. Alternatively, the funding sources requirement can be made a separate requirement as suggested in the annual report.</p>
2.	<p>Current: The number of defendants assessed and interviewed for pretrial release.</p> <p>Suggested: a. The number of defendants that the pretrial release program interviewed via face-to-face or video contact to collect information regarding the possible eligibility for the program by indigency status (declared or not declared indigent by the court). b. The number of defendants that the program conducted a risk assessment of or ran a criminal history check on regarding possible eligibility for the program by indigency status (declared or not declared indigent by the court).</p> <p>Reasoning: Technical revision; programs have different definitions for “interviewed” and “assessed” within their programs and conduct such activities at different times in the process. Also, most programs do not assess and interview defendants for other forms of pretrial release (bond or release on recognizance).</p>
3.	<p>Current: The number of indigent defendants assessed and interviewed for pretrial release.</p> <p>Suggested: Delete.</p> <p>Reasoning: This element is revised and included in an element above.</p>
4.	<p>Current: The names and number of defendants accepted into the pretrial release program.</p> <p>Suggested: The names and number of defendants accepted into the pretrial release program by type of release (secured/nonsecured).</p> <p>Reasoning: Defendants can be granted either secured or nonsecured release into pretrial release programs. This will provide consistency, as other requirements in the act require programs to differentiate by type of release. The register could have a designation to identify the defendant’s type of release (secured/nonsecured).</p>
5.	<p>Current: The names and number of indigent defendants accepted into the pretrial release program.</p> <p>Suggested: The names and number of defendants accepted into the pretrial release program who are declared indigent by the court.</p>

Program Weekly Register Reporting Requirements (s. 907.043, F.S.) (continued)

Reasoning: Programs generally do not declare indigency. To clarify, the requirement should explicitly state that the court declares indigency as the annual report requirement does. Indigency is not always determined at the time that defendants are released into the program; therefore, programs should develop a procedure to update this information at the beginning or end of each registry update to fully comply with the requirement. The register could have a designation to identify whether the defendant is indigent.

6. Current: The charges filed against and the case numbers of defendants accepted into the pretrial release program.
Suggested: All specific charges filed against and the case numbers of defendants accepted into the pretrial release program.
Reasoning: Programs interpret this requirement differently. For example, some programs list only the number of charges, while others list all specific charges, and others list the type of charges, such as one felony. This revision will ensure consistency. Alternatively, the register could have a designation to identify whether the defendant is charged with a dangerous crime as defined in s. 907.041(4), F.S. and the defendant's type of release (secured/nonsecured).²
7. Current: The nature of any prior criminal conviction of a defendant accepted into the pretrial release program.
Suggested: The total number of defendants released into the program who have (1) no convictions; (2) convictions for offenses other than dangerous crimes as defined in s. 907.041(4), F.S., and (3) convictions for dangerous crimes as defined in s. 907.041(4), F.S., by type of release (secured/nonsecured).²
Reasoning: Disclosing any criminal history information to the general public besides Florida criminal history is a violation of federal regulation. The Federal Bureau of Investigation could revoke Florida's access to federal criminal history if programs reported national criminal history information. Programs could instead provide summary information. Alternatively, this requirement could be deleted from the register and summarize the aggregate in the annual report.
8. Current: The court appearances required of defendants accepted into the pretrial release program.
Suggested: *Delete*.
Reasoning: Specific court dates can be found in the court's information system, and some programs reported that they do not keep historical data on court dates. Failures to appear in court are a more significant indicator.
9. Current: The date of each defendant's failure to appear for a scheduled court appearance.
Suggested: Acceptable as written.
Reasoning: A failed court appearance is an indicator of program success; therefore, it is reasonable to disclose this information. Alternatively, the register could have a designation to identify whether the defendant failed to appear as opposed to the date of the failed court appearance if some counties' data systems cannot extract this data for reporting requirements.
10. Current: The number of warrants, if any, which have been issued for a defendant's arrest for failing to appear at a scheduled court appearance.
Suggested: The number of defendants issued an arrest warrant for failing to appear at a scheduled court appearance by type of release (secured/nonsecured).
Reasoning: Technical revision. Alternatively, the register could have a designation to identify whether the defendant has a warrant for failure to appear.
11. Current: The 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.
Suggested: The number and type of program noncompliance infractions (failure to appear, new crime/arrest, or failure to comply with other conditions) committed by a defendant in the pretrial release program.
Reasoning: Many programs reported that they do not recommend whether or not the court should revoke a defendant's release; they only report the infractions to the court. Also, programs could be compared on a more uniform level if the types of infractions were identified consistently by all programs.

Program Annual Report Requirements (s. 907.043, F.S.)

- (4)(a) Current: 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. The annual report must be readily accessible to the public.
Suggested: 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, the Office of Program Policy Analysis and Government Accountability, and to the clerk of the circuit court in the county where the pretrial release program is located. The annual report must be readily accessible to the public.
Reasoning: Technical revision.
- (b) Current: The annual report must contain, but need not be limited to:
Suggested: *No change*.
Reasoning: Accepted as written.
1. Current: The name, location, and funding sources of the pretrial release program, including the amount of public funds, if any, received by the pretrial release program.
Suggested: The name and location of the pretrial release program.
Reasoning: Technical revision to separate background and financial requirements.

Program Annual Report Requirements (s. 907.043, F.S.) (continued)

- 2. Current: The operating and capital budget of each pretrial release program receiving public funds.
Suggested: The operating and capital budget of each pretrial release program.
Reasoning: Technical revision.

- 3.a. Current: The percentage of the pretrial release program's total budget representing receipt of public funds.
Suggested: The funding sources of the pretrial release programs.
Reasoning: This revision would still allow the percentage of public funds to be calculated.

- b. Current: The percentage of the total budget which is allocated to assisting defendants obtain release through a nonpublicly funded program.
Suggested: *Clarify the intent of this element.*
Reasoning: Programs reported that they are unsure what data this element requests.

- c. Current: The amount of fees paid by defendants to the pretrial release program.
Suggested: The fee structure for defendants in the pretrial release program and the total amount collected from these fees.
Reasoning: Programs interpret this requirement differently. Some programs provide the total amount, while some provide the fee structure. Both are useful for our annual report.

- 4. Current: The number of persons employed by the pretrial release program.
Suggested: *No change.*
Reasoning: Acceptable as written.

- 5. Current: The number of defendants assessed and interviewed for pretrial release.
Suggested: a. The number of defendants that the pretrial release program interviewed via face-to-face or video contact to collect information regarding the possible eligibility for the program by indigency status (declared or not declared indigent by the court).
b. The number of defendants that the program conducted a risk assessment of or ran a criminal history check on regarding possible eligibility for the program.
Reasoning: Technical revision; programs have different definitions for "interviewed" and "assessed" within their programs and conduct such activities at different times in the process. Also, most programs do not assess and interview defendants for other forms of pretrial release (bond or release on recognizance).

- 6. Current: The number of defendants recommended for pretrial release.
Suggested: The number of defendants recommended for the pretrial release program by indigency status (declared or not declared indigent by the court).
Reasoning: Technical revision. Many programs do not make recommendations and those who do recommend defendants only recommend defendants for their program, not for any form of release, as the requirement is currently written.

- 7. Current: The number of defendants for whom the pretrial release program recommended against nonsecured release.
Suggested: *Delete.*
Reasoning: Many programs do not make recommendations at all; those that do make recommendations generally do not make recommendations against release or for a particular type of release.

- 8. Current: The number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release.
Suggested: The number of defendants accepted into the program by indigency status (declared or not declared indigent by the court) and by type of release (secured/nonsecured).
Reasoning: Many programs reported that they do not make release recommendations, and those that do make recommendations do not recommend type of release. Also, the act currently does not require programs to list in their annual reports the total number of defendants accepted. This is an essential indicator.

- 9. Current: The number of defendants assessed and interviewed for pretrial release who were declared indigent by the court.
Suggested: *Delete.*
Reasoning: This element is revised and included in an element above.

- 10. Current: The total number and name and case number of each person granted nonsecured release who:
Suggested: The number of defendants in the pretrial release program, by type of release (secured/nonsecured), who:
Reasoning: Defendants can be granted either secured or nonsecured release into the program. Program effectiveness cannot be accurately measured by evaluating only defendants granted nonsecured release, but comparisons can be made by evaluating defendants by type of release.

- a. Current: Failed to attend a scheduled court appearance.
Suggested: Failed to attend a scheduled court appearance while in the pretrial release program.
Reasoning: Technical revision.

- b. Current: Was issued a warrant for failing to appear.
Suggested: Was issued a warrant for failing to appear while in the pretrial release program.
Reasoning: Technical revision.

Program Annual Report Requirements (s. 907.043, F.S.) (continued)

c. Current: Was arrested for any offense while on release through the pretrial release program.
 Suggested: Was arrested for any offense while in the pretrial release program by type of infraction (failure to appear, new crime/arrest, or failure to comply with other conditions).
 Reasoning: Technical revision.

11. Current: Any additional information deemed necessary by the governing body to assess the performance and cost efficiency of the pretrial release program.
 Suggested: Any additional information deemed necessary by the governing body and the Office of Program Policy Analysis and Government Accountability to assess the performance and cost efficiency of the pretrial release program.
 Reasoning: Technical revision.

Create new subparagraph and place in appropriate location.

Suggested: The total number of defendants released into the program who were charged with a dangerous crime as defined in s. 907.041(4), F.S., by type of release (secured/nonsecured).²
 Reasoning: Defendants' charges are an important indicator of public safety and this element is currently not required in annual reports.

Create new subparagraph place in appropriate location.

Suggested: The total number of defendants released into the program who have (1) no convictions; (2) convictions for offenses other than dangerous crimes as defined in s. 907.041(4), F.S., and (3) convictions for dangerous crimes as defined in s. 907.041(4), F.S., by type of release (secured/nonsecured).²
 Reasoning: Disclosing any criminal history information to the general public besides Florida criminal history is a violation of federal security requirements. Programs could instead provide summary information.

OPPAGA's Annual Report Requirements (s. 907.044, F.S.)

Current: The funding sources of each pretrial release program.
 Suggested: *No change.*
 Reasoning: Acceptable as written.

Current: The nature of criminal convictions of defendants accepted into the programs.
 Suggested: The number of defendants released to the program who have (1) no convictions; (2) convictions for offenses other than dangerous crimes as defined in s. 907.041(4), F.S., and (3) convictions for dangerous crimes as defined in s. 907.041(4), F.S., by type of release (secured/nonsecured).²
 Reasoning: Disclosing any criminal history information to the general public besides Florida criminal history is a violation of federal regulation. The Federal Bureau of Investigation could revoke Florida's access to federal criminal history if programs reported national criminal history information. Programs could instead provide summary information.

Current: The number of failed court appearances by defendants accepted into each program.
 Suggested: *No change.*
 Reasoning: Acceptable as written. A failed court appearance is an indicator of program success; therefore, it is reasonable to disclose this information. Alternatively, this element could be deleted as some programs do not consider a participant's absence in court as a failure to appear until the court issues a warrant, which could skew comparisons to those that count a failure to appear as any missed court appearance. The element that requires the number of warrants issued to defendants for failure to appear would be more uniform and comparable.

Current: The number of warrants issued subsequently by defendants in each program.
 Suggested: The number of warrants issued for failure to appear in each program.
 Reasoning: Technical revision; defendants do not issue warrants.

Current: as well as the program's compliance with the provisions of this section.
 Suggested: as well as the program's compliance with the provisions of s. 907.043, F.S., the Citizens' Right to Know Act.
 Reasoning: Technical revision; this section technically refers to s. 907.044, F.S., but programs are required to comply with s. 907.043, F.S.

¹Two programs (Jackson and Seminole) did not respond to our survey, which contained this question.

²Section 907.041(4), F.S., states that a dangerous crime means any of the following: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of Ch. 893, F.S.; and attempting or conspiring to commit any such crime.

Source: *Florida Statutes* and OPPAGA analysis.

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



OPPAGA provides performance and accountability information about Florida government in several ways.

- Reports deliver program evaluation and policy analysis to assist the Legislature in overseeing government operations, developing policy choices, and making Florida government better, faster, and cheaper.
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