

**ASSESSING THE IMPACT OF DADE COUNTY'S FELONY DRUG COURT**

**Executive Summary.**

August 1993

John S. Goldkamp  
Doris Weiland

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**CRIME AND JUSTICE RESEARCH INSTITUTE**  
520 North Delaware Avenue, Suite 304  
Philadelphia, Pennsylvania 19123  
(215) 627-3766

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# ASSESSING THE IMPACT OF DADE COUNTY'S FELONY DRUG COURT

## Executive Summary

### I. The Dade County Drug Court Approach: Court-Based Diversion and Treatment of Felony Drug Defendants

#### The Characteristics of Dade County's Felony Drug Court: the "Miami Model"

A variety of sources have documented the growth and impact of the drug-related criminal caseload in many jurisdictions across the United States in the 1980s<sup>1</sup> (Goerdts and Martin, 1989; Goerdts et al., 1989; Belenko, 1990; Goldkamp et al., 1990). The increases in arrests for drug violations nationally which coincided with a dramatic increase in the availability and use of cocaine and, later, crack cocaine translated into burgeoning criminal caseloads in courts in most urban centers. Depending on how one defines "drug-related"--beyond just persons charged with drug crimes--it is possible to argue that the majority of criminal cases entering criminal processing could be classified as "drug-related" (Goldkamp et al., 1990). In addition to criminal courts, the impact of the drug caseload raised challenges to most criminal justice agencies, including police, prosecutors, defense systems, jails and prisons, exacerbating already difficult problems of correctional overcrowding and court backlogs, and raising public safety concerns about drug-crime violence. In its recent report, The State of Criminal Justice, the Criminal Justice Section of the American Bar Association (1993) argues that the recent focus of law enforcement and confinement resources on drug offenders has occurred at the expense of dealing with violent crime and other serious offenses. This theme has been strongly argued by the Attorney General of the United States,

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<sup>1</sup> The number of arrests for drug violations nationally increased 134 percent from 1980 to 1989, according to F.B.I. statistics summarized in the Sourcebooks of Criminal Justice Statistics published from 1980-1991. There was a slight decline from 1989 to 1990; however, the overall increase from 1980 to 1990 was still 88 percent. About two-thirds of these arrests were for drug possession, one-third were for sales or distribution-related offenses.

who has questioned the impact of mandatory minimum sentences for drug offenders and advocated development of initiatives focusing on the prevention of crime as alternatives to punishment.

In response to the extraordinary growth in the drug-related criminal caseload during the 1980s and the perceived impact of illicit drugs on public safety in Dade County, in 1989 Florida's Eleventh Judicial Circuit implemented a court-based drug abuse treatment approach. The innovation was grounded in the notion that "demand" for illicit drugs, and, hence, the likelihood of involvement in crime and re-involvement in the court system, could be reduced through an effective and flexible program of court-supervised drug treatment.<sup>2</sup> Conceptually, the Circuit Court approach represented a clear departure from the other dominant philosophies governing responses to drug-involved offenders at the time. Those philosophies emphasized primarily deterrent and incapacitative strategies toward the drug offender--as illustrated by pretrial drug testing and preventive detention, as well as by the popularity of mandatory minimum sentences. More punitive, desert-oriented approaches to serious drug offenses were also influential during this period.

The implementation of the Drug Court in the Eleventh Judicial Circuit was undertaken in the context of major criminal caseload pressures. During the entire decade of the 1980s, the numbers of reported crimes and adult arrests had risen steadily in Dade County. Adult arrests had increased about 45 percent between 1985 and 1989 alone, while arrests for drug possession had increased 93 percent during that five year interval (Goldkamp and Weiland, 1991). Misdemeanor and felony filings more than doubled from 1978 to 1990. Dispositions of felonies in Circuit Court nearly kept up with filings until 1989,

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<sup>2</sup> It is interesting to note that treatment approaches to drug-related offending were not widely favored at that time. In fact, the President's National Drug Control Strategy of 1989 gave very little mention to treatment approaches and preferred other, deterrence- and incapacitation-oriented approaches to demand reduction.

when, as the increase in felony filings continued uninterrupted, the number of dispositions began to decline.<sup>3</sup> The number of felony cases pending at the end of the year had increased three and one-half times from 1979 to 1990. The pervasive impact of drug-involved offenders on the criminal caseload in Dade County was illustrated by a study of 1987 felony defendants (Goldkamp, Gottfredson and Weiland, 1990; Goldkamp, Jones, Gottfredson and Weiland, 1990) which found that approximately 73 percent of entering felony defendants tested positively for cocaine and that at least 83 percent could in some way be classified as "drug-related" (that is, they tested positively for drugs, were charged with drug offenses, and/or had prior records of drug offenses).

The combination of two principal components--the role of officials in the courtroom and the operation of a specially adapted program of "outpatient"<sup>4</sup> drug abuse treatment--form the basis of what has come to be known as the "Miami Drug Court Model." While other diversion approaches have undoubtedly referred defendants to drug abuse treatment programs over the last couple of decades in the United States, it is the courtroom-based team approach--and particularly the central judicial role--that distinguishes Dade County's approach from other drug court initiatives.

### The Drug Court Courtroom

The courtroom component departs from the normal criminal courtroom in several respects. First, and most significant, is the role of the judge. The judge presides over many

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<sup>3</sup> It is possible that the gap between number of filings and dispositions beginning in 1989 may be partly explained by the referral of cases to the Drug Court (Division 51). By definition, the cases of the defendants participating in the Drug Court program could not have been disposed in less than one year. In fact, the program began mid-year in 1989. For an analysis of the criminal caseload and its impact on correctional capacity in the 1980s, see Goldkamp and Weiland (1991). These data were updated by data provided by the administrative staff of the Eleventh Judicial Circuit.

<sup>4</sup> The Drug Court's drug treatment emphasis is primarily on "outpatient" modalities. However, in 1991, Drug Court arranged through the Florida system for prioritized access to more than 200 residential placements for selected defendants with particularly difficult drug abuse problems. As of spring, 1993, an average of about 40 such placements were in use at a given moment.



brief hearings that involve defendants' entry into the program, in-court reports on defendants' progress, defendants' graduation from the program, or a variety of sanctioning decisions involving defendants who have absconded or been rearrested for new offenses. Defendants who have opted to enter the program are instructed by the judge to appear in court periodically for reviews of their progress in treatment. On the basis of input from the treatment agency--referred to as the DATP (Diversion and Treatment Program)<sup>5</sup>--the defender and/or the prosecutor, as may be relevant, the judge hears reports of the defendant's progress, discusses his/her status in treatment with the defendant, and offers encouragement if appropriate. Often the judge listens to a defendant's explanation as to why the program was not attended as required and then encourages the defendant to get back into treatment. The judge, who can be encouraging and supportive, is also called upon to impose sanctions when the defendant has shown a poor record of performance, or, for example, is rearrested and brought back to the Drug Court on an alias capias (felony bench warrant). On occasion, the judge will order the defendant confined for two weeks in jail ("motivational jail") in an area reserved for Drug Court defendants and will reassess the defendant's participation after that period of confinement. The judge also may transfer the cases of some defendants out of Drug Court to be tried in the normal fashion by other Circuit Court felony judges.

The role of the Drug Court judge is unorthodox in that it is a more activist, involved supervisory role than normally played by judges in the adjudication of criminal cases. It is important to point out that the judge has had addiction training and, therefore, has been prepared for the difficult behaviors likely to be associated with a concentrated caseload of drug-involved defendants. Because the judge manages a caseload of defendants going through drug treatment rather than processes criminal cases, the role of the Drug Court judge

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<sup>5</sup> The Diversion and Treatment Program is a program of the TASC division of the Office of Rehabilitative services of Metropolitan Dade County.

also does not resemble that of the "diversion" judge<sup>6</sup> who approves diversion referrals, reviews diversion violations, or approves successful diversion dispositions in other settings. To a large extent, the viability of the Drug Court approach depends on strong judicial leadership and judicial support of the flexible and unusual role played by the judge in managing the progress of Drug Court cases. Yet, without the active support of the State Attorney and the Public Defender, strong judicial support and the active role of the judge alone would not have made the Drug Court operation possible.

The unusual role of the judge, thus, is best understood in the context of the unorthodox, non-adversarial and team-oriented roles played by the other criminal justice officials in the courtroom, roles designed to support the judge's role and to contribute to the treatment progress of the drug-involved felony defendants coming through the Court. The priority is given to defendants' treatment progress, and the effect of transactions in the courtroom seem, at times, more to resemble "psychodrama" or "therapeutic community" treatment modalities than normal criminal courtroom proceedings. Most noticeable are the transformed roles of the prosecutor and defender. The prosecutor in the courtroom shifts between communicating strong encouragement for defendants who appear to be making progress to raising the prospects of reinstating formal prosecution of charges when defendants do not seem to be participating appropriately in treatment. The defender seems clearly supportive of the opportunity Drug Court provides and also plays a role that appears more "therapeutic" in nature than adversarial. Representatives of the treatment program as well as of Pretrial Services attend the hearings so that the judge is kept up-to-date on developments in each case.

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<sup>6</sup> In many diversion programs the judge has little to do with diversion. Rather it is the prosecutor who agrees to defer prosecution for the diversionary period, and then, usually as approved by the court, seals and/or expunges the defendant's record.

A final aspect of the courtroom component of the Drug Court approach is the overall environment that is produced. The courtroom seems more informal than a normal criminal courtroom; yet there is a firm sense of order, and the judge can be very forceful when the situation calls for it. Defendants are located in two main areas. Many, scheduled to report on their progress in the treatment program, enter from the street and are seated in the spectator section behind the rail separating that area from the "well." A smaller number of others are seated in a jurors' box to the left of the judge's bench. These defendants appear in Drug Court from custody--because they were just arrested and are making their first appearance in Drug Court, because they have been arrested on new charges while in the Drug Court program, because they have been apprehended on alias capiases or felony bench warrants (have been absent from the program), or because they have been confined temporarily ("motivational jail") because of difficulties in the drug treatment program. Part of the experience of appearing in Drug Court is that defendants in attendance are given an opportunity to observe the hearings of other defendants in the various program statuses, as they are being encouraged, congratulated, admonished or sanctioned for their recent performance. To the observer of Drug Court, the seriousness with which these hearings are witnessed by other defendants, or at least the apparent interest of defendants in the proceedings, forms part of the unusual Drug Court environment.

#### Drug Court's Treatment Program: the Diversion and Treatment Program (DATP)

Since 1989 when the Drug Court first opened, defendants were referred primarily to the DATP, which is an outpatient program with centers in four locations in Dade County. There was also an option for defendants who lived in other jurisdictions to participate in treatment programs outside of Dade County, as long as regular reports were made to the court regarding the defendants' progress. The Drug Court was initially designed to accept defendants charged with third degree felony drug possession offenses and with no prior

convictions. The rationale for these eligibility criteria was that, although the Circuit Court wanted to target felony defendants, it did not want to begin with defendants who posed serious risks to public safety. In addition, it was reasoned that, over the long run, the greatest payoff would come from investing treatment and court resources in defendants with drug problems who were at the beginning of their criminal involvement (had no prior criminal histories), thereby increasing the likelihood of preventing their further involvement.

The DATP drug abuse treatment program was designed to require one year's participation by drug-involved felony defendants during which the defendants would proceed from detoxification (Phase I), to counseling (Phase II), to educational/vocational assessment and training (Phase III), and then to graduation. Phase I was intended to require a minimum of 12 consecutive days of clinic visits or as many days as were required to achieve seven consecutive negative urine tests. In Phase II the number of required visits was generally reduced to three or even two per week, with a urine test at each visit. During Phase III, attendance requirements might continue to be the same or be relaxed somewhat, given a client's progress and work schedule or school obligations. At any time three consecutive unauthorized failures to keep required clinic appointments would result in the client's placement in "Phase V". A client returning after such an absence would be reinstated in whatever phase he or she had been in. If a client failed to appear for 30 consecutive days, in compliance with state regulations, DATP was required to close that client's file. Although clients were commonly readmitted even after such an extended absence, they would be required to start over in Phase I. Acupuncture and drug testing were incorporated into the treatment regime as tools to support the treatment process, but were not considered treatment modalities in themselves. (In fact, acupuncture was and is undertaken on a voluntarily basis by program participants.) Recognizing that drug abusing offenders are a group with a number of related problem behaviors, it was anticipated that the time spent in

Phase I or Phase II of the program might vary notably for different defendants and that "setbacks" would probably not be uncommon. The difficulty of dealing with drug-involved defendants notwithstanding, the aims of the program included reduction of drug abuse and of drug abuse-related criminal behavior among participating defendants over the length of the program and, hopefully, subsequent to it.

The Implications of Competing Drug Treatment and Criminal Justice Goals for the Dade County Drug Court and Its Assessment

Although issues relating to drug abuse treatment in criminal justice settings are not new, they are now being addressed with new urgency. The Drug Court is an innovative example of a joint focus by the drug treatment and criminal justice perspectives on drug-involved offenders. The Eleventh Circuit's Drug Court is a hybrid combining elements of both criminal justice and drug treatment approaches to address a portion of the drug-involved population among criminal offenders (defendants in this case). Table 1 illustrates some of the implications of the goals, methods and outcome measures associated with the two perspectives for designing an assessment of the Drug Court. The attempt to marry criminal justice and drug treatment goals embodied in the Dade County initiative complicates design of an empirical assessment. Because organization of an appropriate research design must begin with a clear understanding of what the Drug Court is trying to accomplish, it is essential to make explicit some of the implications of the dual perspective.

Key elements include the special role for the judge and criminal courtroom personnel, the fundamental treatment orientation, and the diversion-like framework. This attempt to integrate disparate elements has meant joining two perspectives accustomed to different methods and, sometimes, competing aims regarding drug-involvement and its reduction. The adaptation of the courtroom setting and procedures to complement the aims of treatment

Table 1 Drug Treatment and Criminal Justice Goals

<u>Perspective</u>	<u>Goals</u>	<u>Methods/Options</u>	<u>I.D.</u> <u>Target Population</u>	<u>Expectations of</u> <u>Performance</u>	<u>Measures of</u> <u>Effectiveness</u> <u>(Outcomes)</u>
<b>Drug Treatment</b>	<ul style="list-style-type: none"> <li>• Reducing drug abuse &amp; associated behavior</li> </ul>	<ul style="list-style-type: none"> <li>• I.D./diagnose</li> <li>• Detox.</li> <li>• Maintenance</li> <li>• Acupuncture</li> <li>• Various treatments. (counseling)</li> <li>• Out-patient/In-patient</li> <li>• Educ.-voc. training</li> </ul>	<ul style="list-style-type: none"> <li>• Occasional/regular/daily user</li> <li>• Type of drug</li> <li>• Beginning/advanced (addict)</li> <li>• Younger/older</li> </ul>	<ul style="list-style-type: none"> <li>• Counselors/treaters</li> <li>• Access to community based on treatment needs</li> <li>• Expect failure and slow progress</li> <li>• Flexibility and adjustment</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced abuse</li> <li>• Abstinence</li> <li>• Increased performance</li> <li>• Improved skills</li> </ul>
<b>Criminal Justice</b>	<ul style="list-style-type: none"> <li>• Reduced impact of drug caseload (divert flow, reduce future caseload return)</li> <li>• Reduced crowding</li> <li>• Curb drug crime among participants</li> <li>• Improve public safety generally</li> </ul>	<ul style="list-style-type: none"> <li>• Diversion/referral</li> <li>• Sanctions to enforce release conditions</li> <li>• Informal v. formal processing</li> <li>• Monitoring/supervision</li> <li>• Incarceration</li> </ul>	<ul style="list-style-type: none"> <li>• Charge/priors</li> <li>• Less serious/lower risk to public safety</li> <li>• Serious enough not to "widen net" (not misdemeanors)</li> <li>• Self-report/drug test</li> <li>• "Jail-bound" or not</li> </ul>	<ul style="list-style-type: none"> <li>• Formal roles (judges, probation, prosec., defense, etc.)</li> <li>• Probation-like supervision or monitoring</li> <li>• Enforcement of conditions of provisional liberty</li> <li>• Sanctions for failure including revocation, incarceration</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced current future/caseload</li> <li>• Abstinence</li> <li>• Reduced crime</li> </ul>

more flexibly, for example, conflicts with the normally more formal and adversarial criminal justice aims and procedures. Seen from the vantage point of drug abuse treatment, the goals of the Drug Court would primarily center on reducing drug abuse and related behavior so that "client"-defendants could function more normally in society. From the perspective of the criminal court process, the aims of the Drug Court program would more likely include reducing the impact of the drug caseload on case processing resources (by diverting the flow of cases and reducing the future caseload), reducing drug crime among participants, and thereby improving public safety.

The Drug Court judge, the State Attorney and the Public Defender assume that drug-involved defendants, by definition, are likely to have a difficult time in the treatment process and, in fact, may at first fail repeatedly. This expectation of failure and the necessity for program flexibility are antithetical to the standard criminal justice perspective that would first seek to adjudicate criminal charges and impose punishment, and then would seek promptly to sanction deviations from conditions of provisional liberty that had been imposed, through revocation of release or, at least, imposition of more restrictive conditions. One could easily imagine that an approach based on the more conventional enforcement of program conditions--tantamount to a "three strikes and you are out" approach--might have the effect of "backfiring," by identifying drug-involved defendants who ordinarily would not have been identified and then invoking sanctions when conditions were quickly breached. To the extent that incarceration would be employed as an enforcement sanction, an inflexible approach to achieving program compliance might then result in an increase in jailing, as opposed to the reduction assumed by the program.

The drug abuse treatment program that has almost exclusively been designed to serve the Drug Court has also had to accommodate to criminal justice concerns that ordinarily

would not be given such weight by a treatment agency. For example, a clear goal of the Drug Court is to provide defendants with the opportunity to undergo drug treatment in the hope that reduced drug abuse will translate into reduced criminal behavior. In the hope that reduced participation in criminal behavior in the near term will translate into a smaller returning criminal caseload in the future, an assumption of the Drug Court approach is that investment "now" in drug treatment of felony defendants will contribute to reduced criminal caseload strain later. However, reduction in drug abuse among Drug Court defendants alone--the standard primary aim of drug abuse treatment programs--would not in itself satisfy the goals of the Drug Court. The production of more drug-free criminals would not be considered an acceptable outcome of the Drug Court, although it might be viewed as a favorable outcome from a drug treatment perspective alone.

Another example of conflicting aims and methods is found in the area of determining when a "client" could or should be terminated from drug treatment for failing to demonstrate sufficient participation in the treatment process. Ordinarily, the drug treatment program itself would choose to exercise the authority to terminate a defendant from treatment when it was determined to be appropriate. Under the Dade County approach, however, it is the judge who decides whether a defendant should be terminated from treatment and the judge who, in practice, sends defendants back to treatment without the prior approval of the treatment staff itself. In fact, officials report that it is very hard for a defendant to be rejected from treatment once the Drug Court process has begun. On the other hand, no matter how well a defendant has been doing in early stages of treatment, rearrest for a more serious crime will result in transfer to the normal adjudication process. In short, the major challenge of the Drug Court is to try to bring treatment to large numbers of offenders in a system in which this approach has, until recently, been inconceivable.



The drug treatment perspective would make use of a *variety of methods* and program options to bring about its goal of reduced drug abuse behavior among its "clients," beginning with an initial assessment of the client's drug problem, an initial detoxification phase, the use of approaches to improve the client's ability to receive treatment (such as maintenance or acupuncture programs), the use of various treatment modalities as appropriate (often involving counseling and group techniques), placement in out-patient (community-based) or in-patient (residential) settings, and the integration of other life skills improvement strategies (such as educational or vocational training programs). The criminal justice perspective would conceive of the Drug Court principally as a diversion program and would see its responsibility as involving referral of defendants to drug treatment options operated outside of the criminal justice system. The role of the Drug Court would be to approve such referrals (presumably at the recommendation of the prosecutor), to order appropriate monitoring or supervision of the defendants in diversion statuses, and to enforce the conditions of diversion appropriately, including revocation of diversionary status, revocation of preadjudicatory release, and scheduling of cases for adjudication in the normal fashion.

The drug treatment and criminal justice perspectives might also define the *target populations* most appropriate for Drug Court processing quite differently. Several criteria would be central in the identification of the target population from the drug treatment perspective. Potential clients would be classified according to the nature of their drug abuse problems, including the type(s) of substances abused (cocaine, heroin, barbiturates, benzodiazepines, hallucinogens, alcohol, polydrug or other types of abuse substances), the reported frequency (e.g., occasional, regular, daily), and method of abuse (intravenous, oral, inhaling, smoking, etc.). Part of the initial classification of abusers by treatment staff might also consider the stage of the abuse "career" (whether the client is at the beginning or more advanced stages of drug involvement) and the relative ability (or inability) of the defendant to

function normally. The age of the drug abuser might, therefore, also figure into the targeting of drug abusers for the Drug Court treatment program. Classification of candidate drug abusers according to these kinds of criteria would result in the identification of treatment-relevant abuse categories that could target individuals for different treatment approaches.

A criminal justice approach to targeting defendants for Drug Court involvement would be likely to focus on other kinds of eligibility criteria, beginning with the types of criminal charges involved in the instant arrest and the patterns of prior convictions. An aim of such an approach would be to identify categories of defendants with drug-related cases (hence, the presence of drug charges) and prior criminal histories that would suggest that their candidacy in the Drug Court program would not pose undue risk to the public safety. The criminal justice perspective would likely target defendants with cases that were "serious enough" to involve a suitably challenging category of drug-involved defendants (so that "net-widening" could be avoided and possibly some pretrial and post-conviction incarceration eliminated), yet not so serious as to be seen as inappropriately demeaning the seriousness of criminal offenses or risking public safety. If correctional crowding were severe, the criminal justice approach might focus on defendants who were clearly "jail-bound," so that population pressures could be reduced.

Given the competing approaches to defining eligibility for the program that one might expect, it is notable that the actual approach--focusing on felony defendants with drug possession and related charges--makes use of elements of both perspectives as a point of departure. From the criminal justice point of view, a reasonable category of defendants likely to have drug abuse problems is identified by aiming at third degree felony drug possession cases (assuming that drug possession will often indicate drug use). From a drug abuse treatment perspective, this approach singles out drug abusers who have not yet progressed

into serious criminal involvement, providing the opportunity to avoid the amplification of criminal activity that is thought to accompany more serious drug-involvement. Reliance on criminal charges also serves as a simpler and much less costly approach to identification of drug abusers than arrest stage drug testing and perhaps a more reliable means than defendant self-reports drawn from the pretrial services interview.

Perhaps the difference between the two perspectives is most sharply illustrated in the *expectations of performance* of drug-involved defendants in the Drug Court program each would normally have. It is likely that the criminal justice perspective would set forth conditions that defendants would agree to and then expect those conditions to be met. In the event of non-compliance, defendants would risk having program participation revoked and be susceptible to adjudication of their charges in a normal setting and, quite likely, experience pretrial detention in the interim. In contrast, a treatment perspective would probably not view a "three strikes" approach to program compliance as realistic. Indeed, treatment staff would understand that, to the extent that serious drug abusers are encouraged to enter the program, the road to progress is likely to be very difficult, with initial failures routinely to be expected.

This difference in expectations about the performance of the participating drug-involved defendants translates into differences in approaches to *measuring "outcomes"* in an assessment. If it is a reasonable assumption that progress in drug treatment will be, by definition, very difficult at times, then the measure of outcomes probably would not focus on all of the interim missteps, but rather on ultimate reduction of drug abuse, eventual abstinence, and improvement of life skills. The criminal justice perspective would insist on abstinence as a goal, and would be certain to measure re-involvement in crime during and after treatment as important outcomes. Clearly, production of drug-free and healthy

repeating criminals would not be an outcome likely to be acceptable from the criminal justice perspective.

## II. The Design of the Research

### The Research Questions

Given the combination of drug treatment and criminal justice goals underlying Dade County's Drug Court strategy, the aim of the empirical assessment of the Drug Court innovation in Dade County has three basic purposes: a) to examine the impact of the Drug Court program in Florida's Eleventh Judicial Circuit; b) to serve as a basis for informing Circuit Court itself and participating agencies in improving or reshaping, if necessary, the program's next phases; and c) to share with the larger community of American courts the lessons drawn from the findings regarding key issues.

In addition to the descriptive purposes of the empirical assessment--to describe the Drug Court program and movement of defendants into and through its mechanism--data collection was organized to focus on the following areas of inquiry:

- the impact of Drug Court on criminal case processing, including the selection and "enrollment" of felony defendants who would have been adjudicated in the normal fashion;
- comparison of the case outcomes of Drug Court defendants with the outcomes of defendants charged with offenses of similar severity both prior to the inception of Drug Court and contemporaneous to the processing of Drug Court defendants;

- the performance of Drug Court defendants participating in the treatment program, including treatment program outcomes; and
- the public safety implications of the Drug Court program, particularly when compared to other categories of Dade County felony defendants.

These subject areas provide the organization for the research described in this report.

#### Research Design Overview: Drug Court Seen in the Context of the Criminal Caseload

Certainly, one of the most informative approaches to assessing the impact of the Drug Court strategy in Dade County is to study the experience of Drug Court defendants as they enter and then proceed through the program during an appropriate observation period. Although such a description contributes a great deal of information about the operation of the Drug Court program, it does not permit inferences about the impact of the Drug Court program in a relative sense, that is, in comparison to other groups of felony defendants processed through Circuit Court in the normal fashion. A field experiment would offer the most rigorous method for assessing the impact of the program on felony defendants. Using an experimental design, a control group would be randomly selected from Drug Court candidates and then would not participate in the program but be processed in the normal fashion. The aim of the experiment would be to compare the outcomes of control group and Drug Court (experimental group) defendants, with any differences in outcomes being interpreted as deriving from the impact of Drug Court.

The use of an experimental design to study the impact of Drug Court was precluded for practical reasons, largely because the Drug Court had already been in operation for nearly two years prior to the selection of the sample studied and randomization would have caused too great a disruption in the functioning of the ongoing program. Thus, the research strategy selected for the assessment was to improvise "next-best" (nonequivalent) comparison groups

consisting of different kinds of relevant felony defendants to help gauge the effect of the program, including contemporaneous and historically antecedent samples of other (non-eligible) felony drug cases and non-drug cases. The objective of this multi-sample, comparative approach is to be able to view the processing of Drug Court defendants in the context of felony defendants overall. Figure 1 summarizes the overall sampling strategy adopted in the assessment of the Drug Court program and locates the primary sample of Drug Court defendants within the overall caseload of felony defendants entering the Eleventh Judicial Circuit for adjudication. Taken as a whole, Figure 1 represents the entering felony caseload (all filings) during the sampling period defined for the assessment. During August and September of 1990, 8,114 felony cases were filed in the Eleventh Judicial Circuit of Florida. According to these data, approximately four percent of all entering felony matters during the August-September, 1990, period involved defendants who were identified as eligible for Drug Court and were assigned to Division 51 for processing.<sup>7</sup>

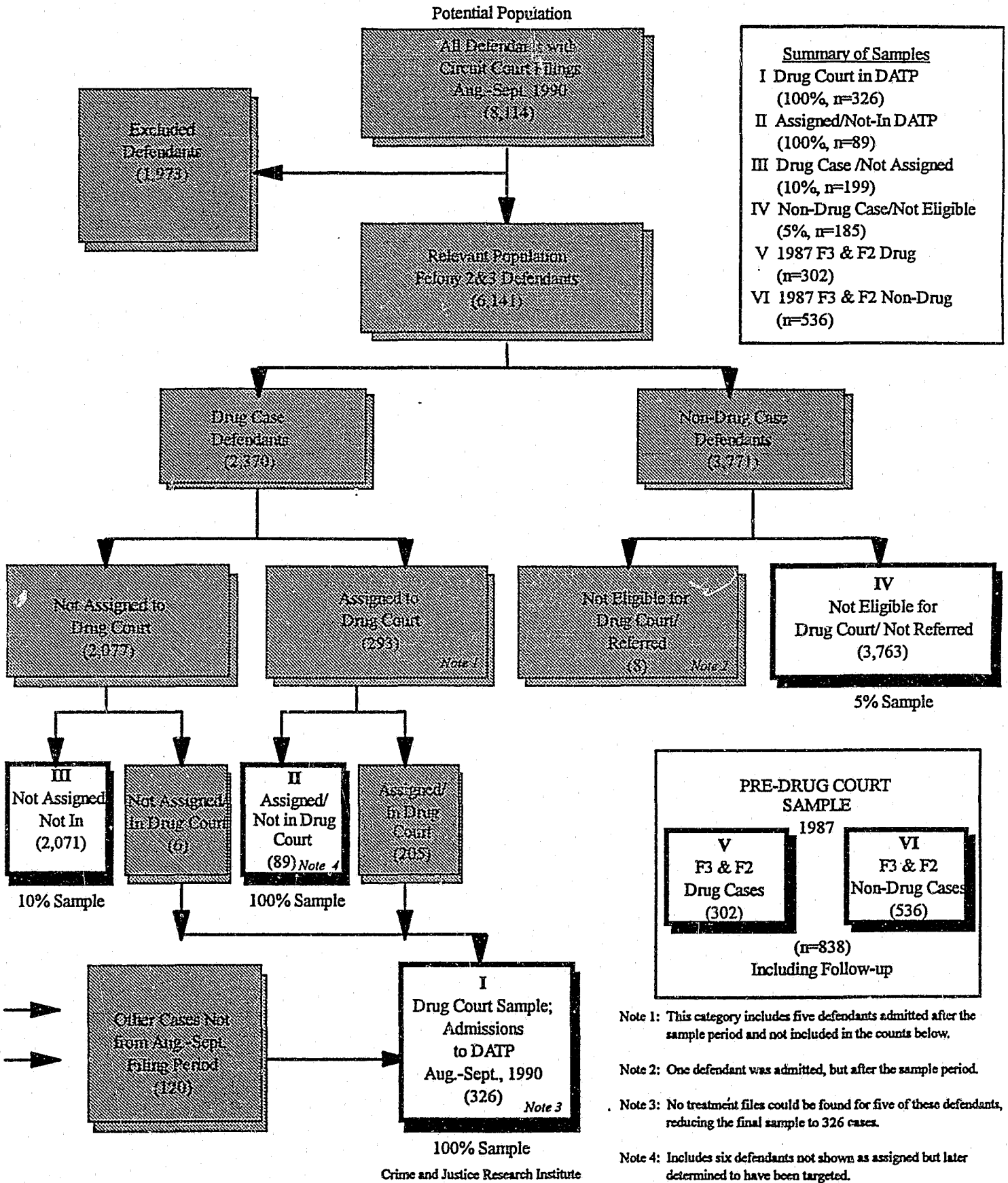
Within the larger categories of drug and non-drug cases, subcategories of interest were then identified for purposes of comparative analyses. Sampling began by focusing first and centrally on a cohort of defendants (admissions) entering treatment during August and September, 1990. At the bottom center of Figure 1, this principal sample of interest is identified as *Sample I (n=326): Drug Court defendants admitted to treatment*.<sup>8</sup> The choice of sample period was guided by two concerns: a) to insure that the study would fairly examine the program at a stage sometime after its implementation "infancy"; and b) to

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<sup>7</sup> The estimate of the percentage of incoming felony defendants that were identified as eligible for Drug Court processing is calculated by summing the number of defendants in Sample I whose felony charges actually were filed in August and September, 1990, (n=205) and Sample II defendants (n=89) and dividing that sum (n=294) by the total number of felony defendants (n=8,114).

<sup>8</sup> Note that the treatment-based admissions Sample I includes all defendants with filings entering Drug Court in August and September and defendants with earlier filings who were admitted to treatment during August and September.

**Figure 1  
Defendant-Based Sampling Strategy for Evaluation of  
Dade County Felony "Drug Court"**



**Summary of Samples**

- I Drug Court in DATP (100%, n=326)
- II Assigned/Not-In DATP (100%, n=89)
- III Drug Case /Not Assigned (10%, n=199)
- IV Non-Drug Case/Not Eligible (5%, n=185)
- V 1987 F3 & F2 Drug (n=302)
- VI 1987 F3 & F2 Non-Drug (n=536)

*Note 1:* This category includes five defendants admitted after the sample period and not included in the counts below.

*Note 2:* One defendant was admitted, but after the sample period.

*Note 3:* No treatment files could be found for five of these defendants, reducing the final sample to 326 cases.

*Note 4:* Includes six defendants not shown as assigned but later determined to have been targeted.

permit use of a sufficient observation or follow-up period (18 months) for study of defendant performance from the point of admission to the program.<sup>9</sup>

The comparison samples consisted of other types of felony defendants processed contemporaneously to the sample of Drug Court defendants through Circuit Courts, including: *Sample II (n=89): presumably eligible defendants who did not enter Drug Court;*<sup>10</sup> *Sample III (n=199): defendants with felony drug cases who were ineligible for the program* because of the greater seriousness of their drug, companion charges, or prior records; and, *Sample IV (n=185): defendants with non-drug felony cases of felony 3 or 2 grading.* In addition, to improvise necessary "before and after" comparisons, historically antecedent samples of *defendants with felony drug cases, (Sample V, n=302)* and *defendants with non-drug felony cases, (Sample VI, n=536)* were selected from a period three years earlier (during the summer of 1987), prior to the implementation of the Drug Court in 1989.

### III. The Problem of Defining "Success"

The DATP treatment approach was designed to include three phases, from admission to eventual graduation, originally estimated to take about one year. The program outcomes of the Drug Court defendants were catalogued by reviewing both the treatment agency files and the criminal justice data maintained by the court system.<sup>11</sup> Given the differing goals of

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<sup>9</sup> The design is based primarily on a cohort approach, in that the samples identified are followed as a group over time. One limitation of this approach—shared by an experimental approach as well—is that prior or subsequent cohorts could have recorded different outcomes than those described in the report. Nevertheless, the rationale for this approach assumes that defendants entering during the study period, and Drug Court defendants in particular, are fairly "typical." In fact, it would have been desirable to study defendants more recently entering Drug Court; however, to permit a reasonable follow-up or observation period and to allow for a sufficient duration for the data collection process, it was necessary to focus on this period in late 1990.

<sup>10</sup> These subgroupings of the overall felony caseload during the two-month period were carried out based on court computer data. Only in the advance stages of data collection did it appear that a large number of Sample II defendants actually may have attended Drug Court, though not during August and September.

<sup>11</sup> When information about the status of a defendant's status was uncertain or conflicting, criminal justice information sources were given priority.



treatment and criminal justice perspectives, it is not surprising to discover that the characterization of program outcomes is a matter of some complexity, one that should be approached with some caution.

Measurement of program outcomes is problematic in part because there are a number of ways to measure "success," all of which could be considered valid depending on the perspective adopted. We illustrate this point in the following discussion, referring, finally, to program outcomes as "favorable" or "unfavorable" for this reason.<sup>12</sup> The August-September, 1990, sample of defendants recorded the following specific treatment program outcomes after an 18-month observation period:

Program failure

Dropped out  
Terminated

Open cases (active)

In good standing  
With a current alias capias

Graduation implied

Nolle prossed.  
Nolle prossed, tracking  
Sealed  
Sealed, tracking  
Probation only

Transferred

Other jurisdiction  
Other local agency

Other

Died

Charges dropped

Within 35 days

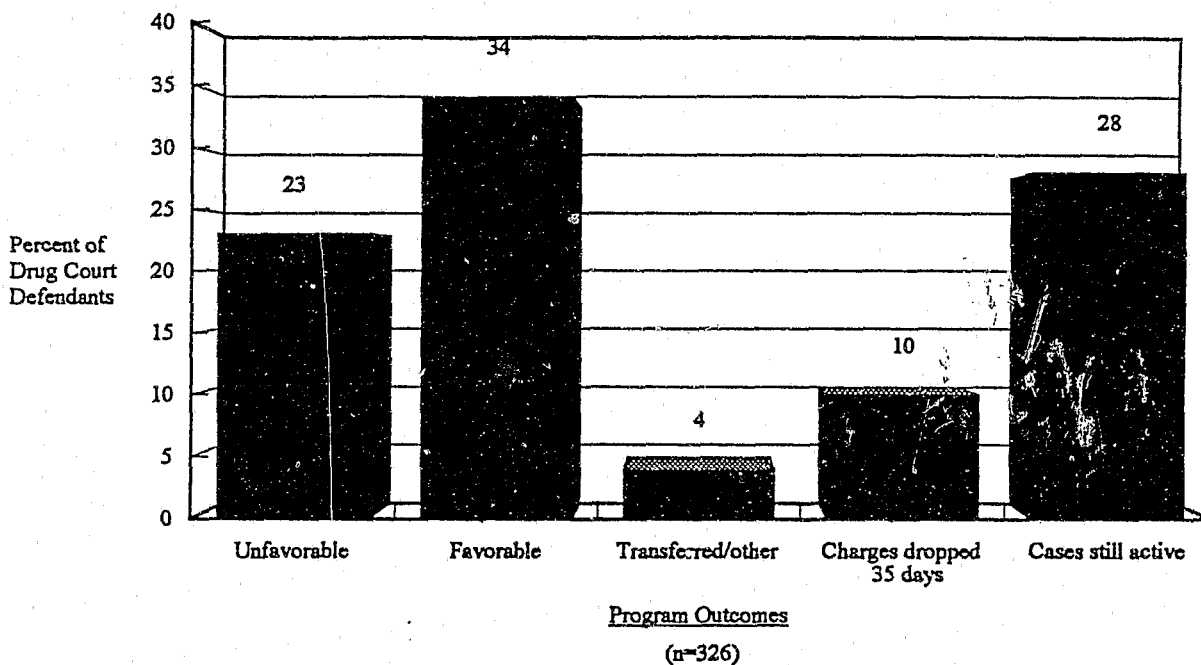
Grouping of what we are calling "program outcomes" involves some relatively clear-cut choices of favorable and unfavorable outcomes, as well as some groupings that are not so self-evident and are more debatable. How a "final" version of favorable and unfavorable outcomes can be adopted is a matter for policy debate and decision by court officials. Figure

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<sup>12</sup> Although the difficulties experienced in deciding upon measures of success constitute a finding of this assessment, an implication of this finding is that definitions of success are better decided in advance of program implementation.

2 illustrates one way to begin to organize program outcomes for Drug Court defendants using five categories:

Figure 2 Program Outcomes for Drug Court Defendants Admitted to Treatment, August-September, 1990



- "unfavorable outcomes" (23 percent)—includes persons who dropped out, disappeared, or were terminated for lack of compliance with the treatment program;
- "favorable outcomes" (34 percent)—includes persons shown as treatment program graduates and/or who successfully completed diversion according to court records;
- "transferred/other outcomes" (4 percent)—includes persons who were transferred to other programs, including residential programs, and two defendants who died during the observation period;

- *charges dropped within 35 days (10 percent)*—is self-explanatory, including persons whose charges were dropped upon review by the State Attorney;<sup>13</sup>
- *cases "still active" (28 percent)*—includes persons whose criminal cases were still open at the end of 18 months of follow-up and whose program status was not any of the four just listed. Active cases included those with outstanding alias capiases and those without.

This rough grouping of program outcomes could be further collapsed into a second version (II) of favorable and unfavorable outcome categories by applying the following assumptions:

- Defendants who "dropped out" because their charges were dropped within 35 days of arrest should be excluded from the analysis of outcomes because they did not become participants in the program for a meaningful period of time (i.e., they were "false starts") and cannot be rated as having favorable or unfavorable outcomes.
- The small number of defendants who were transferred out of the Drug Court to other jurisdictions remained the responsibility of Drug Court; however, one could argue they should also be excluded from evaluation of treatment program outcomes because they became the responsibility of other agencies or jurisdictions and, therefore, did not serve as appropriate "tests" of the impact of the Drug Court in Dade County.
- Defendants who had active or open cases at the end of 18 months either should be counted as provisionally having recorded favorable outcomes (as long as they did not record alias capiases), *or* be counted as having unfavorable outcomes, if they had absconded from the program and had not returned to active participation.

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<sup>13</sup> In principal, information is filed by the State Attorney within three weeks of arrest. At that time, charges may be dropped for insufficient evidence. In actuality on occasion charges are dropped somewhat later than 21 days after arrest. We have included defendants with charges dropped within 35 days in this category.

Depending on the perspective favored, one might also argue that the third category of program outcomes should be set aside as not relevant to assessments of favorable versus unfavorable program impact. Even this classification of program outcomes, however, could be further refined by adopting yet another assumption that has been argued from the drug treatment perspective:

- Because some minimum period of program participation by defendants should be required before it is reasonable to evaluate the impact of the program on defendants behavior, all persons dropping out of the program within the first three weeks of admission (not just those with charges dropped) should be excluded from measures of outcomes (i.e., thus expanding the "false start" argument).

Figure 3 Program Outcomes (II) for Drug Court Defendants Admitted to Treatment, August-September, 1990: Relevant Defendants Only

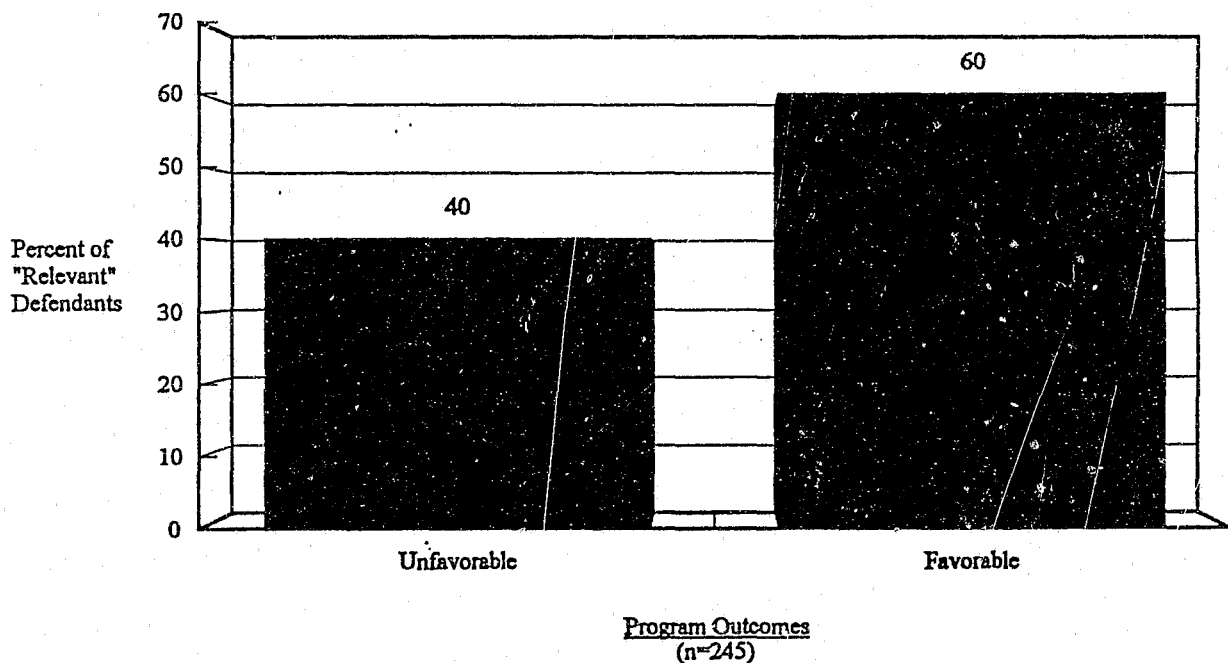
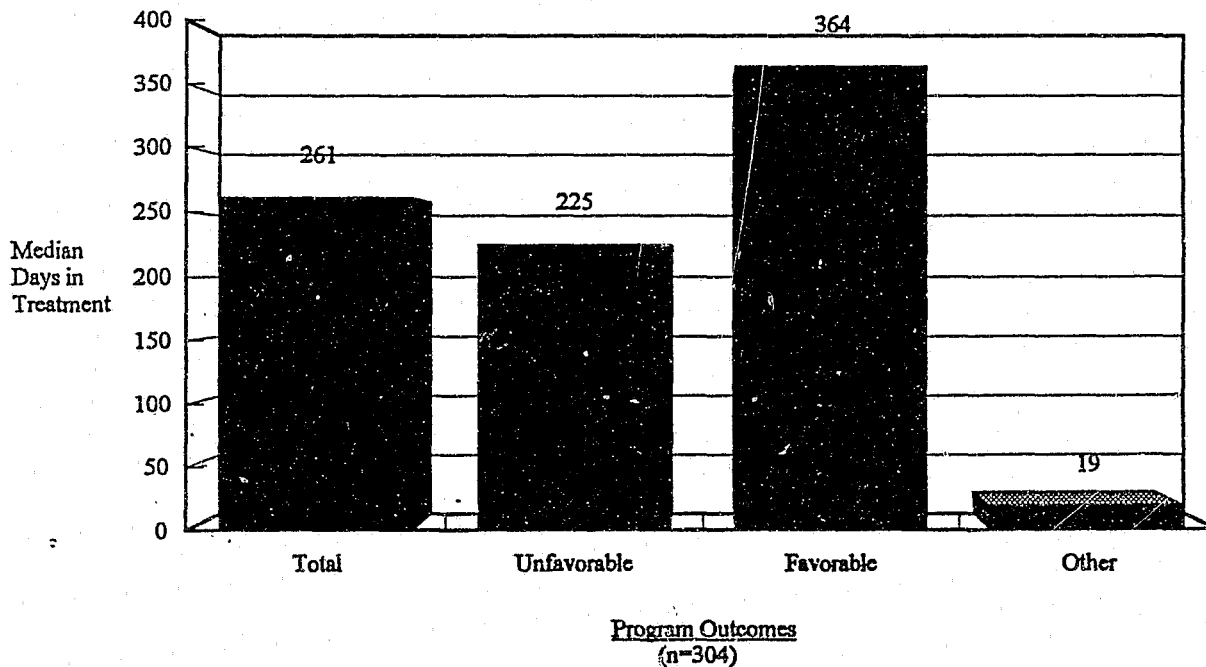


Figure 3 excludes this third category to contrast the outcomes of only the "relevant" defendant categories: of these, 40 percent had unfavorable outcomes, and 60 percent had favorable outcomes.

The average (median) length of time spent by Drug Court defendants in the DATP program--as measured from the date of the intake interview to the last day in treatment--was 331 days, or almost nine months, including defendants whose charges were dropped. Figure 4 displays the (median) lengths of time in the program for Drug Court defendants for each of three categories of program outcomes (unfavorable, favorable, transferred/dropped/other) as described above (version II). As now would be expected by definition, length of program participation and program outcomes closely correspond. Defendants with unfavorable outcomes averaged program stays (225 days) less than two-thirds the length of defendants with favorable outcomes (364 days). Defendants with "other" outcomes, by definition, showed the shortest average program participation, about 19 days.

Figure 4 Length of Participation of Drug Court Defendants Admitted to Treatment, August-September, 1990, by Program Outcomes (II)



#### IV. The Character of Defendant "Progress" Through the Drug Court Program: Illustrative Case Histories

For practical reasons, the research approach adopted for this assessment has adopted a framework which seeks to record defendant program, case and public safety outcomes, as of an arbitrary point in time 18 months after defendants were admitted to the treatment program. Some officials have argued that this research approach will result in a very "flat" or "one-dimensional" accounting of the performance of defendants in the program. They have pointed out, in fact, that the Drug Court's overall approach was based in part on the operating assumption that the behavior of drug-involved individuals would be, almost by definition, erratic and generally irresponsible--at least in the earliest stages of treatment. Thus, these officials reasoned that a simple, quantitative measure of program outcomes would fail to convey the "ups and downs," "zigzags," and other kinds of "real-life" behavior actually involved in treatment program progress. Great concern was expressed by Dade officials that some defendants who had great initial difficulty in the program might be viewed as "failures" under this approach, when, had the observation period extended farther, ultimate success would have instead been recorded as the final result. This point that defendant progress is not so easily conveyed by purely quantitative measures seems well supported by the following case history illustrations.

##### Case 1

R. is a white woman who was in her mid-30s at the time of her admission to the Drug Court's treatment program (DATP). She was arrested in September of 1990 on charges of possession of cocaine and was assigned immediately to Drug Court. At the time of her arrest, she had a substantial history of prior involvement with the criminal justice system, with 13 prior arrests (only one within the past three years) and nine prior convictions, five for felony property offenses. She had no prior arrests for drug offenses (and therefore would not have been identified as Drug Court-eligible on the earlier charges, had the program been in

operation). She was single, a high school graduate, and was living alone and working full time.

In her intake interview at admission to treatment, R. stated that she had been using drugs since the age of 17, and admitted to current use of heroin, marijuana, alcohol and cocaine. She was admitted to treatment on September 17, 1990. According to case notes, her attendance was initially poor, she consistently tested positively for drugs, and showed little motivation for treatment. In early November, after an absence of two weeks from the program, she returned to treatment, citing the demands of her work as the reason for missing appointments, and was then not seen again until the end of December. From this point on, she showed slight improvement. Although her attendance continued to be poor, her drug tests, when she did come to treatment, were usually negative. In February of 1991, her attendance improved, according to file notes, but in April she once again stopped attending treatment. In May, the defendant returned once more to DATP, although the length of her absence is not specified. From this point on, her attendance improved somewhat and her urine tests were generally clean. In mid-July, after 10 months of participation in the program, she was finally transferred to Phase III aftercare. At the end of the 18-month observation period, the defendant's case was still open and she was still active in treatment. Interestingly, her records further showed that as late as September, 1992, or nearly two years after her initial admission to DATP, she did, in fact, complete treatment with the result that her criminal charges were nolle prossed.

### Case 2

C., an African-American man of about 20 years of age at the time of his admission, was arrested in early July on charges of cocaine possession, but entered the DATP on September 26, 1990, after his case was transferred to Drug Court from another court. At the

time of his arrest in July, he had two prior arrests, both for misdemeanor offenses. Although he was charged with possession of cocaine, he admitted only to using marijuana/hashish at his intake interview. He reported being a drug user since the age of 18 and this was his first time in a drug treatment program. Although he initially appeared motivated for treatment, according to file notes, on November 19, 1990, he was reported to have stopped attending.

April 22, 1991, C. was once again referred to DATP following another arrest for possession of cocaine. After one month, case notes indicate, he was responding poorly to treatment and testing positively for drugs. One month later he was again reported to have stopped coming to treatment. In January of 1992, the defendant was once more readmitted after having been sent by the Drug Court judge. Although he was still active in treatment at the close of the 18 month observation period, he dropped out of treatment again in May of 1992. Records show that his pattern of behavior appears to have continued. He was readmitted in late September of 1992, and again discontinued treatment just over one month later, when file notes ceased.

### Case 3

Y. was a 42-year old Japanese immigrant, who at the time of her arrest was married but living apart from her estranged husband, was college-educated but unemployed due to her immigration status and was earning a living as a freelance translator and teacher. She was arrested in a sting operation on charges of purchase and possession of cocaine, and was admitted to DATP on September 6, 1990. At her intake interview, Y. admitted to infrequent cocaine use (less than once per week), as well as alcohol use. She reported also that she had been using alcohol since 1967 and cocaine since 1983. At admission, she tested positively for both cocaine and amphetamines.



According to file notes, Y. was reported to be motivated and cooperative throughout her treatment program. She was transferred to Phase II on October 2, 1990, and continued to make good progress, attending treatment and having negative drug tests until her transfer to Phase III on December 3, 1990, when she recorded a positive drug test. Acupuncture and individual counseling helped her through this period, according to the case notes. Her attendance and attitude continued to be good, and the "binge" did very little to slow her completion of the program. She was recommended for graduation on August 28, 1991, slightly less than one year after admission, and her case was later nolle prossed. File notes state that in addition to helping her with her drug problem, counselors tried to help her address problems related to employment and her marital situation.

#### Case 4

J., a 32-year old, white veterinarian, was arrested with his girlfriend during a sting operation on charges of possession and purchase of cocaine. He had no prior record and had never before been in treatment for drugs or alcohol. J. was admitted to DATP on September 13, 1990. At intake, he admitted to having a problem with alcohol, which he had used since the age of 16, but denied a problem with any other substances. He did report that he had used marijuana for about six years and had experimented with cocaine while in college. He continued to deny use of cocaine during the program, even when he recorded a positive drug test for cocaine during the course of Phase II. Despite this denial, his attendance was good, he was cooperative, and appeared motivated, according to counselor notes. His girlfriend and co-defendant went through treatment with him. He was transferred to Phase II sometime before October 9, and to Phase III on November 21, 1990. He continued to make good progress, attended treatment regularly, and produced negative drug tests. He graduated from the program on September 9, 1991, and his case was later nolle prossed.

#### Case 5

C., an Hispanic woman who was 38 years old at this time of her admission, entered the Drug Court program after her arrest for possession of cocaine on August 24, 1990, despite a rather long history of involvement with the criminal justice system (under a number of aliases). This was reportedly her first time in drug treatment. She was readmitted on September 14 and again on October 9, 1990. On December 12 she was reported to have discontinued treatment. On March 15, 1991, the defendant was once again ordered to be readmitted into treatment by the Drug Court and on April 26, 1991 was reported to have failed to return. No further notes were found after that date.

#### Case 6

E., an African-American woman in her late 20s at the time of her admission, had a 10th grade education, and reported that she was unemployed and expressed no desire to work. She was separated from her husband and living with a sister. E. reported that she had been using cocaine since the age of 18, marijuana since the age of 16, and alcohol since 15.

E. was initially arrested for possession of cocaine, possession of drug paraphernalia and loitering, and was assigned to Drug Court in 1989. She had had two prior arrests for drug possession, but no convictions at that time. On July 13, 1990 she was rearrested on alias capiases stemming from the three 1989 charges.

E. was readmitted to treatment on August 1, 1990, and on August 31. Her counselor noted that she had not returned to the clinic after the latter intake and was being placed in Phase V, which is a record-keeping, tracking status applied to defendants who are out-of-compliance with the program prior to termination. As of October 22, 1990, she still had not returned to treatment and her file was closed.

On February 11, 1991, she was readmitted to the DATP program for treatment. On March 8, 1991, she was again reported to have been placed in Phase V for nonattendance. The counselor noted that her motivation was poor. A court report for the period of March 3 to 21 indicates that she was still in Phase V and "currently in custody." By March 27, 1991, she had somehow progressed to Phase III, according to file records. The next court report indicates that her attendance and motivation were good, although three out of six drug tests were positive. The report further noted that she was working on her GED but was having difficulty remaining drug-free. Residential treatment was recommended.

On May 7, 1991, E. was again placed in Phase V for lack of attendance and one month later her file was again closed. Her counselor noted that her addiction was severe and "out of control" and that she would benefit from residential treatment.

E. was admitted once more on September 30, 1991, and two weeks later was approved for transfer to Phase II. As of December 19, 1991, her Phase II attendance and motivation had been poor, although her urine tests were clean. By January 17, 1992, she was noted to be out of compliance with her treatment plan and was again placed in Phase V and reported to Pretrial Services for action by the Drug Court. On January 24, she returned to treatment and was taken out of Phase V. By mid-February, some positive urine tests had been reported and her attendance was poor. One month later, her urine tests were consistently positive and her attendance was very poor. On April 6, 1992, during a period beyond the range of the 18-month observation period, she was placed in Phase V yet again and one month later her file was closed again due to nonattendance. On June 4 she was readmitted for treatment. Two weeks later, she had discontinued treatment and was again reported to Pretrial Services and placed in Phase V. One month later, and the last information we have, the file was again closed for nonattendance.

### Case 7

At the time of his admission to the program on August 9, 1990, R. was a 28-year old African-American man referred to DATP by the Drug Court after having been arrested on charges of cocaine possession. This was reportedly his first time in drug treatment. His initial intake was on August 9, 1990, after which he did not return. He was readmitted and had a second intake appointment on October 25, 1990. Again he did not return. On December 24, 1990, he was readmitted again and had a third intake appointment, after which he once more failed to return. On February 15, 1991, he had a fourth intake and did not return. On May 10, 1991, the defendant was sentenced to 12 months probation on one charge and continued treatment as a condition of probation. On August 28, 1991, he had a fifth intake and did not return. At the end of 18 months, his initial criminal case was still open and he was missing.

### Case 8

F. was a 53-year old Cuban native with an eighth grade education. He was single and unemployed due to a disability at the time of his arrest for possession of cocaine on August 1, 1990. He had a history of seven prior arrests, three of them recent, and one prior felony conviction.

In his intake interview, F. admitted to daily use of cocaine as well as alcohol. He claimed to have begun using cocaine in 1986 and alcohol in 1967. In 1986, long before his admission to DATP, he had been diagnosed by the Department of Human Resources Office of Emergency Assistance as suffering from alcoholism, tremors, cerebellar degeneration, malnutrition, pain, emphysema, psychiatric illness, hemiparesis, alcoholic liver disease and depression. In short, according to the file notes, he was suffering from "complete" and

"permanent" disability, with no chance of recovery. By the time of his admission he had been hospitalized both for his medical problems and for his addictions.

Court reports for the defendant indicate that F. was motivated and cooperative. However his treatment in Phase I was interrupted early by a medical leave of unspecified length, from which he returned on September 5, 1990. His treatment history from that time onward is difficult to piece together, but it appears that he was hospitalized again and that he was subsequently transferred to a special residential facility. His counselor seems not have been informed of either his whereabouts or his condition. The defendant's file was closed due to inactivity of 30 days on December 21, 1990. The counselor noted that he appeared not to have been motivated to return to treatment after his hospitalization and that he was in need of residential treatment because of the strong negative influences of his neighborhood and because he lived alone on disability income. File notes show that, several months later, the counselor was informed that the client had died at the residential facility.

#### Case 9

S., a 24-year old African-American man, who was single and had a high school education, should have been a success story. He was arrested in December of 1989 on charges of possession of cocaine, six months before Drug Court was established. His case was assigned to Drug Court more than a year and a half later, on August 28, 1990. (What occurred in the interim is not clear from file notes.) At his intake interview, he denied any drug use and case notes indicated that counselors were inclined to believe him, based on his consistently negative drug test results, his cooperative manner and his physical appearance. On September 14, 1990, he was transferred to Phase II and on October 22, 1990, after clean urine tests and good progress in treatment, he was transferred to Phase III. During the course of the program, the defendant obtained full-time employment and made plans for

furthering his education. According to the treatment records, he continued to do well, his attitude was good and he was drug-free. He was working long hours and was required to attend only weekly.

In March, 1991, he was placed in Phase V for tracking due to unexcused nonattendance, but he returned several days later and explained that his absence had been due to a family emergency. In July he was briefly jailed after being involved in a fight at a flea market. On August 29, 1991, the defendant was to have been recommended for graduation. S. failed to appear for his scheduled court date and an alias *capias* was issued. He also failed to keep a clinic appointment. On August 30, his father informed the counselor that his son had been robbed and killed.

#### Case 10

R. was 41 years of age at the time of his admission to DATP on September 12, 1990. He was a single, white man with a master's degree in education, who was employed full time as a teacher in the Dade County school system and showed a good income. He was arrested in a sting operation and charged with purchase and possession of cocaine.

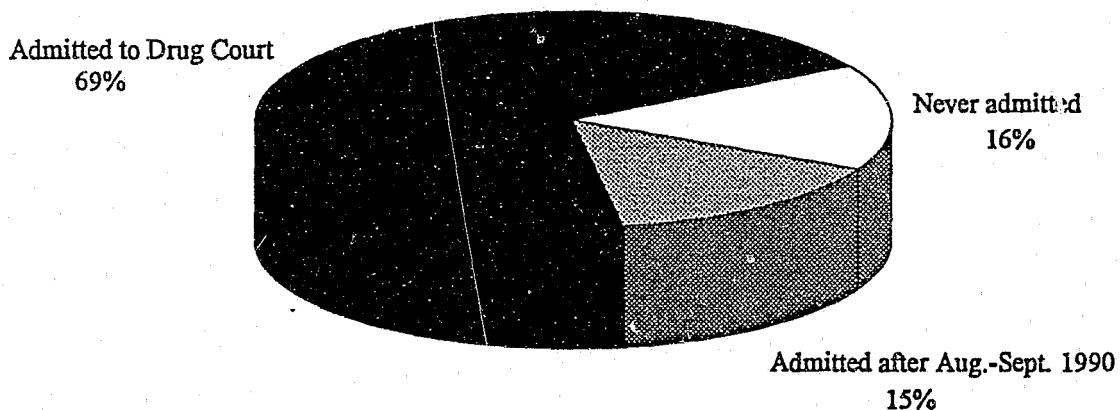
At his intake interview, R. admitted using both cocaine and alcohol, but denied being addicted. He said he had started using cocaine recently due to strong peer pressure. He had never before been in drug treatment or been arrested. Counselors found him to be cooperative and motivated for treatment. He completed Phase I and was transferred to Phase II on September 28, 1990. On November 26, 1990, he was approved for transfer to Phase III. In late January of 1991, the defendant had one positive test for cocaine and was advised to attend NA (Narcotics Anonymous) meetings. This appears to have been his only lapse. Later notes indicate that his attendance was good, he appeared to be highly motivated and

consistently had negative drug tests. He graduated from the program on September 17, 1991 and his case was nolle prossed.

### V. The Scope of the Program: "Hitting" the Target Population

Figure 5 portrays all felony defendants whose criminal charges were filed during August and September, 1990, who were identified as candidates and assigned to Drug Court. It also depicts the proportion who did not actually enter the Drug Court treatment program. About one in three (31 percent) of defendants identified as meeting the charge/priors criteria and assigned to be processed in Drug Court were not "reached" (admitted to treatment) by the program, for any number of reasons. Although this proportion suggests that Drug Court was processing fully two-thirds of the identified population of eligible defendants as they entered court processing, it raises questions about why some eligible/assigned defendants were "missed" or did not participate in the voluntary diversion and treatment program once identified.

Figure 5 Felony 2 and 3 Drug Defendants Entering Circuit Court in August-September, 1990, Assigned to Drug Court, by Actual Admission to Drug Court



Target Population of Felony Drug Defendants Identified for Drug Court  
(n=305)

Several phenomena have been suggested to explain this "miss" rate.

- First, some defendants may merely have decided to decline the invitation to participate, preferring instead to take their chances with normal criminal case processing.
- Another suggested explanation was that sometimes eligible defendants assigned to Drug Court post bond immediately after arrest, by means of the bond schedule, thus eliminating the opportunity of coming into contact with Drug Court.
- In addition, it was suggested that, on very busy days, Pretrial Services staff who assist in the early identification of eligible defendants among arrestees might on occasion have missed some defendants, or at least not reached them in time to refer them to Drug Court.
- Drug Court officials also noted that, early in the implementation of the program, a small number of defendants who appeared in Drug Court would agree to report to the Model Cities Clinic for intake procedures but would never make their appointments, either because they never returned from pretrial release or, very rarely, because, after being transported to the treatment clinic by van, they would walk away without having an intake or admission interview.

Taken together, these kinds of problems could be viewed as relatively typical of the kinds of logistical difficulties that would need to be resolved in early phases of program implementation. These possible explanations for apparently "missing" part of the target population notwithstanding, a sizeable majority of eligible defendants appeared to have been "enrolled" into the Drug Court treatment program.

Careful empirical examination of these defendants who were eligible but not admitted to Drug Court cast doubt on the initial finding that the "miss" rate would finally be as high as 31 percent--and, at the same time, raised questions about the suitability of employing Sample



II defendants as a surrogate control group to compare with Drug Court defendants. In fact, later analysis of the records for these defendants revealed that as many as 40 of the 89 defendants in this group (Sample II) may have entered treatment through Drug Court at some time during the 18-month observation period, just not in the August-September sample period.

- Thus, although many of these were not admitted to treatment during the 60-day period studied according to treatment files, many did enter treatment, possibly very shortly after the August-September sample period. In other words, just as some defendants with charges filed before August-September, 1990, were transferred to Drug Court and admitted to treatment in August-September, 1990, other defendants with charges filed during that period did not enter Drug Court until after September, 1990.

This finding mitigates the estimate that 31 percent of eligible defendants assigned to Drug Court were "missed." Instead, the "miss" rate ultimately may have been as small as 16 percent, the remainder having in fact entered the Drug Court process in a later (post-August-September) period. These findings suggest that, in fact, the Drug Court approach may have had a fairly effective reach--although not all defendants appear to participate immediately. This finding--of a lagged enrollment effect in which some of the targeted defendants enter the program, but only after a delay--complements the earlier findings that about one-third of the admissions to Drug Court treatment were of defendants whose charges had been filed during an earlier period. Together, these findings show a phenomenon of lagged or deferred admissions, such that, during a given month some of the admitted defendants were identified in an earlier period and some of the identified defendants do not enroll immediately, but ultimately are admitted.

## VI. Treatment Program Performance

This attempt at marrying criminal justice and treatment goals in the Drug Court setting is relevant to issues being played out in many American criminal court jurisdictions currently puzzling over ways to link up with treatment provider resources in efficient and effective ways. Given the nature of these challenges the early program outcomes shown in this research are promising, particularly when compared to other results from other treatment programs.<sup>14</sup>

Including all defendants (those with favorable and unfavorable outcomes, and those whose charges were dropped) entering Drug Court during the sample period, the average (median) length of stay in the one year program was about nine months. About one-third of Drug Court defendants were continuing in the program after a one year period. While some defendants moved forward through the successive program phases smoothly, nearly one-third "started over" in Phase I at least once. In fact, about seven percent of the admissions cohort were re-admissions, or people who had been in the program previously. According to one version of measuring program success, excluding defendants whose criminal cases were dropped within the first month, of those who were not in the program for a sufficient start-up period (21 days), or defendants who were transferred to other jurisdictions, 60 percent of defendants could be classified as having "favorable" program outcomes. (See the full discussion of the implications of defining "success" in the final report.)

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<sup>14</sup>See Gerstein and Harwood, eds. (1990: 11-19, 132-194). We should candidly note that one problem this assessment faces is that there is no obvious or suitable comparison with another comparable program readily available. This problem should be rectified as more jurisdictions implement treatment-oriented drug courts and baseline data are accumulated.

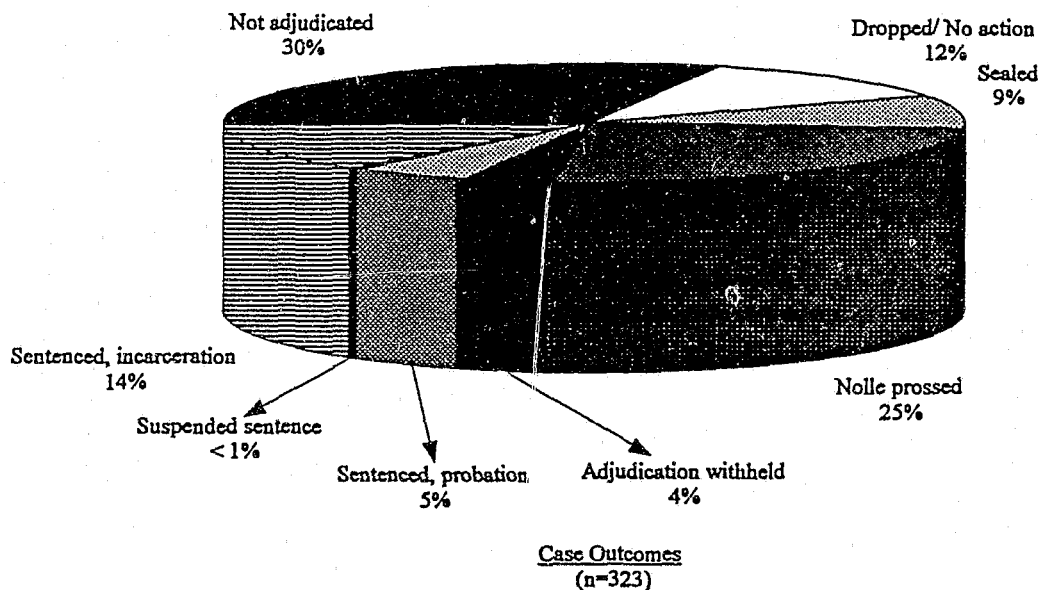
## **VII. Impact on the Criminal Caseload: Size of the Target Population**

The Drug Court program initially targeted third degree felony drug possession cases with no prior convictions. By the time of the 1990 sample employed in this study, persons with initial charges involving selected second degree drug felonies (purchase of drugs) were considered for the program as well as some defendants with prior convictions. One way of estimating the impact of the program on the felony caseload, therefore, is to determine the proportion of relevant felony cases that would have been eligible for the program and the proportion actually entering the program. We began by estimating that about 39 percent of all entering third and second degree felony cases were cases involving drug offenses during the study period. About 13 percent of those cases were identified as eligible and scheduled for Drug Court. This amounted to about five percent of all third and second degree felony cases actually entering Circuit Court that ended up in Drug Court. Given that monthly admissions include some cases filed during previous months, monthly admissions to treatment through Drug Court were equivalent to about seven percent of third and second degree felony filings during the months studied.

## **VIII. Impact on the Criminal Processing: Comparative Case Outcomes**

We also tried to obtain an estimate of the impact of the Drug Court on the caseload by contrasting the outcomes of Drug Court defendants with the outcomes recorded by other types of felony defendants, as reflected by the comparison samples from 1990 and 1987. Drug Court was planned on the assumption that defendants would at a minimum require about one year to complete the program successfully. Thus we might project that these cases would be less quickly "completed" (adjudicated) than typical felony cases, and that when completed they would more often show "nolle prosequi" or "cases sealed" outcomes.

Figure 6 Outcomes of Criminal Cases During 18-Month Observation Period of Drug Court Defendants Admitted to Treatment, August-September, 1990



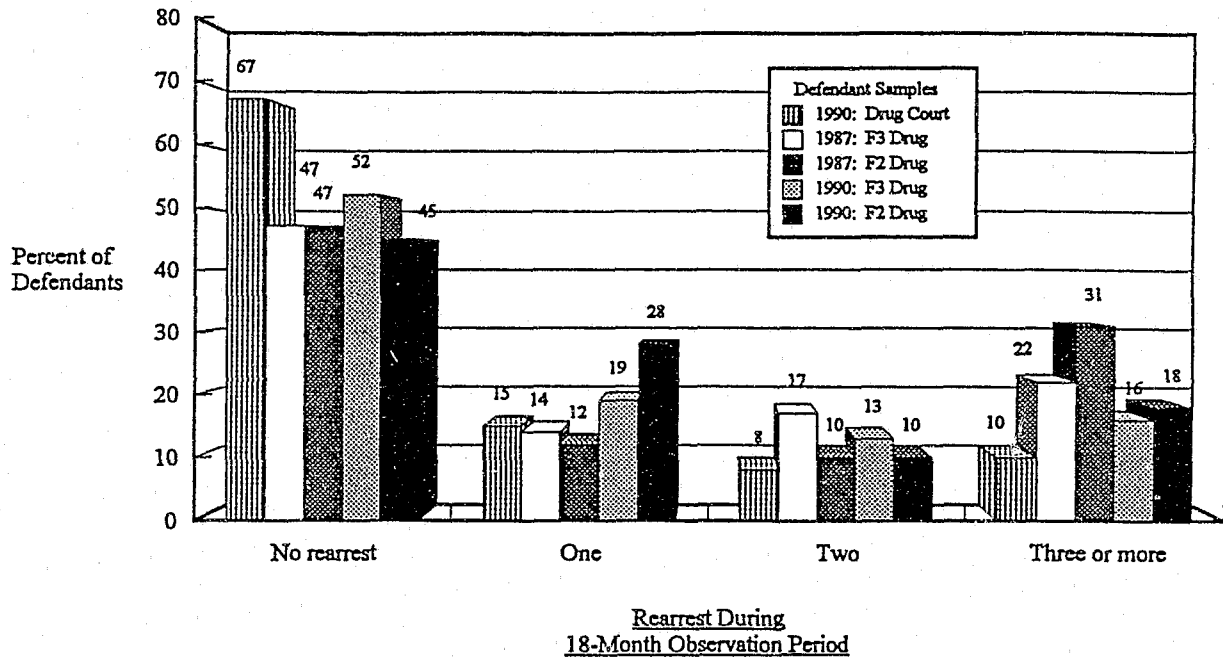
Case outcomes of Drug Court defendants indeed differed sharply from those of the other felony defendants. (See Figure 6.) As expected, "diversion" types of outcomes (diverted, nolle prossed, case sealed) were much more frequently recorded for Drug Court defendants during the 18-month observation period. Another largely expected difference was that Drug Court cases took longer to complete; nearly one-third of Drug Court cases were still open (unadjudicated) by the end of an 18-month observation period. In contrast, almost all other felony defendants had cases completed within that period of time. This finding, that the Drug Court "caseload" is not disposed as promptly as other criminal cases of comparable seriousness, is, in a sense, expected and mostly explained by two phenomena, defendants who stay (are allowed to stay) in the treatment program for much longer than originally anticipated, and defendants who abscond from the program, leaving their cases in indefinite active status. It is difficult to determine with certainty whether the longer completion time contributes to greater use of court resources than normal criminal processing does. However, an important question is whether the "processing" of Drug Court cases requires

fewer or greater court resources than normal criminal adjudication, even though normal adjudication may occur more promptly.

Another apparent difference in the processing of Drug Court defendants is that slightly or dramatically greater proportions of the cases of the other felony defendants in 1990 and 1987 were dropped or dismissed (including "no action"). This raises the question of whether Drug Court processes some cases that, if processed through normal adjudicatory channels, might have been dropped from the system. From a treatment perspective, this may not be an important distinction. However, from a criminal justice perspective, this question takes on importance in several ways. First, from a "net-widening" perspective, Drug Court would be more efficient if it were to focus on cases most likely to be processed farther into the system. Thus, in addition to addressing the drug abuse treatment needs of the defendants, cases are diverted from criminal court processing and, in many cases, from correctional institutions--even if only temporarily.

Finally, compared to other felony drug and non-drug defendants being processed contemporaneously, far fewer Drug Court defendants ended up with sentences to incarceration for terms of more than one year. In the 1987 samples, defendants had cases dropped considerably more often than in the 1990 samples overall. In addition, they were given sentences to incarceration more comparable to those received by the 1990 Drug Court defendants overall.

Figure 7 Comparing Subsequent Rearrests During 18-Month Observation Period:  
1990 Drug Court Defendants v. 1987 and 1990 Felony 2 & 3 Drug Defendants

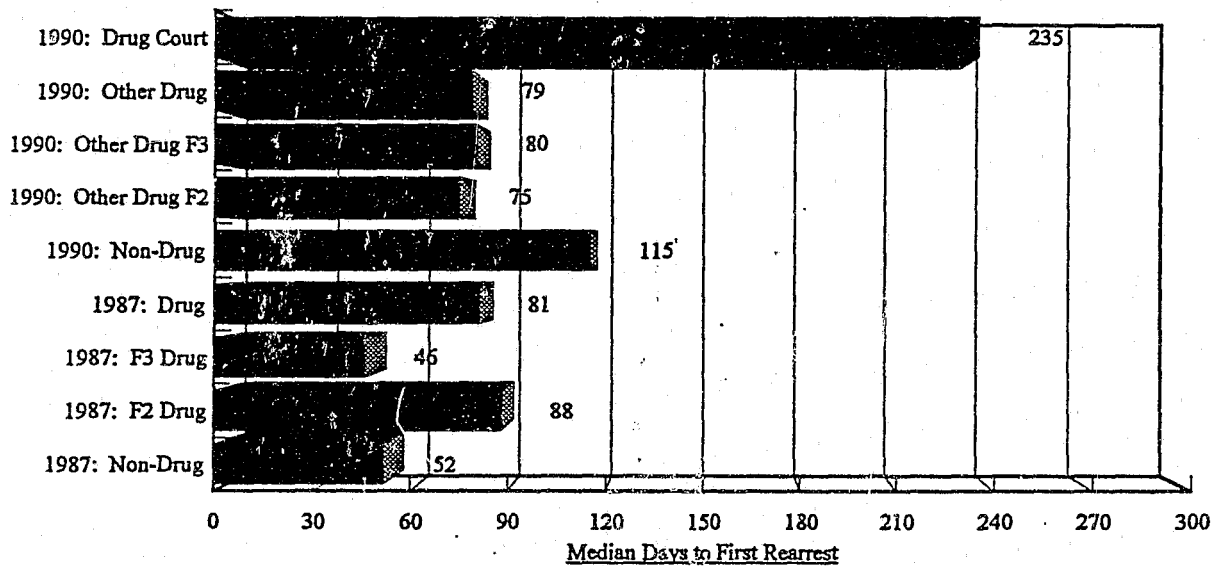


### IX. Comparative Criminal Justice Outcomes: Rearrest and Failure to Attend Court

The criminal justice and public safety outcomes must be considered promising, at least in a comparative sense. Drug Court defendants generated somewhat lower rates of reoffending (as indicated by rearrests) than 1990 non-drug felony defendants and notably lower rates of reoffending than 1990 other (non-Drug Court) felony 2 and 3 drug defendants. (See Figure 7.) At the same time, when compared to felony drug defendants processed into Circuit Court in 1987, two years prior to implementation of the Drug Court, Drug Court defendants showed much lower rates of rearrest, even when controls were exercised for possible differences in sample composition. Perhaps the most striking finding is that when Drug Court defendants were rearrested, they averaged two to three times longer to first rearrest than all comparison group defendants. (See Figure 8.) If generalizable to all Drug Court defendants since the time of this study--and there have been more than 3,000 admitted

since the program began—these findings have important implications for the criminal caseload of Circuit Court. Not only did Drug Court defendants appear to reoffend less often, those who did reoffend delayed reoffending for considerable periods.

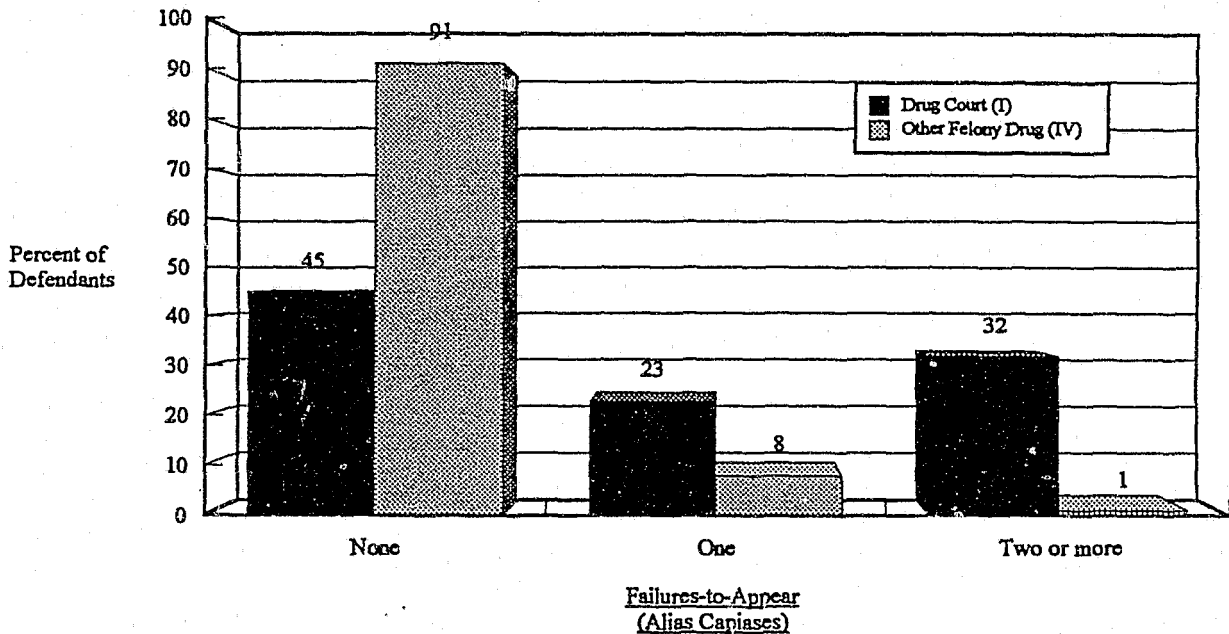
Figure 8 Comparing Median Time to First Rearrest During 18-Month Observation Period:  
1990 Drug Court Defendants v. 1987 and 1990 Felony Samples



Perhaps the most troublesome finding, however, is one that could have been predicted: as Drug Court defendants were required to appear in court periodically throughout their participation in treatment, the opportunity was provided to record failures-to-appear (FTAs) in court at a rate above that normally shown by Dade County felony defendants. (More than half of Drug Court defendants recorded failures-to-appear in Drug Court at least once, compared to from two to 11 percent of other felony defendants. See Figure 9.) These high rates of missed court hearings, however, are clearly an artifact of requiring so many more court hearings than would normally be the case in processing criminal charges. This phenomenon is similar to that experienced by many programs granting provisional liberty to defendants and offenders and suggests that approaches should be

devised to monitor appearance more closely and to prevent such levels of defendant failure-to-appear.

Figure 9 Failures-to-Appear in Court During 18-Month Observation Period:  
Drug Court (Sample I) Defendants v. Other Felony Drug (Sample IV) Defendants



#### X. Themes Emerging from the Empirical Study of Drug Court

On the broader level, the empirical assessment of Dade County's Drug Court surfaced a number of key themes and issues that may be of interest not only to the jurisdiction itself, as it plans further efforts to address the challenge posed by its drug-involved caseload (e.g., regarding incarcerated sentenced offenders and domestic violence defendants), but also to other jurisdictions undertaking or considering similar Drug Court initiatives. The following list briefly highlights 18 key themes or issues associated with implementation of the Miami Drug Court Model that should be reviewed by other jurisdictions weighing a similar approach.



- *Strong System Support:* A key to the functioning of the Drug Court in Dade County is the strong, joint support shown for the program by the judiciary, the prosecutor and the defender. Drug Court depends on this strong support to transact its business in a "team" fashion.
- *Active Judicial Role:* Teamwork notwithstanding, the hands-on, leadership role of an actively-involved judge who is familiar with drug-involved behaviors is an essential element in the Court's capacity to function as well as it does.
- *Designing Treatment Resources to Fit the Special Needs of Drug Court:* One of the critical elements of the Drug Court approach in Dade County was the development of a custom-designed substance abuse treatment program that would respond to the programmatic needs of the Drug Court specifically. The approach focused notably on "outpatient," community-based treatment, while making provision for residential placements for a very limited number of individuals. There was not (and in other jurisdictions often may not be) a pre-existing treatment program just waiting to serve the Drug Court. Instead, the treatment program serving the Drug Court was tailor-made to address the target population identified by court officials. In so doing, just as the criminal court adapted to the treatment goals of the Drug Court program, the treatment program had to modify practices to respond to the procedures of the Drug Court, particularly in the areas of program eligibility and termination criteria.
- *Insuring Program Compliance and "Tolerance" for Addicted Behaviors:* Planning for the Drug Court sought to recognize realistically the sorts of behavior likely to be associated with drug-involved individuals. Within clearly defined public safety boundaries (defendants would be transferred out of the program if they were arrested for new offenses more serious than specified by the eligibility criteria), the Drug Court has implemented a flexible or partly "tolerant" approach to problem behaviors within treatment. This approach contrasts clearly to other, deterrence-oriented approaches that

would specify punishments for program missteps (such as the days-in-jail ordered for positive drug test results proposed in the District of Columbia's new program).

- *Information Needs:* The Drug Court concept and the uneasy "marriage" of drug treatment and criminal justice goals relies heavily on the need for up-to-date, accurate and immediately accessible data about defendants, their treatment progress, and their criminal justice-related problems and developments. In Dade County, this capacity at first developed at a slower rate than the program's ability to handle cases; it clearly represents one of the major operational challenges of the Miami Model. Other jurisdictions should plan carefully to anticipate the data needs implicit in such an undertaking.
- *Information Linkage Between Criminal Justice and Treatment Agencies:* Criminal justice and drug treatment systems need a much better ability to communicate information back and forth. Because these two systems are not accustomed to such a close, interactive working relationship as is essential in the Drug Court, linkages need to be developed and treatment agency information needs to be maintained at a level equaling available criminal justice data. Finally, the information flow must be able to go in both directions with equal timeliness and ease.
- *Identifying and Expanding the Target Population:* A major policy step in developing and implementing the Drug Court program was defining the initial target population. Careful targeting can insure that the treatment resources will be deployed effectively to process a sufficiently challenging group of defendants. By setting sights too low (to deal with very minor offenders, for example), program resources can easily be overwhelmed by a large volume of cases, thus preventing benefit from accruing to efforts to address the criminal caseload processing and/or problems associated with jail capacity. Given what appears to be a comparatively low rate of reoffending among Drug Court defendants (much involving new drug offenses only)—at least compared to other felony drug and non-drug defendants—some of the program findings suggest that the criteria for eligibility

might be broadened to include other types of drug-involved felony defendants who may not be charged with drug offenses.

□ *Targeting to Avoid Net Widening:* Certain assessment findings raise the issue of net-widening as a result of targeting strategies. For example, some Drug Court defendants self-reported that they engaged in no or very minor levels of drug abuse, while some others tested negatively for drugs upon entering the treatment program. Setting aside the questions about the reliability of such data, the possibility that some defendants enrolled in the treatment program did not appear to have "serious" drug abuse problems raises important questions about targeting and screening procedures. The findings that Drug Court defendants had their criminal charges dropped or dismissed much less frequently as a group than other types of felony defendants raises the possibility that some would not have ventured very far into criminal processing, had they been processed in other criminal courts or during an earlier period. Although we did not find evidence that the Miami Drug Court noticeably "widened the net"—particularly given its selective felony-level focus—the possibility that net-widening can occur as an inadvertent "side-effect" of defining the target population should be kept in mind by the Dade County program itself and by other jurisdictions considering similar efforts. By setting sights too low, the system may be "sweeping" into its "net" persons who ordinarily would not require many or any of its scarce resources during the adjudicatory process. By targeting categories not usually fully processed by the criminal courts, such a program might unwittingly add to the court workload and the population of the jail facilities, as well as intervene when intervention is not necessary.

□ *The Role of Screening for Eligible Candidates and "Hitting" the Target Population:* Assuming that a suitable policy defining the target population has been formulated, a separate element critical to effective implementation of a Drug Court is establishment of a rigorous screening mechanism that identifies persons eligible for the program at the

earliest stages of processing. Mechanisms that "miss" large portions of the target population or that carelessly include individuals not meeting the eligibility criteria can adversely affect the Drug Court's ability to meet its objectives.

- *Defining "Success" in Program Outcomes as a Matter of Policy:* The analysis of program outcomes in the full report is intended to illustrate some of the implications of adopting different definitions of "success," or what we have termed "favorable outcomes." An important finding of this assessment is that this is an important policy matter to be resolved by debate and consensus among key officials, and that this policy debate is best carried out in advance of implementation and evaluation. Such a policy should clearly detail the behaviors of participants that are acceptable, that are tolerated but sanctioned in some specified fashion, or that somehow cross the boundary into unacceptable, program-terminating actions. The implications of enforcement of such a policy approach would most helpfully be analyzed in advance of implementation and modifications may be necessary periodically and be made on the basis of program experience.
- *Strengthening Reliability of Information Relating to Defendant Drug Abuse:* A key to effective early classification and efficient subsequent treatment may be closer coordination and computer information exchange between Pretrial Services at the post-arrest interview stage and treatment intake staff. A combination of carefully structured self-report questions about drug use at the Pretrial Services and treatment intake stages and selective initial drug testing may contribute to improved targeting and programming of Drug Court candidates.
- *Development of Defendant Classifications for Risk and Treatment Planning:* Classification of defendants at the earliest stages based on estimated drug-involvement and risk to public safety may be developed to assist in the targeting of appropriate

candidates for Drug Court and in planning for treatment and supervision during Drug Court involvement.

- *The Need for Differential Programming:* In differentiating entering defendants according to estimated drug-involvement and public safety risk, an improved initial stage classification approach can help target Drug Court defendants efficiently to treatment regimens of possibly different substance and length. Such a classification could maximize efficient use of resources by assigning lower risk and less drug-involved defendants to somewhat shorter programs of treatment and medium risk and more drug-involved defendants to longer and more intensive programs.
- *The Role of Drug Testing:* The uneven use and sometimes contradictory results obtained through drug testing suggest that the use of this expensive technology be carefully reexamined as a matter of policy—either to be deployed more effectively and selectively, to be limited to initial tests, to be used more systematically with self-reported drug use information, or, even, to be eliminated to save costs.
- *The Role of Acupuncture:* Questions are often asked about the role played by the availability of acupuncture in the treatment regime provided by the Dade County Drug Court. Acupuncture is employed in the Drug Court's treatment program on a voluntary basis as a treatment tool for defendants attending the outpatient treatment program. As such, acupuncture has not been viewed by the program as a specific treatment modality. Instead it is employed as a resource for stabilizing defendants, particularly during the early phases of treatment, and for increasing amenability for treatment. Although acupuncture was reported to be popular among treatment program participants, it was not an aim of this research to evaluate its effectiveness. The data collected relating to the use of acupuncture do not permit inferences to be drawn concerning its possible impact. Indeed, without a carefully tailored experimental approach, it would have been difficult to

disentangle the effect of acupuncture treatment from the overall package of treatment tools.

- *Addressing the Failure-to-Appear Problem:* A clear implication of the court-based, judge-supervised model of Drug Court is that the much more frequent scheduling of defendants before the judge ultimately translates into many more failed appearances (alias *capiases* issued) when Drug Court defendants are compared to "normal" defendants. (This may be true even though the ratio of absence-per-scheduled-hearing may not have changed.) Thus, provision to address this phenomenon should be made at early stages of the planning for effective Drug Court efforts.
- *The Resource Implications of the Drug Court Program:* Court systems have a practical interest in learning about the "cost-effectiveness" of the Drug Court approach. Because this assessment was not designed as a cost-effectiveness study, clear conclusions about the resource implications of this approach are not offered. In fact, such an analysis is complicated, the outcomes of which depend heavily on the assumptions made about costs and savings in a variety of areas. The costs of the Drug Court program are most simply divided into the costs associated with a) operating one courtroom five days per week strictly dedicated to Drug Court transactions and b) the costs of treatment.

One could argue that the Drug Court courtroom--and the supporting cast of characters staffing the courtroom--does not really add to the use of courtroom resources but rather substitutes the equivalent of at least one operating courtroom when the drug cases are removed from other locations and assembled for processing in one specialized drug courtroom. In fact, it is arguable whether the Drug Court courtroom costs add to, replace or subtract from the existing resource expenditures of the criminal division. Certainly defendants make many more appearances in court than they would have in normal criminal courtrooms, thus requiring more hours of courtroom operation and staffing per case. Moreover, one could also argue that because of the extended periods

defendants stay in treatment--for periods far longer than those normally required to fully adjudicate criminal cases--Drug Court cases take much longer to reach disposition than do other criminal cases.

However, specialization, consolidation of cases, reduced recourse to incarceration resources, and reduced rate of return to the criminal caseload in the future also argue for long term savings. In fact, proponents of Drug Court would argue that length of time to disposition of the charges in Drug Court should not be evaluated in the same way case disposition times are examined for normal criminal cases. In addition to the argument that outpatient treatment costs a fraction of the costs associated with the incarceration (per day), it is the longer term benefits that proponents would argue make expenditure of resources by the Drug Court cost effective. (It is argued by proponents that the cost of "doing nothing" is far greater than the costs necessary to operate the Drug Court program.) In fact, issues of cost effectiveness are complex and not easily resolved; however, they weigh as important concerns to jurisdictions considering establishment of such programs.

- *The Need for Routine Experimental Evaluation:* This assessment has surfaced but not resolved a number of themes and issues relating to the use of the Dade County Drug Court. As other jurisdictions proceed with their plans to implement Drug Courts or continue with efforts already underway, serious consideration should be given to simultaneous implementation of more rigorous, experimental evaluations. Fuller evaluation can point to the strengths and weakness of the Miami Drug Court Model, and the advantages and disadvantages of the variety of initiatives now underway in other court systems.

These themes and issues are important for two reasons. First, they are among the concerns that the Dade County Drug Court may wish to address as the first-of-its-kind

program is strengthened and evolves to meet its next challenges. But, for other jurisdictions considering or already implementing programs based on the Miami Model, these issues, having been "flushed out" in the implementation process by Circuit Court in Dade County, represent concerns that should be taken into consideration in planning and implementing local adaptations. In that spirit, then, this assessment offers to a more general audience the "lessons" of the Miami Model that can be addressed and improved upon in a variety of other court initiatives.

### Recommendations

This research has focused on the innovative efforts of one jurisdiction, the Eleventh Judicial Circuit in Dade County, as it shifted the prevailing paradigm guiding the response of the criminal courts to the drug-related caseload from expedited case processing and increasingly punitive approaches to a court-based treatment approach for felony drug defendants. Throughout this research, and particularly as this report was reaching completion, word of interest in, and efforts to develop, Miami-type drug courts in many other criminal court systems in the United States grew increasingly frequent. Anecdotal reports of initiatives in other sites pointed to the possibility that a variety of interesting and potentially effective variations on the Miami Model may be underway in locations across the nation. Other reports have described program efforts that raise serious questions about the goals and likely impact of fledgling programs.

Our principal recommendation is that a serious national-level effort should be undertaken to bring together officials from selected jurisdictions where such efforts are underway for a "working conference." The purpose of the conference would be to share knowledge about the strengths and weaknesses of the Miami Model, to discuss key implementation issues such as those just outlined, and to examine the problems,



accomplishments and new strategies that may be associated with other, second-generation efforts to implement treatment-oriented drug courts. Such a working conference should be supplemented by selective technical assistance and evaluation efforts so that new efforts build on the lessons of what is known about the Miami Model and on what has been learned in other locations. Above all, a goal of such a working conference would be to make certain that current efforts avoid "reinventing the wheel" and wasting scarce system resources.

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