

**Florida Supreme Court
Task Force on
Treatment-Based Drug Courts**

Report of the 2006 – 2008 Term

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Circuit Court Judge, First Judicial Circuit
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Introduction

The purpose of the Florida Supreme Court Task Force on Treatment-Based Drug Courts is to make recommendations on the legal, policy, and procedural issues confronting treatment-based drug courts and to explore the extent to which drug courts can provide a meaningful solution to the devastating effect of substance abuse on our society. During the 2006-2008 term, the Task Force was assigned four charges:

1. Develop a report to the Court on the long-term sustainability of drug courts.
2. Consistent with the requirements of Administrative Order AOSC 06-20, consider and make recommendations regarding the appropriate scope of confidentiality in drug court cases. The Task Force shall file its recommendations in petition form with the Clerk of the Florida Supreme Court.
3. In conjunction with the Florida Court Education Council and Court Education staff within the Office of the State Courts Administrator, develop a proposal for continuing education and training of drug court team members and other justice system personnel on substance abuse

issues and the application of problem-solving court methods to address those issues.

4. Develop a proposal for a statewide drug court evaluation and explore funding sources to support such an evaluation.

The Task Force held eight one-day meetings and met numerous times via conference call. Workgroups were formulated and met routinely to draft recommendations to address the charges. The Office of the State Courts Administrator (OSCA) enlisted the expertise and guidance of the National Center for State Courts (NCSC) through the Center's *Statewide Drug Court Technical Assistance Project* to assist with developing an evaluation plan as required in Charge 4.¹

The Task Force carefully considered and examined the issues represented within each of the charges and is pleased to present related recommendations in this final report. Following the recommendations for each charge are additional recommendations included at the end of this report.

¹ The Task Force would like to thank the NCSC staff, specifically Ms. Dawn Marie-Rubio and Dr. Fred Cheesman, for their invaluable expertise and time which contributed greatly to the Task Force's final work product on its charge to develop a statewide evaluation plan.

Charge Recommendations

Charge 1: *Develop a report to the Court on the long-term sustainability of drug courts.*

Research shows that sustaining drug courts long-term is a worthwhile investment for Florida. Drug courts are effective, save money, reduce recidivism, and most importantly, save lives. A recent study conducted by the Urban Institute entitled *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders* (April 2008) suggests that 1.5 million drug-involved offenders should be diverted to drug court, saving the American taxpayer \$46 billion. Most significantly, according to Doug Marlowe, Chief of Science, Law and Policy with the National Association of Drug Court Professionals (NADCP), there have been at least five meta-analyses² of the research conducted on adult drug courts. Each of the meta-analyses concluded that drug courts significantly reduce crime by an average of 8% to 26%. Well-functioning drug courts were found to reduce crime rates by 35% and the effects have been shown to last *at least 3 years*.

Such results support the Task Force recommendation that drug courts be taken to scale, that is expanded and institutionalized, as recently suggested by the

² Meta-analyses provide the most conservative and scientifically rigorous estimate of the true effect of any program.

NADCP call to action. This will require sustaining and expanding the current level of funding and resources statewide. To this end, the Task Force considered five major components to achieving long-term sustainability of drug courts in Florida:

1. Court Leadership
2. State and County Funding
3. Case Management
4. Training and Education of Justice System Personnel
5. Drug Court Program Data and Evaluation

1. Court Leadership

The drug court concept was conceived in 1989 in Miami-Dade County when local judges determined that an alternative was needed to more effectively process the high number of drug offenders repeatedly entering the court system. Since then, drug courts have quickly expanded throughout Florida, the nation and across the world. According to the NADCP's recent publication *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States*, there are currently 2,147 operational drug courts in the United States, of which 110 are here in Florida.

Court leadership is the key to sustaining drug courts. As explained in the Office of the State Courts Administrator's (OSCA) publication *Treatment Based Drug Courts...A Guide* (2005), court leadership is needed to determine whether a drug court should be implemented. Continued court leadership is also needed to sustain a drug court that has been implemented.

Drug courts are no longer what some considered a "specialty" or "boutique" court. The *Florida Drug Control Strategy* identifies drug courts as the "crown jewel" of the strategy's treatment component. They are cost effective investments made by a collaboration of all three branches of government and the private sector that reduce crime, restore families, and perhaps most importantly, save lives. Drug courts are now a necessity.

Unfortunately, drug courts have only been able to serve a small percentage of those in need. As a result, NADCP has entered the second year of an ambitious agenda to "Take Drug Courts to Scale." While the media has reported that some drug courts in Florida are closing down, NADCP is pushing for additional funding as a result of the meta-analytical research that has confirmed drug courts work. In a recent letter to the editor in the Miami Herald, NADCP's CEO, West Huddleston reflected the following:

Ironically, the most successful justice program in modern history was launched right here in Florida. The justice system and treatment system partnered together in Drug Courts to reduce crime and child neglect better than any alternative, and at substantially less cost. This brave experiment blossomed into nothing short of a national revolution in the criminal justice system, with untold cost savings and redeemed lives. It would be a tragedy if Florida failed to reap the benefits of its own ingenuity while other states continued to derive the benefits of its foresight.

As drug courts began as a grassroots effort led by the judiciary, ongoing court leadership is key to sustaining drug courts. As some of the more experienced drug court judges rotate out of drug court or retire, it is important for other judges to have a vested interest in working with the drug court if the program is to continue operating. It is equally important for the Florida Supreme Court and the OSCA to continue its advocacy in support of drug courts statewide. Increased efforts to train current and new judges on the impact of substance abuse and mental health issues on the courts and drug courts specifically, will assist in garnering judicial support as further detailed in this report.

2. State and County Funding

Achieving long-term sustainability of drug courts depends greatly upon funding. Drug courts in Florida struggle each year to secure funding. This struggle continues despite their cost effectiveness over jail, prison, or processing a defendant multiple times for committing crimes as a result of substance abuse.

Drug courts rely on a hodgepodge of funding sources which vary from one program to the next. They depend on treatment resources from state agencies such as the Departments of Children and Families, Juvenile Justice, and Corrections. Funding is provided through federal grants, city and county funding, and through participant fees which primarily offset treatment and drug testing costs.

The lack of secure and stable funding puts the future of drug courts in jeopardy. This was made apparent during this year's state budget crisis when at various times, critical drug court resources such as case managers, the Department of Corrections pre-trial intervention officers, and substance abuse treatment services were in jeopardy of being eliminated. The Task Force recognizes that adequate funding is critical in sustaining drug courts. The current level of funding and services provided to drug courts must be maintained while more stable funding is pursued.

In 2001, proposed drug court legislation modeled after the teen court statute was drafted by the Florida Association of Drug Court Professionals (FADCP) and supported by the Task Force. The legislation, if passed, would enable counties to impose a \$6 assessment on criminal cases to support the operation of drug courts in their respective counties. However, efforts to pass this legislation

have been unsuccessful. Although this proposal would not generate enough funding to fully support drug court operations, it would provide a dedicated funding stream for drug courts. The Task Force respectfully requests that the Court continue supporting this legislative proposal. The Task Force, in collaboration with the FADCP, should continue to explore additional funding strategies to sustain drug courts.

3. Case Management

As stated in the Task Force's recent petition to the Court, drug court case managers are crucial to the effective and efficient operation of drug courts. In 2001, the Florida Legislature recognized their importance by appropriating funding for a drug court coordinator/case manager in every judicial circuit. Drug court case managers provide an essential coordination of services between the court and treatment providers, state attorneys, public defenders, probation personnel, and other community service providers. In addition, case managers are responsible for collecting and maintaining program data that not only are critical to the daily operations of a drug court, but also are critical in demonstrating the impact and effectiveness of the drug court. Data which demonstrates the importance of drug courts to the communities they serve are vital tools for sustaining funding.

While we do not yet know the full impact of the budget cuts sustained by the judiciary on drug courts, it is anticipated that some drug court funded positions will be eliminated. Case managers, in general, facilitate a more efficient judicial system. Drug court case managers, in particular, are essential to sustaining and expanding drug courts. The Task Force respectfully requests for the Court to continue to advocate for case management resources as a priority for Florida's courts, but also for drug courts specifically.

4. Training and Education

The training and education of all drug court team members is critical to sustaining drug courts in Florida. Judicial rotation and drug court staff turnover necessitate that training be tailored to new and experienced drug court staff. Topics should include emerging trends, research, and promising practices. The Task Force respectfully requests the Court to provide routine training and education to all judges and court personnel so that they understand the impact of substance abuse and mental health disorders on the courts and effective practices for handling these types of cases.

Details of the Task Force's training and education proposal are addressed beginning on page 21 of this report in response to Charge 3. Implementation of

these recommendations is critical to ensuring the long-term sustainability of drug courts in Florida.

5. Drug Court Program Data and Evaluation

In 1999, the Task Force (then the Drug Court Steering Committee) developed critical performance indicators and data elements for Florida's drug courts. The Task Force requested that all drug courts capture these data to demonstrate the impact and effectiveness of drug courts. In 2006, the OSCA implemented a new data collection system to capture many of these data elements. These data are routinely used to respond to information requests from court personnel, state agencies, the legislature, and other state and national entities.

The responsibility for collecting data falls mostly on drug court case managers. While many drug courts are effectively capturing a large amount of data, data collection continues to be a challenge for many drug courts due to limited staff resources. Data are the most persuasive tool for drug courts to use when seeking new funding and in sustaining current sources of funding. Without data to show the positive impact of drug courts, sustaining drug courts will continue to be a challenge.

The Task Force recommends expanding the current performance indicators to include two additional national measures. Details regarding these indicators are further addressed in our response to Charge 4 beginning on page 26 of this report.

Additionally, the Task Force respectfully requests that an assessment be conducted to identify the needs of drug courts statewide in sustaining their programs. The assessment should identify drug courts that have implemented practices to become self-sustaining. One known example is Polk County's drug court program where in-house treatment and drug testing fully support the cost of its drug courts. In addition, the National Drug Court Institute released a publication in May 2008 entitled *Ensuring Sustainability for Drug Courts: An Overview of Funding Strategies*. It would be advantageous for the Task Force, should it be reconstituted for another term, to review this publication to identify national strategies that can be adopted in Florida.

Furthermore, the Task Force resubmitted its request for the Court to issue an opinion as requested in the April 2008 Task Force response to the Court on its Amended Petition filed July 24, 2006. In the petition, and again in the response, the Task Force requested the Court issue an opinion recognizing the impact and

effectiveness of drug courts. Recognition from the Court in the form of an opinion would assist in institutionalizing and sustaining drug courts in Florida.

Charge 2: Consider and make recommendations regarding the appropriate scope of confidentiality in drug court cases.

Chapter 397, Florida Statutes, the “Marchman Act,” is the state law that governs substance abuse services. Section 397.501(7), F.S. provides:

The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual client are confidential in accordance with this chapter and with federal confidentiality regulations and are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Federal law pursuant to 42 U.S.C. § 290dd-2(a) provides:

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and disclosed only for the purposes and circumstances expressly authorized under subsection (b) of this section.

Furthermore, 42 CFR § 2.12(a) provides that the confidentiality restrictions apply to any drug abuse information whether or not recorded which “would identify a patient as a substance abuser either directly or by reference to other publicly

available information or by verification” and is obtained by a program “for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for the treatment.”

A comprehensive review of state and federal law shows that arguably, all drug court records should be confidential and exempt based upon a broad reading of the federal law. This includes non-treatment records generated by the drug court which simply identify the patient as a drug court participant. Examples of these types of records include drug court participation agreements, waivers and consents for disclosure, drug court dockets and court orders.

In Noelle Bush v. State (unpublished 9th Judicial Circuit case from October 2002), the 9th Judicial Circuit held that drug court status hearings are open to the public. The court noted that typically no substantive patient information is discussed in open court. The court made no rulings as to the disclosure of status hearing records such as court orders, dockets and documents that would identify the defendant as a drug court participant. However, since the hearing was open, presumably, any corresponding records such as dockets and court orders would also be open to the public. The law is unclear as to the confidentiality of non-treatment information. However, state and federal law is clear that treatment

records are confidential and exempt. Therefore, the Task Force recommends that confidentiality be limited to treatment information.

The confidentiality provisions of section 397.501(7), F.S. appear to be limited to the records of service providers. "Service provider" or "provider" is defined in section 397.311(28), F.S. as a public agency, a private for-profit or not-for-profit agency, a person who is a private practitioner, or a hospital licensed or exempt from license under chapter 397. Private practitioner is defined in section 397.311(23), F.S. as a licensed physician, psychologist, or a clinical social worker, marriage and family therapist or mental health counselor licensed under chapter 491. These definitions imply that a service provider is someone who actually performs the diagnosis, referral, or treatment. These functions are performed by outside service providers and not by drug court personnel in the vast majority of drug courts in Florida. Arguably, drug court personnel, including judges, "refer" patients to treatment and therefore should be included as treatment providers or as later discussed "programs". However, this interpretation appears overly broad. More accurately, courts place eligible persons in drug court programs based upon clinical assessments and recommendations provided by substance abuse professionals. Therefore, they do not make referrals in the clinical sense as contemplated by the statutes.

Drug court personnel receive treatment information verbally and in writing from outside service providers through written consent from the patient. Unlike federal law, section 397.501(7), F.S. is silent as to the confidentiality of redisclosure information received from service providers. For drug courts that perform assessments, referrals and treatment in-house, the drug court would arguably be a service provider and the records pertaining to the identity, diagnosis and prognosis of and service provisions to any individual would be confidential and exempt. Clearly, the treatment records of service providers, whether in-house or external, that pertains to the identity, diagnosis and prognosis and service provisions to any individual are confidential and exempt. Court records that simply identify an individual as a drug court participant do not appear to be covered under section 397.501(7), F.S. and thus, are not confidential. However, service provider records that simply identify a person as a drug court participant would be covered and are confidential.

The federal law is more vague and expansive. 42 U.S.C. § 290dd-2 applies to “programs” or “activities” relating to substance abuse treatment and prevention that are regulated or supported by the federal government. “Activity” is not defined. However, 42 CFR § 2.11 defines “programs” other than a general medical facility as follows:

An individual or entity (other than a general medical facility) that holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment;

The other definitions provided specifically refer to general medical facilities. Similar to the Marchman Act definition of service provider, this definition implies someone who actually performs the diagnosis, referral, or treatment. As discussed, the vast majority of Florida drug courts do not perform these functions in-house. Further, as discussed, courts do not make clinical determinations in making “referrals” and probably do not fit within the definition of “program”. 42 CFR § 2.35(a) expressly provides that a “program” may disclose patient information “to those persons within the criminal justice system which have made participation in the program a condition of the disposition of any criminal proceeding against the patient, the patient’s parole or other release from custody.” This provision contemplates that a program is a separate entity that provides patient information to the drug court. Program disclosures can only be made to “those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient’s progress upon written consent by the patient” and the patient has signed a written consent. 42 CFR § 2.35(d) provides that a person who receives information pursuant to § 2.35 may redisclose and use this information “only to carry out that

person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given." Clearly, under federal law, program records that pertain to the identity, diagnosis, referral and treatment of a patient are confidential and exempt. Further, federal law expressly provides that this information cannot be redisclosed without a court order or written consent.

The federal law is unclear about the disclosure of information that simply identifies a person as a substance abuser. 42 CFR § 2.12(e) (3) states that the restrictions on disclosure apply to any information that would identify a patient as an alcohol or drug abuser. However, this conflicts with 42 CFR § 2.12(a) which also provides that a second prong must be met before the information is restricted from disclosure. Under § 2.12(a), the drug abuse information was obtained for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for the treatment. Further, 42 CFR § 2.13(c) (1) expressly prohibits the disclosure of the presence of a patient in a facility which is publicly identified as a place where only substance abuse diagnosis, treatment or referral is provided. In response to a request for records that are confidential under the regulations, subsection 42 CFR § 2.13(c)(2) prohibits the records holder from affirmatively disclosing that the regulations prohibit

disclosure because such statements affirm that the individual whose name was provided was in fact an alcohol or drug abuser. Finally, when requesting a court order for disclosure, the regulations specifically require that applications must use a fictitious name to refer to the patient to protect their identity. The regulations make specific provisions to protect the identity of covered patients. It would be inconsistent if this same information could simply be accessed from the clerk of court.

Given the unique nature of drug courts where intensive judicial oversight is provided to monitor treatment progress, and the sharing of treatment information is critical among the drug court team in order to monitor such progress, it is important that appropriate measures are taken to protect the confidentiality of substance abuse treatment information as required by law. The law is unclear as to the confidentiality of non-treatment information. However, both state and federal law is clear that treatment records should be confidential and exempt. As a result, the Task Force recommends that the confidentiality of drug court files should currently be limited in scope to treatment information. Therefore, at a minimum, treatment records included in clerk of court files should be included in Appendix A classified as a Type I record under the proposed Florida Rule of Judicial Administration 2.420 of the Committee on Access to Court

Records. Inclusion in Appendix A would make the treatment record automatically confidential as opposed to requiring a motion to make the record confidential.

This would likely involve a bifurcation of the file.

Further, section 397.334 F.S. should be amended to specifically make drug court treatment records confidential and exempt. The Task Force has drafted the following proposed language to amend section 397.334, F.S. to add the following section:

Proposed Section 397.334(5)

The clerk of the courts shall make and keep an official record of all drug court cases brought before it under the provisions of § 397.334. Official drug court treatment records that pertain to the identity, diagnosis, prognosis or provision of treatment of an individual, which are maintained or generated in connection with the referral or participation in a treatment-based drug court program established under this section are confidential in accordance with federal confidentiality regulations. Official drug court treatment records maintained by the clerk of courts are exempt from the provisions of § 119.07(1) and s. 24(a), Art. I, of the State constitution. Official drug court treatment records include but are not limited to treatment records already confidential and exempt pursuant to § 394.4615 and § 397.501(7). Official drug court treatment records may not be disclosed to the public except by order of the court. Official drug court treatment records may be disclosed to drug court personnel for official drug court purposes. Official drug court treatment records may be disclosed to the drug court participant and/or their legal counsel. Official drug court treatment records may also be disclosed to authorized personnel for the purpose of conducting drug court program audits and evaluations. However, such authorized personnel may not identify any

individual drug court participant in the report or otherwise disclose individual drug court participant identities in any manner.

The Task Force recognizes that the Court requested for the Task Force to submit its recommendations for this change in petition form with the Clerk of the Florida Supreme Court. However, because the Task Force is requesting a statutory rather than a rule change, it was determined that a petition is unnecessary. Should the legislature decide to adopt the proposed statutory language, it may be appropriate at that time to revise the Rules of Judicial Administration to accommodate this change in law.

The Task Force recommends that best practices be developed to provide guidance to the circuits on issues such as minimizing the amount of treatment records that make it into court files and to ensure that drug courts are using written waivers as required by state and federal confidentiality laws. Finally, the Task Force recognizes that drug court status hearings are open to the public. Typically, little to no substantive patient treatment information is discussed at the status hearing. Best practices should be developed to ensure that the amount of substantive patient treatment information discussed in open court is limited.

Charge 3: Develop a proposal for continuing education and training of drug court team members and other justice system personnel on substance abuse issues and the application of problem-solving court methods to address those issues.³

The Task Force recognizes the importance and value of providing regular training to all drug court practitioners on emerging trends, research, and evidenced-based practices to help maintain well functioning drug courts. The Task Force also recognizes the importance of providing routine training and education to all judges and court personnel on the impact of substance abuse and mental health disorders and how the application of problem-solving practices assists in handling these types of cases. To that end, the Task Force respectfully recommends the following:

1. A training needs assessment should be conducted by the Office of the State Courts Administrator a minimum of every two years or in preparation for any appropriate drug court training events, such as the statewide training conferences. The assessment should survey all drug court team members from operational and planned drug courts. Results from the needs

³ The Task Force is indebted to the staff of the OSCA's Court Education Unit for their assistance and guidance in handling this charge.

assessment should be compiled and considered when developing training agendas and content.

2. Specialized training and education for drug court practitioners should be provided every two years through a statewide training conference. Existing judicial training events such as the Florida Judicial College, the Florida Conference of Circuit Judges, the Conference of County Court Judges, and Advanced Judicial Studies (AJS), should be targeted to educate all judges on the impact of substance abuse within the courts and how drug courts effectively deal with the substance abusing population. In addition, a training curriculum should be developed and provided to new judges each year at the Florida Judicial College. Training and education should be offered regularly to all court and other justice system personnel, specifically, personnel who deal with cases involving substance abuse within the justice system. Local and regional workshops should be offered to target specific training needs of jurisdictions. Training and education should be available through distance learning, when appropriate, which may include web-based training, DVD's and audio tapes. Site visits by drug court team members to other drug courts should be encouraged for operational and planned drug court teams.

3. Drug court practitioners should be trained on effective practices, current research, and emerging trends within the drug court field. Other non-drug court justice system personnel, including judges, court administrators, state attorneys, public defenders, treatment personnel, probation and community control officers, private attorneys and others, should be trained on the impact of substance abuse within the justice system and the effectiveness of problem-solving court methods in handling these types of cases, as well as the value of recommending the provision of substance abuse treatment to offenders while incarcerated. Such training and education should also be provided to state and federal legislators; board of county commissioners; city, county, and school board officials; local community stakeholders; student and civic organizations; potential funding providers; the media; and the general public. Suggested organizations for the court to collaborate with in providing training and education when appropriate include:

- Florida Association of Drug Court Professionals (FADCP)
- Florida Office of Drug Control (ODC)
- Department of Children and Families (DCF)
- Department of Corrections (DOC)
- Department of Education (DOE)
- Department of Juvenile Justice (DJJ)
- Department of Health (DOH)

- Florida Alcohol and Drug Abuse Association (FADAA)
- Florida Association of Community Corrections
- Association of Florida Police Chiefs
- Florida Sherriff's Association
- Florida Prosecuting Attorney's Association
- Florida Criminal Defense Attorney's Association
- Legislative Criminal Justice Commission
- Conference of Chief Justices (CCJ)
- Conference of State Court Administrators (COSCA)
- Center for Substance Abuse Treatment (CSAT)
- Substance Abuse and Mental Health Services Administration (SAMHSA)
- Department of Justice (DOJ)
- Office of Justice Programs (OJP)
- Office of National Drug Control Policy (ONDCP)
- National Association of Drug Court Professionals (NADCP)
- National Drug Court Institute (NDCI)
- National Institute of Drug Abuse (NIDA)
- American Judges Association (AJA)
- American Bar Association (ABA)
- National Bar Association (NBA)
- National Judicial College
- National Association of Women Judges (NAWJ)
- National Center for State Courts (NCSC)
- National Association for Court Management (NACM)

In addition, Continuing Judicial Education (CJE), Continuing Legal Education (CLE), Continuing Education Units (CEU's), and other appropriate continuing education credits should be available to attendees at appropriate drug court training forums.

4. Training and education sessions (basic, intermediate, and advanced) should be provided for, and target the needs of, all operational and planned drug courts. Examples of topics to be covered include but are not limited to:

- Drug court 101
- Nature of addiction
- Continuum of care
- Drug testing
- Co-occurring substance abuse and mental health disorders
- Sanctions and incentives
- Therapeutic responses
- The ten key components of drug court
- The drug court team concept
- Team building
- Confidentiality requirements
- Licensure requirements
- Treatment
- Law and ethics
- Benefits of problem-solving courts
- Best practices, research and trends

Additionally, the application of other problem-solving court methods and applicable unified family court guiding principles should be routinely covered. Training sessions should be coordinated with the Florida Court Education Council and the Steering Committee on Families and Children in the Court when appropriate.

5. Training and education programs should be evaluated through the use of onsite opinion and satisfaction surveys for improvement and adjustments when necessary. Follow up evaluations should be distributed to training participants to determine what tools were learned and applied. The results of the evaluations should be analyzed and applied to future training initiatives as appropriate.

The Office of the State Courts Administrator, Office of Court Improvement should continue to support statewide drug court training initiatives in collaboration with the Florida Association of Drug Court Professionals (FADCP) to fulfill the recommendations herein. Additionally, the Office of Court Improvement should work together with the Court Education unit and the Florida Court Education Council (FCEC) to develop judicial training on the impact of substance abuse and mental health disorders on the courts and the application of problem-solving court methods to address these types of cases.

Charge 4: Develop a proposal for a statewide drug court evaluation and explore funding sources to support such an evaluation.

The Task Force was fortunate to receive free technical assistance from the NCSC *Statewide Drug Court Technical Assistance Project*, to help guide the

development of a statewide evaluation proposal. The report of this technical assistance effort is attached as Appendix A.

The Task Force is recommending a phased approach to the statewide evaluation. The evaluation process should be prioritized by drug court type, focusing first on adult drug courts, with juvenile, family dependency, and misdemeanor/DUI drug courts to follow. It is anticipated that the evaluation of each drug court type will cost approximately \$150,000 – \$200,000. The OSCA should survey the drug courts to assess the level of data availability prior to securing funds. Data availability will affect the final cost of the evaluation and ultimately the type of evaluation that will be conducted (for example, retrospective vs. prospective study). The OSCA should apply for the Bureau of Justice Assistance Statewide Enhancement Grant in 2009, and continue to explore additional funding sources that could be secured, some of which might include:

1. Federal Grants:

- a. U.S. Department of Justice, Bureau of Justice Assistance, Drug Court Statewide Enhancement Grant
- b. Substance Abuse and Mental Health Services Administration (SAMSHA)
- c. National Institute of Justice (NIJ)
- d. Edward Byrne Memorial Grants
- e. Juvenile Accountability Block Grant (JABG)

2. Foundation Grants

- a. Robert Wood Johnson Foundation
- b. Pew Research Center
- c. Annie E. Casey Foundation
- d. JEHT Foundation – www.jehtfoundation.org

3. State Funding

- a. Colleges/Universities
- b. Legislature

As indicated in Appendix A, the statewide evaluation will require updated performance indicators for adult, juvenile and family dependency drug courts. The revised performance indicators should include sobriety and units of service measures. The Task Force recommends that the Court, by letter from the Chief Justice to the Trial Court Administrators and Chief Judges, recognize and encourage the use of each of the new performance indicators referenced in Appendix A. The updated performance indicators should also be recognized in the proposed Court opinion in response to the 2006 Task Force Amended Petition.

The Vortex Report

In January 2008, Chief Justice Lewis requested that the Task Force review the Justice Policy Institute report entitled *The Vortex - The Concentrated Racial*

Impact of Drug Imprisonment and the Characteristics of Punitive Counties and

submit any appropriate recommendations to the Court by June 1. In follow-up to this request from the Court, the Task Force, in a letter dated April 30, 2008, requested an extension of time to respond to this request by the Court. However, OSCA staff from the Office of Court Improvement has had the opportunity to conduct a cursory review of the report. The following is a summary of the report's findings and Task Force recommendations to the Court.

The report examined the county-level rates of admission to state prison for drug offenses using 2002 data for 198 large counties throughout the United States with populations of 250,000 or more. Prison admission rates for drug offenses were calculated for the entire population, and then separately for whites and African Americans. County-level admission rates were then compared against county resources spent on law enforcement and the judiciary.

The report found that county-level admissions rates were a function of the resources the county spent on law enforcement and the judiciary to police and prosecute drug offenses. The greater the resources expended, the greater the admission rate. Further, the report also found some correlation between admission rates and the county's level of poverty, unemployment and

concentration of African American population. A significant racial disparity in the admission rates for 193 of the 198 counties examined was identified.

Seventeen (17) Florida counties were included in the report. The results also varied widely from county-to-county and were consistent with the results found nationwide; therefore a problem unique to Florida does not seem to exist. The results indicated that African Americans were admitted to prison for drug crimes at a rate from 4 times (Polk County) to 37 times (Sarasota County) higher than the rate for whites.

The report does not quantitatively explain the reasons for the great racial disparity in admissions. Instead, the report suggests disparate policing practices, disparate treatment before the courts, differences in availability of drug treatment, and punitive social spending patterns. The report proposes the adoption of evidence-based drug enforcement and prosecution. Under this scenario, the government would fund county-level probability surveys and ethnographic research to determine the rates of specific types of drug behavior across categories of race/ethnicity. Public officials, prosecutors and law enforcement officials would be held accountable if their arrest or prosecution rates exceed the levels determined by the surveys and research.

The biggest factor influencing prison admission rates appears to be the public policy regarding law enforcement policing practices which is beyond the control of the judiciary. The study states, “[T]he size of the judicial budget, in turn determines the number of those caught in the vortex that can be dispatched to prison.” The report does not address the extent that racial disparity in admission rates is attributable to either disparate treatment in prosecutions or sentencing. The only thing proffered by the report is that disparate treatment before the courts may be a factor and that this “often stems from generalizations and miscommunications between people of different racial or ethnic backgrounds.” The report indicates that research shows that white youth are twice as likely as African American youth to retain private counsel and that youth with private counsel are less likely to be convicted than youth with either a public defender or appointed counsel. It is important to note that the report’s reference to the judiciary primarily involves prosecutors, not judges and court staff. In fact references to this component of the judicial system are minimal.

The Task Force acknowledges and is concerned by the major issues raised in the report. The incarceration rate for drug offenders in the United States is very high and accelerating. Research shows that although the European Union has 200 million more inhabitants, the United States incarcerates nearly 10 times as many

people for drug offenses. Further, the data indicates that the incarceration rate of African Americans for drug offenses is disproportionately high. The study notes that in 2003, African Americans made up 13 percent of the total U.S. population, but accounted for 53 percent of sentenced drug offenders in state prisons. While the data indicates great racial disparities in prison admissions for drug offenses, the report fails to provide specific reasons for the disparity. The report does not examine whether there is disparate treatment by the courts or the extent and impact of any such disparate treatment. Further study would have to be undertaken in an attempt to explain the phenomenon. The complexity of such a study and the resources needed would be beyond the capability of a committee charged with the task. The difficulty in constructing a reliable research model because of all the potential variables would require great technical assistance. Significant staff resources and funding would be needed to collect and analyze the data. This would be a significant undertaking better suited to academia or a public research organization.

Additional Task Force Recommendations

The Task Force respectfully requests that this Task Force be reconstituted for another term. The scope of the Task Force should be expanded to address both substance abuse and mental health disorders. The Task Force should

identify mechanisms to better coordinate services for substance abuse, mental health and co-occurring disorders, specifically with regard to drug and mental health courts. In addition, as problem-solving courts continue to expand throughout the state, the reconstituted Task Force should assess the full impact of these dockets in Florida and develop strategies for implementing promising practices statewide. Specifically, the Task Force requests to be reconstituted to work on the following tasks:

1. Continue to make recommendations for statewide policies concerning the extent to which drug court can provide a meaningful solution to cases involving substance abuse, mental health, and co-occurring disorders.
2. Conduct an assessment to identify the needs of drug courts statewide in sustaining their programs and review the National Drug Court Institute publication *Ensuring Sustainability for Drug Courts: An Overview of Funding Strategies* to identify strategies that could be adopted in Florida;
3. Develop best practices for addressing the confidentiality of cases involving substance abuse and mental health disorders.
4. Explore the use of re-entry drug courts as an approach to reducing the prison population of non-violent drug offenders.
5. Conduct a review of the Department of Juvenile Justice's Blueprint Commission report to identify recommendations involving juvenile substance abuse and mental health and develop appropriate strategies for the courts to address these recommendations.
6. Promote DUI drug courts, misdemeanor drug courts and other problem-solving courts and develop a strategy for institutionalizing these practices into all appropriate cases in Florida.
7. Provide guidance to the statewide drug court evaluation process should funding be secured for an evaluation.
8. Monitor current efforts of the legislature in determining whether expansion of drug court capacity can achieve cost savings in prison beds and if

needed, develop appropriate guidelines to the drug courts to effectively achieve greater capacity without loss of effectiveness.

Conclusion

The Task Force is pleased with the work that has been accomplished over the past two years. We look forward to receiving a response from the Court on the previous recommendations submitted by the Task Force earlier this year in follow-up to the 2006 Task Force petition. As former Attorney General Barry McCaffrey suggested, “The establishment of drug courts, coupled with their judicial leadership, constitutes one of the most monumental changes in social justice in this country since WWII. Maintaining the integrity of the drug court movement will take constant monitoring and reassessment of their progress.” With substance abuse and mental health disorders driving most of the cases entering our court system, it behooves the judiciary to continue efforts to improve the manner in which these types of cases are handled. In approaching the twenty-year anniversary of drug courts, a concept conceived in Florida, the time has come to take what we have learned and institutionalize problem-solving court practices statewide. If the Task Force recommendations from this report and the petition are implemented, Florida will be closer to sustaining and institutionalizing drug courts.

The chair would like to thank each Task Force member, many of whom have served so diligently since this committee's inception in 1998, for the hard work and dedication in fulfilling our obligations for this term. The chair would especially like to thank the following members for their leadership and hard work in chairing the workgroups: Judge Jeffrey Rosinek (Training and Education Workgroup), Magistrate Lester Bass (Confidentiality Workgroup), and Dr. Roger Peters (Evaluation Workgroup). In addition, the Task Force would be remiss if it did not recognize that without the capable research, hard work, and incredible diligence of OSCA staff, the Task Force would have been markedly less able to respond to its charges. We look forward to continuing this important work in the future.

**Appendix A:
A Plan for the Statewide Evaluation
of Florida's Drug Courts**