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LEGISLATIVE  
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Program  
Evaluation  
Unit

## Program Evaluation: Update on New Mexico Drug Courts

October 26, 2017

Report #17-03

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October 26, 2017

Mr. Arthur W. Pepin, Director  
Administrative Office of the Courts  
237 Don Gaspar  
Santa Fe, New Mexico 87501

Dear Director Pepin:

On behalf of the Legislative Finance Committee, I am pleased to transmit the evaluation report, *Update on New Mexico Drug Courts*. This review examined the costs and performance of drug courts statewide.

This report will be presented to the Legislative Finance Committee on October 26, 2017. An exit conference to discuss the contents of the report was conducted with the Administrative Office of the Courts on October 20, 2017. The Committee would like a plan to address the recommendations within this report within 30 days from the date of the hearing.

I believe this report addresses issues the Committee asked us to review and hope New Mexico's drug court programs will benefit from our efforts. We very much appreciate the cooperation and assistance we received from your staff.

Sincerely,

A handwritten signature in blue ink that reads "David Abbey".

David Abbey, Director

Cc: Representative Patricia Lundstrom, Chairwoman, Legislative Finance Committee  
Senator John Arthur Smith, Vice-Chairman, Legislative Finance Committee  
Chief Justice Judith K. Nakamura, New Mexico Supreme Court  
Ms. Duffy Rodriguez, Cabinet Secretary, Department of Finance and Administration  
Mr. Keith Gardner, Chief of Staff, Office of the Governor  
Mr. Timothy Keller, State Auditor





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### **New Mexico's Drug Courts Are a Lower-Cost Alternative to "Business as Usual"**

New Mexico continues to face substantial challenges to its criminal justice system due to substance abuse, including the second-highest rate of property crime in the nation in 2016. Drug courts, among the largest evidence-based programs in the state, target offenders with drug abuse or addiction issues and are intended as an alternative to incarceration for certain high-risk, high-need individuals. These programs, overseen by the Administrative Office of the Courts (AOC), combine substance abuse testing and treatment with regular supervision and court involvement to promote accountability and reduce recidivism of those charged with drug-related offenses. New Mexico's 21 adult and 12 juvenile drug courts served 821 and 281 participants, respectively, in FY17, with total budgeted costs of \$3.9 million for adult programs and \$2 million for juvenile programs.

The total cost to participate in an adult drug court program in New Mexico is approximately \$9,400 per year across various parts of the criminal justice system. This compares to an average "business as usual" cost of \$11,500 annually, or \$26 thousand over an individual's entire sentence. AOC has been proactive in collecting performance information from drug court programs, which have reported increases in both average rearrest and graduation rates in recent years. In FY16, the average New Mexico drug court had 27 percent of its clients experience a felony rearrest in the previous three years and saw 61 percent of its participants graduate. LFC evaluators, along with AOC and the New Mexico Sentencing Commission, continue to conduct an in-depth analysis of rearrests among adult drug court participants and non-participants.

Adult drug courts generally adhere well to national best practices, and AOC has begun new initiatives to ensure program fidelity. However, drug courts could potentially improve their effectiveness by implementing operational changes. Given the large investment in drug courts, better and more uniform reporting on ongoing performance is needed. Inconsistent and incomplete data means long-term outcomes are not effectively tracked, and there is no centralized database with uniform tracking of all New Mexico drug court participants. Drug courts may also be able to improve how they leverage Medicaid for treatment costs. Compared with adult drug courts, New Mexico's juvenile drug courts are less able to demonstrate their effectiveness, and are experiencing challenges with efficiency in light of declining participation. Four juvenile drug courts have closed since FY15, and self-reported rearrest rates have increased while graduation rates have fallen.

This update of adult and juvenile drug courts recommends the Legislature consider funding for a uniform drug court data system and that AOC collect more information on cost, cohort-based outcomes, and participant risk, as well as require drug court treatment providers to be Medicaid-certified and bill Medicaid before using drug court funds. This report also recommends AOC assess outcomes and costs of juvenile drug courts to ensure they are viable and effective.



## KEY FINDINGS AND RECOMMENDATIONS

***Adult drug courts are a lower-cost alternative to other interventions, but opportunities exist to better understand outcomes***

Between FY15 and FY17, 2,917 individuals participated in adult drug court programs at a total budgeted cost of \$11.7 million. The state spends approximately \$7,900 per adult drug court participant, based on drug court budgets. However, drug courts also draw on resources from the broader courts and criminal justice system – such as judge and district attorney staff time – that are often not captured in program budgets. When additional personnel costs from other agencies are included, the annual cost per client rises to approximately \$9,400. This is compared to an annual estimated cost of \$11,500 for “business as usual.”

Meta analysis by the Washington State Institute for Public Policy (WSIPP) found drug courts have a positive effect on reducing recidivism, resulting in benefits to taxpayers and society. WSIPP estimates a \$2.83 to \$1 return.

On average, self-reported data shows the felony rearrest rate for New Mexico adult drug court participants was 27 percent in FY16, and the percent of graduates rearrested during this period averaged 18 percent. An initial LFC analysis of adult drug court rearrest rates found that participants who complete the program have a three-year rearrest rate (for any type of rearrest, not just felony rearrests) of 25 percent, compared to 50 percent for a comparison group with similar characteristics.

While self-reported drug court performance measures can be useful in tracking drug court performance, they are limited in their ability to inform stakeholders on the value of drug courts relative to “business as usual.” Forthcoming analysis from LFC seeks to develop more comprehensive analyses of drug court recidivism outcomes when compared to non-drug court participants.

***Additional operational changes could improve adult drug court effectiveness***

Adult drug courts have opportunities for improvement in a number of different operational areas, including funding transparency, performance reporting and data integrity, and leveraging other funding sources such as Medicaid.

Currently, adult drug court appropriations reside within the Administrative Office of the Courts (AOC), individual drug courts, and in the case of the 2<sup>nd</sup> District adult drug court, within New Mexico Corrections Department (NMCD). Adult drug courts do not have a separate appropriation, and budget amounts are buried throughout individual drug courts and AOC.

While drug court staffing has remained relatively unaffected as state budgets have tightened over the last few years, NMCD has to balance resources in the 2<sup>nd</sup> District adult drug court (ADC) with other priorities such as putting more probation and parole officers in the field to manage cases. The 2<sup>nd</sup> ADC has never received grant funding from liquor excise tax revenues that the Legislature allocates to the rest of the state’s drug courts through AOC. Thus, as the Legislature has sought to strengthen drug courts statewide through increased funding, the state’s largest court has not benefitted from these resources.

While drug courts maintain program databases, and AOC collects certain performance measures, inconsistent and incomplete data means long-term



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outcomes are not effectively tracked. Quality of information contained in the databases varies widely among drug courts, making analysis and comparisons difficult, and there is no centralized database with uniform tracking of all New Mexico drug court participants.

Overall, adult drug courts adhere to program best practices in most areas, and AOC has begun implementation of a certification program to strengthen drug court fidelity to best practices.

In FY17, adult drug courts reported that Medicaid paid \$1.1 million in treatment costs, more than three times what it paid in FY15. However, because drug courts rely on their treatment providers to report billing and reimbursement, it is difficult to know the full scope of Medicaid coverage for drug courts. Eight drug courts did not report any Medicaid billing in FY17. Given that most courts report that a majority of their participants are Medicaid eligible, some courts may be able to better leverage Medicaid funding through their existing provider, or explore whether there are other, Medicaid-certified providers in their area.

Between FY15 and FY17, 1,061 juvenile offenders participated in drug courts at a total budgeted cost of \$7.2 million. The average annual marginal cost per juvenile participant is approximately \$16,700 based on budgeted drug court costs, and approximately \$21,800 when additional personnel costs are factored in.

Self-reported recidivism rates of juvenile drug courts are increasing, while graduation rates are on the decline. The average rate of new felony arrests over the previous three years reported to AOC by juvenile drug courts rose from approximately 20 percent in FY13 to 33 percent in FY16. Meanwhile, rearrests among drug court graduates averaged 20 percent in FY16, up from 14 percent in FY13. Due to inconsistent drug court reporting of client rearrest information, it is not possible to compare outcomes of New Mexico juvenile drug courts to a control group.

Participation in New Mexico juvenile drug courts has declined by almost a third since FY15, with the closure of four juvenile drug courts. Reasons for closure included low enrollment, insufficient referral volume, and the level of resources required to run small programs.

Meta-analysis from WSIPP indicates that juvenile drug courts are not cost effective, with a benefit to cost ratio of \$0.83 to \$1.

***New Mexico juvenile drug courts cannot demonstrate strong impact and participation has declined, resulting in significant deficiencies***

## Key Recommendations

### The Legislature should consider:

Allocating funds to AOC to implement a new drug court database within the existing Odyssey system.

Funding the 2nd Judicial District Adult Drug Court through AOC rather than NMCD.

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**AOC should:**

Collect cost data on all costs incurred by drug courts – including non-drug court personnel costs and detention costs – to assess overall, or “all-in” program costs.

Require courts to track participants’ risk and need assessment scores to understand the risk profile of drug court participants and ensure that programs are serving target populations.

Consider administering a risk and needs assessment to all defendants – not just potential drug court participants – in order to better assess and compare risk and need levels between defendants and target interventions accordingly.

Include performance measures such as graduation, recidivism, and costs in its program certification process to ensure courts are meeting meaningful performance targets, in addition to implementing best practices.

Engage external outcome evaluation in the program certification process in order to provide independent oversight.

Implement a statewide, cloud-based database with uniform data fields and conventions to track participant data, including screening, demographics, activities, and outcomes.

Revise performance measures to better assess drug court outcomes, including performance by cohort.

Require treatment providers to become Medicaid certified in order to contract with drug courts, where feasible, and work with HSD to help providers obtain Medicaid certification.

Require drug court treatment providers to report Medicaid billing and reimbursement to drug court coordinators as part of contracts.

Encourage treatment providers who are Medicaid certified to bill Medicaid for all available services.

Target counties with high-risk, high-need juvenile populations willing to support drug courts as part of a continuum of evidence-based interventions for juveniles.

Assess whether resource or scale efficiencies can be achieved for juvenile drug court programs, such as increased resource sharing between adult and juvenile drug courts, or consolidation of programs.

Using CYFD arrest data, compare juvenile drug court outcomes and costs to a comparison group – and to outcomes and costs of other juvenile justice interventions.



## Overview

### Purpose and intent of drug courts

Problem-solving courts, also known as specialty or treatment courts, serve as an alternative to the traditional judicial process for certain populations of offenders with specific treatment needs. Offenders are provided with treatment opportunities and other services, while being closely supervised. Problem-solving courts include drug courts, DWI courts, mental health courts, veterans treatment courts, family dependency courts, and tribal healing courts.

Drug courts are the most common type of problem-solving court, focusing on individuals with drug addiction or abuse issues. Drug courts are intended to provide an alternative to incarceration for offenders whose involvement in the criminal justice system is at least partially a result of substance abuse and addiction. Drug courts are targeted at either adult or juvenile offenders who are high-risk, high-need individuals, meaning that they have a substance dependency and are at risk of failing in less intensive rehabilitation.

### National history of drug courts

As of 2015, there were more than 1,500 adult drug courts in the United States, and over 400 juvenile drug courts. The first drug court was developed in Florida in 1989. A group of judges and other justice professionals developed the program as an approach designed to attack addiction, rather than attack or punish individuals facing addiction. This approach recognizes the role that drug abuse and addiction play in crime and incarceration. According to the National Council on Alcoholism and Drug Dependence, 50 percent of the country's jail and prison inmates are clinically addicted to drugs or alcohol, and 60 percent of individuals arrested for most types of crime test positive for illegal drugs when arrested. Research shows that treatment is the most effective way to break the cycle of crime and incarceration for offenders with drug abuse and addiction issues, but less than 20 percent of inmates who need treatment receive it. Drug courts are a way to provide these types of offenders with appropriate and effective treatment, while still holding them accountable for their behavior.

### How drug courts work and key standards

The National Association of Drug Court Professionals (NADCP), founded in 1994, propagates a set of standards – known as the Ten Key Components – that outline certain benchmarks that adult drug courts should meet (Table 1). Juvenile drug courts use a similar set of 16 strategies (Table 2). However, drug

**Table 1. Ten Key Components of Adult Drug Courts**

1.	Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2.	Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
3.	Eligible participants are identified early and promptly placed in the drug court program.
4.	Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
5.	Abstinence is monitored by frequent alcohol and other drug testing.
6.	A coordinated strategy governs drug court responses to participants' compliance.
7.	Ongoing judicial interaction with each drug court participant is essential.
8.	Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9.	Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
10.	Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

Source: NADCP

**Table 2. Sixteen Strategies of Juvenile Drug Courts**

1.	Collaborative planning
2.	Teamwork
3.	Clearly defined target population and eligibility criteria
4.	Judicial involvement and supervision
5.	Monitoring and evaluation
6.	Community partnerships
7.	Comprehensive treatment planning
8.	Developmentally appropriate services
9.	Gender appropriate services
10.	Cultural competence
11.	Focus on strengths
12.	Family engagement
13.	Educational linkages
14.	Drug testing
15.	Goal-oriented incentives and sanctions
16.	Confidentiality

Source: NADCP

courts often take a localized, grassroots approach, and there is no national accrediting organization.

While individual drug courts may differ in their operations, the model is usually a collaborative one, in which prosecuting and defense attorneys, along with judges, treatment providers, and other stakeholders work together to direct eligible participants into appropriate and effective treatment programs. Treatment is designed to address addiction and other behavioral issues that may contribute to an individual's criminal activity. The drug court team ensures that a participant receives the treatment he or she needs, complies with conditions of participation such as drug testing, and minimizes the risk of reoffending. Incentives offer positive reinforcement for good behavior, while sanctions penalize participants for poor behavior or non-compliance. While drug courts are designed to provide an effective treatment program for high-risk, high-need individuals, some courts also offer alternate tracks for low-risk and/or low-need individuals that are more focused on prevention and diversion.

Since the primary federal grant program for drug courts – the Department of Justice's (DOJ) Drug Court Discretionary Grant Program – prohibits serving violent offenders, many drug courts do not admit this type of participant to their programs. The DOJ characterizes offenders as “violent” based on both current and past convictions, as well as current charges. However, drug courts that do not rely on federal funding often admit certain types of violent offenders on a case-by-case basis.

### **National research findings on drug court benefits and costs**

Overall, research on drug courts suggests that they are effective at reducing recidivism and cost less than alternatives – with some key limitations. When The

Sentencing Project conducted a review of findings from drug court evaluations, they found the following:

- An analysis of findings from 76 drug courts found a 10 percent reduction in rearrests.
- An analysis of 30 drug court evaluations found an average decline of 13 percent in reconviction rates.
- A study of six New York State drug courts found a 29 percent reduction in rearrests in the three years following participants' initial arrest.
- A Government Accountability Office report found that 13 of 17 courts reporting on post-program recidivism measured reductions between 4 and 25 percentage points in rearrests and reconvictions.

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However, there are challenges in conducting effective drug court evaluations. Factors like criminal history, behavioral health, and substance abuse have been shown to impact treatment outcomes, but data on these factors is often unavailable and thus not included in analyses of outcomes. In addition, definitions of recidivism and the length of time for which recidivism is measured differ among studies, with some studies using rearrests, and others using reconvictions or felony reconvictions. Some studies measure recidivism for all drug court participants, while others measure it only for program graduates. Some studies suggest that drug court has little to no effect for participants who do not graduate from the program.

Similarly, evaluations of drug courts indicate that they are a lower-cost alternative to probation and/or incarceration, but there are limitations to these findings given differing methodologies and definitions used to calculate costs. For example, some studies estimate only cost savings from reduced use of probation and incarceration, while others include factors like lower victimization costs and lower healthcare costs. Findings from The Sentencing Project review of drug court evaluations included the following:

- An Oregon drug court saved approximately \$3,500 per participant due to reduced recidivism and incarceration.
- Six drug courts in Washington saved an average of \$6,800 per participant based on reduced rearrests and victimization costs.
- A study of five drug courts in Washington found \$1.74 in benefits for every dollar invested in drug courts.

From its own meta-analysis, Washington State Institute for Public Policy (WSIPP) estimates a benefit-cost ratio of \$2.83 to \$1 for adult drug court programs and \$0.83 for juvenile drug court programs.

## Drug courts in New Mexico

### Background and location of New Mexico drug courts

New Mexico's first problem-solving court, the Doña Ana County Magistrate DWI Court, began operating in 1994 using federal grant funding. The oldest currently operating drug court in the state, excluding DWI courts and other types of problem-solving courts, is the 2<sup>nd</sup> Judicial District Adult Drug Court in Bernalillo County, founded in 1995.



**Table 3. New Mexico Adult and Juvenile Drug Courts**

District	Court Location	Adult Program	Juvenile Program
1	Espanola	Y	Y
	Santa Fe	Y	Y
2	Albuquerque	Y	Y
3	Las Cruces	Y	Y
4	Las Vegas	Y	N
5	Carlsbad	N	Y
	Roswell	N	Y
6	Deming	Y	Y
	Lordsburg	Y	N
	Silver City	Y	N
7	Estancia	Y	N
	Socorro	Y	N
	Truth or Consequences	Y	N
8	Raton	Y	N
	Taos	Y	N
9	Clovis	Y	N
	Portales	Y	N
11	Aztec	Y	N
	Farmington	N	Y
12	Alamogordo	Y	Y
	Ruidoso	Y	N
13	Bernalillo	Y	Y
	Grants	Y	Y
	Los Lunas	Y	Y
	<b>TOTAL</b>	<b>21</b>	<b>12</b>

Source: AOC

**Table 4. Individuals Eligible for Drug Court in New Mexico**

Those eligible for drug court are individuals who:
<ul style="list-style-type: none"> <li>• Have been arrested or convicted of drug offenses or drug related crimes having to do with alcohol or other drugs as defined in New Mexico Criminal Code and New Mexico Children's Code;</li> <li>• Have non-drug related offenses that were committed while under the influence, or committed to support addiction or dependency, or are substantially related to the use or abuse of alcohol or drugs;</li> <li>• Committed distribution or trafficking of illegal substances to support participant's dependency or addiction to alcohol or drugs (AOD);</li> <li>• Have been arrested for drug offenses or drug related crimes and have qualified for a pre-prosecution or court-ordered AOD diversion program;</li> <li>• Have violated probation by commission of a drug offense, drug related crime, or drug use;</li> <li>• Have substantiated child abuse and/or neglect findings where alcohol or other drug use is a factor; or</li> <li>• Have a severe alcohol or other drug abuse problem, which has put their children at risk of child abuse and/or neglect that could result in removal upon the filing of a petition.</li> </ul>

Source: New Mexico Statewide Drug Court Standards

Like elsewhere in the country, New Mexico instituted drug courts to reduce substance abuse and related criminal activity through the coordinated efforts of the courts, law enforcement, probation officers, and local service agencies, and achieve savings by reducing incarceration of nonviolent drug offenders. New Mexico faces significant drug abuse issues. According to the Drug Policy Alliance, New Mexico has had the highest drug overdose death rate in the country over most of the last two decades, and in 2014, the state's overdose death rate was twice the national average. In that year, 70 percent of drug overdose deaths involved opioid painkillers or heroin.

New Mexico currently has 21 adult drug courts and 12 juvenile drug courts. All but one of New Mexico's 13 judicial districts, the 10<sup>th</sup>, has at least one drug court program, and the rest have two or three, as shown in Table 3.

### New Mexico drug court model and operations

New Mexico drug courts are overseen by the Administrative Office of the Courts (AOC), with the exception of the 2<sup>nd</sup> Judicial District's adult drug court, which is overseen and managed by the Corrections Department, within the Probation and Parole Division. The New Mexico Courts define drug courts as "a treatment program, within a behavior modification program, administered by a court of law." State drug court standards are based on the ten key components developed by NADCP, but in keeping with the localized approach to drug courts, state standards indicate that exceptions may be necessary "due to individual circumstances, local challenges, and the specific needs of the population."

Offenders are generally referred to drug court by a sentencing judge, with agreement from the prosecution and defense counsel. Drug courts screen clients using the Risk and Needs Triage (RANT) tool to determine their risk and need levels (see sample RANT report in Appendix E). A selection panel, usually consisting of a judge, defense counsel, district attorney staff, treatment

provider, and probation officer, then meets to review potential participants, and votes to accept or deny the individual, based on a recommendation from the drug court director or coordinator. The judge provides the final acceptance decision. Table 4 lists the types of individuals who may be considered for drug court.

Drug court participants follow a strict abstinence-based program that typically includes frequent, random drug testing, individual and group counseling,

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community service, exercise, and attendance at court hearings. Violations such as a positive drug test, missing scheduled hearings or activities, or other non-compliance results in sanctions, such as increased frequency of court appearances, community service, written assignments, curfews, or detention. Incentives such as less restrictive reporting requirements, recognition, or small donated gifts provide positive reinforcement for successfully adhering to program requirements. Participants move through several stages of the program, culminating in a graduation for successful completers.

Drug courts across the state follow one or more of the below models:

- Pre-indictment – diversionary program where offenders enter drug court on a voluntary basis.
- Post-indictment.
- Deferred sentencing – sentencing is deferred until after offenders graduate or are terminated from drug court.
- Probation with condition of drug court – offenders are put on probation and must complete drug court as a condition; leaving or being terminated from drug court is considered a probation violation.
- Probation referral – offenders are referred while on probation, or may be referred because of a probation violation.
- Parole referral – drug court is a condition of parole.

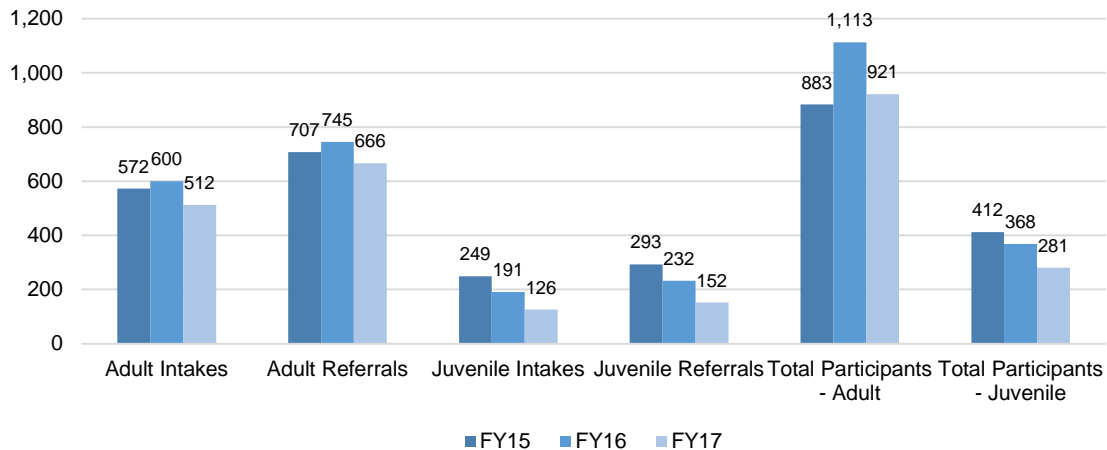
Some drug courts integrate multiple types of the above models, or have developed modified programs, based on local needs. For example, one juvenile drug court has developed a “wellness track” to serve participants who have significant mental health needs, as well as drug addiction. Other courts offer separate tracks for pre- and post-indictment participants.

### **Drug court participation and demographics**

Through the first half of FY17, there have been over 10 thousand adult participants and over 4 thousand juvenile participants since the inception of drug courts in New Mexico. Between FY15 and FY17, drug courts accepted, on average, 80 percent of referred individuals. Overall, the capacity of adult drug courts in FY17 was 637 participants at any given time, compared with a capacity of 231 participants for juvenile drug courts.

Adult drug court referrals and intakes among both adults and juveniles were lower in FY17 than in the two preceding fiscal years, despite a modest increase in FY16. However, the total number of adult drug court participants was slightly higher in FY17 than in FY15, likely owing to participants from the FY16 spike carrying over into FY17. The FY16 spike in adult drug court intakes was largely driven by a single-year increase in the 3<sup>rd</sup> Judicial District in Doña Ana County, as well as the establishment of a drug court in Portales, the second in the 9<sup>th</sup> Judicial District. On the other hand, juvenile referrals and intakes, as well as total participants, decreased steadily each year due to the closure of several juvenile drug courts during that period. The number of juvenile drug court intakes fell by 49 percent between FY15 and FY17, from 293 to 152. This compares with a 10 percent overall decrease for adults, from 572 to 512, despite a spike in FY16 (Chart 1).

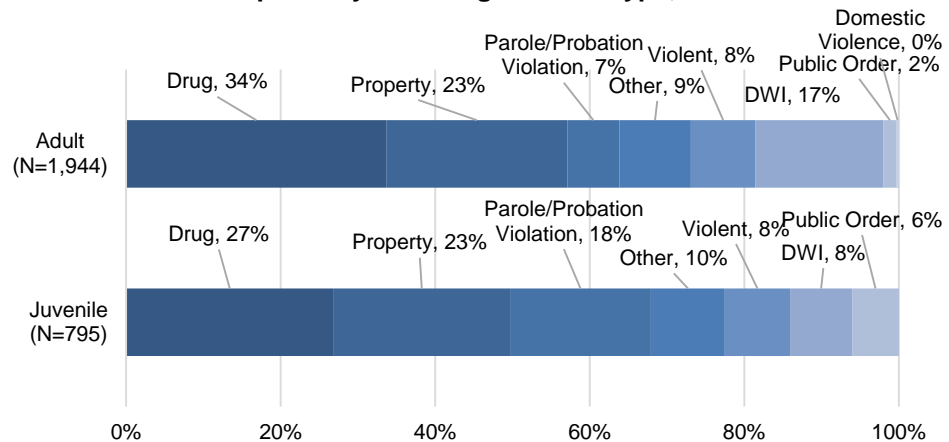
**Chart 1. Drug Court Referrals, Intakes, and Total Participants, FY15-FY17**



Source: LFC analysis of AOC data

A “typical” adult drug court participant in New Mexico is a 32-year-old Hispanic male referred for a charge of drug possession or an associated property offense such as burglary. In juvenile drug courts, a “typical” participant is a 16-year-old Hispanic male with similar referring charges. As illustrated in Chart 2, among participants entering drug court between CY12 and CY16, the most common charge categories for both adults and juveniles were drug offenses, typically possession, or property crimes such as burglary or larceny. New Mexico drug courts admit participants with violent offense charges on a case-by-case basis; for example, if the offense was committed in order to support a drug habit. Demographic data reflected here is based only on participant records that included comprehensive demographic information, and thus, does not include all drug court participants during the time period.

**Chart 2. Percentage of Adult and Juvenile Drug Court Participants by Referring Offense Type, CY12-CY16**

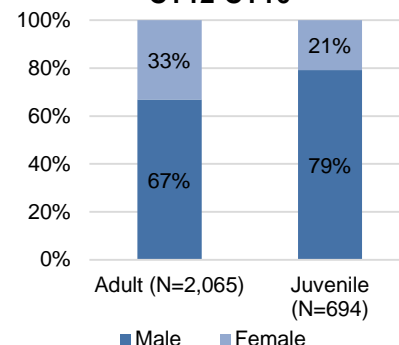


Source: LFC analysis of drug court data

From CY12 through CY16, 79 percent of juveniles entering drug court were male, compared with 67 percent of adults entering drug court (Chart 3). For juvenile drug courts in particular, this is a disproportionately high rate of males considering the rate of referral to the state's juvenile justice system. In FY16, the Children, Youth and Families Department (CYFD) reported that 64 percent of referrals to its Juvenile Justice Services Division were male, and 36 percent were female, a ratio that has held consistently over the past several years.

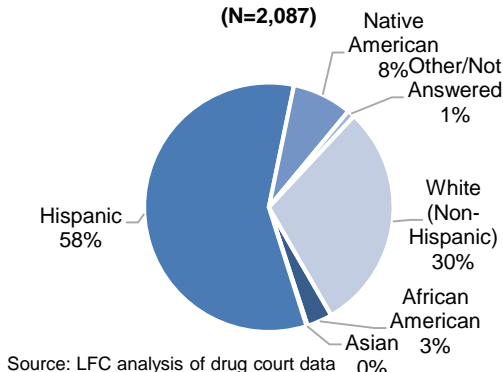
During the same period, 58 percent of adult drug court participants were Hispanic, compared with 67 percent of those in juvenile drug court. This is reflective of the larger proportion of Hispanic youth among the state's population (59 percent of New Mexicans aged 10 to 17, compared to 45 percent aged 18 or older). A greater proportion of juvenile drug court participants were Native American, at 12 percent, compared with 8 percent for adult drug courts (Charts 4 and 5).

**Chart 3: Adult and Juvenile Drug Court Participants by Gender, CY12-CY16**



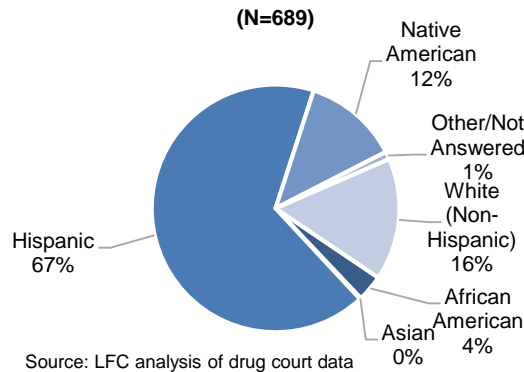
Source: LFC analysis of drug court data

**Chart 4. Adult Drug Court Participants by Ethnicity, CY12-CY16 (N=2,087)**



Source: LFC analysis of drug court data

**Chart 5. Juvenile Drug Court Participants by Ethnicity, CY12-CY16 (N=689)**



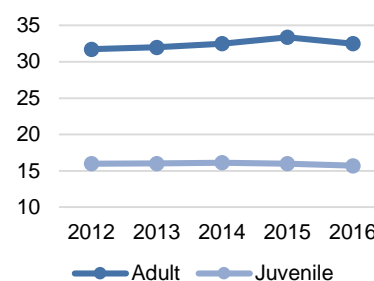
Source: LFC analysis of drug court data

Adult drug court participants are trending slightly older, mirroring national drug use trends. While juvenile drug court participants averaged 16 years old between CY12 and CY16, with little variation in average age from year to year, the average age of adult drug court participants has increased (Chart 6). Since CY12, the average age of adult drug court participants has gradually increased, from 31.7 years old in CY12 to 33.4 years old in CY15, with a slight decrease to 32.5 years old in CY16. This aligns with a national trend toward more adults in their 50s or 60s using illicit drugs as the baby boom generation ages, according to a 2015 report by the National Institute on Drug Abuse.

## Drug court funding

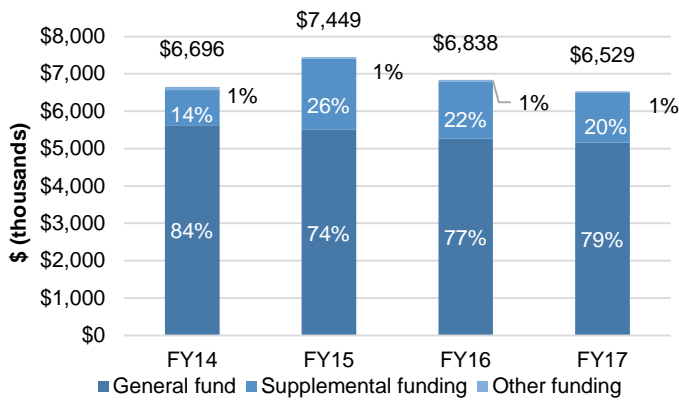
Drug courts are funded primarily through appropriations from the General Fund, as well as through supplemental state funding. Supplemental funding comes from the local DWI grant fund, which relies on liquor excise tax revenues (Section 11-6A-3 NMSA 1978). Supplemental funding is distributed to individual courts by AOC on a competitive grant basis, with grants approved by the Drug Court Advisory Committee (DCAC). Total funding for adult and juvenile drug courts was \$6.5 million in FY17, including \$3.8 million for adult courts and \$2.8 million for juvenile courts (Chart 7).

**Chart 6: Average Age at Intake of Drug Court Participants, CY12-CY16**



Source: LFC analysis of drug court data

**Chart 7. Overall Adult and Juvenile Drug Court Funding (FY14-FY17)**



Source: Drug Court Operating Budgets

Supplemental funding as a share of total drug court funding has ranged from 14 percent to 26 percent between FY14 and FY17. Other funding – which includes federal funds, program revenues, and previous years’ fund balance – has been a negligible source of drug court revenues.

However, this funding includes just \$8 thousand of General Fund appropriations for the 2<sup>nd</sup> District adult drug court. This drug court is run by the Probation and Parole Division of the New Mexico Corrections Department (NMCD). NMCD does not separately report funding for its drug court program, but based on self-reported program costs, the drug court accounts for just over one percent of Probation and Parole’s total FY17 expenditures of \$32.9

million, with costs of \$400.6 thousand.

### Drug court performance measures

AOC requires drug courts to report twice annually on a variety of performance measures. These include basic measures of the number of active participants, capacity, intakes, and exits, as well as the number clients who are eligible for Medicaid and the amount billed to Medicaid on their behalf. Each court reports recidivism rates for the preceding three-year period for all program participants who exited the program, as well as those who graduated. AOC also collects information on each program’s per-client cost, including salaries, treatment costs, and operational costs. Finally, each court reports the number and percentage of graduates who are employed and their educational attainment.



# FINDINGS AND RECOMMENDATIONS



## Adult Drug Courts Are a Lower-Cost Alternative to Other Interventions, but Opportunities Exist to Better Understand Outcomes

**Between FY15 and FY17, 2,917 individuals participated in adult drug court programs at a total cost of \$11.7 million.**

Drug court direct costs consist of contract costs, personnel costs, and operational costs. Adult drug courts reported total costs of \$3.9 million in FY17. Between FY15 and FY17, on average, 38 percent of budgeted costs for adult drug courts went to contracts with treatment providers and 49 percent to employee salaries and benefits (Chart 8).

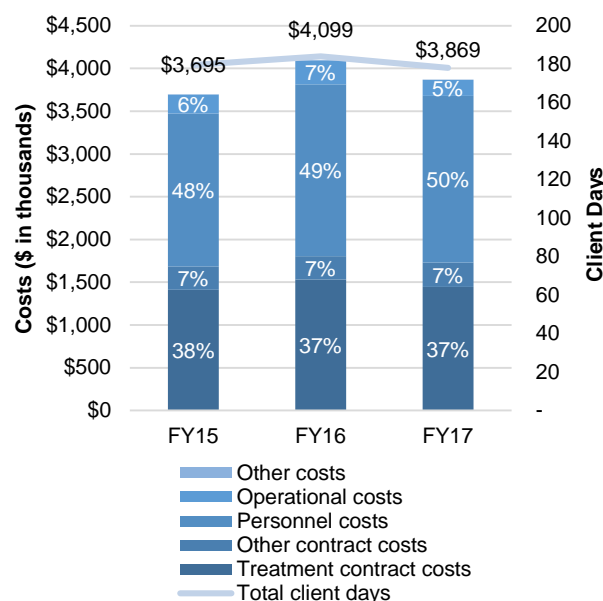
**Drug courts draw on resources from the broader court and criminal justice systems that are often not captured in program budgets.** Drug court roles that are not included in drug court budgets include judges, prosecuting attorneys (staff from the district attorney’s office), NMCD adult probation officers, law enforcement (state and local), and other state or county staff (e.g. social workers, diversion officers). In the case of defense counsel, some drug courts contract directly with defense counsel, while others contract through the Public Defender’s office or rely on staff from that office. Additionally, on average, a court uses four judge hours per week, but judge salaries are not reflected in drug court budgets.

Statewide, adult drug courts utilize a total of 8.8 FTEs that are typically not accounted for in drug court budgets, totaling approximately \$400 thousand in salary costs. These salary estimates do not include law enforcement, as they account for less than one drug court FTE, and information on which are state versus local officers was not available, making it difficult to accurately estimate salary costs. “Other” staff are also excluded from the salary estimate, as there was insufficient information on specific roles within this category.

The cost of drug court roles not captured in program budgets could add approximately \$700 thousand to adult drug court costs. This includes salary costs, plus employee benefits, based on an assumption of benefits as 43 percent of total compensation. In FY17, adult drug court direct personnel costs totaled \$1.9 million, meaning that “uncounted” personnel costs add over a third to this category, and 18 percent to overall costs.

Although the above-mentioned personnel are captured in other agencies’ budgets, it is important to reflect the “all-in” cost of drug courts in order to better assess the

**Chart 8. Adult Drug Court Costs (FY15-FY17)**



Source: Self-reported drug court cost data; AOC performance measures FY15-17

**Table 5: Adult Drug Court Personnel Costs Not Included in Drug Court Budgets (FY17)**

Role	Total FTE – Adult Drug Courts	Total Costs – Adult Drug Courts
Judge	2.1	\$244,000
Prosecuting Attorney	0.9	\$54,000
NMCD Probation Officer	2.4	\$103,000
Law Enforcement	0.5	Unknown
Other court, state, or county staff	2.9	Unknown
<b>TOTAL</b>	<b>8.8</b>	<b>\$400,000</b>

Source: Drug court self-reported personnel hours; SPO salary data averages

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return on investment, and to be able to make informed decisions about resource allocation.

***On average, the “all-in” cost of drug court participation is \$9,400 per year.*** The state spends approximately \$7,900 per adult drug court participant annually, based on an average cost per client per day of \$22, down from \$27 in FY15. These figures are based on self-reported direct drug court marginal costs, and self-reported total client days. When additional personnel costs from other agencies are included, the cost per client per day rises to approximately \$26, or \$9,400 per year.

The state spends less when an individual participates in drug court, compared to a business as usual situation (standard criminal justice interventions such as regular probation or incarceration). The annual cost per person for business as usual is approximately \$11,500, and the lifetime cost, taking into account average sentence length for similar charges, is approximately \$26 thousand. Average sentence lengths and costs are based on a sample of individuals sentenced between 2013 and 2015 with charges relating to domestic violence, drugs, DWI, property, and public order.

It is important to note that this “all-in” cost excludes costs borne by counties that result from detention sanctions that drug courts impose on participants who violate drug court rules. Available data did not allow for a calculation of the costs of adult detention related to drug court holds, but based on information from juvenile detention centers, LFC staff were able to estimate the total costs of juvenile detention drug court holds at \$191 thousand in FY17, or \$164 per client per day.

**Research suggests that adult drug courts have a positive benefit to cost ratio.**

Meta analysis by WSIPP found drug courts have a positive effect on reducing recidivism, resulting in benefits to taxpayers and society. WSIPP estimates a \$2.83 to \$1 return, based on data from Washington state drug courts, meaning that for every \$1 invested in drug courts, the state sees benefits of \$2.83 in terms of reduced crime. WSIPP estimates that an adult drug court program will break even in year five of operations.

In 2013, an LFC report under the Pew-MacArthur Results First Initiative found a benefit to cost estimates of \$3 to \$1, using state specific cost and population based data and assuming complete fidelity. This estimate was based on an analysis of drug court participant outcomes as compared to “business as usual,” meaning standard criminal justice interventions such as regular probation or incarceration.

## In FY16, adult drug courts reported rearrest rates between 11 percent and 65 percent.

Each drug court is required to report to AOC the percentage of clients who were rearrested on a new felony charge in the preceding three years (“intent-to-treat recidivism”), as well as the percentage of program graduates with a new felony arrest in the same period (“graduate recidivism”). According to this self-reported data from year-end FY16, the percentage of adult drug court participants rearrested in the previous three years (FY14 through FY16) ranged from 11 percent to 65 percent, averaging 27 percent across all drug courts. The percent of graduates rearrested during this period averaged 18 percent, with individual drug courts ranging between 0 percent and 45 percent. Overall, these rates have trended upward since FY13 (Chart 9).

The rate of graduation reported by adult drug courts, as measured by the percent of drug court exits resulting in graduation, also grew in FY16 to 61 percent, up from 53 percent in FY15 but only slightly above the FY13 rate (Chart 10).

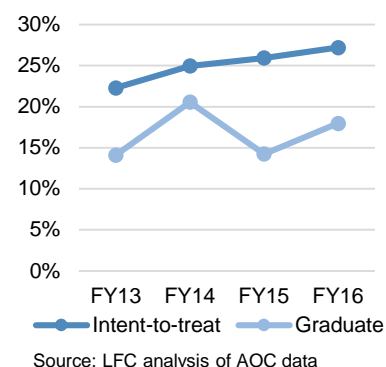
**AOC requires regular performance reporting by drug courts, but measures could be even more useful.** AOC’s business rules for reporting rearrest data require each drug court to report the rate of rearrests for new felony arrests within three years. Some drug courts use their databases to report this information for individual participants, while others report aggregate information to AOC on annual performance measure worksheets.

While these performance measures can be useful in tracking drug court performance, they are limited in their ability to inform stakeholders on the value of drug courts relative to “business as usual.”

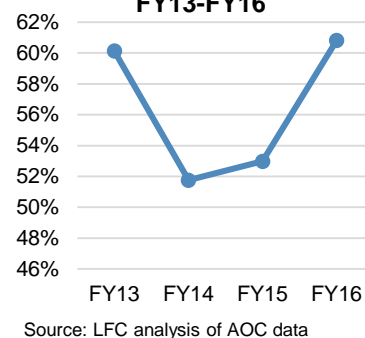
An initial LFC analysis of adult drug court rearrest rates found that participants who complete the program have a three-year rearrest rate (for any type of rearrest, not just felony rearrests) of 25 percent, compared to 50 percent for a comparison group with similar characteristics. LFC, in collaboration with AOC and the New Mexico Sentencing Commission, is conducting further analysis to develop more comprehensive analyses of drug court recidivism outcomes when compared to non-drug court participants.

The forthcoming analysis seeks a more robust understanding of whether New Mexico drug courts are outperforming business as usual with respect to recidivism and cost. For example, rather than rely on AOC’s performance measure of participant rearrests over the prior three years, the analysis seeks to understand how specific cohorts of drug court participants who entered the program during a defined time period perform against their peers who did not participate in drug court. While there have been some such evaluations of individual drug courts in New Mexico, there has not yet been an analysis of the overall performance and cost-effectiveness of the state’s drug courts as a whole.

**Chart 9. Average Self-Reported Recidivism of Adult Drug Courts, FY13-FY16**



**Chart 10. Average Percentage of Adult Drug Court Exits Resulting in Graduation, FY13-FY16**



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## Recommendations

AOC should:

- Collect cost data on all costs incurred by drug courts – including non-drug court personnel costs and detention costs – to assess overall, or “all-in” program costs.
- Require courts to track participants’ risk and need assessment scores to understand the risk profile of drug court participants and ensure that programs are serving target populations.
- Consider administering a risk and needs assessment to all defendants – not just potential drug court participants – in order to better assess and compare risk and need levels between defendants and target interventions accordingly. For example, some counties in Oregon use a risk and needs analysis pre-adjudication to determine if defendants can be safely diverted to an incarceration alternative. This type of assessment would also allow AOC to compare the profile of drug court participants to other types of offenders.
- Require courts to identify if participants are in specialized tracks – e.g. wellness track, pre-adjudication diversion track – to determine if rearrest rates and other outcomes differ for these tracks.

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## Additional Operational Changes Could Improve Adult Drug Court Effectiveness

### **Opportunities exist to provide a more transparent funding mechanism for adult drug courts.**

Currently, adult drug court appropriations reside within AOC, individual drug courts, and in the case of the 2<sup>nd</sup> District adult drug court, within NMCD. The 2<sup>nd</sup> District court does not control the budget for that drug court, as the budget is part of NMCD's Probation and Parole Division. Adult drug courts do not have a separate appropriation, and budget amounts are buried throughout individual drug courts and AOC. Given the move to a more unified court budget process, the courts and legislature may wish to consolidate court appropriations for drug court costs, excluding some (judge's partial salary, for example), into a single line item.

### **Balancing budget priorities within NMCD's Probation and Parole Division has left the drug court understaffed.**

While drug court staffing has remained relatively unaffected as state budgets have tightened over the last few years, NMCD has to balance resources in the drug court with other priorities such as putting more probation and parole officers in the field to manage cases. Currently, there are four probation and parole officer FTEs allocated to the 2<sup>nd</sup> District adult drug court (ADC), each carrying a caseload of 30 clients, for a total capacity of 120 clients. In FY18, one of the probation and parole officers in the 2<sup>nd</sup> ADC was promoted into a supervisory role, and that position has been designated to remain vacant for the remainder of FY18. While this individual maintains a caseload of up to 30 clients while also performing management functions, the unfilled position leaves capacity for another 30 potential clients to come into the drug court program.

A 2012 LFC evaluation of costs and outcomes of various adult offender interventions found NMCD cut resources to the 2<sup>nd</sup> Judicial District adult drug court, noting that NMCD has no statutory jurisdiction over drug court participants. The evaluation also recommended the 2<sup>nd</sup> District drug court be funded consistently with other drug courts in the state. The report noted that the 2<sup>nd</sup> District adult drug court was operating at its lowest capacity in three years, with the number of FTEs that NMCD dedicated to the drug court falling from eight in FY09 to 5 in FY11. Between FY10 and FY11, the drug court capacity was cut by 43 percent, whereas all other drug courts combined cut capacity by 14 percent.

The 2<sup>nd</sup> ADC has never received grant funding from liquor excise tax revenues that the Legislature allocates to the rest of the state's drug courts through AOC. Thus, as the Legislature has sought to strengthen drug courts statewide through increased funding, the state's largest court has not benefitted from these resources.

### **Given the large investment in drug courts, more consistent reporting on ongoing performance is needed.**

While drug courts maintain program databases, and AOC collects certain performance measures, inconsistent and incomplete data means long-term outcomes are not effectively tracked. AOC requires each drug court to maintain a database with certain minimum data elements. While AOC has



access to these databases, it does not use them to develop performance measures or perform in-depth data analysis, and there is no centralized database with uniform tracking of all New Mexico drug court participants.

Additionally, in examining these databases, LFC staff noted the quality of information contained in the databases varies widely among drug courts, making analysis and comparisons difficult. In some cases, essential information such as intake dates was missing altogether. There are no uniform standards for entering and formatting certain data elements, and individual drug courts may employ different formats or codes for items such as activities, referring offenses, outcomes, and demographic information. For example, there are at least eight different codes used by various drug courts to indicate successful completion or graduation, and no uniform guidelines or definitions for how courts should classify or report these, or whether there are substantial distinctions between categories such as “satisfactorily terminated,” “successful discharge,” and “graduated” (Table 6).

**Table 6: Varying Program Completion Codes Found in Drug Court Databases**

- Completed
- Completed (Graduated)
- Completed/Graduated
- Graduated
- Graduated from program
- Graduated to Aftercare
- Sat. Termination
- Successful Discharge

Source: LFC analysis of drug court data

AOC also collects data from the courts on performance measures such as graduation, recidivism, cost, and Medicaid eligibility of clients. In general, drug courts submit forms containing self-reported information on an annual or bi-annual basis. While much of the data comes from each drug court’s database, according to AOC, recidivism data may also be drawn from the centralized Odyssey system. However, these measures are less indicative of program success than cohort-based performance measures would be. For instance, drug courts currently measure graduation rates by measuring the number of graduations as a share of program exits in a year. In addition, the graduation rates do not take into account participants who voluntarily exited the program, potentially skewing the graduation rates. A more meaningful measure of graduation would be the percentage of participants who entered drug court in a given year who graduate from the program. Adopting these kinds of measures and ensuring regular, uniform data collection would allow for more useful and accurate longitudinal analysis of drug court outcomes.

AOC is considering using the supervision module of the existing Odyssey system to track drug court data, which would allow for both a single, uniform statewide drug court database and greater sharing of data between drug courts and the rest of the judicial data system. Some other states have a centralized drug court database, such as New York, where the database enabled a full evaluation of that state’s drug courts in 2013 by the Center for Court Innovation and the Urban Institute.

AOC anticipates that while there would be no significant upfront costs, there would be substantial personnel resources that would need to be devoted to such a project, including working groups to assess and agree on data needs and entry and reporting procedures. While creating a centralized, uniform data warehouse for drug courts would be an involved process, it would allow for greater fidelity monitoring and outcome evaluation of one of the state’s largest evidence-based programs.

## Adult drug courts adhere to best practice standards most of the time with opportunity for increased adherence.

A core component of drug court operations is the idea of “fidelity” to the drug court model, or the ten key components. However, the key components are generally broad – for example, key component #6 states “A coordinated strategy governs drug court responses to participants’ compliance.” In an attempt to measure fidelity, AOC contracted with an outside research group, NPC Research of Portland, Oregon, to assess New Mexico drug courts’ adherence to a set of best practices. Based on their study of other drug courts, NPC grouped 77 best practices under the ten key components. The researchers surveyed drug courts to determine whether they followed each best practice.

As a whole, New Mexico drug courts have the highest adherence to best practices related to key component #2, which specify roles of defense and prosecuting attorneys. Courts had the weakest adherence to best practices related to key component #9 (drug court training practices) and key component #10 (setting up committees composed of representatives from other agencies and the community) (Table 7).

**Table 7: Overall adult drug court adherence to best practices**

Key Components	Percent of Best Practices Followed
<b>Key Component #1:</b> Drug courts integrate alcohol and other drug treatment services with justice system case processing.	67%
<b>Key Component #2:</b> Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights	96%
<b>Key Component #3:</b> Eligible participants are identified early and promptly placed in the drug court program.	71%
<b>Key Component #4:</b> Drug courts provide access to a continuum of alcohol, drug and other treatment and rehabilitation services	65%
<b>Key Component #5:</b> Abstinence is monitored by frequent alcohol and other drug testing	74%
<b>Key Component #6:</b> A coordinated strategy governs drug court responses to participants’ compliance	66%
<b>Key Component #7:</b> Ongoing judicial interaction with each participant is essential	88%
<b>Key Component #8:</b> Monitoring and evaluation measure the achievement of program goals and gauge effectiveness	56%
<b>Key Component #9:</b> Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations	25%
<b>Key Component #10:</b> Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness	21%

Source: LFC analysis of NPC survey data

**AOC has developed two programs to enhance best practice adherence and alignment with state standards.** A program certification process will classify best practices (or standards) in the following way:

- **Mandatory** – drug courts must meet 100 percent of these standards to qualify as a drug court program.
- **Expected** – drug courts are required to meet at least 80 percent of these standards.

- Best practice – drug courts should meet as many as possible of these recommended standards.
- State mandate – drug courts must meet 100 percent of procedures or documentation required to be a New Mexico drug court program.

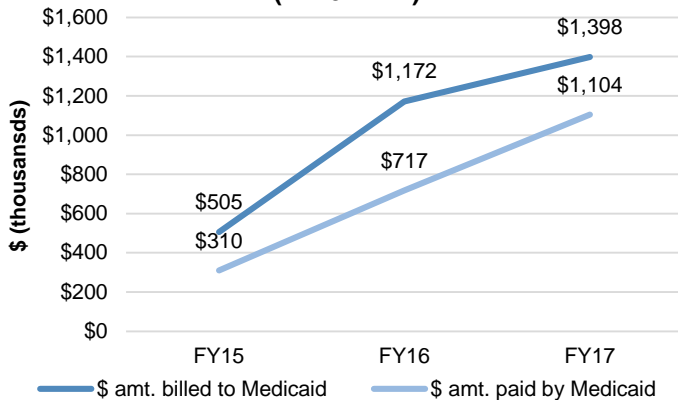
AOC will review courts' self-assessment responses along with selected program documentation. Drug courts have one year to complete this review, and must revisit the process every three years. AOC will develop corrective action plans for drug courts that fall short of requirements.

In addition, AOC has launched a peer review learning community with the goal of increasing drug courts' access to support and information at low cost. Drug court programs will assess other programs and provide feedback about alignment with state standards. Peer reviewers will be trained in conducting assessments. Reviews will take place every three years, and AOC may request additional reviews for programs that do not meet certification criteria.

### **Medicaid funding provides an opportunity for additional funding for expansion of services, but drug courts need to ensure efficient use of this funding.**

Between FY15 and FY17, adult drug courts reported an increase of over 175 percent in the amount their treatment providers had billed Medicaid, and over 250 percent in the amount reimbursed. AOC began collecting data on Medicaid reimbursement in response to a 2015 LFC evaluation that looked at ways to more effectively leverage Medicaid dollars.

**Chart 11. Medicaid Billing & Reimbursement to Adult Drug Court Treatment Providers (FY15-FY17)**



Note: The 2nd ADC did not report the total amount billed; these figures assume that it was the same as the amount paid by Medicaid  
Source: AOC Performance Measure Data (FY15-17)

In FY17, drug courts reported that 52 percent of adult participants were considered to be Medicaid eligible (meaning that they meet eligibility guidelines, not that they are necessarily enrolled in the program). AOC requires that drug court participants check their eligibility online and submit proof of eligibility to their drug court program. Medicaid reimbursed, on average, \$1,199 per adult participant.

Eight adult drug courts did not report any Medicaid billing. However, because drug courts rely on their treatment providers to report billing and reimbursement, this could mean that no Medicaid billing took place, or it could indicate that the treatment provider was unable or unwilling to report their billing and reimbursement rates. For example, the 2<sup>nd</sup>

District adult drug court did not report any billing to AOC in FY17, but drug court staff later provided LFC staff with Medicaid reimbursement amounts for that year. Without consistent reporting, it is difficult to assess whether providers are fully leveraging Medicaid. Of the eight drug courts that did not report any billing, five contract with Medicaid-certified providers.

Given that most courts report that a majority of their participants are Medicaid eligible, some courts may be able to better leverage Medicaid funding through their existing provider, or explore whether there are other, Medicaid-certified providers in their area.

**Table 8: Drug Courts Reporting No Medicaid Billing by Treatment Providers (FY17)**

Type	Court	Treatment Provider	Medicaid Certified?	% of Drug Court Participants Medicaid Eligible (FY17)
Adult	4 <sup>th</sup> Las Vegas	7 Circles Justice Center	No	100%
Adult	6 <sup>th</sup> Deming	The Recovery Management Center	Yes	<i>Not reported</i>
Adult	6 <sup>th</sup> Lordsburg	The Recovery Management Center	Yes	<i>Not reported</i>
Adult	6 <sup>th</sup> Silver City	The Recovery Management Center	Yes	36%
Adult	7 <sup>th</sup> T or C	The Roots Counseling Center	Yes	100%
Adult	9 <sup>th</sup> Clovis	Dr. Sistar Yancy (Christian Believers Education)	No	95%
Adult	9 <sup>th</sup> Portales	<i>Unknown</i>	<i>Unknown</i>	86%
Adult	11 <sup>th</sup> Aztec	Presbyterian Medical Services	Yes	<i>Not reported</i>

Source: Drug court provider contracts; New Mexico Medicaid Portal Provider Search

## Recommendations

The Legislature should consider:

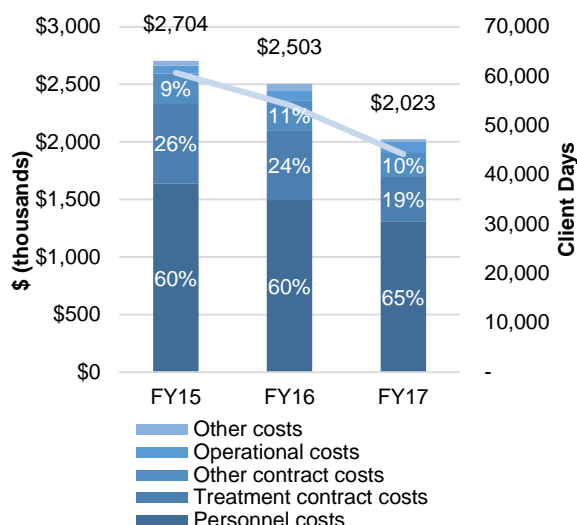
- Allocating funds to AOC to implement a new drug court database within the existing Odyssey system.
- Funding the 2<sup>nd</sup> Judicial District adult drug court through AOC rather than NMCD.

AOC should:

- Include performance measures such as graduation, recidivism, and costs in its program certification process to ensure courts are meeting meaningful performance targets, in addition to implementing best practices.
- Engage external outcome evaluation in the program certification process in order to provide independent oversight.
- Implement a statewide, cloud-based database with uniform data fields and conventions to track participant data, including screening, demographics, activities, and outcomes.
- Revise performance measures to better assess drug court outcomes, including performance by cohort (this could be more easily tracked if a uniform, statewide database was available).
- Require treatment providers to become Medicaid certified in order to contract with drug courts, where feasible, and work with HSD to help providers obtain Medicaid certification.
- Require drug court treatment providers to report Medicaid billing and reimbursement to drug court coordinators as part of contracts.
- Encourage treatment providers who are Medicaid certified to bill Medicaid for all available services.
- Include performance measures such as graduation, recidivism, and costs in its program certification process to ensure courts are meeting meaningful performance targets, in addition to implementing best practices.

# New Mexico Juvenile Drug Courts Cannot Demonstrate Strong Impact and Participation Has Declined, Resulting in Inefficiencies

**Chart 12. Juvenile Drug Court Costs (FY15-FY17)**



Source: Self-reported drug court cost data

**Between FY15 and FY17 1,061 juvenile offenders participated in drug courts at a cost of \$7.2 million.**

In FY17, juvenile drug courts reported spending \$2 million. Between FY15 and FY17, on average, 23 percent of total costs went to treatment providers, and 62 percent went to employee salaries and benefits.

The average marginal cost per juvenile participant per year is approximately \$16,700 based on direct drug court costs, and approximately \$21,800 when additional personnel costs are factored in. This is an average marginal cost of \$46 per client per day based on direct costs, and \$60 when additional personnel costs are included.

**Research suggests juvenile drug courts have a negative benefit-cost ratio.**

According to WSIPP meta-analysis, and based on data from Washington State drug courts, juvenile drug court programs have a negative return on investment of \$0.83 to \$1,

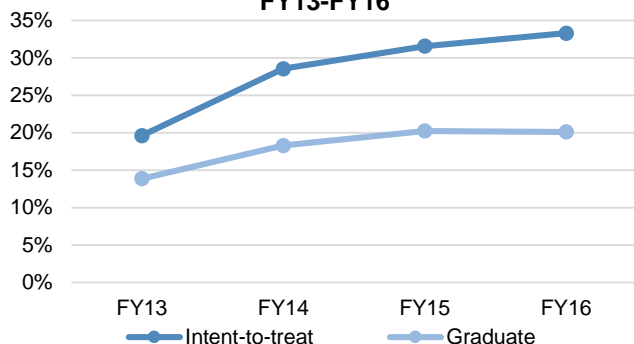
meaning that costs outweigh the benefits. WSIPP analysis finds that juvenile drug court programs do not break even over a 50-year time horizon.

**Self-reported recidivism rates of juvenile drug courts are increasing, while graduation rates are on the decline.**

The average rate of intent-to-treat recidivism (new felony arrests over the previous three years) reported to AOC by juvenile drug courts grew from approximately 20 percent in FY13 to 33 percent in FY16, ranging from 19 percent to 64 percent. Meanwhile, graduate rearrests averaged 20 percent in FY16, up from 14 percent in FY13, and ranged from 0 percent to 41 percent (Chart 13).

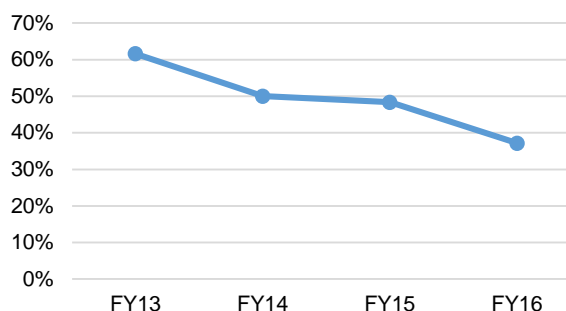
As reported to AOC by juvenile drug courts, the average percentage of juvenile drug court exits statewide decreased from nearly 62 percent in FY13 to about 37 percent in FY16 (Chart 14). This may be due in part to the closure of several

**Chart 13. Average Self-Reported Recidivism of Juvenile Drug Courts, FY13-FY16**



Source: LFC analysis of AOC data

**Chart 14. Average Percentage of Juvenile Drug Court Exits Resulting in Graduation, FY13-FY16**



Source: LFC analysis of AOC data



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juvenile drug courts during this period, whose clients were either transferred to other programs or were otherwise terminated from drug court without completing the program at the time of closure.

**Complications with multiple justice and data systems inhibit an effective impact evaluation of juvenile drug court outcomes.**

Because DPS arrest data used for the adult cohorts in LFC’s analysis of adult drug court outcomes does not include juvenile offenders, available data does not allow for a thorough analysis of juvenile drug court participant recidivism compared with a control group. The individual drug court databases contain tables for reporting client rearrests, but these are very inconsistently populated. AOC’s business rules for reporting rearrest data require each drug court to report the rate of rearrests for new felony arrests within three years. Some drug courts use their databases to report this information for individual participants, while others report aggregate information to AOC on annual performance measure worksheets.

According to self-reported data drug courts provide to AOC, the average recidivism rate of juvenile drug court participants who begin the program (“intent-to-treat recidivism”) has outpaced that of adult drug court participants since FY13. The recidivism rate for juvenile drug court participants rose from below 20 percent in FY13 to 33 percent in FY16, while the rate of adult participants rose more slowly, from 22 percent to 27 percent.

**Participation in juvenile drug courts has declined, necessitating a re-examination of the level of need for this intervention against other evidence-based juvenile justice interventions.**

Between FY15 and FY17, the number of participants in juvenile drug courts decreased by 32 percent and the number of total client days decreased by 27 percent. During this time, four drug courts – in Taos, Raton, Gallup, and Ruidoso – shut down. Reasons for closure included low enrollment, insufficient referral volume, and the level of resources required to run small programs. For example, in FY16, the juvenile program in Gallup spent \$31,272 – mainly on personnel – but had only 60 total client days, meaning that their cost per client per day was \$521. An article from the Albuquerque Journal referencing the shut-down of the juvenile drug court in Ruidoso cited low enrollment and high costs as key reasons for the closure, as well as demands on the time of judges. The article indicated that prior to closure, there were only three individuals enrolled in the program.

## **Recommendations**

AOC should:

- Target counties with high-risk, high-need juvenile populations willing to support drug courts as part of a continuum of evidence-based interventions for juveniles.
- Assess whether resource or scale efficiencies can be achieved for juvenile drug court programs, such as increased resource sharing between adult and juvenile drug courts, or consolidation of programs.
- Revise performance measures to better assess drug court outcomes, including performance by cohort (this could be more easily tracked if a uniform, statewide database was available).

- 
- Using CYFD arrest data, compare juvenile drug court outcomes and costs to a comparison group – and to outcomes and costs of other juvenile justice interventions.



## Administrative Office of the Courts

Supreme Court of New Mexico

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October 24, 2017

Mr. David Abbey  
Director, Legislative Finance Committee  
325 Don Gaspar, Suite 101  
Santa Fe, NM 87505

Dear Mr. Abbey,

We have received and reviewed the draft form of the Legislative Finance Committee's evaluation of Adult and Juvenile Drug Courts. Attached are specific comments related to the report's recommendations.

More generally, we appreciate the LFC's understanding of our programs' focus on a high risk/high need offender population. Your evaluation team's decision to take extra time to build a comparison group that is similarly comprised, especially in regard to criminal history and high risk of repeat offense, will be essential to a viable comparison of our programs' outcomes and costs to "business as usual." We also appreciate LFC's recognition of our dedication to best practices. As the report notes, we have contracted with a national research organization to embed the extensive array of evidence-based best practices in our state standards and operations. The program certification process we have just initiated is based on those standards and will help ensure our programs are maintaining fidelity to the drug court model while employing as many best practices as local resources allow. By doing so, we are confident our programs' results will continue to compare favorably to those in the national literature, showing drug courts are successful in reducing recidivism of substance-dependent repeat offenders, and more cost effectively than alternative interventions.

I want to thank the LFC evaluation team for giving us an opportunity to review the draft report and discuss its contents in preliminary meetings. We appreciate the team's efforts, the work of the New Mexico Sentencing Commission in providing comparison group data, and all of our adult and juvenile drug court programs for responding to AOC requests for cost and program data to help the LFC with the analysis.

Sincerely,

Arthur W. Pepin, Director  
Administrative Office of the Courts

- 
- **Collect cost data on all costs incurred by drug courts – including non-drug court personnel costs and detention costs – to assess overall, or “all-in” program costs.**

Drug Court judges and the attorneys who serve as part of the drug court teams often donate their time to the program out of a belief in its effectiveness, and that is why such personnel costs are not normally included by the AOC in its drug court cost calculation. Similarly, drug court participants spend far less time in detention than they would if they were not in drug court. The AOC understands, however, the LFC’s interest in the “all-in” program costs and will work with the appropriate agencies to secure personnel and detention costs.

- **Require courts to track participants’ risk and need assessment scores to understand the risk profile of drug court participants and ensure that programs are serving target populations.**

The AOC is confident that programs are appropriately screening referrals to ensure they are focusing program resources on high risk / high need participants, but will work with the programs to ensure the results of the screening are consistently tracked in the drug court database.

- **Consider administering a risk and needs assessment to all defendants – not just potential drug court participants – in order to better assess and compare risk and need levels between defendants and target interventions accordingly.**

The AOC agrees in the benefit of screening all defendants for risk of reoffense and behavioral health issues, but suggests that detention facilities might be more appropriate entities to administer such initial assessments in light of limited pre-trial services at the courts statewide. We’ll also note that the defense bar has often raised concerns about such screening “interviews” being conducted without counsel present.

- **Include performance measures such as graduation, recidivism, and costs in its program certification process to ensure courts are meeting meaningful performance targets, in addition to implementing best practices.**

A review of a program’s performance measures is already planned as part of the program certification process.

- **Engage external outcome evaluation in the program certification process in order to provide independent oversight.**

The AOC would be interested in doing so if funding were available. As is, the program certification process is designed with AOC’s limited funding in mind. Historically, the AOC has channeled all drug court funding to the programs for their operations and participant treatment, using fidelity to the drug court model as the means to ensure programs are operating effectively.

- **Implement a statewide, cloud-based database with uniform data fields and conventions to track participant data, including screening, demographics, activities, and outcomes.**

The AOC hopes to migrate to the Supervision module within the Odyssey case management system for tracking all drug court program and participant activities. The current Microsoft Access database has worked well from a program practitioner standpoint, and has been recommended by independent researchers to other states as an inexpensive solution for tracking program data. The migration to Odyssey will need to be monitored carefully to ensure it balances practitioner and evaluator requirements.

- **Revise performance measures to better assess drug court outcomes, including performance by cohort.**

The AOC is working with NPC Research on the state’s program certification process, and has asked for their suggestions on improvements to our current performance measures. Their recommendations will be included in the project plan for the proposed migration to Odyssey’s Supervision module.

- 
- **Require treatment providers to become Medicaid certified in order to contract with drug courts, where feasible, and work with HSD to help providers obtain Medicaid certification.**

The AOC has a third party billing expert under contract to help the drug court treatment providers understand and navigate the Medicaid certification process. However, in light of the federal discussion about the Affordable Care Act and the state's recent behavioral health shakeup, the AOC has encouraged but not demanded that our program treatment providers become Medicaid certified.

- **Require drug court treatment providers to report Medicaid billing and reimbursement to drug court coordinators as part of contracts.**

The AOC agrees with this recommendation and will continue working with the appropriate courts to secure this information from their treatment providers.

- **Encourage treatment providers who are Medicaid certified to bill Medicaid for all available services.**

The AOC encourages the courts to include language in their treatment contracts to require that the provider bill Medicaid and/or private insurance first, and only bill the court for uncovered treatment services or ineligible participants.

- **Target counties with high-risk, high-need juvenile populations willing to support drug courts as part of a continuum of evidence-based interventions for juveniles.**

Historically, the AOC has never directed a jurisdiction to start a drug court; instead, it has responded to local initiative by helping with implementation, training, and the identification of potential funding. Pending improved communication with CYFD (see next response), and the local jurisdiction's interest, the AOC is ready to explore the potential for new or expanded programs in the appropriate counties.

- **Assess whether resource or scale efficiencies can be achieved for juvenile drug court programs, such as increased resource sharing between adult and juvenile drug courts, or consolidation of programs.**

The AOC is aware of the mixed results for juvenile drug court programs in the national research, and recognizes that the problematic perception of our state's programs by CYFD has led to a significant decrease in referrals. The AOC believes, however, that the best approach to the juvenile drug courts is to use the program certification process to ensure they are operating in fidelity to the drug court model and employing as many best practices as local resources allow, while also working towards better communication with CYFD on juveniles in the system and appropriate program placement.

- **Using CYFD arrest data, compare juvenile drug court outcomes and costs to a comparison group – and to outcomes and costs of other juvenile justice interventions.**

The AOC will reach out to NCJFCJ and other federal partners for recommendations on securing the resources necessary to such an evaluation, as the AOC does not have the staff resources to do this internally.



## Appendix A: Evaluation Scope and Methodology

### **Evaluation Objectives.**

- Assess the impact of New Mexico drug courts on criminal recidivism compared to “business as usual”;
- Review the cost of operating drug courts, relative to “business as usual;” and
- Determine whether drug courts produce savings that exceed the costs of the program and if the intervention should be expanded further.

### **Scope and Methodology.**

- Reviewed and analyzed adult and juvenile drug court performance measure data collected by the Administrative Office of the Courts
- Performed a cohort-based recidivism analysis of adult drug court participants versus a comparison group of individuals in the “business as usual” criminal justice system (ongoing; results forthcoming)
- Reviewed and analyzed drug court budgets and surveyed adult and juvenile drug courts about the personnel, treatment, and other operational costs involved in administering drug court programs and analyzed this data against “business as usual” costs
- Reviewed national and state drug court standards and best practices, including the results of the NPC Research best practice survey of New Mexico drug courts
- Reviewed existing studies and evaluations of drug courts both nationally and in New Mexico
- Interviewed selected drug court personnel, including drug court coordinators, treatment providers, judges, and probation officers
- Visited selected drug courts and observed drug court hearings and staffings

### **Evaluation Team.**

Alison Nichols, Lead Program Evaluator  
Maria Griego, Program Evaluator  
Brian Hoffmeister, Program Evaluator  
Jessica Eden, Support Staff

**Authority for Evaluation.** LFC is authorized under the provisions of Section 2-5-3 NMSA 1978 to examine laws governing the finances and operations of departments, agencies, and institutions of New Mexico and all of its political subdivisions; the effects of laws on the proper functioning of these governmental units; and the policies and costs. LFC is also authorized to make recommendations for change to the Legislature. In furtherance of its statutory responsibility, LFC may conduct inquiries into specific transactions affecting the operating policies and cost of governmental units and their compliance with state laws.

**Exit Conferences.** The contents of this report were discussed with the Director of the Administrative Office of the Courts and his staff on October 20, 2017.

**Report Distribution.** This report is intended for the information of the Office of the Governor, the Administrative Office of the Courts, the Office of the State Auditor, and the Legislative Finance Committee. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Charles Sallee  
Deputy Director for Program Evaluation



## Appendix B: FY17 Drug Court Operating Budgets

### FY17 Operating Budget for All Adult Drug Courts\*

(\$ in thousands)

Revenues	Base Operating Budget	Supplemental Funding Award	Total
General Fund	\$2,837.4	\$0.0	\$2,837.4
Other Transfers	\$0.0	\$870.8	\$870.8
Federal Funds	\$0.0	\$0.0	\$0.0
Other Revenues	\$22.0	\$0.0	\$22.0
Fund Balance	\$16.5	\$0.0	\$16.5
<b>Total</b>	<b>\$2,875.9</b>	<b>\$870.8</b>	<b>\$3,746.7</b>
Expenditures	Base Operating Budget	Supplemental Funding Award	Total
Personal Services & Employee Benefits	\$1,829.6	\$193.0	\$2,022.6
Contractual Services	\$907.7	\$663.9	\$1,571.6
Other	\$138.6	\$13.8	\$152.4
Other Financing Uses	\$0.0	\$0.0	\$0.0
<b>Total</b>	<b>\$2,875.9</b>	<b>\$870.7</b>	<b>\$3,746.6</b>

\* Excludes funding for the 2nd Judicial District Adult Drug Court provided through the Corrections Department

Source: AOC

### FY17 Operating Budget for All Juvenile Drug Courts

Revenues	Base Operating Budget	Supplemental Funding Award	Total
General Fund	\$2,321.3	\$0.0	\$2,321.3
Other Transfers	\$0.0	\$459.5	\$459.5
Federal Funds	\$0.0	\$0.0	\$0.0
Other Revenues	\$1.0	\$0.0	\$1.0
Fund Balance	\$0.0	\$0.0	\$0.0
<b>Total</b>	<b>\$2,322.3</b>	<b>\$459.5</b>	<b>\$2,781.8</b>
Expenditures	Base Operating Budget	Supplemental Funding Award	Total
Personal Services & Employee Benefits	\$1,739.0	\$143.4	\$1,882.4
Contractual Services	\$500.2	\$302.2	\$802.5
Other	\$83.1	\$14.0	\$97.1
Other Financing Uses	\$0.0	\$0.0	\$0.0
<b>Total</b>	<b>\$2,322.3</b>	<b>\$459.6</b>	<b>\$2,781.9</b>

Source: AOC

## Appendix C: Drug Court Best Practice Adherence

Drug courts were categorized into high fidelity (adhering to at least 75 percent of best practices), medium fidelity (between 64 and 74 percent of best practices) and low fidelity (less than 64 percent of best practices).

Court type	Court name
Adult	3rd District
Juvenile	3rd District
Adult	13th District - Bernalillo
Juvenile	5th District - Roswell
Adult	9th District - Clovis
Juvenile	6th District - Deming
Juvenile	13th District – Los Lunas
Juvenile	13th District – Grants
Adult	9th District - Portales
Adult	6th District - Silver City
Adult	11th District - Aztec
Adult	12th District – Alamogordo
Adult	13th District – Grants
Juvenile	2nd District
Adult	1st District – Santa Fe
Juvenile	13th District – Bernalillo
Juvenile	12th District – Ruidoso
Adult	6th District – Lordsburg
Juvenile	1st District – Espanola
Juvenile	5th District – Carlsbad
Juvenile	1st District – Santa Fe
Adult	4th District – Las Vegas
Adult	7th District – Estancia
Adult	1st District – Espanola
Adult	2nd District
Juvenile	11th District – Farmington
Adult	8th District – Taos
Adult	7th District – Socorro
Adult	8th District – Raton
Adult	7th District – TorC
Adult	13th District – Los Lunas

## Appendix D: NPC Research Best Practice Survey

<b>Key Component #1: Drug courts integrate alcohol and other drug treatment services with justice system case processing.</b>
1.1 Program has a Memorandum of Understanding (MOU) in place between the drug court team members (and/or the associated agencies)
a. MOU specifies team member roles
b. MOU specifies what information will be shared
1.2 Program has a written policy and procedure manual
1.3 All key team members attend staffing (Judge, prosecutor, defense attorney, treatment, program coordinator, and probation)
1.4 All key team members attend court sessions/status review hearings (Judge, prosecutor, defense attorney, treatment, program coordinator, and probation)
1.5 Law enforcement (e.g., police, sheriff) is a member of the drug court team
1.6 Law enforcement attends drug court team meetings (staffings)
1.7 Law enforcement attends court sessions (status review hearings)
1.8 Treatment communicates with court via email
<b>Key Component #2: Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights</b>
2.1 A prosecuting attorney attends drug court team meetings (staffings)
2.2 A prosecuting attorney attends court sessions (status review hearings)
2.3 The defense attorney attends drug court team meetings (staffings)
2.4 The defense attorney attends court sessions (status review hearings)
<b>Key Component #3: Eligible participants are identified early and promptly placed in the drug court program.</b>
3.1 The time between arrest and program entry is 50 days or less
3.2 Current program caseload/census (number of individuals actively participating at any one time) is less than 125
3.3 The drug court allows other charges in addition to drug charges
3.4 The drug court accepts offenders with serious mental health issues, as long as appropriate treatment is available
3.5 The drug court accepts offenders who are using medications to treat their drug dependence
3.6 Program uses validated, standardized assessment to determine eligibility
3.7 Participants are given a participant handbook upon entering the program

<b>Key Component #4: Drug courts provide access to a continuum of alcohol, drug and other treatment and rehabilitation services</b>
4.1 The drug court works with two or fewer treatment agencies or has a treatment representative that oversees and coordinates treatment from all agencies
4.2 The drug court requires participants to meet individually with a treatment provider or clinical case manager weekly in the first phase of the program
4.3 The drug court offers a continuum of care for substance abuse treatment (detoxification, outpatient, intensive outpatient, day treatment, residential)
4.4 Program uses validated, standardized assessment to determine level or type of services needed <sup>1</sup>
4.5 Treatment providers administer evidence-based, manualized behavioral or cognitive-behavioral treatments
4.6 The drug court offers gender specific services
4.7 The drug court offers mental health treatment
4.8 The drug court offers parenting classes
4.9 The drug court offers family/domestic relations counseling
4.10 The drug court offers residential treatment
4.11 The drug court offers health care
4.12 The drug court offers dental care
4.13 The drug court offers anger management classes
4.14 The drug court offers housing assistance
4.15 The drug court offers trauma-related services
4.16 The drug court offers a criminal thinking intervention
4.17 The drug court provides relapse prevention services for all participants
4.18 The drug court provides services to participant's children
4.19 The drug court provides childcare while participants are in treatment or in court (or participating in other drug court requirements)
4.20 Program provides (or partners with service providers who provide) participants with legally prescribed psychotropic or addiction medication (MAT)
4.21 The minimum length of the drug court program is 12 months or more
4.22 Treatment providers are licensed or certified to deliver substance abuse treatment
4.23 Treatment providers have training and/or experience working with a criminal justice population
4.24 Caseloads for probation/supervision officers do not exceed 30 active participants (up to 50 if mix of low risk and no other caseloads/responsibilities)
4.25 Caseloads for clinicians providing case management and treatment do not exceed 30 active participants (up to 40 if only counseling OR 50 if only case management)

<b>Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing</b>	
5.1	Drug testing is random/unpredictable
5.2	Drug testing occurs on weekends/holidays
5.3	Collection of test specimens is witnessed directly by staff
5.4	Staff that collect drug testing specimens are trained in appropriate collection protocols
5.5	Drug test results are back in 2 days or less
5.6	Drug tests are collected at least 2 times per week
5.7	Participants are expected to have greater than 90 days clean (negative drug tests) before graduation
<b>Key Component #6: A coordinated strategy governs drug court responses to participants' compliance</b>	
6.1	Program has incentives for graduation, including avoiding a criminal record, avoiding incarceration, or receiving a substantially reduced sentence
6.2	Sanctions are imposed immediately after non-compliant behavior (e.g., drug court will impose sanctions in advance of a client's regularly scheduled court hearing)
6.3	Team members are given a written copy of the incentive and sanction guidelines
6.4	Program has a range of sanction options (including less severe sanctions such as writing assignments and community services and more severe sanctions such as jail time)
6.5	In order to graduate participants must have a job or be in school
6.6	In order to graduate participants must have a sober housing environment
6.7	In order to graduate participants must have pay all court-ordered fines and fees (e.g., fines, restitution)
6.8	Participants are required to pay court fees
6.9	The drug court reports that the typical length of jail sanctions is 6 days or less
6.10	The drug court retains participants with new possession charges (new possession charges do not automatically prompt termination)
<b>Key Component #7: Ongoing judicial interaction with each participant is essential</b>	
7.1	Participants have status review sessions every 2 weeks, or once per week, in the first phase
7.2	Judge spends an average of 3 minutes or greater per participant during status review hearings
7.3	The judge's term is at least 2 years or indefinite
7.4	The judge was assigned to drug court on a voluntary basis
7.5	In the final phase of drug court, the clients appear before the judge in court at least once per month
<b>Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness</b>	
8.1	The results of program evaluations have led to modifications in drug court operations
8.2	Review of program data and/or regular reporting of program statistics has led to modifications in drug court operations
8.3	The drug court maintains data that are critical to monitoring and evaluation in an electronic database (rather than paper files).

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<b>Key Component #9: Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations</b>
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9.1 All new hires to the drug court complete a formal training or orientation
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9.2 All members of the drug court team are provided with training in the drug court model
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9.3 Drug court staff members receive ongoing cultural competency training
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<b>Key Component #10: Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness</b>
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10.1 The drug court has an advisory committee that meets twice per year
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10.2 The drug court has an advisory committee that includes community members
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10.3 The drug court has a steering committee or policy group that meets regularly to review policies and procedures
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## Appendix E: Drug Court Screening Tools

### Sample RANT screening report



## Treatment Research Institute

### Client Report

<b>Name:</b>	John Doe	<b>Gender:</b>	Male
<b>Date of Birth:</b>	6/2/1982	<b>Race:</b>	Multiracial
<b>Date of Eval:</b>	2/13/2008	<b>Evaluator:</b>	Jane Doe
<b>ID No:</b>	18003501	<b>Referral Source:</b>	Pre-trial Services
<b>Case No:</b>	984654654		

		Risk	
		High	Low
		X	
Needs	High		
	Low		

**The following risk factors were identified:**

- **Age of onset of criminal activity  $\leq 15$  years.** An earlier onset of crime or delinquency generally predicts a more chronic course and poorer response to interventions unless there is close supervision and accountability.
- **Age of onset of substance abuse  $\leq 13$  years.** An earlier onset of substance abuse generally predicts a more chronic course and poorer response to standard treatment unless there is close supervision and accountability.
- **Deviant peer affiliations.** Associating with other offenders or substance abusers predicts a poorer response to treatment and supervision requirements.
- **Prior failure in drug rehabilitation.** Previous failures in rehabilitation or treatment predict a poorer response to subsequent episodes unless there is more intensive monitoring and services.
- **Prior felony or serious misdemeanor convictions.** Prior felony or serious misdemeanor convictions predict a greater likelihood of recidivism.
- **Unstable living arrangements.** A pattern of instability is generally associated with a poorer response to treatment and greater likelihood of failure to comply with supervision requirements.

**The following needs factors were identified:**

- **Physical addiction to drugs or alcohol.** This individual suffers from a loss of control over substance use that requires substantial clinical intervention.

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This individual was classified as **high risk and high need**. Such individuals typically require a combination of services involving intensive treatment, close monitoring, and accountability for their actions.

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*Note: This triage screen was not designed to be a clinical assessment tool and should not be used for treatment planning or diagnostic purposes. It was designed to identify those risks and needs for offenders that have been proven by research to predict a poorer response to standard supervisory or treatment requirements. The goal is to use this information to match the offenders to those programs that are most likely to elicit the best outcomes.*



RANT™ was created by the Treatment Research Institute