



November 2011

Report No. 11-21

Expansion Drug Courts Serving More Prison-Bound Offenders, but Will Not Fully Expend Federal Funds

at a glance

The 2009 Florida Legislature established eight post-adjudicatory drug courts to divert drug-addicted, prison-bound offenders to treatment, thereby saving state prison dollars. As of September 30, 2011, 1,190 offenders had been admitted to the program. Despite actions by the 2011 Legislature, the Office of the State Courts Administrator reports that the courts are not likely to serve enough offenders to expend all federal grant funds before they expire in March 2013.

While the number of prison-bound offenders served has continued to increase, only two of the eight expansion drug courts have had a majority of their participants facing mandatory prison sentences.

Current data indicates that Florida expansion drug court completion rates for early program participants may slightly exceed the completion rates of other post-adjudicatory drug courts.

Scope

This report, the second review of eight post-adjudicatory drug courts established with federal funds, examines program admissions, expenditures, and participant completion rates.¹ Data are not yet available to evaluate participant recidivism.

Background

In an effort to reduce prison costs, the 2009 Legislature appropriated \$18.6 million in federal funds from the Edward Byrne Memorial Justice Assistance Grant to establish eight post-adjudicatory drug courts.^{2,3} These courts were intended to divert drug-addicted offenders from prison to supervised community treatment, thereby reducing state corrections costs. The program targets prison-bound, non-violent felony offenders who agree to drug treatment and to participate in the program. The eight expansion counties were selected based on high numbers of prison admissions for eligible offenders. Most of the expansion post-adjudicatory drug courts were fully operational by February 2010. As of September 30, 2011, 1,190 offenders had been admitted to the program.

The program's federal grant funding expires in March 2013. OPPAGA reported in October 2010 that the program was not on track to spend the federal funds, and that a large number of the offenders being served by the program were not prison diversions.⁴ Subsequently, the 2011 Legislature changed the law to expand the pool of eligible offenders to include more offenders likely to be sentenced to prison.

² [Chapter 2009-64](#), *Laws of Florida*.

³ These eight drug courts are located in Broward, Escambia, Hillsborough, Marion, Orange, Pinellas, Polk, and Volusia counties.

⁴ *Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings*, OPPAGA [Report No. 10-54](#), October 2010.

¹ *Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings*, OPPAGA [Report No. 10-54](#), October 2010.

Questions and Answers —

Are expansion drug court admissions sufficient to fully expend available federal funds?

Due to lower than expected admissions, expansion drug courts are not likely to expend the remaining federal funds before they expire. In general, Florida's post-adjudicatory expansion drug courts have not served as many offenders as first projected. We found in our October 2010 report that the expansion drug courts were serving significantly fewer offenders than anticipated for several reasons. First, initial estimates of the number of offenders who could be served in the expansion drug court were overstated; second, fewer counties were selected than needed to reach admissions goals; and third, restrictive program eligibility criteria limited program admissions.

While the Legislature took steps to address these issues, of the \$18.6 million in federal funds appropriated in 2009, drug courts had only expended approximately 39% (\$7.2 million) through September 2011. The Office of the State Courts Administrator projects that there will be approximately \$2 million in remaining grant funds at the end of federal grant in March 2013. This projection is based on the assumption that the Legislature will continue to fund the program after the federal grant expires. If the Legislature does not do so, the programs would stop taking new admissions approximately one year earlier, which would result in significantly more unexpended funds.

Recent legislative changes expanded the potential pool of drug court participants, but preliminary data do not show an increase in admissions. The 2011 Legislature changed the law to better target prison-bound offenders by increasing the maximum sentencing score for program eligibility from 52 to 60 points and allowing judges to transfer cases to drug court for offenders who violate their probation or community control with offenses other than a failed drug test.^{5,6} Court personnel, including judges,

drug court coordinators, state attorneys, and public defenders we spoke with were supportive of these changes to increase program participation.

Despite the legislative action to expand eligibility criteria, preliminary data show that average monthly admissions slowed in the first three months of Fiscal Year 2011-12, from 59 admissions per month to 44 per month. (See Exhibit 1.) According to stakeholders, turnover in local program staff contributed to reduced admissions in several counties.

Exhibit 1 Average Admissions Slowed in the First Three Months of Fiscal Year 2011-12

Time Period	Total Admissions	Average Admissions per Month
January 2010 – June 2010	350	58
July 2010 – June 2011	707	59
July 2011 – September 2011	133	44

Source: OPPAGA analysis of data from the Office of the State Courts Administrator for offenders admitted from January 1, 2010 through September 30, 2011, as of October 10, 2011.

Are expansion drug courts targeting prison-bound offenders?

Expansion drug courts have admitted an increasing percentage of offenders with higher sentencing scores each year. As shown in Exhibit 2, in each of the three fiscal years in which drug courts operated, the percentage of offenders admitted with sentencing scores in the target range requiring a prison sentence (scores of 44 and above) has increased. Conversely, the drug courts have admitted fewer offenders with sentencing scores below 23 points, who are eligible for prison only if deemed a danger to public safety by the court. Serving offenders with higher sentencing scores increases the likelihood that they would have been sentenced to prison in the absence of drug court.

sentencing. Prison is mandatory for those scoring above 44 points unless one of the conditions specified for an exemption, or 'downward departure' is met. 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.

⁶ Sections 948.06(2)(i)1.a. and b., F.S.

⁵ Under the Florida Criminal Punishment Code, offenders are assigned points for their crime and any past crimes, and these scores are used in

Exhibit 2

The Percentage of Expansion Drug Court Participants with Sentencing Scores Over 44 That Mandate Prison Sentences Has Increased Each Year

Sentencing Scores of Participants	Fiscal Year 2009-10	Fiscal Year 2010-11	Fiscal Year 2011-12 (July – September)
1 – 22	19%	14%	11%
23 – 43	49%	46%	35%
44 – 52	32%	40%	29%
53 – 60 ¹	NA	NA	25%
Total Number of Participants	350	707	132

¹ Offenders with sentencing scores of 53 to 60 points were not eligible for drug court prior to July 1, 2011.

Source: OPPAGA analysis of Office of the State Courts Administrator data for offenders with sentencing scores reported. The data does not include one offender for whom a sentencing score is not available.

Two primary factors contributed to offenders with higher sentencing scores participating in the program. In September 2010, the Office of the State Courts Administrator issued guidelines directing expansion drug courts to certify that the offenders entering the program would have otherwise been sentenced to prison, and advising them that offenders with sentencing scores below 23 points do not meet statutory criteria for drug court admission.⁷ In addition, the 2011 Legislature increased the sentencing score maximum for program eligibility from 52 to 60 points to allow expansion drug courts to serve more prison-bound offenders and reduce prison costs. In the first three months of Fiscal Year 2011-12, expansion drug courts in four counties admitted 33 offenders with sentencing scores in the 52 to 60 point range. As a result, just over half (54%) of the offenders admitted since the legislative changes became effective on July 1, 2011, had sentencing scores in the range for a mandatory prison sentence. Serving offenders who clearly would have been sentenced to prison in the absence of drug court results in greater cost savings for the state. For each offender diverted from prison, the

program potentially saves the state \$19,469 a year, the annual cost of housing an offender in prison.

Program participant sentencing scores vary across the expansion drug courts. While the overall percentage of offenders with higher sentencing scores being served has increased, the scores vary among the expansion drug courts. As shown in Exhibit 3, most of the expansion drug courts predominantly served offenders in the 23 to 43 point range. Although offenders with these sentencing scores are less likely to be sentenced to prison than those scoring 44 points or above, judges have discretion to impose a prison sentence on offenders in this score range.⁸ Two expansion drug courts, Broward and Pinellas, are serving a majority of the targeted offenders with higher scores.

Are expansion drug court completion rates comparable to other post-adjudicatory drug courts?

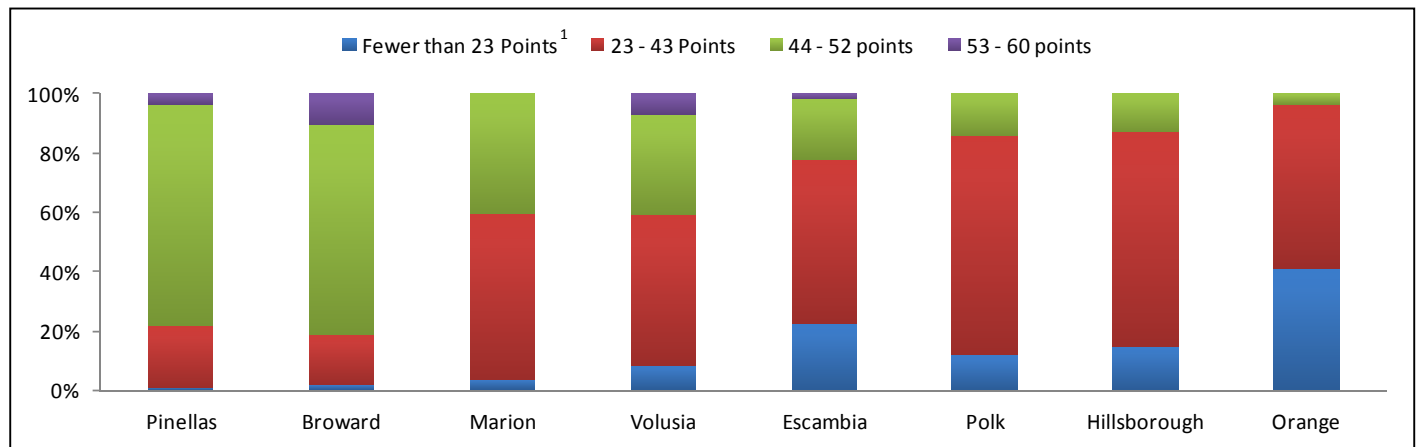
Some expansion drug courts may slightly exceed completion rates seen in other post-adjudicatory drug courts. Because most participants have not had time to complete the program, it is too early to evaluate participant recidivism. Therefore, a key measure of drug court success at this stage is completion rates. Early participants in some circuits are doing well on this measure; however, program completion rates may change over time, as they may differ for offenders who enter the program later.

⁷ The memo states, "Section 775.082(10), *F.S.* was amended effective July 1, 2009, to provide that for third degree felonies that are not forcible felonies as defined in section 776.08, *F.S.*, excluding any third degree felony under chapter 810 committed on or after July 1, 2009, the sentencing court cannot impose a state prison sanction if the sentencing score is 22 points or fewer unless the sentencing court makes a written finding that a non-state prison sanction could present a danger to the public. Thus, offenders scoring 22 points or fewer would not meet the 'prison bound' requirement unless the court made a written upward departure. However, if the court found that a non-state sanction could present a danger to the public, it would be difficult for the court to then justify that the offender would be suitable for a post-adjudicatory drug court program."

⁸ Office of Economic and Demographic Research data reported in OPPAGA [Report No. 10-54](#) showed that only 3% of non-violent felony offenders with sentencing scores below 23 points and only 12% of offenders with scores between 23 and 44 points were sentenced to prison.

Exhibit 3

Since July 1, 2010, Six of the Expansion Drug Courts Have Mostly Served Offenders with Sentencing Scores Below 44 Points



¹ Offenders with sentencing scores of 53 to 60 points were not eligible for drug court prior to July 1, 2011.

Source: OPPAGA analysis of data from the Office of the State Courts Administrator for offenders with sentencing scores reported for July 1, 2010 through September 30, 2011.

To evaluate completion rates for the expansion drug courts, we used preliminary data on a cohort of participants who entered the expansion drug courts early in the program, at least 15 months before September 30, 2011. Because it can take up to 18 months to complete the program, 28% of the 351 participants in our study were still active in the program as September 30, 2011, but had three months or less remaining before they complete the program. (See Exhibit 4.)

Exhibit 4

Preliminary Data for Expansion Drug Courts Show that 44% of Participants Are Unsuccessful

Participant Status as of September 30, 2011	Number (Percentage) of Participants
Successful Program Completion	100 (28%)
Active Program Participant	97 (28%)
Unsuccessful Program Termination	154 (44%)
Total	351 (100%)

Source: OPPAGA analysis of data from the Office of the State Courts Administrator for offenders who entered the expansion drug court on or before June 30, 2010, allowing at least 15 months follow-up.

While an exact percentage of completions cannot be determined, if all remaining participants successfully complete the program, an overall successful completion rate of 56% could be achieved for these early drug court participants. Such a rate would be a modest improvement on the 49% average rate attained by other drug courts in our 2009 study.⁹

The success of individual programs varies widely, as five of the eight drug courts could achieve rates of 65% or better. (See Exhibit 5.) However, even if all of the remaining participants in two of the expansion drug courts (Escambia and Polk) complete the program, their completion rates of 36% and 33%, respectively, would be below the lowest completion rates in our prior study.

⁹ A 2009 OPPAGA analysis of participants in Florida's non-expansion post-adjudicatory drug courts found 49% of program participants admitted to drug courts in 2004 successfully completed drug court while 51% were terminated before completion. Program completion rates for individual drug courts ranged from 39% to 74%.

Exhibit 5**Five of the Eight Expansion Drug Courts Could Potentially Achieve Completion Rates Above 65%**

County	Total Number of Participants Admitted by June 30, 2010	Percent of Unsuccessful Program Terminations	Completion Rate if All Remaining Participants Successfully Completed Program
Marion	8	25%	75%
Hillsborough	78	28%	72%
Orange	50	30%	70%
Broward	47	30%	70%
Volusia	20	35%	65%
Pinellas	46	57%	43%
Escambia	22	64%	36%
Polk	80	68%	33%
Total	351	44%	56%

Source: OPPAGA analysis of data from the Office of the State Courts Administrator for offenders who entered the expansion drug court on or before June 30, 2010, allowing at least 15 months follow-up.

Although the program potentially saves the state \$19,469 a year for an offender successfully diverted from prison, actual cost savings per capita depend on the successful completion rate. With drug court costs currently paid for with federal funds, the cost savings to the state from a 65% successful completion rate would be \$12,655 per offender served. The cost savings to the state from a 33% successful completion rate would be \$6,425 per offender served.

Termination rates may vary among expansion drug courts due to the alternative resources and sanctions available for offenders who do not comply with program requirements. For example, court personnel in Orange County said their work release program served as an alternative to program termination for non-compliant offenders who may have relapsed. Staff from the Hillsborough County drug court also

stated that they used their in-jail treatment program and residential beds as alternatives to program termination. Conversely, a lack of resources may contribute to higher termination rates. For example, Polk County court staff said that a limited number of residential beds limit the court's ability to impose an immediate sanction on offenders who have violated the conditions of probation or drug court or have relapsed.

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 and respond. The State Court Administrator's response has been reproduced in Appendix A.

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

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Appendix A

Charles T. Canady
Chief Justice



Elisabeth H. Goodner
State Courts Administrator

Office of the State Courts Administrator

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November 16, 2011

Mr. R. Philip Twogood
Coordinator, Office of Program Policy Analysis
and Government Accountability
Claude Pepper Building
111 West Madison Street, Room 312
Tallahassee, Florida 32399-1475

Dear Mr. Twogood:

I appreciate the opportunity to comment on OPPAGA's draft report entitled "Expansion Drug Courts Serving More Prison-Bound Offenders but Federal Grant Funds Will Not Be Fully Expended." While I concur with some of the findings in the report, I would like to offer a few observations and some additional details.

When the expansion program was developed, the number of counties selected was sufficient to reach the proposed admissions goals based on the estimates of eligible offenders provided to my office at that time. Unfortunately, the information on the potential pool of offenders was not accurate. Additionally, Duval County was selected to participate in the expansion program, but ended its participation early. Since discovering the error in estimating the pool of eligible offenders and losing Duval County's participation, the OSCA sought ways to augment the original plan, but the time necessary to establish a program and the temporary nature of the grant award made it impossible to expand operations to mitigate these issues.

Our analysis of the costs of the expansion drug court program shows that for the 18 months from March 2010 through September 2011 program expenses were slightly more than \$7 million. The early months of this period were clearly the developmental stages of the program and thus had the smallest number of active participants and the lowest monthly costs. Projecting the exact same amount of expenses through March 2013 yields total expenditures of more than \$14 million. Considering the far greater number of active participants in the program now and additional admissions in the future, the total expenditures for the remainder of the program will exceed those of the first 18 months. At current spending levels, we project that there will be approximately \$2,000,000 in remaining grant funds at the end of March 2013. Should additional time be granted by FDLE to spend the funds beyond March, we anticipate that all funding would be spent by June 2013. While the state has not yet decided if this program should continue with state funding once federal grant funds expire, this analysis assumes that the state will want to

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continue this program once the grant period ends, and that it will not be necessary to ramp-down operations. If all program operations must cease in March 2013, then the program will have to stop taking new admissions approximately one year earlier which would result in significantly more unspent funds. If the program must ramp-down and end operations by March 2013, then we anticipate the monthly costs for the final 18 months of the program to mirror those of the first 18 months which would result in total program expenditures of approximately \$14 million.

The new eligibility range is already clearly working to bring more prison-bound offenders into the program. With the new eligibility requirement in place for only three months, there have already been 35 admissions of offenders in the new range. We have also recognized that staff turnover has resulted in reduced admissions. The temporary nature of this grant-funded program has made it difficult to attract qualified staff to these positions and to retain them once hired. While the number of admissions has somewhat declined during the past three months, overall, the expansion program is averaging 55 new admissions per month, and most recently, there were 59 admissions in October 2011.

It is encouraging to see that 54% of recent admissions to the program have sentencing scores indicating a mandatory prison sentence. Considering that the eight counties participating in the expansion program were specifically selected due to their unusually high number of prison admissions, those with sentencing scores in the 23 to 43 point range are much more likely to be prison-bound in these counties than statewide averages might suggest. The Office of Economic and Demographic Research statistics that were relied upon to formulate the drug court expansion plan showed that more than 50% of all people who were sentenced to prison for a non-forceable felony and had fewer than 44 sentencing points came from the counties (including Duval) selected for this program. Furthermore, of the offenders statewide who were sentenced to prison with sentencing scores in the 0 – 52 point range, more than 70% of them had 44 points or less.

Most of the people admitted with fewer than 23 points were admitted for violations of probation (VOPs), which is permissible under the eligibility criteria and which also reflects the reality that these offenders were prison-bound. The expansion program requirements distributed by my office have always called for a written finding of eligibility for any offender entering the program with fewer than 44 points. In September 2010, a reminder of this requirement was sent to all of the expansion counties. Judges handling expansion drug court dockets are making written certifications that the offender would have been sent to prison if not for the expansion drug court program.

Also encouraging is your finding that the majority of the expansion counties are poised to exceed the originally projected rate of successful completions. We also identified this trend and have been working with the counties that are currently underperforming. We have recently completed a training program with all of the expansion counties which was designed to identify each program's strengths and weaknesses and develop a program improvement plan for going forward. Finally, we will be following up with the counties with on-site technical assistance.

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Some additional detail regarding program expenses and cost savings to the state should be noted. Through September 30, 2011, the expansion drug court program has expended just under \$7.2 million. The total number of days all offenders have spent in the program through September 30, 2011 is 302,941. Had these offenders been sent to prison at a daily cost of \$58.36 per day, they would have cost the State of Florida \$17,679,636. On the simplest of metrics, the day for day costs of the expansion drug courts versus incarceration, this program has already helped the state avoid nearly \$10.5 million in prison costs. Considering additional costs to be avoided in the future through increased admissions and the expected reductions in recidivism for those offenders being served in drug court, I remain optimistic about future success of this program.

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