

Evaluation of Broward County Jail Population

Current Trends and Recommended Options

Updated Report

Prepared by

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Introduction and Background

In September 2006, the Broward County Sheriff Office (BCSO) developed 15 specific recommendations that, if implemented, would help alleviate jail crowding. At that time the county jail population was steadily increasing and had reached 5,661 inmates, most of whom were pretrial felons. Further, with an existing design capacity of 5,852 an operational capacity of 4,992, there was a growing concern that the county would have to expend funds to build and operate additional jail bed-space.¹

The recommendations included making changes in the Magistrate Court process, increasing the eligibility criteria for the BCSO Pretrial Services Agency (PSA) to screen candidates for pretrial release for the Magistrate Court, increasing the number of candidates screened by the PSA for the “Second Look” program, reducing the number of probation technical violators, and increasing the number of Notice To Appear (NTA). The final recommendation was to request that the National Institute of Corrections (NIC), Jail Division conduct a comprehensive assessment of the criminal justice system. That report was completed in 2007. Since jail populations are the product of the admissions and average length of stay (LOS), the report noted that both population drivers were increasing. The report issued a number of recommendations to curb the growth pattern and actually reduce the jail population.

Since that report was issued the jail population has been reduced. As of the end of January 2012, the jail population was approximately 4,500 inmates – a significant decrease of some 1,300 inmates since 2006. As will be discussed in this report, part of the reduction is due to declines in the number of people being arrested and booked in the county. But other reasons for the decline can be linked to the adoption of several reforms that were recommended in 2006 and later adopted by the criminal justice system.

I was originally appointed the Court’s Population Management Expert in October 2010. My appointment was initially prompted by the increase in the Jail’s population in 2010. (*See* Motion to Appoint Expert (dkt. 863) at 3) An initial report was submitted in June 2012 that served to update the 2007 NIC report and to determine if further jail population reductions could

¹ The functional capacity is based on the figure of 85% of design capacity. It has been stated by the Broward County Sheriff staff that if the population begins to exceed this figure, difficulties in safely managing the jail population begin to emerge.

be achieved. At that time the jail population was stable, and I had identified several options that the County could employ to further reduce it.

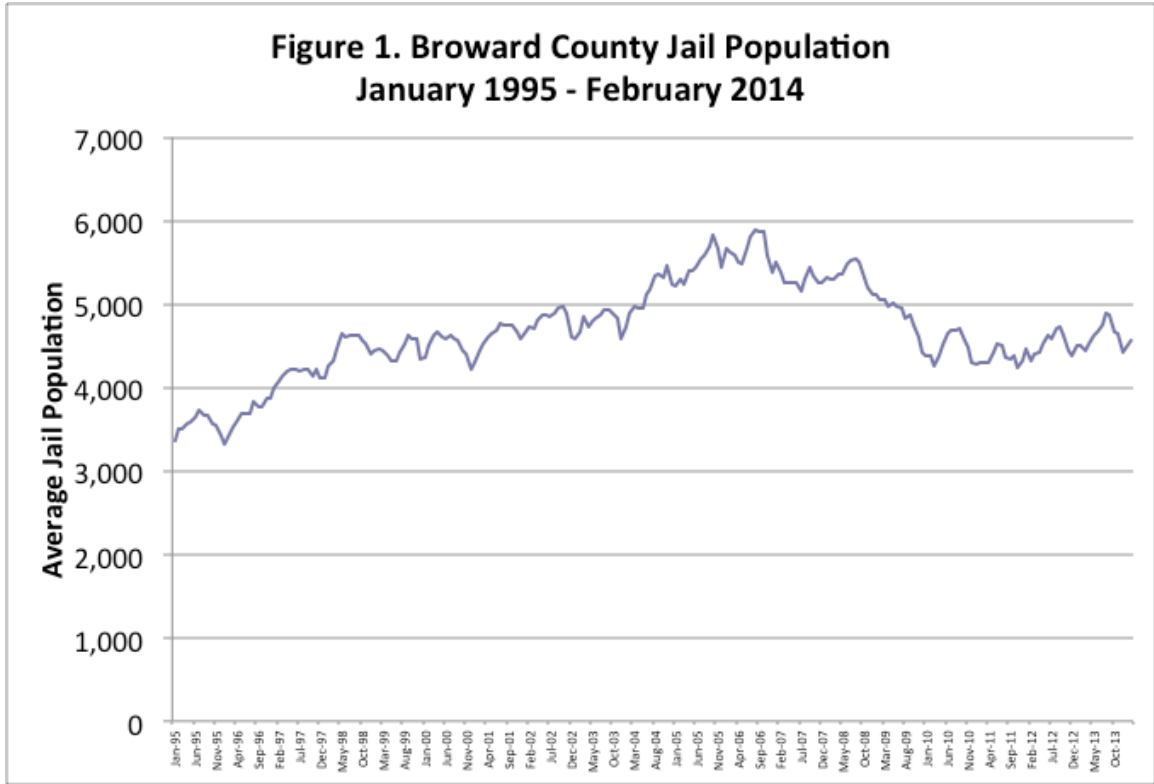
Since the jail population began to increase in 2012, it was requested that I update the key data contained in my June 2012 report. I was again provided with updated data files on jail admissions, releases and the current jail population by the BCSO that allowed me to update the jail population forecast and to assess the extent to which further reforms might serve to reduce the current jail population. I also have made several on-site visits with representatives of the BCSO, and met with Howard Messing, Judge Peter Weinstein and Judge Bidwill on several occasions , and made a presentation before the Criminal Justice Coordinating Council.

What follows is an updated review of the key jail population trends (admissions, releases and the daily population). I then update the estimates of future jail populations and the likely impacts of the key recommendations that would serve to reduce the jail population.

Updated Jail Population Trends

An examination of the historical trends in the jail population displayed in Figure 1 shows that from 1995 through 2006, the average daily population of the jail system exhibited a relatively consistent growth trend from 3,567 in 1995 to 5,661 in 2006. This was followed by decreases through 2010 (4,498). There was a slight downward trend in the jail population in 2011, but since 2012 it has been relatively stable.

Jail populations are the product of two key factors, jail admissions and the length of stay (LOS). For Broward County there has been a steady decrease in the number of people being booked each year with the decline continuing through 2012 (see Figure 2). The number of bookings for 2013 was 51,946, as compared to 55,405 for 2011 both of which were well below the peak number of 66,760 in 2007.



Much of the reason for the decline in the jail bookings can be linked to similar declines in both reported serious crimes and adult arrests. As shown in Table 1, between 2007 and 2013 there have been mix results in all of these indicators that help fuel jail bookings. The number of crimes being reported to police has been fairly stable with a larger decline in the less prevalent violent crime category. The more prevalent property crime category has not been impacted.. Conversely, the number of adults being arrested has declined especially since 2008 when it reached a peak of 80,228. By 2013, the number reached a low of 66,605. It should be noted that these downward trends in arrests are not unique to Broward County, but are identical to the national trends as reported by the FBI. Even more dramatic has been the decline in jail bookings which has plummeted by 27% far exceeding the decline in adult arrests. But if the jail bookings have continued to decline to the present, why has the jail population not continue to decline? The answer lies in the LOS trends, which have been increasing (also see Figure 2).

Table 1. Reported Serious Crime, Adult Arrests, Bookings and Jail Population 2006-2012

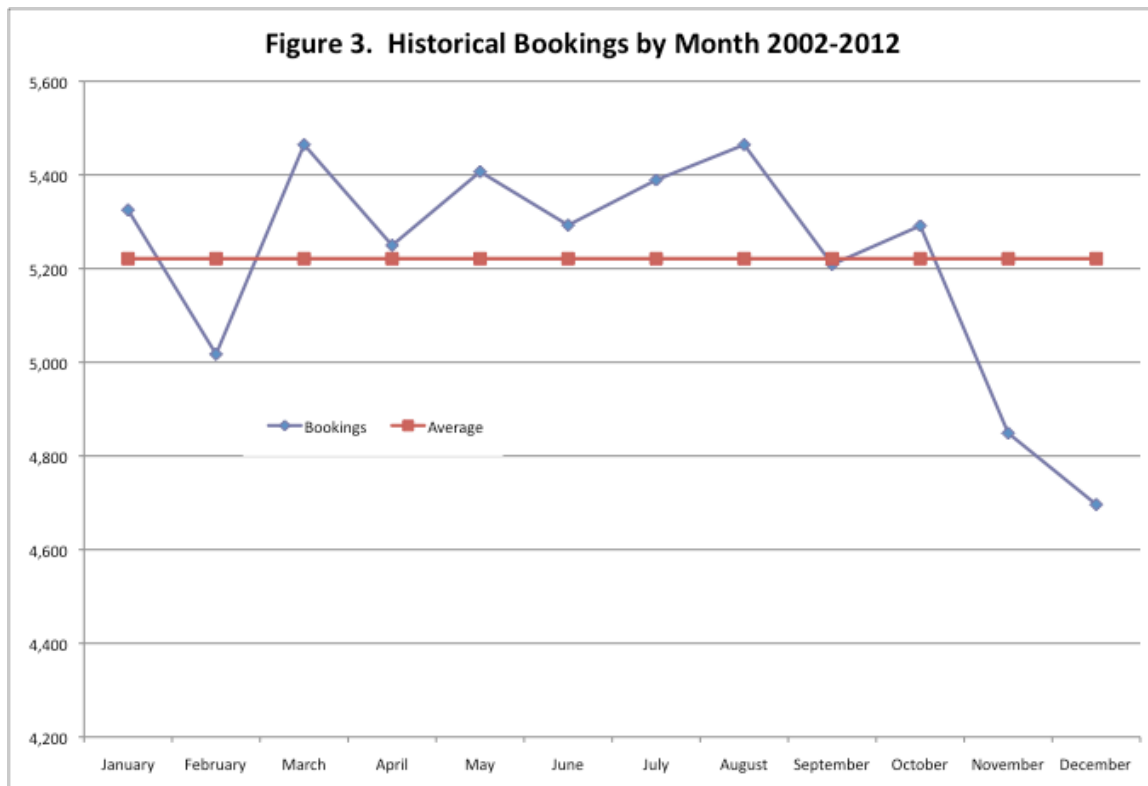
Year	Violent Crime	Non-Violent Crime	Total	Adult Arrests	Bookings	Jail Population
2006	10,764	64,550	75,314	73,864	65,418	5,661
2007	10,893	68,939	79,832	77,740	66,760	5,305
2008	10,637	71,758	82,395	80,228	65,758	5,364
2009	9,562	69,568	79,130	76,680	63,220	4,888
2010	8,597	68,314	76,911	71,819	59,949	4,498
2011	8,749	70,949	79,698	67,354	55,405	4,450
2012	8,720	67,932	76,652	69,806	50,928	4,628
2013	8,080	63,711	71,791	66,605	48,026	4,610
% Change	-25%	-1%	-5%	-10%	-27%	-19%

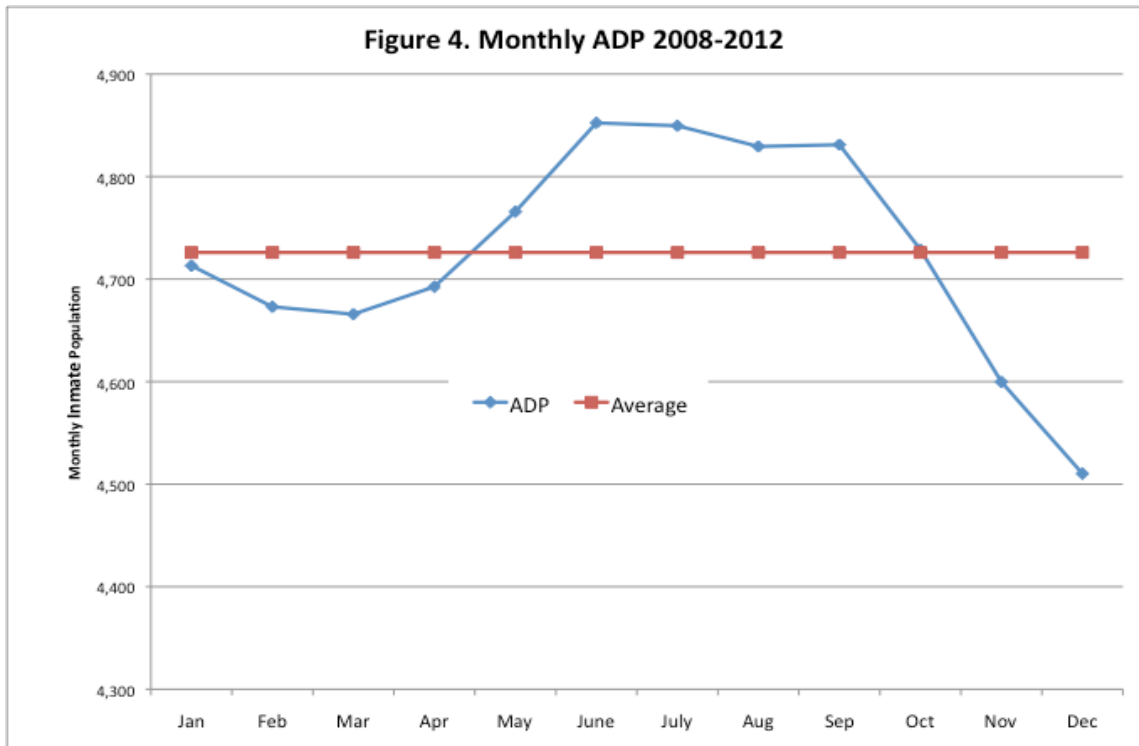


As also shown in Figure 2, the LOS for the jail had been declining. But in 2011, there was an increase in the LOS from 27.4 days to 29.3 days. In 2012, the LOS figure increased again to 33.2 days and then again in 2013 to 35 days. While a change of just six days may not seem like much, it is sufficient to reverse the decline in the jail population as well as to increase it. Using the 2012 figure of 50,928 bookings, had the LOS remained at the 2010 rate of 27.4 days, the jail population would be 3,820 instead of 4,628 - a difference of about 800 inmates.

One other point relative to the jail population trends is the significant amount of seasonal variation in the bookings and monthly jail populations over the course of a year. As shown in Figure 3, between 20002 and 2012 there has been a pattern of declining bookings beginning in August that reach a low point by December. The bookings increase in January and remain relatively constant throughout the summer.

The impact of seasonal bookings on the daily jail population is shown in Figure 4 with the trends matching the bookings. These seasonal variations show that in order for the jail system to remain un-crowded for the year, the bed capacity needs to be higher than the average jail population for the year. For Broward County the so-called population peaking effect should be set at three percent.





Prior to 2012, one of the major reasons for the reduced LOS has been the increased use of release on own recognizance (ROR) via the BCSO Pretrial Service Agency (PSA). Since FY 2006, the PSA increased the number of RORs from 4,500 to about 5,300 per year by FY 2011 (Table 2). Further, there has been a significant increase in the number of “First Appearance” releases and an associated decline in the number of post First Appearance releases. Finally, the use of a “blended” release, where the court refers the case to the PSA for supervision and requires the posting of bail, had tripled since FY 2006 from about 600 to nearly 1,700 per year by FY 2011. Conversely, the number of pure surety bond releases, which is still the dominant form of release.

As noted before the number of jail bookings has been steadily declining. Consequently, the number of releases has also declined. To better evaluate the rates of releases they have been converted to rates per 100 bookings to control for the declining number of total bookings. Using this metric, the rate of surety bond releases per 100 bookings has been steadily *increasing* while the rate of PTR releases peaked in FY2009 at 9.5per 100 bookings and has declined to 7.0 by FY2013.

Collectively, all of these data show that between FY2006 and FY2011, more people were being released at the First Appearance and sooner, which has served to reduce the LOS and, thus, the jail population. Since FY2012 the rates for PTR releases per 100 bookings have declined while Surety Bond releases have increased. Overall the number of pretrial releases (surety and PTR) has increased significantly since FY2006 but has declined slightly since FY2011. These data correlate with the population declines and subsequent increases.

Table 2. Pretrial Releases by Method of Release – FY 2006-2013

Method of Release	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13
PTR Release at First Appearance	1,230	1,433	2,278	3,921	2,880	2,399	1,763	1,896
PTR Release Post First Appearance	3,315	4,334	3,304	1,839	2,184	2,891	2,212	1,472
PTR Total Releases	4,545	5,767	5,582	5,760	5,064	5,290	3,975	3,368
% PTR Release at First Appearance	27%	25%	41%	68%	57%	45%	44%	56%
% PTR Release Post First Appearance	73%	75%	59%	32%	43%	55%	56%	44%
Total Jail Bookings	65,418	66,760	65,758	63,220	59,949	55,405	50,928	48,026
Total Jail Releases	66,850	69,009	68,527	66,837	62,156	58,133	51,895	49,843
Surety Bond Releases	16,464	17,094	18,741	18,652	18,275	17,733	16,029	15,655
Pretrial Services Total	4,545	5,767	5,582	5,767	5,064	5,290	3,975	3,368
Surety Bond and Pretrial Services	597	1,207	1,487	2,560	1,681	1,681	1,053	948
Pretrial without Bond	3,948	4,560	4,095	3,207	3,383	3,609	2,922	2,420
% Surety Bond Releases	25%	25%	27%	28%	29%	31%	31%	31%
% Pretrial Services Total	7%	8%	8%	9%	8%	9%	8%	7%
% Surety Bond and Pretrial Services	1%	2%	2%	4%	3%	3%	2%	2%
% Pretrial without Bond	6%	7%	6%	5%	5%	6%	6%	6%
PTR Total Releases	4,545	5,767	5,582	5,760	5,064	5,290	3,975	3,368
Surety Bond and Pretrial Services	597	1,207	1,487	2,560	1,681	1,681	1,053	948
% of PTR with bond	13%	21%	27%	44%	33%	32%	26%	28%
PTR Releases Per 100 Bookings	6.9	8.6	8.5	9.1	8.4	9.5	7.8	7.0
Surety Bond Releases Per 100 Bookings	25.2	25.6	28.5	29.5	30.5	32.0	31.5	32.6
Total PTR/Bond Releases Per 100 Bookings	32.1	34.2	37.0	38.6	38.9	41.6	39.3	39.6

Source; BCSO

Part of the reason for the slight increase in the jail population has been the increase in the number of inmates who are in pretrial status and charged with a felony crime. The pretrial population is the largest group in the jail and occupies the largest number of jail beds -- currently 3,378 or 76% of the jail population (Table 3).

This statistic is not unique to Broward County. Many, if not most, of Florida and the nation’s jail populations are largely composed of pretrial detainees with felony charges. According to the Florida Department of Corrections Local Detention Report for December 2012, the statewide average of inmates in pretrial status is 61%. However, it should be emphasized that a sizeable portion of the “pretrial” population is not purely in “pretrial” status. Many of these inmates have multiple charges or have been sentenced on one offense but have a pending charge(s).

The most recent data file received showed that about one-third of the pretrial population has only charges pending, which is well below the 3,622 shown in Table 3. Broward’s pretrial percentage is significantly higher compared to other counties and the state as a whole with an 80% figure (Table 4). At the same time, Broward’s incarceration rate of 240 per 100,000 is well below the statewide rate of 270, although there are counties with lower rates with nearby Palm Beach being one of them which also has a lower crime rate than Broward County.

Table 3. Legal Status of the Broward County Jail Population

Legal Status	Jan-11		Jan-12		Jan-14	
Felony Sentenced	18%	773	17%	725	16%	699
Felony Pretrial	74%	3,179	76%	3,326	79%	3,362
Misdemeanor Sentenced	2%	76	2%	63	1%	47
Misdemeanor Pretrial	6%	252	6%	249	5%	174
Felony Violation Probation Only		148		151		196
Felony Violation Probation W/Felony		508		477		515
Felony Violation Probation W/Misd.		96		79		127
Total Probation Violation Population		752		707		838

Source; BCSO Jail Report

Table 4. Comparisons on Key Indicators 2013

Attribute	Palm Beach	Pinellas	Broward	Florida
County Population	1,345,652	926,610	1,784,715	19,552,860
Arrests	59,510	44,233	72,419	904,634
Crime Rate Per 100,000	3,699	4,449	4,022	3,627
Arrest Rate Per 100,000	4,422	4,774	4,058	4,627
Jail Rate Per 100,000	170	310	240	270
% Pretrial	60%	58%	80%	61%

Sources: Florida Department of Corrections and Florida Department of Law Enforcement

Updated Jail Population Projections

The next issue addressed is: what does the future hold for changes in the BCSO jail population over the next five years based on these trends? Jail (and all correctional populations) are driven by two key statistics – admissions and length of stay (LOS). It has been already shown that the number of people being booked into the BCSO jail system has been declining. Yet, the jail population most recently has not been reduced, which means that the LOS must be increasing.

As was shown in Figure 2, this is exactly what has been occurring. While bookings and LOS were declining since 2006, the trend in LOS changed in 2012. The essential question is *will the LOS factor remain as it was prior to 2011 or stay at the 2013 level?*

One method used to estimate the future average daily jail population is a time series analysis based on an estimation technique referred to as, Autoregressive Integrated Moving Average (ARIMA). This forecasting method uses historical trends in a series and projects the future based on the temporal trend, however, it assumes that the more recent fluctuations in a series of data has more predictive influence over how the series will change in the future than more distant values. In other words, the assumption is that whatever factors will influence the future changes in the jail population that are occurring in the more immediate past will continue to influence future population trends to a greater extent than those from more distant periods.

In April 2010, the Center for Criminology and Public Policy Research at Florida State University issued a jail population forecast, which used a regression model as described above

and is summarized in Table 5. The problem with that time series forecast (and any time series trend model) is that it is based largely on the period of time during which the LOS that existed in 2010. Since 2010, admissions and LOS have changed and these changes are not factored into the 2010 forecast. Fortunately for the BCSO, the changes are largely offsetting although the increase in LOS has produced a net increase in the jail population.

Table 5. Current Versus Revised Projected Annual Average Daily Population of the Broward County Jail System

Year	Original Projected ADP Jail Population	Updated Projected Annual ADP Population	Projection Adjusted for Higher LOS	Difference Between Current and Revised Projected Jail Population
2011	4,640	4,360	4,460	-180
2012	4,660	4,299	4,449	-211
2013	4,685	4,257	4,457	-228
2014	4,710	4,216	4,491	-219
2015	4,731	4,174	4,424	-307
2016	4,789	4,160	4,478	-311
2017	4,786	4,167	4,465	-321

If the current LOS persists and jail bookings stabilize, there will be no further reductions in the jail population, and it will remain at the 4,400 - 4,600 level for the next several years. Should the LOS return to 27.4 days with the current number of bookings, the jail population will decline to about 3,600 or a difference of about 900 from the 2013 levels.

These are just mathematical simulations that may or may not have much validity. What is known is that the booking numbers may continue to decline but unlikely to continue at the pace that it has. To ensure the jail capacity is sufficient to meet future needs, the most prudent assumption is that bookings for the near future will remain at their current levels. The larger and

unstable question is *whether the LOS will remain at its 2013 level or recede to the levels seen in 2011 and 2010?*

Currently, the first three months of 2014 have shown that compared to the same three months in 2013, there has been a continued decline in bookings but associated and offsetting increases in the LOS resulting little change in the ADP (Table 6). Unless other actions are taken the prudent forecast is one of no growth under current criminal justice practices.

Table 6. Average Bookings, LOS and ADP for January - March 2013-2014

	2013	2014	Difference
Bookings	12,289	11,914	-3.1%
LOS	33.9 days	34.8 days	+0.85 days
ADP	4,557	4,529	-0.6%

Source: BCSO Monthly Population Reports.

Inmate Populations and Bed Capacity by Facility

What does such a forecast mean for jail crowding? Due to the closing of older jail housing units, the current BCSO jail bed design capacity is now set at 5,144 beds. Typically, jails are expected to operate within the level of occupancy that takes into account seasonal fluctuations and the need to move inmates to certain housing areas as required by its classification system.

There has been considerable discussion about what level of capacity the BCSO jail population should not exceed. The common number that has been discussed is 85% threshold of available beds as the preferred capacity, based on experience showing that the jail has suffered from overcrowding, and has had to house prisoners on temporary beds, when this 85% threshold is exceeded. Overcrowding and the use of temporary beds at the jail negatively affect conditions and operations, and can affect the Jail’s capacity to manage its population safely through its classification system. (See Sheriff’s Status Report (dkt. 863), *Carruthers v. Lamberti*, No. 76-6086))

However, it is also true that not all of the four BCSO facilities need to adhere to the 85%. For purposes of discussion and with goal of ending the consent decree with respect to the

crowding issue, the following observations can be made as summarized in Table 13. This analysis sets the operational capacity at 85% for the two higher security facilities, which have the highest rates of assaults and uses for force. The other two facilities, which are direct supervision units and have more open facilities, are set at the 90% limit based on the fact that they house lower security inmates and have significantly lower rates of assaults and uses of force. My tours of the Conte and Rein facilities reinforced the perspective that the Conte and Rein facilities can safely operate at the 90% level. This also means that if the County can keep its jail population at the 4,300 level or below it would be below the 85% level for the entire jail system and thus satisfy that aspect of the consent decree.

If a consensus can be reached that keeping the jail population at or below these levels to reach compliance on the crowding issue, then the County only needs to lower the current average population by another 55 inmates for more. Recommendations that would ensure these goals are met and discussed later in the report.

Table 7. Design and Operational Capacities by Facility

Facility	Design Beds	Proposed % of Capacity	Operational Beds	ADP 2013	% of Operational Capacity	Assaults Per 100 Inmates	Use of Force
Main Jail	1,542	85%	1,311	1,305	85%	13.44	182
North Broward	1,206	85%	1,025	948	79%	11.11	51
Conte	1,328	90%	1,195	1,289	97%	8.30	32
Rein	1,068	90%	961	1,005	94%	7.07	32
Total	5,144	87%	4,492	4,547	88%	9.98	297

Source; BCSO Jail Reports

Closer Analysis of the Jail Population, Admissions and Releases

Current Jail Population

An initial jail population snapshot was taken on March 8, 2011 and then repeated for September May 29, 2013. As shown in Table 8, there has been a substantial increase the average

amount of time that inmates had served to date between 2011 and 2013. In 2011 the time served to date average was 151 days. By May 2013 the figure had increased to 174 days.

Table 8. Jail Population by Major Attributes - March 2011 and May 2013

Key Attributes	2011		2013	
	%	Average Days in Custody	%	Average Days in Custody
Pending Trial	75.5%	157 days	77.7%	177 days
Sentenced County	20.4%	90	19.9%	88
Sentenced State	4.1%	325	2.4%	372
Gender				
Male	88.2%	159	89.3%	192
Female	11.8%	87	10.7%	83
Race				
Black	55.1%	163	58.2%	184
White	39.9%	131	37.7%	153
Hispanic	4.0%	168	3.5 %	206
Total	100.0%	151	100.0%	174

Source: BCSO Data Files

The relative proportion of people in pretrial has increased as well which is another indication that the criminal court process is the primary reason for the LOS increasing. It is noteworthy that females who only comprise 10-12% of the jail population have been in custody a much shorter period of time while Blacks and Hispanics have been in custody for longer periods of time to their White counterparts.

With regard to the setting of bond, there is a wide array of bail amounts being set by the court. These decisions are guided by the bail schedule that has not been updated for many years. Table 9 shows the bail amounts for the inmates who were in pretrial status as of May 29, 2013. The largest group by far is the “No Bail” group that consists of 1,856 inmates who fall into two broad categories.

The first and largest group are inmates who have violated are those charge with violent or sex crimes. About 400 inmates in pretrial status fall into that category. The other consists of violations of court orders or probation and parole violations. There are about 600 of these inmates who are in pretrial status.

It is also noteworthy that about 350 inmates are being held on a bond amount of \$100 or less. In our observations of the First Appearance hearings, we noted that Judge Hurley often asked the question, “who is going to help bail you out” to which the defendant often gives no clear response. Due to the nature of the crime, the judge then typically sets bail at \$25. These low bond amounts of \$25 for who are often indigent/homeless inmates cause them to remain in the jail population, due to having no social support system, despite the non-serious nature of the charges they face. Most of those with low bonds are people charged with possession of less than 20 grams of marijuana (Section 893.13-6b), possession of drug paraphernalia (Section 893.147-1) and false information (Section 901.36-1).

Table 9. Bail Amounts for the Current Pretrial Population –May 2013

Bond Amount	Inmates	%
No Bond	1,459	48%
\$100 or less	353	11%
\$150-750	127	4%
\$1,000-2,000	370	11%
\$2,500-3,500	234	7%
\$4,000-5,000	120	4%
\$6,500-10,000	258	8%
\$12,500-25,000	117	4%
\$30,000- 50,000	85	3%
\$75,000 Plus	161	5%
Totals	3,284	100%

Source: BCSO Data File

Table 10. Primary Reason for Non-Bail Inmates

No Bail Reasons	Inmates	%
Non- New Crimes		
Court Order Violation	328	22%
Capias Felony	160	11%
Capias Misdemeanor	7	1%
Violation of Probation/CCC	264	18%
Pretrial Release Violation	89	6%
Sub Total	848	58%
Violent Crimes	228	16%
Sex	108	7%
Property and Other Reasons	275	19%
Totals	1,459	100%

Source: BCSO Data File

These facts take on greater importance if we look at the custody levels by legal status as shown in Table 11. As of January 2013, there were about 1,128 pretrial defendants in minimum custody. This large number begins to suggest that there is a significant number of pretrial defendants who could be safely released to the community under the supervision of the BCSO or could be assigned to alternative housing. This finding is consistent with my previous assessment of the daily population as of March 2011 where over 900 pretrial inmates were in minimum custody.

Table 11. Custody Levels of the Jail Population by Legal Status – January 2013

Class Level	Pending Trial	Sentenced County	Sentenced State	Total	%
Minimum	1,128	316	44	1,488	31%
Medium	2,106	587	84	2,777	59%
Maximum	380	60	26	466	10%
Total	3,614	963	154	4,731	100%
%	76%	20%	3%	100%	

Source: BCSO Data File

Jail Admissions and Releases

Unlike the snapshot population, a jail admission and release file reflects the flow of the large number of people who are processed through the jail system each year. As noted early there have been about 50,000 -56,000 admissions and releases per year over the past two years.

It is noteworthy that during a one-year time frame, there are multiple bookings for the same person. Table 12 is based on all bookings and releases that occurred from January 1, 2013 through December 13, 2013. During that time frame there were 35,547 people who were booked and released from custody. Of that number 9,372 were people who were booked at least twice in that same time period. It is noteworthy the “repeaters” have a shorter LOS suggesting that they tend to be arrested for low level/public nuisance crimes.

While most jail systems show about one-third released within three days, the number is much higher for Broward County where over 50% of all admissions are released within three days and 60% - 68% are released within one week of being admitted (Table 13). Table 13 also shows that the time it takes to get released from jail increased between 2011 and 2013.

Table 12. Single Versus Multiple Bookings 2013

Type of Bookings/Releases	Average LOS in Days	Releases
People with Multiple Booking/Releases Per Year	23.1 days	9,372
People Booked/Released Per year	37.0 days	35,547
Totals	34.1 days	44,919

Source: BCSO data file.

It also shows that in 2011 if one was not released within the first week of booking, the average LOS jumped to 85 days. By 2012 the LOS had increased to 109 days and declined to 99 days in 2013. Clearly, the courts have increased the amount of time it requires to dispose of cases.

Table 13. Key Length of Stay Attributes – 2011, 2012, 2013

Days in Custody Prior to Release	% of Releases		
	2011	2012	2013
0 days	16.0%	18.4%	17.6%
1 day	47.5%	45.2%	48.4%
2 days	54.9%	50.3%	54.3%
3 days	58.2%	52.8%	57.0%
4 days	60.8%	54.7%	59.5%
5 days	63.5%	56.6%	61.8%
6 days	66.1%	58.4%	64.1%
7 days	68.3%	60.0%	66.1%
Overall LOS	28 days	32 days	34 days
If not released in 7 days	85 day average	109 day average	99 day average

Source: BCSO Data File

It is a legal requirement that the state file formal charges on defendants in custody within 30 days from the date of arrest or service of a capias². However, it is often the case that the explicit desire of the prosecutor is to keep the person incarcerated for as long as possible. This may be done to place pressure on the person to accept a plea of guilty and/or to incapacitate the person for as long as possible for public safety reasons.

² Florida Rule of Criminal Procedure 3.134.

There are court mechanisms intended to address this practice. If the defendant remains uncharged, the court on the 30th day, with notice to the state, is required to order the automatic ROR release on the 33rd day unless the state files formal charges by that date or, if good cause is shown by the state, order the automatic ROR release on the 40th day unless formal charges are filed.³

Under no circumstance should a defendant remain in custody for 40 days without being charged with a crime. Further, a defendant who is not charged in an information or indictment within 21 days from the date of arrest or service of a *capias* has a right to an adversary preliminary hearing on any felony charge then pending against the defendant. The subsequent filing of an information or indictment does not eliminate a defendant's entitlement to this proceeding.⁴ Implementation of the mandated automatic release orders and the setting of adversary preliminary hearings would impact LOS. Additionally, the chief judge, or the chief judge's designee is required to regularly examine the status of every inmate in the county jail.⁵

The methods of release for the 2011 and 2012 are reflected in Table 13. Most of the people booked into the jail are released in pretrial status (about 65%). The most frequent method is via bail bonds agency (30%) followed by cash bail (17%) and pretrial/ROR release (13%). Most significantly only three percent of all bookings and releases result in a state prison term meaning that 97% of the jail bookings are returned to the community within a few weeks of their booking date. However, because these state sentenced inmates have an average LOS of 213 days, they occupy a disproportionate share of the jail beds (nearly 900 inmates on any given day).⁶

Also noteworthy are the significant number of people who were released after the court could determine no probable cause. With over 1,300 of these releases each year and a LOS of 71 days, they occupy about 265 beds on any given day. At this time it is unclear as to why these cases are taking so long to conclude with a "no probable cause" finding. It may be that these releases have multiple charges and that the final disposition may be one other than a "no

³ Florida Rule of Criminal Procedure 3.134.

⁴ Florida Rule of Criminal Procedure 3.133(b)(1).

⁵ Florida Rule of Judicial Administration 2.215 (b)(3) and (8).

⁶ The Florida Department of Corrections reports that 2,034 people were admitted to state prison in FY2010-2011. The higher number reported by the FDOC is due to more complete reporting (a full 12 months) and complete encoding of the release reason. Regardless, the number of people released from jail each year who are sentenced to state prison is in the 3-4% range.

probable” decision. So further research is needed. There is also a large number of probationers who are detained due to an alleged violation of their probation sentence. They also are spending over 70 days before being released.

Finally, about 1,100 people each year are released after they have completed a treatment program. This release cohort occupies 261 beds on any given day. While the utility of having people participate and complete treatment programs, it may be the case that such services could be provided in the community without having to be incarcerated. There is research showing that treatment is at least as effective if delivered in the community as opposed to the jail or prison.⁷

Table 14. Primary Reasons for Release and LOS - January to September 2011 and 2012

Type of Release	2011 Releases		2012 Releases	
	Average LOS	Releases	Average LOS	Releases
Pretrial Releases				
Bond Out – Surety	6.8	7,533	6.2	8,176
Bond Out – Cash	2.2	4,997	2.3	4,683
R.O.R.	10.4	2,130	13.0	1,955
N/C	4.0	1,382	5.4	1,470
Pre-Trial Release	11.4	833	15.2	838
Pending Trial	25.9	654	33.4	804
Sentenced State	165.5	652	237.7	780
Adjudication Withheld	12.3	720	15.5	648
Judge Order	45.6	343	43.2	389
Pre-Trial ELMO	34.0	166	61.1	206
Nolle Pros	271.9	143	238.2	211
Probation Reinstated	7.0	489	13.6	645
No Information	104.6	481	114.3	639
Sentenced Releases				
Sentencing County	92.6	832	90.7	909
Time Served	36.0	587	38.2	697
Sentence Completed	142.9	510	127.3	635
Probation	87.9	464	89.5	566
Awaiting Program	121.4	250	89.6	410

Source: BCSO Data Files

⁷ Welsh, Wayne. (2006). *Evaluation of Drug Treatment Programs at the State Correctional Institution (SCI) at Chester*. Philadelphia, PA: Temple University

Review of Detention Process and Initial Review for Release⁸

Because the vast majority of the BCSO detention population is in some form of pretrial status, it was important to review the intake and pretrial release screening process for newly arrested people. This assessment was accomplished over three on-site visits during which we were able to observe the booking and initial assessment process.

While the BCSO operates four major facilities, the Main Jail with a capacity of 1,500 inmates is where the bulk of the initial reviews are completed by the Magistrate Court. Within the Main Jail is the Central Intake Unit (CIU), which processes virtually all male and female arrestees. They are brought directly to the CIU by law enforcement agencies or via the three BCSO satellite booking facilities.

Upon arrival, the following intake steps are completed: property intake, medical screening, fingerprinting, photographing and warrant check. The staff at Central Intake does intake and release processing of arrestees and eligible inmates. Staffing to inmate ratio appeared more than adequate and misdemeanor inmates were housed in the “B” housing pod, and the felony inmates were held in the “A” pod awaiting video court. These violent inmates are placed in single cells. In general, the Main Jail processes approximately 200 inmates in a 24-hour period on many days.

Pre-trial arrestees who are not immediately bonded out of jail or receive a Notice to Appear (NTA) will appear before a Magistrate Court judge either the same day or the day following the arrest (including Saturdays and Sundays) at what is commonly referred to as the “First Appearance Hearing”. Proceedings usually begin at 8 a.m.; however this depends upon the presiding judge’s schedule.

All of the First Appearance Court hearings are conducted via a live but limited video feed from the jail facility to the magistrate judge’s chambers. A special large room has been created within the Main Jail that allows the First Hearing judge to interact with the defendant via a video

⁸ In making this assessment the following sources were relied upon: a sample of Inmate Booking and Release summaries dated 10-26-11; Magistrate Docket Courtroom #235 dated 10-25-11; Broward Sheriff’s Office, Probation Division and Pre-Trial services Division summaries; Validation of the COMPAS Risk Assessment Instrument dated September 2010.; Florida State Charge/Statute Table with bond amounts, and Florida State Charge/Statute Section 948.06. Interviews were also conducted with Lieutenant George Rimel Broward County Detention Compliance Officer, Judge John Hurley, Darren Sieger, Broward County Detention Classification Manager, and Debra Lesniak, Pre-Trial Services Division Manager.

feed system. From the defendant's perspective, the hearing room in the jail is loud and it is very difficult to hear the Judge's questions. If nothing else, the video system needs to be significantly improved if the county's intent is to retain this process. Conversely, the Judge's hearing room is very modern, quiet and comfortable.

The judge will inform the arrestee of the charge and, if appropriate, will set a bond amount. In misdemeanor cases, the judge may accept a guilty plea and release the arrestee on his or her own recognizance or for time-served. The judge may also ask personal questions to gauge a prisoner's ties to the community and ability to pay bail or assess suitability for a ROR. During weekdays, these First Appearance Court hearings are almost always presided over by a single person - Judge John Hurley. This all happens in just a few minutes with no input from the Pretrial Service Agency (PSA) staff who have completed the COMPAS for ROR eligible inmates.

When arrestees are allowed speak with the judge, they also have a public defender appear alongside them unless a private attorney is representing them inside the Judge's courtroom. Inside the courtroom, there is a Court Clerk, representatives from the State Attorney, the Public Defender and the Broward County Detention Pre-Trial Release Division. Judge Hurley often cuts off the defendant's questions and comments if he feels the information is not relevant to his primary task of setting bail.

In a minute or two, Judge Hurley asks the defendant a set of basic questions regarding aspects of their crime, social and family relationships. He conducts a quick case review to determine release options - usually a few minutes. It is noteworthy that the Judge does not inquire about the COMPAS Risk Assessment though it is part of the packet of materials the he has available to review, nor does the PSA make a recommendation for release.

The Judge has three release options. He can release defendants on their own recognizance, which he does for minor crimes. He can also set bail and assume that the defendant can secure sufficient funds either personally or through a bail bondsman. The third option is to be granted pre-trial release (also an ROR), which is operated by the PSA. Supervision is also provided by the PSA via electronic monitoring, phone calls, drug testing and other programs.

On the two dates where the video court process was observed there were no releases directly from court. The arrestees were sent back to housing at the Main Jail or in some cases

one of the other BCSO facilities. A review of relevant intake release documents revealed the average time from court appearance to release was approximately nine to twelve hours.

During an interview with Judge Hurley he said, "I am the original full time, First Appearance Judge in Broward County. I evaluate almost every new arrest daily for probable cause, bond and risk to the public. I also play a major role in controlling the jail population." Judge Hurley said the Chief Judge's evaluation of him in the Bond Court position is partially determined by efficient control of the Broward County jail pre-trial detainee population count. He also expressed his concerns regarding the validity and utility of the COMPAS risk assessment and the necessity for a full time relief Judge, his eventual replacement on the bench, and the current Bail Schedule, which he feels needs to be reviewed and updated.

Regarding COMPAS, the instrument has been administered to clients since May 2008, Judge Hurley was appointed as the First Appearance Judge and began receiving COMPAS risk scores in March, 2009. Judge Hurley has said he would welcome a review of the pre-trial detainee COMPAS review instrument, and he would encourage adjustments made to include his standards for making inmate release decisions.

However, at of 2014 the COMPAS risk assessment tool is not being relied on by Judge Hurley. The lack of use of a validated risk assessment tool creates a risk that detainees are not appropriately assessed for risk, and therefore may unnecessarily remain incarcerated though they are low-risk. This, in turn, can increase the County's costs, by forcing it to manage a population that may be low risk in the most costly setting, the jail. I have presented to the County an option of having a locally developed risk assessment tool developed under the auspices of this case, as there are well-qualified candidates at Florida State University who can do this work. By developing a risk instrument which takes into account the factors Judge Hurley and the PSA staff feel should be included would increase the likelihood of an objective risk assessment being utilized by the First Appearance Court. I was part of a similar effort involving the San Diego Jail that has shown very good initial results at reducing the low-risk population there. .

Most observers of the First Appearance Court feel that with the appointment of Judge Hurley, the pretrial release decisions are more consistent than in the past. On the other hand, having a single judge perform this task for several years also means that such decisions are tied to that judge's perspective. Judge Hurley believes that even more consistent inmate release decisions leading to more efficient control of the jail population would be enhanced by using a

limited number of retired judges as a permanent cadre to staff Magistrate Court on the weekends.

As shown in Table 15, the Pretrial Service Agency (PSA) conducts an average of 840 risk assessment interviews per month. Of this number 250 are released to PSA to be supervised. In addition to the First Appearance Court (FAC) interviews and appearances, the PSA also conducts “2nd Look” interviews which are designed to re-evaluate people who were denied or not considered for ROR at the FAC hearing. Prior to 2013, only misdemeanor-charged defendants who were not released at the First Appearance or at subsequent hearings were being reexamined by the PSA. This misdemeanor policy greatly limits the potential impact on the jail population which, as noted earlier, consists mostly of pretrial defendants.

It should also be noted that the PSA has an overall successful closure rate of 63% with only 7% being re-arrested for either a new felony or new misdemeanor level crime (Table 15). The other most frequent reasons for unsuccessful closures are technical violations, absconding and FTAs. Given the high public safety record of the PSA and the relatively low percentage of people released to PSA, there does seem to be an opportunity to increase pretrial releases – especially for felony level crimes.

Review of the Low Bail Non-Violent Pretrial Detainees

We conducted two further levels of analysis to better understand the dynamics of those bookings that do secure release within a week of booking. First, I selected all people who were in custody for a non-violent crime and had a bail of \$1,000 or less. In this category were a total of 1,174 pretrial defendants with an average bail amount of \$301 and an average LOS to date of 71 days. Only three percent had a single charge while most having multiple charges. The most typical charge or reason why they were in custody was due to a supervision violation (31%); outstanding warrant (30%); drugs (16%); other non-burglary property (10%); and other agency holds (10%). Since current Court and PSA policy disallows anyone to be considered for release with an active hold or warrant, the vast majority of these cases are not eligible for release.

To further verify this finding, I drew a random sample of 100 of these cases and reviewed them with PSA staff. The case review finding was consistent with the statistical analysis in that the vast majority of these defendants were ineligible for release due to the hold or supervision

violation warrant. It should also be noted that if the defendant has a prior community control violation, the person is not eligible to be re-released on pretrial ROR.

**Table 15. Pretrial Service Monthly Measures
October 2013 to January 2014**

Pretrial Service Agency Metrics	Monthly Average
Jail Bookings	3,971
FAC Interviews	840
FAC Releases	144
2nd Look Interviews	
Felony	19
Misd	84
2 nd Look Releases	9
Post FAC Pretrial Releases	97
Total Releases to Pretrial	250
Closures	305
Success	191
Success Rate	63%
Unsuccessful	114
Re-Arrest Rate	7%
FTA Rate	3%
Abscond	7%
Tech Violation	12%
Other	8%

Source: BCSO Pretrial Services Agency

Major Findings

1. The Broward County jail population declined by about 1,100 inmates between 2006 and 2010. About half of this reduction is due to a declining crime and arrest rate that have reduced jail bookings by nine percent. But the other major trend was a reduction in the LOS, which has declined from about 32 days in 2006 to a low of 27.5 days in 2010.
2. Since 2010, bookings have continued to decline but the LOS has increased. The net effect has been a slight increase in the jail population to over 4,500 by the close of 2013.
3. The major reason for the increase in the LOS has been due to lengthier processing of criminal cases by the courts. This may be due to the election of new judges who are unfamiliar with the court processes or other reasons. It is not related to the court receiving more serious cases that require lengthier court processing.

4. Current crime, arrest and criminal court processing trends suggest that the jail population will remain in the 4,500 range if the current LOS continues. If the county could return to the 27.5 day mark, the jail population would decline to about 3,600.
5. One of the major reasons for the reduced LOS between 2006 and 2010 was the increased use of ROR via the BCSO Pretrial Service Agency. But in 2012 there was a significant reduction in First Court Appearance releases and other forms of pretrial releases.
6. COMPAS risk information is not being used by the court to make pretrial release or bail release decisions. Currently, the First Appearance Judge questions about the validity of the COMPAS instrument even though the questions asked by the Judge are similar to those covered by COMPAS.
7. The validation report on the COMPAS found that it was predictive of general recidivism and violent re-arrests but had not distinguished medium and high FTA risks. Despite these problems, the research showed that the majority of persons released from the jail are unlikely to be re-arrested for a new crime or FTA. They are extremely unlikely to be re-arrested for a new violent crime.
8. The PSA “2nd Look” program currently focuses on reviews misdemeanor-charged defendants who were not released at the FAC hearing although there is an effort underway to increase the number of felony reviews. Expansion to more felony level cases will increase the potential to impact the jail population, which consists mostly of pretrial defendants.
9. PSA releases have very low re-arrest and FTA rates. These low rates coupled with the large number of PSA screened cases that are not released would suggest there are more suitable cases for PSA release and supervision
10. A significant number of inmates are required to complete their in-custody programs prior to being released. Expansion of community-based programs would serve to reduce this number.

Recommendations

Broward County has made exceptional progress in reducing its jail population crowding problem. Since 2006, it has successfully implemented a number of reforms that have lowered its jail population and in turn eliminated the need for future jail bed capacity. However, there are a number of recommendations that flow from the findings that would serve to further reduce the jail population. These have been separated below according to those that are more operational and those that are intended to reduce the jail population. For the latter recommendations, some estimates of the possible impact on the jail population are made.

Operational Recommendations

1. *Require a face-to-face meeting by the Court with the defendant for the First Appearance hearing.*

Rationale: The lack of a face-to-face interview with the Magistrate Judge has an adverse impact on the quality of a review that will impact the defendant's ability to secure release from custody. Allowing this critical review to be based on a face-to-face meeting rather than an audio-visual meeting from a remote location (the Main Jail and other facilities) diminishes the quality of the review.

2. *If the face-to-face meeting cannot be achieved, at a minimum the current defendant's hearing room now located in the Main Jail needs to be upgraded so that the communications between the defendant and the Judge and the overall quality of the hearing is enhanced.*

Rationale: The quality of the current audio-visual event is poor. Both the quality of the visual and audio feeds is deficient. Both need to be substantially upgraded so the defendant can clearly understand the questions and instructions from the Judge.

3. *Rotate the primary Magistrate Judge position on two-year basis.*

Rationale: The appointment of Judge Hurley has significantly enhanced consistency in the bail setting and ROR release decision-making process. At some point, the reliance upon Judge Hurley will end. It will be important to recruit a new Judge who will bring the same consistency in the decision-making process. When that occurs, it would be proper to institute a new process where the Magistrate Judge assigned to the First Appearance Hearing be altered every two years.

4. *Recruit a limited pool of retired Judges to serve on the weekend First Appearance hearings and/or when the primary Magistrate Judge is not available.*

Rationale: Regardless of the rotation of the primary Magistrate Judge hearing, there is the issue of maintaining consistency in the decision-making process for weekends and days the Magistrate Judge is not available. Judge Hurley's recommendation that a small pool of recently retired Judges be used to fill these days should be adopted. The judges must receive appropriate orientation to the COMPAS assessment tool and the role of the PSA in conducting risk assessments.

5. *Require the presentation of the COMPAS results at the First Appearance and Arraignment hearings along with a supervision plan or develop a local, validated risk assessment tool that will be used and considered by the court (see recommendation 7, below).*

Rationale: The COMPAS results on each defendant should be made a formal part of each First Appearance Hearing and the subsequent Arraignment hearings. At each hearing, the

PSA should report the risk assessment and a proposed release plan for the defendant should he/she be released.

6. *Improve the work and interview space for PSA staff.*

Rationale: All parties agree that the working conditions for the PSA staff are inadequate. Pretrial staff have told us that the limited work space and problems with transportation staff timely moving prisoners to meet them continues to hamper their work.

7. *Re-validate and adjust, or replace the COMPAS FTA Risk Assessment Scale.*

Rationale: The FSU validation study noted that the COMPAS FTA Risk Assessment Scale is not functioning properly. Using the FSU data file (or a more current data file) can be used to correct this problem with the current instrument or the COMPAS system could be easily replaced with a customized risk assessment scale that is tailored to Broward County. Developing its own risk assessment system would also be cost-effective. This should be done this year.

8. *Ensure that the filing of criminal charges so that the 33rd and 40th date deadlines are not being violated.*

Rationale: A significant number of pretrial defendants are being detained past the 33rd and 40th deadlines. An audit completed with the Sheriff found that the jail population would be reduced by as much as 100 inmates if the 30 day rule was adhered to. The Chief Judge could issue an AO that a show cause order must be generated from the Presiding Judge at day 21 that would notify the DA he has nine days to file or an order for release order would be issued.

Jail Population Reduction Recommendations

1. *Develop an agreement between the Court and the Sheriff that allows the Sheriff to directly release defendants - to grant ROR - without a bail requirement. Such releases would be limited to certain criteria agreed to between the Court and the Sheriff.*

Rationale: There is no question that there are several hundred inmates who are in pretrial and/or sentence status who could be safely placed under the supervision of the several programs that are well managed by the BCSO. These may include minimum custody prisoners, those with low bails, and those arrested for marijuana possession, drug paraphernalia, and providing false information. The difficulty is allowing these releases to occur. The way to overcome this obstacle is for the Court to grant authority to the BCSO to have the authority to release such inmates at their discretion to one of their well-managed and effective programs.

2. *Modify mandatory restrictions on the consideration for pretrial release such as a prior FTA, a prior VOP, and prior failure on Community Supervision.*

Rationale: The use of mandatory exclusion factors is counter-productive in that it disqualifies people who would be successful on pretrial release. While these factors are relevant they should not be used to unilaterally disqualify people who are otherwise suitable risks for release.

3. *Establish a specialized pretrial release program with low bond amounts (\$500 or less).*

Rationale: As noted earlier, there are approximately 350 people in the jail at any given time with bail amounts of \$500 or less. Their average length of time in custody to date is 90 days. They tend to be charged with possession of drugs, petty theft, resisting arrests and other public nuisance level crimes. They obviously have no means to post their modest amount of bail and likely have limited community ties. About 100 are classified as minimum custody. Even though some portion of this group has no known residency or have had prior FTAs or failures on community supervision, these repeated failures do not necessarily warrant or justify further detention. A special effort should be made by the PSA and the Courts to find a suitable release option for such cases.

4. *Enhance the "2nd Look" Program to focus on moderate and low risk felons who have been in custody for 15 days or more.*

Rationale: While the PSA already has a program that reviews cases previously denied ROR at the initial court reviews it is limited. Given that the vast majority of pretrial defendants are eventually released back to the community after their criminal cases are disposed of by the courts, it would make sense for the PSA to continually re-assess the pool of pretrial defendants for suitable cases for release and supervision. The focus would be on those people who have been detained for more than 30 days.

5. *Authorize the Sheriff to request a sentence modification that would allow the Sheriff to transfer to community supervision-sentenced inmates as part of a re-entry program.*

Rationale: There are a significant number of sentenced inmates who are in minimum custody and who are nearing the end of their sentences. It would be desirable for some portion of this group to be released to the community ahead of their scheduled release date (under the auspices of the Court) as part of a re-entry program.

6. *Expand community-based treatment programs to divert those currently held in the jail until they complete jail-based programs.*

Rationale: There are 261 prisoners held every day in the jail who cannot be released until they complete jail-based treatment programs. There is good research showing that community-based treatment programs are at least as effective, if not more so, than prison- and jail-based programs.

7. *Expand Community-Based Forensic Beds to Accommodate or Establish a Specialized Housing Unit for Inmates Who Have Been Declared Incompetent to Proceed (ITP) with*

Criminal Proceedings.

Rationale: It was discovered during a 2013 on-site visit that there were 124 ITP inmates awaiting community placement. Of that number 21 had been released approximately one month later. Of these releases, their average LOS was 176 days (nearly six months). Of the ITP inmates still in custody, their average LOS was 298 days; 31 had been in custody for over one year, while four had been in-custody over two years. The vast majority, (70%) are assigned to the general population and are classified as medium or minimum custody. This chronically ill population requires specialized treatment outside the traditional jail system, but there are not enough beds to accommodate them. Contracting these inmates to specialized treatment beds in the community would significantly reduce the stress on the corrections and mental health resources at the jail, while helping to ensure these patients receive the level of care they need. However, an assessment of the availability of these beds in existing non-jail facilities would need to be determined.

8. *Establish a Work Release Program for Sentenced Inmates*

Rationale: A significant number of the sentenced population is nearing the end of their sentence and could be candidates for either a residential or non-residential work-release program. The former would require the inmate to return to the correctional facility after completing the day's work assignment. The latter, which resembles the program operated by the San Diego County Sheriff's Department, only requires the person to show up for a work assignment and then return to their residence. Such a program does not require a jail facility to operate.

9. *Establish an SMI wing at Atlantic Shores Hospital for high-risk Baker Act prisoners.*

Rationale: Under Florida law, a mentally ill patient can be detained against their will if the person has demonstrated that he/she can cause harm to themselves or others (Baker Act passed in 1971). Such action can be taken by law enforcement agencies (and other mental health professionals) who will book them into the local jail. There are non-criminal justice facilities that are authorized to accept people. For Broward County, the principle facility is the Atlantic Shores Hospital. Currently, there is only a small number of people who have been arrested under the Baker Act (less than 10), so its impact would be minimal. However, regardless of how small the number, the County should reduce this number as much as possible by expanding the capacity at the Atlantic Shores Hospital.

10. *Expand Community-based Programs so that inmates in treatment programs can be placed in the community to complete their program requirements rather than remaining in the jail to do so.*

Rationale: As indicated above, a significant number of inmates are required to remain in custody until they have completed their required program. By increasing the number of community placement slots this number would decline and so would the jail population. These additional community program beds could also be used to facilitate the 2nd Look program for inmates who require supervision and treatment.

There were some aspects of the jail population that require further study to determine if there are other changes that can be made that would reduce the population. Of these, I note that there is a significant number of people who were released after the court could determine no probable cause. With over 1,300 of these releases each year and a LOS of 71 days, they occupy about 265 beds on any given day. It may be that these releases have multiple charges and that the final disposition may be one other than a “no probable” decision. So further research is needed.

Impact on the Jail Population

The overall assessment is that the number of people housed in the jail system could be further reduced by as much as 875 inmates if all of the above recommendations were implemented (Table 16). Further, reductions might be possible if cases that are released due to a “no probable cause” or a violation of probation could have their cases disposed of more efficiently. If this can be achieved, the jail would be operating well below the 85% threshold level for all facilities. Broward County would also become a model for other jurisdictions both within and outside Florida on safely managing its jail population without jeopardizing public safety.

Table 16. Potential Estimates of Inmate Population Reductions

Reform	Impact
Main Jail Population Reductions	
Adherence to 30 day charging rule	100
Low Bail Supervised Release Program	100
Enhanced 2nd Look Program	250
Remove Mandated Exclusions for Pretrial Release	100
Work Release for Sentenced Inmates	150
ITP Housing Unit	75
Increased community treatment programs	100
Expedited Court Processing	
Expedited “no probable cause” cases	Unknown
Expedited probation violations/Capias	Unknown
Expedite Dispositions of State Sentenced Inmates	Unknown
Total	875