



# State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders

## *at a glance*

Drug courts provide supervised community treatment designed to divert drug-addicted offenders from the criminal justice system. The two principal types of drug court programs for adult offenders are pre-trial diversion drug courts for first-time drug offenders, and post-adjudicatory drug courts for non-violent offenders who typically have prior convictions.

- National research has shown that drug courts can reduce the future criminal activities of offenders.
- Effective drug court programs can help reduce prison admissions and state costs.
- Over a three-year follow-up period, offenders who successfully completed post-adjudicatory drug courts in Florida were 80% less likely to go to prison than the matched comparison group.
- While drug court graduates have lower recidivism rates, only half of post-adjudicatory drug court participants complete the program, and many non-completers are sentenced to prison.

Two issues—program eligibility limitations and low completion rates—must be addressed if drug courts are expanded to reduce prison admissions.

## Scope

As directed by the Legislature, OPPAGA examined Florida drug courts and addressed three questions.

- What are drug courts and what types of defendants do they serve?
- What are the benefits and drawbacks of drug courts?
- What factors should the Legislature consider if drug courts are expanded?

## Questions and Answers

### *What are drug courts and what types of defendants do they serve?*

Drug courts are designed to divert drug addicted offenders from the criminal justice system and provide supervised community treatment services in lieu of incarceration. The programs receive local, state, and federal funds and operate in approximately two-thirds of the state's 67 counties.

Section 397.334, *Florida Statutes*, authorizes the establishment of drug courts, and s. 948.08, *Florida Statutes*, mandates the type and severity of offenders that pretrial drug courts may serve, but the statute does not address eligibility criteria for post-adjudicatory drug

courts.<sup>1</sup> The individual drug court programs have established eligibility criteria for both pretrial and post-adjudicatory drug courts that generally specify that they will serve offenders who have non-violent felony drug or drug-related offenses and who have no history of violence, drug trafficking, or drug sales.

Drug courts operate as special court dockets that hear cases involving drug addicted offenders. Defendants can be referred to the drug court program in several ways. Drug court coordinators may identify potential candidates at arraignment hearings, and defendants may be referred by the county jail, treatment providers, felony division judges, defense attorneys, or family members.

In most counties, the state attorney’s office screens referred adult felony cases to determine if the defendant meets the court’s eligibility criteria. Defendants who are determined to be eligible are interviewed by a member of the drug court team, who explains program requirements and consequences. The decision to participate in drug court is generally voluntary. Once a defendant is accepted into the program, the court orders a substance abuse evaluation to determine the defendant’s treatment needs, and the drug court team uses the evaluation results to design a supervision and treatment plan.

Judges order participating offenders to attend community treatment programs under close supervision by the court. The participant undergoes an intensive regimen of substance abuse treatment, case management, drug testing, and monitoring. Although treatment is tailored to each offender’s individual substance abuse treatment needs, drug court programs generally require at least one year of intensive individual and/or group substance abuse treatment.

Drug courts generally use graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions can include mandatory community service, extended probation, or jail stays. Drug court staff noted that offenders with serious substance abuse problems often relapse while in the program, and indicated that the judge typically would apply several graduated sanctions before terminating an offender from the program and ordering their incarceration.

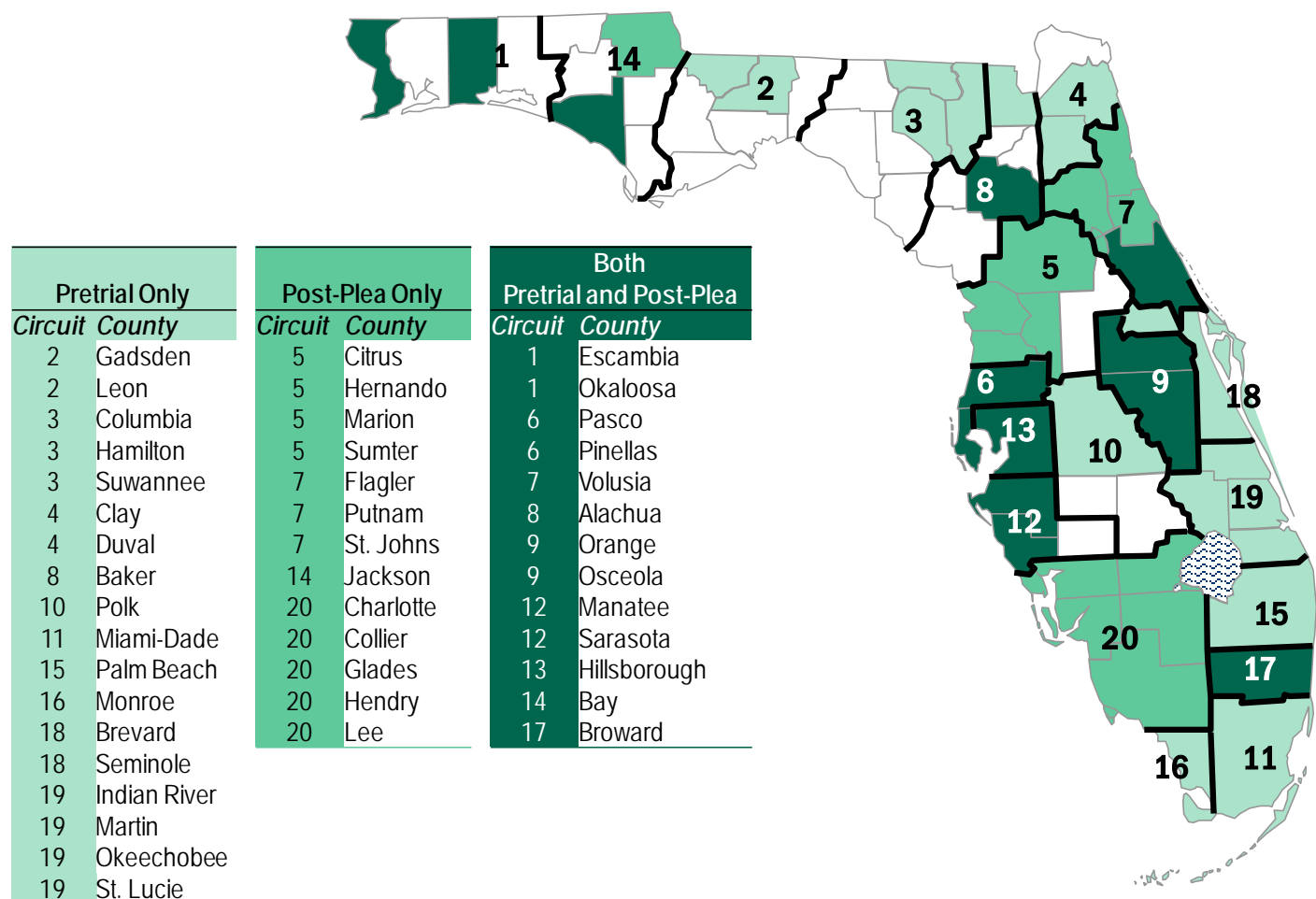
There are two principal types of drug court programs for adult offenders.

- Pretrial diversion drug courts are designed for first-time drug offenders who, in lieu of the program, would likely be placed on county probation rather than in state prison. Participants are diverted into the program prior to adjudication. Upon successful completion of the program, the offender’s charges may be dropped. As of September 2008, pre-trial diversion drug courts operated in 31 counties in 18 judicial circuits (see Exhibit 1). Pre-trial diversion drug courts admitted approximately 6,573 offenders during calendar year 2007.
- Post-adjudicatory (post-plea) drug courts serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced. As of September 2008, post-adjudicatory drug courts operated in 26 counties in 11 judicial circuits and these programs admitted 1,694 offenders during calendar year 2007.

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<sup>1</sup> Pretrial drug courts operate in conjunction with pretrial intervention programs and have specific eligibility requirements, as described in s. 948.08, *F.S.*, including requirements that the offender has been charged with a second or third degree drug offense, has not been charged with any violent crime, and does not have a previous felony conviction.

**Exhibit 1  
More than Half of Florida's Counties and All Judicial Circuits Have Some Form of Drug Court**



Source: Florida Office of the State Courts Administrator, 2009.

Each drug court operates independently and is funded through a mixture of county funds, federal grants, client fees, and state funds provided through the Office of the State Courts Administrator, the Department of Corrections, and the Department of Children and Families. In Fiscal Year 2007-08, drug courts received approximately \$25 million in funding of which \$15 million was local county funding. However, recent budget cuts to the Department of Corrections, the Department of Children and Families, and the Department of Juvenile Justice have resulted in reduced availability of treatment services to drug courts. In February 2009, the

Office of the State Courts Administrator requested information from local drug courts on how they had been affected by recent budget cuts. Of the 14 circuits responding, 13 reported reductions in treatment services, resulting in fewer defendants served or increased waiting lists and waiting time for treatment services, particularly residential treatment. In addition, 16 out of 37 case management positions funded through the Office of the State Courts Administrator were eliminated. Some circuits also reported reductions in drug screening and an increase in relapse and positive drug tests as a result.

**What are the benefits and drawbacks of drug courts?**

Drug courts are designed to divert drug addicted offenders from the criminal justice system and provide treatment resources these persons need to successfully remain crime free. When effective, the programs can help reduce prison admissions and state costs. However, while drug court graduates have lower recidivism rates, only half of participants complete the program, and many non-completers are re-arrested and subsequently sentenced to prison.

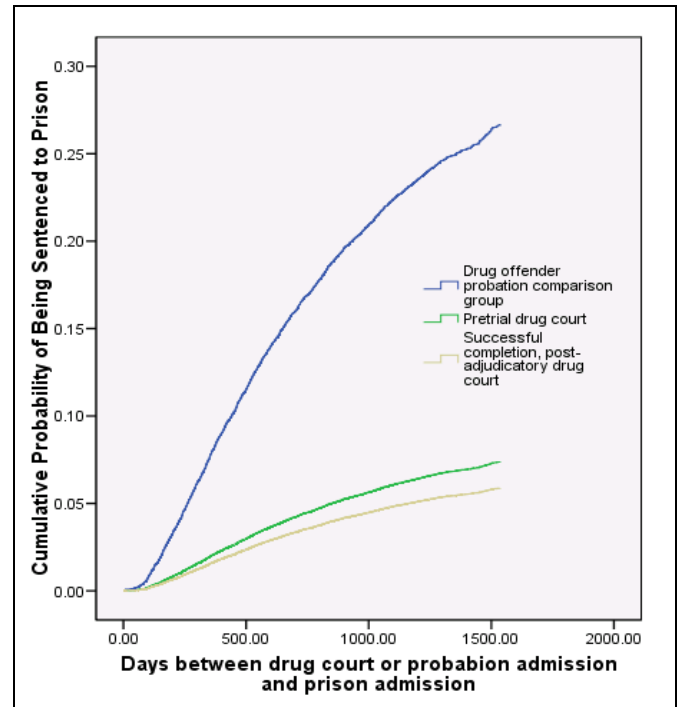
National research has shown that drug courts can reduce the future criminal activities of offenders. Studies comparing drug court participants to similar offenders who did not complete drug court have concluded that adult drug courts reduce re-arrests by 8% to 26%.<sup>2</sup>

Available data on Florida’s post-adjudicatory drug courts indicates that they appear to reduce prison admissions among offenders who successfully complete the programs. We focused our analysis on post-adjudicatory drug courts because they typically serve offenders who otherwise could be sent to prison, while pre-trial diversion drug courts generally serve offenders who would typically be placed on probation rather than incarcerated. We analyzed prison admissions for a group of 674 offenders who graduated from post-adjudicatory drug courts in 2004 and compared their subsequent prison admissions to a similar group of 8,443 offenders who were sentenced to drug offender probation. Over a three-year period, offenders who successfully completed drug court were 80% less likely to go to prison than the matched comparison group.

<sup>2</sup> Aos, Steve, et al. (2006). *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Olympia Washington, WA: Washington State Institute for Public Policy; Latimer, J. et al. (2006). *A Meta-Analytic Examination of Drug Treatment Courts: Do They Reduce Recidivism?* Canada Dept. of Justice, Research & Statistics Division; Lowenkamp, C.T. et al. ‘Are Drug Courts Effective? A Meta-Analytic Review’, *Journal of Community Corrections*, Fall, 5-28; Shaffer, D. K. (2006). *Reconsidering Drug Court Effectiveness: A Meta-Analytic Review*. Las Vegas, NV: Dept. of Criminal Justice, University of Nevada; Wilson, D. B. et al. (2006). ‘A Systematic Review of Drug Court Effects on Recidivism. *Journal of Experimental Criminology*, 2, 459-487.

Exhibit 2 shows that this treatment effect was sustained and increased over time.

**Exhibit 2  
Offenders Who Successfully Completed Post-Adjudicatory Drug Court Had a Significantly Lower Probability of a Prison Sentence**



Source: OPPAGA analysis of data from the Department of Corrections and local drug courts.

Research indicates that both the programs’ treatment and supervision components are significant factors in reducing prison admissions. Participants in drug court must comply with more demanding requirements than those offenders serving regular probation. In addition to reporting to court several times each month, drug court participants receive regular drug testing, individual and group substance abuse treatment and counseling, and are monitored by both a probation officer and drug court case manager. Most drug courts also provide ancillary services such as mental health treatment, trauma and family therapy, and job skills training to increase the probability of participants’ success.

While drug courts appear promising in reducing future criminality, many participants fail to graduate from the programs. Only 49% of the participants in our sample of offenders admitted to Florida's drug courts successfully completed the programs.<sup>3</sup> This completion rate is generally consistent with other drug court programs nationwide, but rates vary significantly. According to a 2005 report by the U.S. Government Accountability Office, drug court program completion rates range from 27% to 66% nationally. Completion rates for post-adjudicatory drug courts in Florida ranged from 39% to 74%.<sup>4</sup>

Drug court participants who fail to complete the program can pose public safety risks. Our analysis found that more than one-third of the offenders who did not complete drug court failed to graduate because of an arrest. Moreover, a substantial percentage of such offenders subsequently were incarcerated. While only 6% of post-adjudicatory drug court graduates were subsequently incarcerated in prison within a three-year period, 49% of those who failed to graduate from the program were subsequently incarcerated during the three-year follow-up period, either as a result of a new arrest or a violation of probation on the original charge. Of that group, 54% were admitted for a drug charge, primarily for drug possession, and 74% were sentenced to prison on the original charge.

### ***What factors should the Legislature consider if drug courts are expanded?***

While drug courts can potentially divert offenders from prison and save state funds, they have two limitations that should be addressed if the programs are expanded—program eligibility limitations and low completion rates.

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<sup>3</sup> The successful completion rate for post-plea drug courts was determined using local drug court records for offenders identified as post-adjudicatory drug court participants in probation data maintained by the Department of Corrections. When offenders who failed to complete drug court were included in our recidivism analysis, there was no significant difference in the likelihood of incarceration for all drug court participants and the matched comparison group.

<sup>4</sup> Based on drug courts with 30 or more participants in our study of post-plea drug court participants admitted in 2004.

Florida drug courts do not generally target prison-bound offenders and may therefore not save significant state dollars. Most of the drug courts operating in Florida are pre-adjudicatory programs that serve less serious offenders such as those with no prior adjudication for a drug offense. These offenders would typically serve a probation sentence rather than be incarcerated in the absence of a drug court program. In addition, post-plea drug courts typically serve offenders who are ineligible for prison. For example, the Orange, Broward, and Hillsborough county drug courts interpret statutes as prohibiting them from diverting offenders to drug court if the offenders have sentencing guideline scores that otherwise require a mandatory prison sentence. As a result, while these programs reduce local jail costs, their expansion would not significantly reduce prison admissions and state expenditures.<sup>5</sup>

If the Legislature wished to expand drug courts to divert relatively low-risk offenders from prison, it could consider three options for expanding eligibility to target prison bound offenders. First, it could authorize drug courts to serve prison-bound offenders who have committed certain offenses that would otherwise disqualify them from the program. For example, drug courts could be authorized to admit offenders who commit non-violent property crimes and also have substance abuse treatment needs. If the Legislature wishes to expand the program to serve such offenders, it should consider input from prosecutors, judges, public defenders, and law enforcement officials regarding the offenses that would pose the least risk to public safety.

Second, the Legislature could authorize drug courts to expand their eligibility criteria to serve offenders who violate their supervision terms by testing positive on a random drug test and who have been identified as having a substance abuse problem. Currently, such offenders are often incarcerated for these violations. Some drug courts, notably those in central and southwest Florida, currently target offenders who violate their probation due to drug

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<sup>5</sup> Jails are funded and operated by the counties and house inmates with sentences of one year or less. Prisons are funded and operated by the state and house inmates with sentences of more than one year.

usage.<sup>6</sup> Stakeholders indicated that there is strong incentive for such offenders to participate in the post-adjudicatory drug court programs as a means of avoiding incarceration.

Third, the Legislature could change the statute to allow drug courts to serve offenders with a non-violent criminal history and a sentencing score in the low range for mandatory prison, for example between 44 and 60 points.<sup>7</sup> Our analysis of 2007 prison admissions identified 1,972 non-violent offenders with identified drug treatment needs who received sentencing scores between 44 and 60. Florida law previously allowed but currently prohibits judges from using an offender's substance abuse addiction to justify a non-prison alternative for offenders who score over 44 points. The Legislature could remove this exclusion from statute to permit judges, in their discretion, to place appropriate offenders into drug court.<sup>8</sup>

Improved data collection and empirical evaluations may improve low program completion rates. A second critical challenge facing drug courts is that they often have low completion rates, which diminish their potential ability to reduce prison admissions and produce cost savings for the state. Current national research on drug courts provides little guidance on how to improve completion rates. Florida's ability to conduct such research is hindered by the limited data on client outcomes that is currently collected by drug courts. The Office of the State Courts Administrator should work with drug court personnel to improve data collection and conduct empirical evaluations of the programs.

Currently, drug courts report some aggregate data annually to the Office of the State Courts Administrator, including the total number of clients served and the number who graduate from the programs. However, some drug courts, including several large courts, are not collecting electronic records of client-level data such as name, date of birth, social security number, entry and exit dates, and graduation or other termination. Of the 25 drug courts we contacted, few maintained such electronic data on the offenders they served in 2004. Most of the courts that provided data for our analysis had to manually review court records to determine the completion status of the clients they served in 2004. The Office of the State Courts Administrator reports that many of these courts have begun collecting client-level data electronically since 2004. However, according to information they collected in February 2009, many drug courts reported that the recent loss of funding for administrative and case management positions negatively affects data collection as well as other administrative functions.

Drug court coordinators and court administrators asserted that their programs would need additional funding and staffing to develop databases to capture critical information on outcomes for drug court participants. However, minimal data to allow matching with other state databases for tracking the progress and success of drug court clients could be managed on inexpensive database or spreadsheet software that is readily available. The Office of the State Courts Administrator has developed a uniform set of data elements, including the number of persons offered participation in drug court, the number of eligible persons admitted and not admitted to the program, demographic characteristics, and all prior convictions and adjudications withheld.<sup>9</sup>

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<sup>6</sup> Circuit 9, Orange and Osceola counties, and Circuit 20, Charlotte, Collier, Glades, and Hendry counties.

<sup>7</sup> State attorneys and the Department of Corrections must prepare sentencing scoresheets for each felony offender prior to sentencing in accordance with the Criminal Punishment Code (s. 921.0024, s. 921.0025, *F.S.*). The scoresheets award sentencing points to each offender based on the number and severity of the individual's current offense and prior offense record, and the total number of points awarded determines the type and length of sentence that is permissible. A non-prison sanction is only permissible for offenders who score 44 points or lower on the sentencing scoresheet; prison is mandatory for those scoring above 44 points unless one of the conditions specified for an exemption, or 'downward departure' is met.

<sup>8</sup> Substance abuse is specifically excluded from the list of justifications for a 'downward departure' (s. 921.0026, *F.S.*).

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<sup>9</sup> Data elements that drug courts should collect include primary offenses that resulted in their drug court referral; treatment compliance; completion status and reasons for failure to complete; offenses committed during treatment and sanctions imposed; frequency of court appearances; units of service; and Department of Law Enforcement and Department of Corrections identifiers that enable matching to arrest, probation and prison data. In addition, drug courts should report data on the characteristics of their

They have also adopted a set of critical performance indicators. We recommend that the drug courts maintain client-level data for these measures electronically, and submit it annually to the Office of the State Courts Administrator to allow for program evaluation.

The Office of State Courts Administrator has applied for a federal grant through the U.S. Department of Justice, Bureau of Justice Assistance Drug Court Discretionary Grant program, to evaluate Florida's drug courts. The proposed evaluation is intended in part to determine the effectiveness of drug courts and the elements of drug courts related to successful outcomes. The office should continue efforts to conduct this evaluation and should report its results to the Legislature.

## 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 the State Courts Administrator to review and respond. The State Courts Administrator's written response has been reproduced in Appendix B.

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programs, such as referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.

## Appendix A

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# Analysis of Drug Court Outcomes

To assess the impact of drug courts on subsequent prison admissions, we analyzed records of three cohorts of offenders on Department of Corrections probation in 2004 who had identified drug abuse problems—offenders that successfully completed or graduated from post-plea drug courts, those who failed to complete the drug court program, and a comparison group of persons on Department of Correction drug offender probation with similar criminal history requirements and at least one additional indicator of drug treatment needs. We compared prison admissions for these groups of offenders through May 1, 2008, a minimum period of three years and five months after they had entered treatment.

**Data.** The Department of Corrections provided data on the offender’s demographics, drug court participation and final completion status, drug treatment and testing, number of offenses and most serious prior offense resulting in placement on probation, prior probation or prison sentences, sentencing score, and subsequent prison admissions for persons placed on Department of Corrections probation and in post-adjudicatory drug courts in calendar year 2004. Since department data on completion status of drug court participants was incomplete, we obtained data on offender completion from local drug courts, and used only court-verified data to determine successful completions. For two large drug courts, Pinellas and Hillsborough, the court provided data on a random sample of cases.

**Study population.** The drug court participants in our study were admitted to post-plea drug courts for the first time between January 1 and December 31, 2004. There were 674 offenders in this population, from 18 counties that had post-plea drug courts in 2004. Of these post-plea drug courts, six had more than 30 admissions from 2004 in our study population, including drug courts in Bay, Broward, Hendry, Hillsborough, Pinellas, and Volusia counties. Drug courts reporting data for fewer than 30 participants in 2004 included Citrus, Collier, Glades, Hernando, Jackson, Lee, Manatee, Osceola, Putnam, St. Johns, and Sarasota.

Our comparison group consisted of 8,443 persons on drug offender probation who met criminal history eligibility criteria for drug court, and had one of more indicators of drug treatment needs. The criminal history criteria excluded those with violent felonies or offenses related to drug sales, or sentencing guideline scores beyond the range found among drug court participants. Indicators of drug treatment needs beyond participation in drug offender probation included a referral for drug treatment, a record of treatment, and/or positive drug tests.

**Methods of analysis.** The outcome measure for this study was an admission to prison during the follow-up period. We used survival analysis to calculate and compare the probability of an admission to prison for successful drug court completers, drug court failures, and comparable offenders on drug court probation. This technique calculates the probability of an event, such as an admission to prison, given the number of days during which the event could happen, such as the number of days after admission to drug court or probation. Using Cox Regression to conduct the survival analysis, we compared the probability of an offender being admitted to prison given the number of days from admission to drug court or probation until incarceration or to the end of the study period.



Control variables. The survival analysis allowed us to control for differences between the treatment and comparison group on factors related to recidivism, including age, gender, race, number of prior convictions resulting in probation, whether the offender had a prior prison term, as well as length of time from program admission to a prison admission or the end of the study period.

Statistical results. The risk of recidivism is calculated in the survival analysis for drug court participants, both successful and unsuccessful, compared to persons on drug offender probation with a similar initial risk of recidivism. For those who successfully completed the drug court program, the relative risk of incarceration (Exp(B)) was 0.195, meaning that the risk that offenders who successfully completed drug court will be sentenced to prison after being admitted to drug court was 20% of the risk for persons on drug offender probation, controlling for factors related to incarceration. In other words, drug court completers were 80% less likely to be sentenced to prison than similar offenders on drug offender probation. These results were statistically significant at the 0.01 level. When unsuccessful completers and successful completers were combined, there was no significant difference in the risk of imprisonment.

**Exhibit 2**  
**Post-Adjudicatory Drug Court Programs Showed Significant Reductions in**  
**Prison Admissions for Those Who Successfully Complete the Program**

| Measure             | Relative Risk of Being Sentenced to Prison (Exp(B)) <sup>1</sup> | Reduced Likelihood of a Prison Sentence <sup>1</sup> | Statistical Significance | Number of Successful Completers |
|---------------------|--|--|--------------------------|---------------------------------|
| Admission to prison | 0.195  | 80%  | 0.000                    | 674                             |

<sup>1</sup>Compared to similar offenders on drug offender probation with no history of violent offenses or drug dealing, controlling for age, gender, race, number of convictions on probation, prior prison terms, and time since admission to drug court or probation.

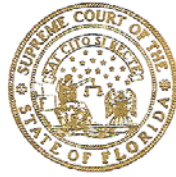
## Appendix B

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Peggy A. Quince  
Chief Justice

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Elisabeth H. Goodner  
State Courts Administrator

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### Office of the State Courts Administrator

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March 3, 2009

Gary R. VanLandingham, Ph.D.  
Director, Office of Program Policy Analysis  
and Government Accountability  
Claude Pepper Building  
111 West Madison Street, Room 312  
Tallahassee, FL 32399-1475

Dear Dr. VanLandingham:

I have received OPPAGA's report entitled: "Drug Courts Could Expand to Target Prison-Bound Offenders." Your staff is to be commended for their diligent work researching drug courts in Florida and nationwide. I believe the results are thorough and appropriate, with recommendations that are well thought-out and useful.

I am heartened that the report recognizes the potential for drug courts to divert offenders from prisons. However, I believe that eliminating pretrial drug courts from the analysis results in a limited view of success. These programs arguably prevent prison admissions further down the road by providing offenders with treatment on the front-end. This helps get offenders back "on the right track," thus reducing recidivism. Similarly, while the report indicates that offenders in post-adjudicatory drug courts are not typically eligible for prison, without drug court intervention, they too are more likely to recidivate and ultimately serve a prison sentence.

Finally, as indicated in the report, judicial circuits have insufficient data on client outcomes. This is an excellent illustration of the limitations of our court data systems. The state judiciary does not have a unified data management system that would allow for the reporting of this type of information statewide. While some courts have developed local methods to assist with case management, court case data is primarily maintained by the clerk of courts. Clerk data systems are designed specifically for case maintenance functions. The data needs identified in the OPPAGA report require a system designed for judicial case management. Additionally, the staff resources necessary to collect, enter, and maintain such data electronically is limited. The state court system simply lacks the resources necessary to meaningfully collect, manage, and utilize data to improve case processing.

Gary R. VanLandingham, Ph.D.  
March 3, 2009  
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Thank you for the opportunity to respond to the report. Please do not hesitate to call on me if you require additional information.

Sincerely,



Elisabeth H. Goodner

LG: rcp

## *The Florida Legislature*

# *Office of Program Policy Analysis and Government Accountability*



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- [OPPAGA reviews](#) deliver program evaluation, policy analysis, and Sunset reviews of state programs to assist the Legislature in overseeing government operations, developing policy choices, and making Florida government better, faster, and cheaper.
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