

ORDINANCE NO. 2009-01

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, RELATING TO COURTS AND LEGAL SERVICES; CREATING SECTIONS 10-127 THROUGH 10-130 TO ARTICLE VII OF CHAPTER 10, OF THE BROWARD COUNTY CODE OF ORDINANCES; CREATING THE "BROWARD COUNTY PRETRIAL RELEASE POLICY"; PROVIDING A POLICY FOR THE PRETRIAL RELEASE SERVICES PROGRAM TO ADHERE TO APPLICABLE STATE STATUTES, RULES OF CRIMINAL PROCEDURE, AND THIS ORDINANCE WHEN RECOMMENDING INDIVIDUALS FOR THE PRETRIAL RELEASE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Section 1. Chapter 10 of the Broward County Code of Ordinances, entitled "Courts and Legal Services," is hereby amended to create the following article and sections:

Section VII. Broward County Pretrial Release Policy

Sec. 10-127. Title.

This article shall be known as the "Broward County Pretrial Release Policy."

Sec.10-128. Authority.

This article is enacted pursuant to Broward County's power to enact ordinances to protect the public health, safety, and general welfare of the residents of Broward County, Article VIII, Subsection 1(g), Florida Constitution, and Subsection 125.01(1)(w), Florida Statutes, as may be amended from time to time.

1 **Sec. 10-129. Intent and Declaration of Policy.**

2 (a) *Intent.*

3 It is the intent of this policy that individuals who are charged with serious criminal
4 offenses that pose a threat to the safety of the community or the integrity of the judicial
5 process, or those individuals deemed to be a risk of not appearing at trial, be detained
6 upon arrest. Individuals not posing such a threat and not deemed a nonappearance
7 risk, who meet specified criteria and who would otherwise not qualify for monetary
8 release on bond or release on their own recognizance, may be recommended for
9 release by the Pretrial Release Services Program (the "Program") under certain
10 conditions until criminal proceedings against them are concluded and adjudication has
11 been determined. This policy is intended to ensure the detention of individuals who
12 pose a threat to the community, while also providing fair and equal access to pretrial
13 release. Additionally, these measures should ensure that individuals appear for court
14 and also reduce jail crowding.

15 (b) *Declaration of Policy.*

16 (1) The Program is County-funded and operated by the Broward Sheriff's
17 Office to provide judges with an alternative to pretrial detention, release
18 on an individual's own recognizance (ROR), and monetary release on
19 bond.

20 (2) The Program is to place public safety first and use its best efforts to
21 ensure that individuals accepted into the Program appear at all court
22 proceedings until final disposition of the case.

23 (3) Section 907.041, Florida Statutes, as may be amended from time to time,
24 and Rule 3.131 of the Florida Rules of Criminal Procedure specify factors

1 to be considered for pretrial detention and nonmonetary release of
2 individuals arrested for criminal offenses, and these factors are set forth
3 below in Subsection 10-130(a)(2). There is a statutory presumption in
4 favor of nonmonetary release for individuals granted pretrial release.

5 (4) A case in the Program is successfully completed when it is closed with no
6 non-compliances that result in revocation from the Program, no failures to
7 appear that result in revocation from the Program, and no re-arrests that
8 result in revocation from the Program.

9 (5) The definition of non-compliance is a failure to comply with an order of
10 monitoring or supervision that results in a revocation from the Program.
11 The definition of failure to appear is missing or non-appearance at any
12 court date.

13 **Sec. 10-130. Program Criteria; Preservation of Discretion; and Program**
14 **Requirements.**

15 (a) *Program Criteria.*

16 (1) The release of individuals eligible for the Program is solely in the
17 discretion of the judiciary.

18 (2) The method of monitoring and supervision by the Program shall be put in
19 writing, signed and acknowledged by the individual released to the
20 Program, and made a part of the court file.

21 (3) No individual shall be recommended for release by the Program
22 unless the Program certifies to the court that it has investigated or
23 otherwise verified the following factors:
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- a. That the current charges pending against the individual are a municipal ordinance violation, a misdemeanor, or a felony;
- b. The individual's name and address;
- c. The individual's financial resources, such as the ability to afford bond or a declaration of indigence signed by the individual and made a part of the court file;
- d. The mental health status of the individual;
- e. The individual's past and present conduct, including any record of criminal convictions, failure to appear at prior court proceedings, and flight to avoid prosecution;
- f. That the individual is not already released from custody on a monetary bond, released to the Program pending resolution of another criminal proceeding, or is on probation, parole, or other release pending completion of a jail or prison sentence;
- g. Whether the individual has community ties, including present employment, length of time in the community, and family ties;
- h. Any facts justifying a concern that an individual will fail to attend court or pose a threat to the community; and
- i. That the Program has provided to the individual a document which describes the different forms of release, including, but not limited to, pretrial release and possible conditions and costs and fees associated with it, monetary release such as bail bonds and cash bonds, and release on the individual's own recognizance.

- 1 (4) Individuals charged with dangerous crimes as defined in
2 Subsection 907.041(4)(a), Florida Statutes, as may be amended from time
3 to time, are not eligible for release to the Program at First Appearance, as
4 that term is defined in Rules 3.130 and 3.131 of the Florida Rules of
5 Criminal Procedure, unless the court exercises its discretion and
6 determines otherwise consistent with Florida Statutes.
- 7 (5) At First Appearance, individuals who are not indigent should be
8 recommended for release to the Program only if a bail bond is issued,
9 unless the court exercises its discretion and determines otherwise. The
10 determination of indigent status shall be consistent with Section 27.52,
11 Florida Statutes, and Florida Rules of Criminal Procedure, 3.111.
- 12 (6) After First Appearance, individuals charged with dangerous crimes should
13 be recommended for release to the Program only if a bail bond is issued,
14 unless the court exercises its discretion and determines otherwise.
- 15 (7) If an individual, who is eligible for the Program, has not been released to
16 the Program within three days after First Appearance, that individual shall
17 thereafter be eligible for release to the Program.
- 18 (8) When the Program conducts interviews of individuals after First
19 Appearance, it will give high priority to individuals charged with
20 misdemeanors and those individuals who are indigent.
- 21 (9) While released to the Program, if the court determines that any individual
22 has been found to be in substantial and willful violation of the terms and
23 conditions established by the court, fails to comply with the conditions of
24 the Program, or is convicted of criminal activity of any kind, the Program

1 shall promptly inform the court. If pretrial release is revoked by the court,
2 the individual will not be permitted future re-entry to the Program for a
3 period of five years.

4 (10) Any individual who has knowingly and willfully failed to appear within the
5 past calendar year on any case other than a civil traffic infraction should
6 not be recommended or accepted for release to the Program, unless the
7 court exercises its discretion and determines otherwise.

8 (11) Individuals are eligible for acceptance into the Program only once per
9 calendar year, unless the individual swears to his/her indigence under
10 oath or only if a bail bond is issued.

11 (b) *Preservation of Discretion.*

12 (1) Nothing in this Ordinance shall restrict the court's discretion to order an
13 individual released into the Program and to determine the conditions of
14 pretrial release in accordance with the Florida Statutes and the Florida
15 Rules of Criminal Procedure. If the court releases an individual to the
16 Program who does not meet the criteria, the Program shall record the
17 reasons for doing so.

18 (2) Nothing in this Ordinance shall restrict how the Program monitors or
19 supervises the individuals released to the Program.

20 (c) *Program Requirement.*

21 (1) The Program will prepare a report displaying information that is relevant to
22 the individuals released to the Program. A copy of the report will be filed
23 at the Office of the Clerk of the Court and be readily accessible to the
24 public. The report must be updated weekly and display accurate data on
the following information:

- 1 a. The name, location, and funding source of the Program.
- 2 b. The number of individuals assessed and interviewed.
- 3 c. The number of indigent individuals assessed and interviewed.
- 4 d. The names and number of individuals accepted into the Program,
- 5 including a breakdown of individuals released to regular
- 6 supervision, electronic monitoring, and GPS electronic monitoring,
- 7 including the individual's name, case number(s), and charge(s).
- 8 e. The names and number of indigent individuals accepted into the
- 9 Program.
- 10 f. The charges filed against and the case numbers of individuals
- 11 accepted into the Program.
- 12 g. The nature of any prior criminal conviction of an individual accepted
- 13 into the Program.
- 14 h. The court appearances required of an individual accepted into the
- 15 Program.
- 16 i. The date of each individual's failure to appear for a scheduled court
- 17 appearance.
- 18 j. The number of warrants, if any, which have been issued for an
- 19 individual's arrest for failing to appear at a scheduled court
- 20 appearance.
- 21 k. The number and type of program non-compliance infractions
- 22 committed by an individual in the Program and whether the
- 23 Program recommended that the court revoke the individual's
- 24 release.

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l. The total number of individuals released to the Program by the magistrate judge and post magistrate judge, including the individual's name, case number(s), and charge(s).

m. The total number of false alarms reported by the electronic monitoring station and GPS monitoring and the total number of minutes per month each bracelet or the system is not communicating with the monitoring station.

(2) The Program shall, no later than March 31st of every year, submit an annual report for the previous calendar year to the Board of County Commissioners, the Clerk of Court, and the Public Safety Coordinating Council. The report will be made readily available to the public. The annual report must contain at a minimum:

- a. The name, location, and all funding sources of the Program.
- b. The operating and capital budget of the Program.
- c. The percentage of the Program's budget supported by public funds.
- d. The amount of fees paid by individuals to the Program.
- e. The number of persons employed by the Program.
- f. The number of individuals assessed and interviewed for the Program.
- g. The number of individuals recommended for the Program.
- h. The number of individuals for whom the Program recommended against non-secured release.
- i. The number of individuals granted non-secured release after the Program recommended non-secured release.

1 j. The number of individuals assessed and interviewed for non-
2 secured release, who were declared indigent by the court.

3 k. The name and case number of each person granted non-secured
4 release who:

5 1. Failed to attend a scheduled court appearance;

6 2. Was issued a warrant for failing to appear;

7 3. Was arrested for any offense while on release through the
8 Program;

9 l. Any additional information necessary to assess the performance of
10 and cost efficiency of the Program.

11 Section 2. SEVERABILITY.

12 If any portion of this Ordinance is determined by a court to be invalid, the invalid
13 portion shall be stricken, and such striking shall not affect the validity of the remainder of
14 this ordinance. If any court determines that this Ordinance, or any portion hereof, cannot
15 be legally applied to any individual(s), group(s), entity(ies), property(ies), or
16 circumstances(s), such determination shall not affect the applicability hereof to any
17 other individual, group, entity, property, or circumstance.

18 Section 3. INCLUSION IN CODE.

19 It is the intention of the Board of County Commissioners that the provisions of
20 this Ordinance shall become and be made a part of the Broward County Code; and that
21 the sections of this Ordinance may be re-numbered or re-lettered and the word
22 "ordinance" may be changed to "section," "article," or such other appropriate word or
23 phrase in order to accomplish such intentions.

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1 Section 4. EFFECTIVE DATE.

2 This Ordinance shall become effective as provided by law.

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4 ENACTED January 27, 2009

5 FILED WITH THE DEPARTMENT OF STATE February 4, 2009

6 EFFECTIVE February 4, 2009

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8 PURPOSE: The purpose of this Ordinance is to assure access to pretrial
9 release and reduce the jail population, while also protecting the community.

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