

# Performance Audit

Legislative Joint Auditing Committee

May 9, 2008

## Drug Court Programs

Arkansas Administrative Office of the Courts and  
Arkansas Department of Community Correction

### INTRODUCTION

Act 1266 of 2003, known as the Arkansas Drug Court Act, authorized each judicial district to establish a drug court program to help with serious overcrowding in state prisons. Drug courts are designed to be a treatment-based alternative to incarceration for individuals with a dependence on drugs or alcohol. Act 1022 of 2007 created the Division of Drug Court Programs within the Administrative Office of the Courts along with a twelve-member Drug Court Advisory Committee in order to help facilitate the creation, expansion, and coordination of drug court programs.

The first drug court in the State began operating through a federal grant in Little Rock in 1994. Since then, the number of drug courts in the State has increased to thirty-nine (39). Counties with drug court programs are illustrated in Exhibit I on page 2. This report serves to inform members of the Legislative Joint Auditing Committee of the ongoing efforts of the adult drug court programs and our review of selected drug courts throughout the State. **Audit conclusions and recommendations are provided on page 8.**

### OBJECTIVES

We determined if the:

- Policies and procedures for drug court programs were comparable to other states;
- Drug court programs incorporated the "Ten Key Components" outlined in Act 1022 of 2007;
- Administrative Office of the Courts had provided a uniform statewide method to evaluate the effectiveness of drug court programs; and
- Drug courts had proper controls in place for the collection of fees.

### SCOPE AND METHODOLOGY

This audit was conducted for the period July 1, 2007 through December 31, 2007. We met with drug court teams at randomly selected drug courts and reviewed participant case files, court dockets, related bank records, and controls over fees collected.

ARKANSAS DIVISION OF LEGISLATIVE AUDIT

172 State Capitol, Little Rock, AR 72201

Phone: 501-683-8600 Fax: 501-683-8605

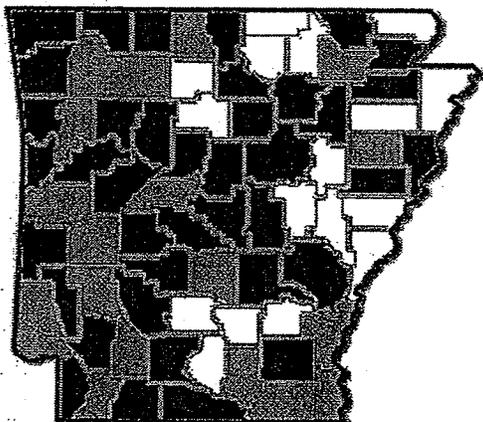
[www.arklegaudit.gov](http://www.arklegaudit.gov)

Report ID: PSPE03408 Report Date: May 2, 2008



**Exhibit I**

**Drug Court Programs Map  
at December 31, 2007**



	Primary county where drug court is located
	County served by a court in another county
	No drug court

Source: Department of Community Correction

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**BACKGROUND**

The concept of drug courts originated in Dade County, Florida in 1989. As illicit drug and alcohol related arrests rose throughout the nation, the number of drug courts also increased to address the resultant overcrowding in prison systems. Drug courts are currently operating in forty-four (44) states.

Drug courts are designed to provide an alternative to incarceration while providing a highly-structured judicial process for substance abuse treatment. In addition to

reduced prison populations, benefits of a drug court program include:

- Hands-on drug/alcohol counseling;
- Required employment for participation resulting in productive, tax-paying citizens;
- Continued educational training to increase the standard of living for participants and the community where they reside;
- Continued payment of fines, fees, and restitution participants may owe; and
- The opportunity to maintain or heal family relationships.

The drug court program structure and oversight used nationwide has demonstrated an overall success of helping individuals with an underlying problem of drug and alcohol addiction become productive members of society and avoid return to the criminal

**POINTS OF INTEREST:**

- *Participant user fees are not collected in a uniform manner. (page 8)*
- *Arkansas Code does not define "remaining funds" nor specify at what point in time funds are to be deposited into the MAGNUM Drug Court Fund. (page 10)*
- *Arkansas Code does not provide a definition of a violent felony offense specific to the drug court statute. (page 10)*

**LIST OF EXHIBITS AND SCHEDULES:**

<i>Drug Court Map</i>	<i>Page 2</i>
<i>Ten Key Components</i>	<i>3</i>
<i>Drug Court Process</i>	<i>3</i>
<i>Drug Court Team</i>	<i>4</i>
<i>Average Daily Costs</i>	<i>6</i>
<i>Drug Court Fees</i>	<i>7</i>
<i>Drug Courts Visited</i>	<i>9</i>
<i>Budgeted Treatment Dollars</i>	<i>11</i>

justice system. Conversely, disadvantages that have arisen include individuals with felony charges who have fled court supervision and those who have misrepresented their drug or alcohol dependence to avoid incarceration. The risk also exists that drug court participants might relapse into drug use causing personal injury or loss of life to themselves or others.

## DRUG COURT PROCESS

Act 1022 of 2007 requires each drug court program to incorporate the "Ten Key Components" detailed in **Exhibit II** to provide an interdisciplinary, non-adversarial approach focusing on treating each participant's individual addiction. While each judicial district is allowed to operate its drug court program with a degree of autonomy, details of the program process most widely used along with a description of the roles of key participants is provided beginning on page 4. The process is summarized in **Exhibit III**.

### Exhibit II

#### Drug Court Program Ten Key Components

- Integration of substance abuse treatment with justice system case processing
- Non-adversarial approach
- Early identification of eligible participants and prompt placement
- Access to a continuum of treatment, rehabilitation, and related services
- Frequent alcohol and drug testing
- Coordinated strategy among the judge, prosecution, defense, and treatment providers to govern offender compliance
- Ongoing judicial interaction
- Monitoring and evaluation of program goals and effectiveness
- Continuing interdisciplinary education
- Development of partnerships with public agencies and community-based organizations

Source: Act 1022 of 2007

### Exhibit III

#### Drug Court Process

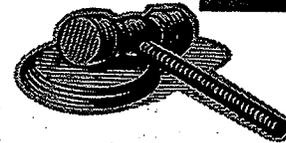


1. The drug court process begins with the arrest and charge of an individual in a drug-related crime.

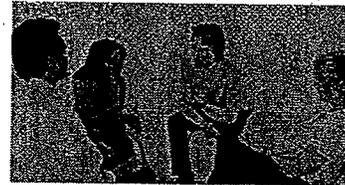


2. Potential participants are referred by the prosecuting attorney's office and a drug screening and assessment are performed.

3. Potential participants are evaluated by the drug court team and a recommendation is presented to the drug court judge.

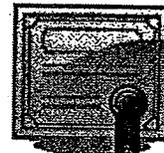


4. Drug court judge accepts the individual into the program and the defendant pleads guilty to the related charges or charges are set aside pending completion of the program.



5. Individuals begin group, individual, and/or residential treatment. Treatment includes random drug testing, Department of Community Correction (DCC) supervision, and periodic drug court appearances.

6. Individuals successfully completing drug treatment may avoid a felony conviction, incarceration, or have their convictions sealed and/or expunged.



Source: Act 1022 of 2007

**Drug Court Team**

Each drug court program is staffed with a team typically comprised of the following individuals:

- Circuit Judge (Drug Court Judge);
- Prosecuting Attorney (or their designee);
- Defense Attorney (Public Defender Office or private attorney);
- Department of Community Correction (DCC) Probation Officer; and
- Drug/Alcohol Treatment Counselor.

Drug court teams may have additional members such as representatives from county or city law enforcement. The drug court team is responsible for implementing the core components of the drug court process. The role of each team member is detailed in **Exhibit IV** below.

Additional state entities providing support for drug court programs include:

1. **The Administrative Office of the Courts (AOC)** Division of Drug Court Programs monitors and serves as a liaison to the drug courts throughout the State. The Division also develops the funding formula for allocating treatment funding provided to drug courts.
2. **The Drug Court Advisory Committee** provides oversight to the Division of Drug Court Programs by reviewing the allocation formula for treatment dollars and the development of effective local drug court programs. The Committee also establishes the structure for conducting research and evaluation of drug court program accountability. The Committee is comprised of twelve (12) members representing:
  - Administrative Office of the Courts (AOC);
  - Arkansas Drug Director;
  - Arkansas Judicial Council;
  - Arkansas Public Defender Commission;

**Exhibit IV  
Drug Court Team**

Team Member	Responsibility
Drug Court Judge	Provides judicial oversight for the local drug court program. The judge orders participants into the program and ensures participants follow program guidelines.
Prosecuting Attorney	Is often the first team participant with knowledge of the offender and their potential eligibility for the program. They often recommend potential participants for drug court.
Defense Attorney	Works with the prosecuting attorney to review potential drug court participant's options and ensure the individual's rights to due process are protected.
DCC Probation Officer	Provides an integral part in the supervision of the participant. They perform random drug tests, periodic house searches, employment or school checks. They ensure the individual is performing all program requirements.
Drug/Alcohol Treatment Counselor	Provides outpatient treatment such as individual and group counseling sessions to help participants deal with the underlying causes of their drug or alcohol dependence.

Source: Act 1022 of 2007

DCC - Department of Community Correction

- Arkansas Supreme Court;
  - Board of Corrections;
  - Bureau of Alcohol and Drug Abuse Prevention;
  - Department of Community Correction (DCC);
  - Department of Human Services (DHS);
  - House of Representatives;
  - Prosecutor Coordinator's Office; and
  - Senate.
3. **The Department of Community Correction (DCC)** oversees probation and counseling staff assigned to drug court programs and assists in data collecting functions. DCC provides its personnel with alcohol and drug treatment training and licenses transitional living facilities housing participants who are felony offenders.
4. **The Department of Human Services (DHS) Office of Alcohol and Drug Abuse Prevention (ADAP)** licenses counselors and alcohol and drug treatment centers authorized to be used by the drug court programs.

#### Drug-Related Arrest

The drug court process starts with the arrest and charge of an individual with a crime committed 1) to support a drug addiction or 2) as a result of a drug-related addiction. Drug courts operate in two ways, either allowing an eligible offender to enter treatment prior to being convicted of criminal charges (pre-adjudication) or after a plea to the court, as a condition of probation (post-adjudication). Some courts use both options. In either process, potential participants are referred by the prosecuting attorney's office for a criminal history screening and a drug addiction assessment.

#### Screening and Assessments

Criminal background screenings are conducted by DCC probation officers and/or



prosecuting attorneys to verify the potential participant does not have a history of violence, sex offenses, or other pending criminal charges. Drug and alcohol assessments are then completed by drug treatment counselors to document the nature of the drug or alcohol dependence. Each court may provide additional eligibility requirements for participation in the program. For example, some drug courts require participants to live in the geographical area of the drug court and not be a charged or convicted manufacturer or distributor of a controlled substance.

Once the screening and assessment is complete, the drug court team reviews the results and discusses the potential participant's eligibility for the program with final approval left to the drug court judge. The individual may then accept the offer to enter the drug court program at which point treatment begins.

#### Treatment

Participants are required to follow a vigorous schedule of:

- Individual and group counseling;
- Drug tests;
- Court appearances;
- Educational or employment requirements;
- Probation officer meetings; and
- Submission to random home visits and searches.

The number and length of treatment phases vary by program. Most programs have multiple treatment phases lasting a total of 9 to 24 months with progression to the next phase allowed only after completion of all current phase requirements. Requirements typically include clean drug tests, attendance at all required counseling sessions, and payment of all fees. As the participants progress through the program, the number of drug tests, counseling sessions, and probation officer visits decrease. Conversely, if the participant does not complete all required phase events they may be sanctioned. Sanctions may range from:

- Verbal warning from the judge;
- Weekend in jail;
- Week(s) in a regional correction facility;
- Set back to a previous treatment phase;
- Ordered to a residential treatment facility; or
- Termination from the program.

In fiscal year 2008, DCC provided \$2,853,721 to drug court programs for treatment. The funding was authorized for each drug court program based on a formula developed by the Administrative Office of the Courts, reviewed by the Drug Court Advisory Committee, and approved by Legislative Council.

For fiscal year 2008, funding was divided among the State's thirty-nine (39) drug courts based upon the average caseload of calendar year 2006. Each drug court received a minimum award amount of \$25,000 (with the exception of newly established courts, which received one-half of the base amount, or \$12,500). The base amount of \$25,000 covered 11.73 participants for 2008. For each participant over the base amount of 11.73 the drug courts received an additional \$2,035 per participant. The amount authorized for each drug court program for fiscal year 2008 is detailed in Schedule 1 on page 11.

Treatment funding earmarked by DCC for drug court programs has allowed treatment options that prior to this funding were not always available. For example, the funding increased residential treatment options that once required long waits for space and shorter stays in treatment facilities.

Exhibit V details the difference in the average daily cost per individual in drug court (\$9.96), regular DCC probation (\$1.22), DCC incarceration (\$47.66), and incarceration in the Department of Correction (\$54.82). Other than treatment and probation services, there are no additional direct costs to the State for drug court programs.

#### Exhibit V

Average Daily Costs for Sentencing Options Fiscal Year 2007			
Sentencing Option	Total 2007 Expenditures	Number of Individuals	Average Daily Cost per Individual per Day
Drug Court	\$5,136,196	1,413	\$9.96
Regular Probation	\$23,504,797	52,784	\$1.22
DCC residential correctional facilities	\$26,355,800	1,515	\$47.66
ADC correctional facilities	\$253,342,707	13,762	\$54.82

Sources: Department of Community Correction (DCC) and Arkansas Department of Correction (ADC)

## Exhibit VI

Commonly Assessed Drug Court Fees December 31, 2007				
Fee	Payment To:	Amount:	Service Provided:	General Collection Process:
Program User Fee	Drug Court	Up to \$20 per month	Operation of the drug court program	Payments made in person to the court clerk
Supervision Fee	DCC	\$25 per month	Probation officer supervision	DCC payment coupons mailed directly to the DCC Central Processing Center
Drug Court Treatment Assessment Fee	DCC, Private Provider or Drug Court	Up to \$600 for the program	Drug counseling and drug testing supplies	<ul style="list-style-type: none"> <li>• DCC payment coupons mailed directly to the DCC Central Processing Center.</li> <li>• Payments made in person to private providers, and</li> <li>• Payments received by the drug court using various methods.</li> </ul>

*Note: All or any drug court fees may be waived by the drug court judge.*

*\*The judge may require the fee to be divided between the provider and the drug court.*

*DCC - Department of Community Correction*

*Source: Act 1266 of 2003*

### Fees

While some drug court judges choose not to assess any fees because of the financial difficulties often associated with those recovering from drug addictions, Act 1266 of 2003 authorizes the collection of certain fees (detailed in Exhibit VI) from participants to help offset the cost of the program. The fees are:

- Program user fee - not to exceed \$20 per month, may be collected for the benefit and administration of the drug court program. Remaining program user fees are required to be remitted to the Treasurer of the State by the court clerk for deposit in the MAGNUM Drug Court Fund;
- Supervision fee - a DCC fee (currently \$25 per month as requested by DCC) for supervision and drug court assessment conducted by DCC probation officers; and

- Drug court treatment assessment fee - a fee paid to the provider of treatment services for counseling and drug testing supplies (currently \$600 per participant as requested by DCC).

All or any of the fees may be waived by the drug court judge. DCC requests judges order participants to pay the \$25 supervision fee and at least \$300 of drug court treatment assessment fee if DCC is serving as the treatment provider. Any remaining balance of the \$600 drug court treatment assessment fee may be paid to a private treatment provider, DCC, or the drug court program itself. Fees collected by the drug court itself are often used to provide incentives for participants and to purchase awards for progress during or upon completion of the program.

### Program Completion

After successful completion of all treatment and judicial requirements, participants graduate from the program. In pre-

adjudication, the drug court judge's order is destroyed and the participant has no record of conviction for the felony drug-related charge. In post-adjudication, the participant's charges remain on their record; however, their record may be sealed and conviction expunged if they qualify under other Arkansas statutes (e.g. Act 346 of 1975, Arkansas First Offender Act).

## **PROGRAM STANDARDS AND MEASURES**

Act 1022 of 2007 requires the goals of the drug court programs to be consistent with the standards adopted by the United States Department of Justice and recommended by the National Association of Drug Court Professionals. The Division of Drug Court Programs within the Administrative Office of the Courts is responsible for:

- Developing a statewide evaluation model;
- Conducting ongoing evaluations of the effectiveness and efficiency of all drug court programs; and
- Providing a report on the effectiveness and efficiency of the drug court programs each year.

The Division of Drug Court Programs, working with the National Center for State Courts, has drafted and is currently reviewing the evaluation standards and the methodology for collecting this data in cooperation with DCC. Implementation of these standards is awaiting final approval by the Drug Court Advisory Committee and is set for implementation on July 1, 2008. The Division of Legislative Audit will evaluate the standards adopted and update the Legislative Joint Auditing Committee regarding the progress in meeting those standards once they have been implemented and adequate data has been accumulated for meaningful analysis.

## **OTHER STATES**

The National Center for State Courts has identified forty-four (44) states with some form of drug courts. We reviewed four (4) - Florida, Georgia, Missouri, and Tennessee to determine if policies and procedures in Arkansas drug court programs are comparable. Of the states reviewed, the "Ten Key Components" are also a fundamental part of the program. The drug courts work cooperatively with treatment providers and community services to provide participants with all the possible tools necessary to enter and stay in recovery as well as lead a productive, crime-free life. Like Arkansas, the goal of the drug court programs is to work on changing a person's life in order to stop criminal activity instead of focusing only on punishment. The other state drug courts we reviewed also have pre- and post-adjudication venues and have chosen to work with non-violent offenders using the drug court team approach. Drug courts remain a relatively new concept and long-term studies of their success are not available.

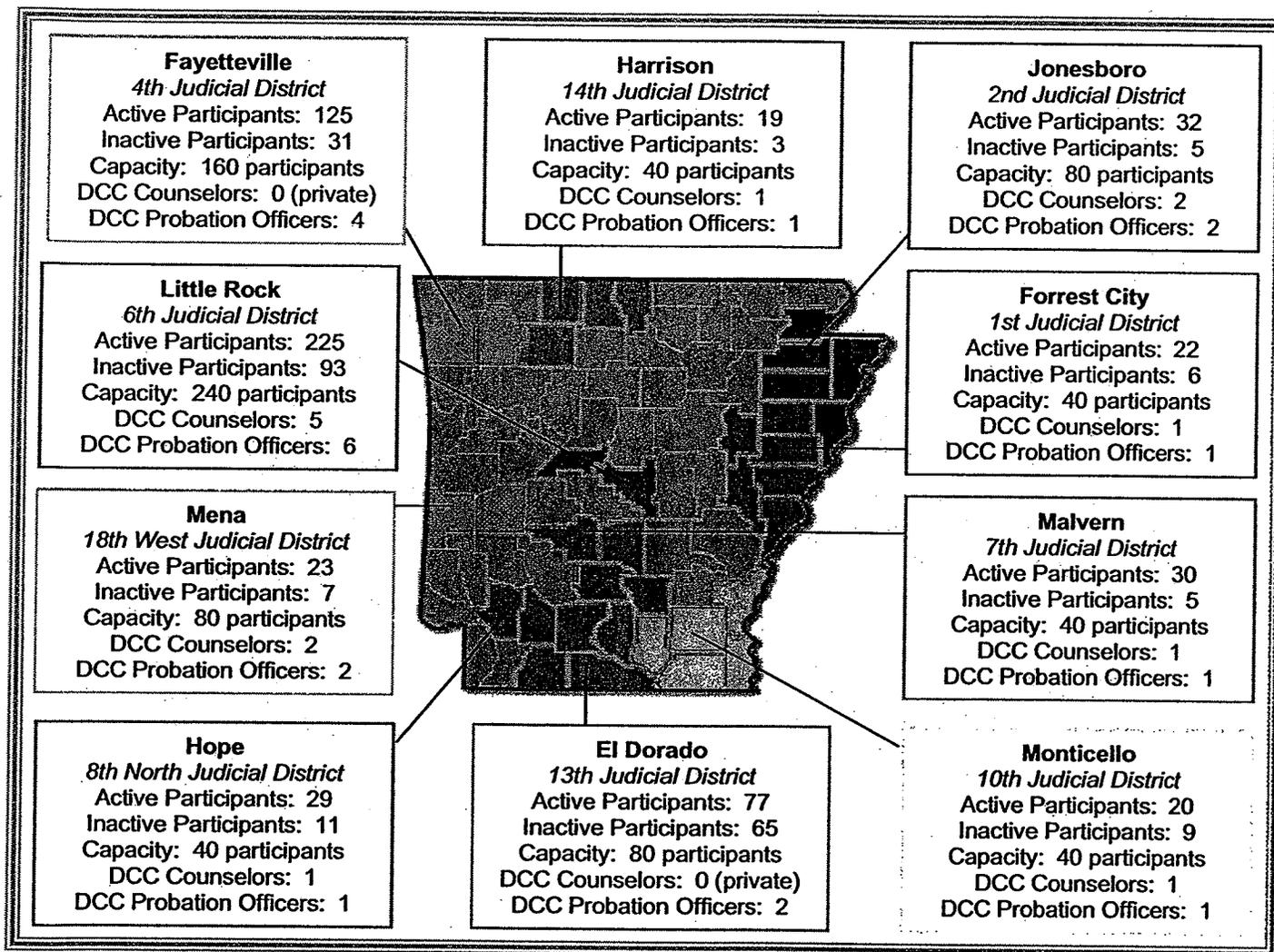
## **AUDIT CONCLUSIONS AND RECOMMENDATIONS**

To test the procedures of the State's drug court programs and their compliance with Arkansas Code, we visited ten (10) randomly selected drug courts identified in Exhibit VII. While we were able to verify the programs we visited operate within the framework of the "Ten Key Components" and AOC is in the process of developing a uniform, statewide evaluation method in accordance with Act 1022 of 2007, we noted the following areas of concern:

### **Audit Conclusion 1:**

Fees are not collected in a uniform manner. For example, one drug court program has participants remit fees to the deputy prosecuting attorney's office. These funds are deposited into a bank account maintained by the deputy prosecutor with the

**Exhibit VII**  
**Drug Court Programs Visited**



**Note 1:** Inactive Participants include drug court participants who are assigned to a residential treatment facility, incarcerated, or have absconded.  
**Note 2:** Act 1022 of 2007 specifies the ideal caseload is 30 participants per DCC counselor and 40 participants per DCC probation officer. Capacity figures presented above were calculated by multiplying 40 times the number of DCC probation officers assigned to each drug court program.  
**Note 3:** Staffing and participation rates at December 31, 2007.  
**Source:** Department of Community Correction (DCC)

collection, depositing, and expenditure of funds under the control of only one person. In addition to a lack of controls over the bank account, because the funds are held outside a state or local government entity, the funds are not subject to an annual financial audit.

In contrast, another drug court program uses the same process of collecting drug court fees as it does regular court fines through

the county clerk and treasurer offices. The expenditure of funds requires an affidavit with the drug court judge's signature for the release of funds to pay for approved expenditures. Funds held in the county treasury are subject to regular financial audits as well as established county collecting, receipting, and disbursement procedures.

We recommend the General Assembly consider revising Arkansas Code to require all funds collected relating to drug court programs (excluding payments to DCC) be deposited in county treasury accounts and follow established county procedures for collecting, receipting, and expending of funds.

**Audit Conclusion 2:**

Act 1266 of 2003 requires remaining participant user fees be remitted to the Treasurer of State by the court clerk for deposit in the MAGNUM Drug Court Fund. To date no funding has been placed in this fund. Arkansas Code does not define "remaining funds" nor specify at what point in time funds are to be deposited into the MAGNUM Drug Court Fund.

We recommend the General Assembly consider defining "remaining funds" and determining when required deposits are to be made into the MAGNUM Drug Court Fund.

**Audit Conclusion 3:**

Although Act 1022 of 2007 states defendants having a pending charge or conviction for a violent felony offense are not eligible for drug court programs, Arkansas Code does not provide a definition of a violent felony offense specific to the drug court statute.

If it is the intent of the statute to exclude offenders of selected violent acts, we recommend the General Assembly consider revising the law defining the term violent felony offense.

**ADDITIONAL CONCERNS  
EXPRESSED BY DRUG COURT  
TEAM MEMBERS**

In addition to the many positive aspects of drug court programs (e.g. small caseloads

and frequent judicial interaction), the drug court team members we visited shared the following areas of the program they thought might be improved upon.

1. As illustrated in Exhibit I on page 2, many drug court programs encompass more than one county. Having drug court participants travel into another county during regular office hours for routine drug counseling, DCC probation officer meetings, and random drug testing while maintaining employment creates an additional burden for these individuals. In addition, many participants have difficulty affording reliable transportation to attend required events. As a result, these obstacles often limit participants to only those who reside in the county or city where the drug court is located.
2. Funds are not available for drug court participant's basic prescription drug needs (e.g. blood pressure, insulin) or basic dental and medical treatment. Prospective participants have selected incarceration with the Arkansas Department of Correction over drug court in order to have these prescriptions provided for their care. Addressing the physical needs of participants may help resolve the underlying cause of some drug addictions.
3. Mental health treatment services for drug court participants is another area said to be needing improvement. Many of the community and residential treatment resources do not treat those with mental health issues. It was expressed that a dedicated statewide drug court resource might help alleviate the problem.

Budgeted Treatment Dollars by Drug Court for Fiscal Year 2008			
Drug Court	Calendar Year 2006 Average Caseload	Number of Participants Exceeding Base Funding	Authorized Award Amount <sup>1</sup>
Arkadelphia	23.25	12.00	\$48,443
Batesville	21.33	9.60	\$44,536
Benton	41.08	29.00	\$84,727
Bentonville	44.58	32.85	\$91,850
Berryville	9.58	0.00	\$25,000
Booneville	15.50	3.77	\$32,672
Camden	2.80	0.00	\$25,000
Clarksville	4.30	0.00	\$25,000
Conway	31.33	19.60	\$64,886
Dardanelle	0.00	0.00	\$12,500
El Dorado	47.83	36.10	\$98,463
Fayetteville	154.58	142.85	\$315,700
Forrest City	23.75	12.02	\$49,461
Fort Smith	113.58	101.85	\$232,265
Harrison	10.18	0.00	\$25,000
Heber Springs	7.25	0.00	\$25,000
Hope	26.30	14.77	\$55,057
Hot Springs	35.91	24.00	\$74,206
Jonesboro	22.75	11.20	\$47,426
Little Rock	208.25	196.80	\$425,488
Lonoke	29.58	17.85	\$61,325
Magnolia	37.25	25.52	\$76,933
Malvern	17.83	6.10	\$37,413
Mena	24.91	13.00	\$51,821
Monticello	22.16	10.00	\$46,225
Morrilton	28.58	16.85	\$59,290
Mountain Home	24.25	13.00	\$50,478
Mountain View	0.00	0.00	\$12,500
Nashville	32.00	20.27	\$66,249
Newport	5.80	0.00	\$25,000
Paragould	15.33	3.60	\$32,326
Pine Bluff	41.16	29.00	\$84,890
Pocahontas	27.58	15.85	\$57,255
Russellville	38.00	26.00	\$78,459
Searcy	23.50	11.77	\$48,952
Stuttgart	13.75	2.02	\$29,111
Texarkana	35.00	23.27	\$72,354
Van Buren	37.33	26.00	\$77,096
West Memphis	40.41	28.68	\$83,364
<b>TOTAL</b>	<b>1338.75</b>	<b>935.44</b>	<b>\$2,853,721</b>

<sup>1</sup> Authorized award amount is distributed only as needed for treatment.

Note: Fiscal Year 2008 funding is based on the average caseload of Calendar Year 2006. Each drug court program was funded a minimum of \$25,000 (\$12,500 for newly established courts) covering a base amount of 11.73 participants. Each court was funded an additional \$2,035 per participant over the base. Figures above are presented as provided by AOC.

Source: Administrative Office of the Courts (AOC)

