



## Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings

### *at a glance*

The 2009 Legislature appropriated \$19 million in federal funds to establish eight post-adjudicatory drug courts. The drug courts were expected to divert offenders from prison and thereby reduce corrections costs by an estimated \$95 million.

The drug courts are generally meeting standards for their operation. However, they are unlikely to generate the expected cost savings for several reasons. Initial admissions targets overestimated the potential population of offenders who would qualify for the programs and strict eligibility criteria limited admissions. Some programs also appear to be serving offenders who would be unlikely to be sentenced to prison in the absence of drug court.

The Legislature may wish to consider four options to address these problems. It could modify drug court criteria to serve more prison-bound offenders, include additional counties in the program, require the courts to serve predominantly prison-bound offenders, and/or shift federal funds to other prison diversion programs.

### Scope

Chapter 2009-64, *Laws of Florida*, directs OPPAGA to evaluate the effectiveness of post-adjudicatory treatment-based drug court programs. This report examines how the programs are being implemented and the potential cost savings they may achieve for the state. Data are not yet available to evaluate participant recidivism.

### Background

Post-adjudicatory drug courts divert persons who have been found guilty of certain crimes from incarceration to supervised treatment. Offenders, who typically have prior drug-related offenses, are sentenced to drug court for 12 to 18 months as a condition of probation.<sup>1</sup> Prior to 2009, the programs were operated by 21 counties.

In 2009, the Legislature sought to reduce prison costs by passing Ch. 2009-64, *Laws of Florida*, to create new expanded drug courts for more serious prison-bound, non-violent offenders.

<sup>1</sup>In addition to post-adjudicatory programs, some counties operate pretrial diversion drug courts that divert first-time offenders from the criminal justice system.

The Legislature directed \$19 million in federal funds from the Edward Byrne Memorial Justice Assistance Grant to the expansion drug courts for case management, treatment services and drug testing, data management, and project administration.

The Office of the State Courts Administrator worked with local jurisdictions to establish expansion drug courts in eight counties: Broward, Escambia, Hillsborough, Marion, Orange, Pinellas, Polk, and Volusia.<sup>2</sup>

## Findings

The eight expansion drug courts are generally meeting accepted standards for drug court operation. However, as currently implemented, the programs are unlikely to achieve the goal of diverting 4,000 offenders from prison over a two-year period, which was expected to reduce state corrections costs by an estimated \$95 million. Programs are not reaching their admission goals because initial admissions targets overestimated the potential population and strict eligibility criteria limit admissions. In addition, cost savings are reduced because some programs are serving offenders unlikely to be sentenced to prison in the absence of drug court. The Legislature could consider four options to increase correctional cost savings: expand eligibility criteria to serve more prison-bound offenders; increase the number of counties participating; require existing expansion courts to serve predominately prison-bound offenders; or shift federal funds to other prison diversion programs.

### ***Expansion drug courts are generally meeting Florida drug court standards***

The expansion drug courts are generally meeting six standards established in s. 397.334, *Florida Statutes*.<sup>3</sup>

- Drug courts provide access to a continuum of alcohol, drug, and related treatment and rehabilitation services. All eight programs require offenders to attend intensive outpatient treatment through a multi-phased approach; six programs also offer residential treatment.<sup>4</sup> In addition, all provide referrals for ancillary services such as job training and employment assistance, transitional housing, and services for non-English language speakers.
- Drug courts ensure ongoing judicial interaction with each drug court participant. Seven of the eight programs require participants to appear before the judges at least once a month and five programs hold weekly drug court hearings. Judges base the required frequency of court attendance on each offender’s progress.
- Drug courts identify eligible participants early and promptly place them in the program. Eligible offenders are typically identified by drug court staff or are referred by attorneys, treatment providers, or felony division judges. For all eight programs the state attorney’s office screens cases to determine if the defendant meets the court’s eligibility criteria. Once a defendant is accepted into the program, the court orders a substance abuse evaluation to determine treatment needs, and the drug court team uses the evaluation results to design a supervision and treatment plan. Five programs use the American Society of Addiction Medicine’s validated risk assessment instrument.

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most central to drug court operations and appropriate for the program’s implementation status. We did not evaluate the programs’ compliance with four standards due to difficulties in translating program activities into measurable results or the programs’ implementation status. These four standards were: promoting public safety while protecting participants’ due process rights; measuring attainment of program goals and gauging effectiveness; continuing interdisciplinary education for drug court personnel; and forging local, state and community-based partnerships and coalitions to enhance drug court effectiveness.

<sup>2</sup> Duval was originally selected to participate but withdrew on May 19, 2010.

<sup>3</sup> These standards were adapted from the United States Department of Justice’s 10 Key Drug Court Components and are intended to promote effectiveness and improve performance. We focused on 6 of the 10 standards that were

<sup>4</sup> Drug court programs consist of three to four phases that participants must complete in order to successfully graduate from the program.

- Drug courts integrate alcohol and other drug treatment services with justice system case processing. Six courts hold frequent status hearings in which judges, treatment providers, probation officers, attorneys, and case managers assess the offenders' progress in the program. They discuss an offender's compliance with supervision requirements as well as whether to increase or decrease treatment requirements, impose sanctions and incentives, and monitor the offender's movement through program phases.
- Drug courts adopt a coordinated strategy to govern drug court responses to participant compliance. When offenders with serious substance abuse problems relapse, judges may impose a range of sanctions while the offenders remain in the program. For example, judges often use sanctions such as mandatory community service, extended probation, or jail stays when offenders violate probation requirements by testing positive on drug tests, missing treatment sessions, or failing to report to court.
- Drug courts monitor abstinence with frequent random alcohol and drug testing. All eight programs use random drug testing to monitor program compliance. Participants are tested by drug court staff at least twice per week. In addition, offenders are required to maintain a minimum number of 'clean days' before they can progress through the program phases and are also required to be drug free for at least 90 days before graduating from drug court.

***Expansion drug courts as currently implemented are unlikely to significantly reduce state prison costs***

The 2009 Legislature expanded eligibility criteria for drug courts to divert suitable offenders from prison and thereby reduce corrections costs. Expanded drug courts were expected to divert 4,000 offenders, thereby reducing state corrections costs by an estimated \$95 million. However, cost savings of this magnitude are unlikely to be achieved unless changes are made. Programs are not reaching their admission goals because initial estimates of the potential population were overstated and restrictive eligibility criteria limit admissions. In addition, cost savings are reduced because programs appear to be serving many offenders unlikely to be sentenced to prison in the absence of drug court.

The expansion drug courts will not meet their goal of serving 2,000 offenders by December 2010. As of June 30, 2010, the expansion drug courts had admitted 324 offenders, substantially fewer than the mid-year target of 900 offenders. Program utilization rates varied from 20% to 66% (see Exhibit 1). Six of the eight programs report that they will not achieve the anticipated number of admissions this year. The expansion drug courts will not reach admissions goals for two main reasons: initial estimates overstated the potential population and restrictive eligibility requirements limited admissions.

**Exhibit 1  
Expansion Drug Courts Have Low Admissions<sup>1</sup>**

Circuit	County	Number of Offenders to Serve	2010 Admissions	Program Capacity Used
1 <sup>st</sup>	Escambia	38	21	56%
5 <sup>th</sup>	Marion	35	7	20%
6 <sup>th</sup>	Pinellas	150	48	32%
7 <sup>th</sup>	Volusia	30	16	53%
9 <sup>th</sup>	Orange	120	43	36%
10 <sup>th</sup>	Polk	100	66	66%
13 <sup>th</sup>	Hillsborough	252	77	31%
17 <sup>th</sup>	Broward <sup>2</sup>	175	46	26%
<b>Total</b>		<b>900</b>	<b>324</b>	<b>36%</b>

<sup>1</sup> 2010 admissions are for the first six months of operation for most drug courts, from inception through June 30, 2010. Accordingly, the number of offenders to serve and program capacity used are based on half of the annual number projected.

<sup>2</sup> The expansion drug court in Broward County began operating in March 2010.

Source: OPPAGA analysis of county court data collected by the Office of the State Courts Administrator.

Initial estimates of the potential population for expansion drug courts were overstated. Original estimates of the number of offenders potentially eligible for expansion drug courts included offenders with prior forcible felonies and drug trafficking and sales offenses, which drug courts traditionally have not served.<sup>5</sup> These estimates were used to determine how many counties to include in the expansion.<sup>6</sup> As a result, fewer counties were selected than needed to reach admissions goals. When offenders with prior violent or drug trafficking offenses are excluded, the estimate of potential prison diversions from participating counties is reduced by half, from approximately 6,000 offenders to 3,000.<sup>7</sup> In addition, Duval County

<sup>5</sup> Prior to the current expansion, Florida law did not address eligibility criteria for post-adjudicatory drug courts and each drug court established slightly different eligibility criteria through local administrative orders. While the 2009 statutory changes did not specifically exclude prior forcible felonies, most drug courts serve offenders who have non-violent felony drug or drug-related offenses and no history of violence, drug trafficking, or drug sales.

<sup>6</sup> The original estimates of the potential population were from the Office of Economic and Demographic Research and were based on the 2009 statutory criteria.

<sup>7</sup> OPPAGA’s estimate is based on Fiscal Year 2007-08 prison admissions for drug offenses or non-violent property offenses, excluding prior or current forcible felonies and drug dealing, for offenders with drug treatment needs who have sentencing

withdrew from the expansion program in May 2010; it was expected to serve 200 offenders annually.

Drug court eligibility criteria restrict admissions. State law authorizes expansion drug courts to serve both offenders arrested for specified new crimes and for specific violations of probation. Probation violators are eligible if their offense occurred on or after July 1, 2009, and if the violation is solely for a failed substance abuse test. Consequently, programs cannot serve probation violators if the reason for the violation was anything other than a failed drug test. Department of Corrections data shows that statewide, 74% of all violations of probation for a failed drug test occurred with other technical violations.<sup>8</sup> According to drug court and Department of Corrections staff, probation offenders rarely are cited for a single violation; for example, offenders often are cited for additional technical violations such as failing to timely pay court-ordered fees, missing a treatment session, or failing to report to the probation office. In addition, drug court staff reported that some technical violations other than a failed drug test are related to the offender’s substance abuse problem and are considered indicators that the offender has relapsed. Expanding the eligibility criteria to other technical violations of probation would increase the number of offenders eligible for the program.

In addition, some expansion drug court staff reported they could serve more prison-bound offenders if offenders with prior violent offenses could be considered for eligibility on a case-by-case basis. Although Florida law does not exclude offenders with a history of violent offenses, drug courts have traditionally excluded these offenders because federal grant requirements prohibited drug courts from serving these offenders. However, the Department of Justice has confirmed that

scores of 52 points or fewer.

<sup>8</sup> This percentage is based on a Department of Corrections analysis of 1,653 non-violent offenders who had sentencing scores of 52 points or fewer and did not have a prior history of violent or forcible offenses committed on or after July 1, 2009.

expansion drug courts are not required to adhere to the federal violent offender exclusion.<sup>9</sup> Although certain offenders with violent histories would not be suitable for the drug court model, drug court judges in general and state attorneys in three of the eight counties with expansion drug courts reported that some offenders with a previous violent offense may be appropriate for the program (e.g., a person who committed a violent offense years ago but has had no subsequent history of violence). Judges in these programs would like more discretion to serve offenders who are appropriate for treatment and do not present a risk to public safety.

Most expansion drug court clients have low sentencing scores. As directed by the Legislature, the expansion drug courts are serving non-violent felony offenders. As of June 30, 2010, offenders admitted into the programs had no prior or current violent felony offenses, had committed third degree non-violent felony offenses or received technical violations of probation, and had sentencing scores of 52 points or fewer, as required by statute.

The Legislature intended expansion drug courts to reduce state costs by diverting offenders from prison. However, most drug court participants have sentencing scores below 44 points, well below the maximum sentencing score of 52 points required to meet eligibility criteria.<sup>10</sup> Judges in six of the eight expansion counties are certifying that the offenders admitted to drug court with

sentencing scores below 44 points would have been sentenced to prison in the absence of drug court. In contrast, some judges and state attorneys in Polk and Orange counties stated that most offenders placed in expansion drug court would not have been sent to prison on their current offense; approximately 92% of offenders in these counties scored below 44 points. As shown in Exhibit 2, most of the offenders served by the drug courts have sentencing scores between 23 and 44 points.

**Exhibit 2**  
**Circuits Varied Widely in the Percentage of Participants Likely to be Diverted from Prison**

Circuit	County	Percentage in Each Sentencing Score Range			Number
		1-22	23-43	44-52	
9 <sup>th</sup>	Orange	65%	33%	2%	43
10 <sup>th</sup>	Polk	21%	67%	12%	66
13 <sup>th</sup>	Hillsborough	21%	64%	16%	77
7 <sup>th</sup>	Volusia	6%	63%	31%	16
1 <sup>st</sup>	Escambia	0%	65%	35%	20
5 <sup>th</sup>	Marion	14%	43%	44%	7
17 <sup>th</sup>	Broward	2%	33%	65%	46
6 <sup>th</sup>	Pinellas	0%	15%	85%	48
<b>Total Number</b>		<b>61</b>	<b>155</b>	<b>107</b>	<b>323</b>

Source: OPPAGA analysis of county court data collected by the Office of the State Courts Administrator.

The low sentencing scores of many participants raise questions about whether they would have been sentenced to prison in the absence of a drug court. Office of Economic and Demographic Research data for non-violent felony offenders sentenced in Fiscal Year 2009-10 shows that offenders with sentencing scores greater than 22 points but not more than 44 points were unlikely to be sentenced to prison (see Exhibit 3).

<sup>9</sup> The expansion drug courts awards were authorized under the American Recovery and Reinvestment Act of 2009 through the Edward Byrne Justice Assistance Grant (JAG) program. Although drug courts funded under Bureau of Justice Assistance Drug Court Discretionary Grant provisions are prohibited from serving offenders with a prior violent felony conviction, drug courts funded under the Justice Assistance Grant program are not required to adhere to this exclusion.

<sup>10</sup> Under the Florida Criminal Punishment Code, offenders are assigned points for their crime and any past crimes, and these scores are used in sentencing. If an offender's total points are equal to or less than 44, the lowest permissible sentence is a non-state prison sanction unless the court determines within its discretion that a prison sentence up to the statutory maximum can be imposed.

**Exhibit 3  
Few Non-Violent Felony Offenders with Sentencing Scores of 44 Points or Fewer Were Sentenced to Prison<sup>1</sup>**

Sentencing Score Range	Number Sentenced	Percentage of Non-Violent Felony Offenders Receiving Each Sanction		
		State Supervision	Jail, Other	Prison
22 and below	14,004	69.9%	27.5%	<b>2.6%</b>
Over 22 to 44	12,786	57.6%	30.9%	<b>11.5%</b>
Over 44 to 52	1,007	24.8%	17.5%	<b>57.7%</b>

<sup>1</sup> The total reflects offenders sentenced in Fiscal Year 2009-10 for non-violent felony offenses or community sanction violations committed on or after July 1, 2009, who had no prior forcible felonies. Data does not include cases where the sentencing score was not reported.

Source: Office of Economic and Demographic Research.

Focusing drug court resources on offenders who score below 44 points reduces the potential cost savings for the state. We estimate that the state could save approximately \$6,300 per year for each offender served in a drug court rather than incarcerated in prison.<sup>11</sup> However, the state will attain these savings only if the participating counties serve offenders who would be sentenced to prison in the absence of a drug court.<sup>12</sup>

***Options for increasing correctional cost savings***

The 2009 Legislature appropriated \$19 million in federal trust funds for drug court treatment services with the goal of reducing state correctional costs by \$95 million. According to the Office of the State Courts Administrator, the state has until September 30, 2012, to spend

<sup>11</sup> The average cost to serve a drug court participant is approximately \$5,100, which includes approximately \$3,500 in treatment costs and \$1,600 in Department of Corrections supervision costs compared to an average annual prison bed cost of approximately \$19,000. Since half of post-adjudicatory drug court participants fail to successfully complete the program and serve an average sentence of 1.5 years in prison, we estimate the expected cost savings per participant is approximately \$6,300.

<sup>12</sup> Broward and Pinellas counties, two of the largest counties in the expansion, primarily serve offenders who score above 44 points and will be in the best position to provide cost savings.

down these funds before they revert to the federal treasury. As of June 30, 2010, the state had not spent approximately \$18.1 million, or 96%, of the funds.<sup>13</sup>

To avoid reverting this money and to reduce state prison costs by diverting prison-bound offenders, the Legislature may wish to consider four options.

- Expand drug court criteria to serve more prison-bound offenders.
- Include additional counties to divert more prison-bound offenders.
- Require existing expansion courts to serve predominantly prison-bound offenders.
- Shift federal drug court funds to other prison diversion programs.

Expand drug court criteria. Most drug courts report that they could serve more prison-bound offenders if the eligibility criteria were expanded. The Legislature may wish to consider

- authorizing drug courts to serve offenders who are cited for technical violations of probation other than a failed substance abuse test, if substance abuse was the main factor at the time of their violation; and
- giving judges discretion to allow offenders with prior violent offenses who are appropriate for treatment and do not present a risk to public safety to participate in expansion drug court.

Include additional counties so as to divert more prison-bound offenders. Because program participation is low, the Legislature could afford to add new counties to the drug court expansion program if they agree to serve prison-bound offenders. For example, Bay, Brevard, and St. Lucie counties have high prison admission rates for drug court eligible offenders but were not previously selected for program participation.

<sup>13</sup> The Office of the State Courts Administrator reports that \$852,325 has been expended as of July 2010, and that this amount does not include expenditures for Duval County or Hillsborough County.

Require existing expansion courts to serve predominantly prison-bound offenders. While the courts should have some flexibility to serve lower scoring offenders, the Legislature intended the expansion drug courts to serve offenders who would be sentenced to prison in the absence of the drug court.

- The Office of State Courts Administrator should work with counties serving few offenders with sentencing scores over 44 points to identify ways to target more serious offenders. For example, courts should target potential drug court clients by screening offenders in the felony division rather than limiting referrals to offenders who violate probation.
- The Legislature may wish to stop funding programs that are not predominately serving prison-bound offenders. Funding from these programs could be shifted to the existing expansion counties or allocated to new counties willing to serve prison-bound offenders.

Shift federal drug court funds to other prison diversion programs.

- In the absence of increased program admissions and to avoid reverting drug court funds to the federal government, the

Legislature may wish to shift some of the funding to serve prison-bound offenders in other diversionary programs (e.g., day-reporting centers and community-based substance abuse and mental health treatment).<sup>14</sup> Federal Byrne-JAG grant requirements do not prohibit use of these funds for other programs and some other states are using these funds on other such diversion efforts. In addition, the Legislature may wish to expand problem solving courts, such as mental health courts, to serve prison-bound offenders with both mental health and substance abuse treatment needs.

## Agency Response ---

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Office of State Clerks Administrator to review. Their responses have been reproduced in Appendices A.

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<sup>14</sup> See *Intermediate Sanctions for Non-Violent Offenders Could Produce Savings*, OPPAGA [Report No. 10-27](#), March 2010, which provides recommendations for community-based treatment options.

## Appendix A

Charles T. Canady  
Chief Justice



Elisabeth H. Goodner  
State Courts Administrator

### Office of the State Courts Administrator

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September 29, 2010

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and Government Accountability  
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Dear Dr. VanLandingham:

I appreciate the opportunity to comment on OPPAGA's draft report entitled "Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings." Overall, I concur with the recommendations outlined in the report and my staff has been working diligently to develop a strategy for addressing the concerns raised. Additionally, I would like to offer a few observations.

The report includes two major findings, the first being that expansion drug courts are generally meeting Florida drug court standards. This finding is important because these standards are statistically linked to successful outcomes, including lower recidivism rates, in the national data. Programs that consistently meet the standards should ultimately produce positive outcomes, including a significant number of graduates who will not go to prison and in fact will go on to lead productive lives.

The avoidance of prison and the ability to lead productive lives are important to the next finding: that expansion drug courts as currently implemented are unlikely to significantly reduce state prison costs. We have two comments regarding this finding. First, it may be premature to use admissions data to predict the potential of cost savings, considering that the six months of data used includes the "ramp up" time necessary for local programs to fully develop their referral mechanisms. The actual number of offenders served during the first 12 months of operations will not be known for several more months. Certainly the programs have not served as many offenders as initially planned and we will not reach the original target. But we do anticipate that many more offenders will be served in the coming months. Second, cost effectiveness also should be measured against actual expenditures. Expenditures to date are significantly lower than initial projections. Expansion programs may ultimately show some cost savings while serving fewer offenders, even if less than expected.



Gary R. VanLandingham, Ph.D  
September 29, 2010  
Page Two

The report indicates that the estimates of the number of qualified offenders who could be served by the programs were significantly overstated because they did not exclude prior violent offenses or drug trafficking and sales offenses. This led to target admissions numbers that have proven to be too high. Planning for this project relied on data provided by the Office of Economic and Demographic Research (EDR). EDR based their data on the new provisions passed in 2009. This methodology was sound considering the information we had at the time. However, in developing the implementation plan we did not contemplate that local programs, in consultation with the local state attorneys, public defenders and treatment providers, would exercise their discretion to exclude individuals with violent histories or drug trafficking and sales offenses. If indeed the initial estimates of potential prison diversions from participating counties could be reduced by half as OPPAGA suggests, from approximately 6,000 offenders to 3,000 offenders, targets should also be lowered and any evaluation of the expansion program should ultimately consider those lower targets. My office is in the process of doing an analysis of county specific data to determine reasonable estimates of future program admissions, which could serve as a basis for revising the estimated cost savings.

The report points to another issue that can impact potential prison cost savings: that there are non prison-bound offenders being placed into these programs. OPPAGA specifically identifies Orange and Polk Counties as serving a significant number of offenders who seemingly do not meet the prison-bound criteria. This conclusion is made based on low sentencing scores and the statements of some judges and state attorneys in those counties. In August, my staff met with the judges in Orange and Polk Counties to discuss this matter. Both counties have agreed to ensure that prison-bound offenders are targeted to participate in the program. In addition, Polk and Orange Counties have agreed to begin documenting that each offender is indeed prison-bound. My staff will continue to monitor admissions to ensure compliance. We are confident that the other six counties are serving prison-bound offenders in their respective expansion programs.

As recommended in the report, we agree that expanding the drug court criteria to serve more prison-bound offenders would increase the number of eligible offenders. Several programs have further suggested that the legislature consider raising the 52 point sentencing score threshold to 60 points as originally recommended in OPPAGA's March 2010 report entitled "State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders." This would also allow more non-violent offenders in need of substance abuse treatment into the program. My office will be able to propose language for the legislature's consideration.

Finally, I would like to note that getting this program implemented has been exceedingly challenging, given the many requirements in the federal grant regulations. As reflected in the report, program census is low. Yet while this program will not meet the targeted number of offenders during its first year of operations, I remain confident that with time the expansion drug courts will begin producing more positive outcomes and may prove to be a cost effective approach to dealing

Gary R. VanLandingham, Ph.D  
September 29, 2010  
Page Two

with offenders whose criminal activity is fueled by their substance abuse and addiction. I welcome any further guidance from the legislature and other stakeholders on how this program can better serve prison-bound offenders and the citizens of Florida.

Thank you for the opportunity to respond to the report. Please do not hesitate to contact me if you require additional information.

Sincerely,



Elisabeth H. Goodner

LG:jg



# *The Florida Legislature*

## *Office of Program Policy Analysis and Government Accountability*



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