



Prescription Monitoring Program Center of Excellence at Brandeis

## Notes from the Field

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### NF 2.4 Monitoring and Changing Behavior: The Role of PMP Data in Kentucky Drug Courts

August, 2011

This project was supported by Grant No. 2009-PM-BX-K044 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the U.S. Department of Justice.



## Notes from the Field

# Monitoring and Changing Behavior: The Role of PMP Data in Kentucky Drug Courts

### Summary

Drug courts help offenders avoid incarceration and break free of drug abuse and addiction by offering them a program of treatment, incentives and sanctions. A recent innovation in Kentucky drug courts is the use of prescription monitoring program (PMP) data to track participants' non-medical use or diversion of controlled substances. Approximately two thirds of Kentucky drug courts currently make use of PMP data in a variety of situations. According to Kentucky Circuit Judge Charles Hickman, by providing judges with information on the prescription histories of drug court participants, PMP data can play a valuable role in monitoring and changing their behavior.

### Background

According to the Office of National Drug Control Policy (ONDCP), drug courts first started in 1989 in Dade County, Florida as a response to high recidivism rates among felony drug offenders. As described by ONDCP, "Drug court diverts non-violent, substance abusing offenders from prison and jail into treatment. By increasing direct supervision of offenders, coordinating public resources, and expediting case processing, drug court can help break the cycle of criminal behavior, alcohol and drug use, and incarceration."<sup>1</sup> Drug courts are now operational or planned in virtually all U.S. states and territories. Although evidence of their effectiveness is mixed, research suggests they help reduce recidivism.<sup>2</sup>

Since drug court participants are usually not incarcerated or under 24 hour surveillance, courts must take other steps to monitor their behavior to ensure they uphold agreements to remain drug free, or in the case of prescription drugs, use them only as medically indicated. Periodic and random drug tests (drug screens) that analyze hair, blood or urine samples are routinely used to detect illicit and non-medical drug use. However, these tests aren't completely reliable in detecting the presence of all prohibited substances, and are subject to evasion by resourceful and determined drug users.

The steep rise in prescription drug diversion, abuse and addiction over the last decade in the United States means that an increasing number of drug court participants are enrolled due to involvement with prescription drugs.<sup>3</sup> These drugs are sometimes obtained by means of multiple simultaneous prescriptions from prescribers and pharmacies without their knowledge, commonly known as doctor shopping. Doctor

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<sup>1</sup> From the ONDCP webpage on drug courts: <http://www.whitehousedrugpolicy.gov/enforce/drugcourt.html>.

<sup>2</sup> See the GAO report, "Adult drug courts: evidence indicates recidivism reductions and mixed results for other outcomes" at <http://www.gao.gov/new.items/d05219.pdf>.

<sup>3</sup> For a description of the prescription drug abuse epidemic, see <http://www.pmpexcellence.org/drug-abuse-epidemic>.

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shopping is designated as a criminal offense in most states. Fortunately, data exist that can help drug courts track the prescription purchases of their participants, namely data collected, analyzed and distributed by state prescription monitoring programs (PMPs). PMPs collect data electronically from pharmacies on sales of controlled substances, recording the type of drug, quantity dispensed, customer and/or patient identifying information, prescriber, pharmacy and date of sale. Access to these data is restricted to authorized users, which in most states include prescribers, pharmacists, medical and dentistry boards, and selected law enforcement and regulatory agencies.

### The use of PMP data in Kentucky drug courts

Interviewed for this report, Vice-Chief Regional Circuit Judge Charles Hickman supervises the drug court for Anderson, Shelby and Spencer counties in Kentucky. His drug court has been operational since 2002, and PMP data were first made available to the court through direct electronic access in 2008. Kentucky's prescription monitoring program is the Kentucky All Schedules Prescription Electronic Reporting (KASPER) system, which provides data on patient prescription histories to over 7,600 authorized users, including 5,823 prescribers, 1,298 pharmacists and 1,270 law enforcement officials.<sup>4</sup> Judge Hickman described PMP data as a valuable addition to the court's monitoring capabilities.

As of the end of Fiscal Year 2011 (June 30, 2011), nearly 14,000 offenders have participated in Kentucky's drug courts since their inception, and one third have graduated. A typical drug court program in Kentucky consists of 3 phases that gradually give participants more autonomy, plus a post-graduation aftercare phase.<sup>5</sup> Programs are designed to take between 15 to 18 months if all goes well, depending on the status and type of offender. Actual time in a program depends on the participant's success in meeting program requirements; the average is 19 months, according to data from Kentucky Administrative Office of the Courts. To move from one phase to the next (to "phase-up"), participants must comply with their drug treatment plan and other court obligations, fulfill their pledge to remain abstinent from drugs, not commit other infractions, and show progress in areas such as employment and housing. The drug court strategy is to change behavior by applying concrete incentives and sanctions in response to the participant's actions. This requires monitoring behavior as accurately as possible.

As described by Judge Hickman, PMP reports are run on participants when they move from one phase of the program to another in order to help confirm that their purchases of controlled substances, if any, are consistent with good clinical care. PMP data can reveal patterns of prescribing that indicate a participant might be using controlled

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<sup>4</sup> Data as of June 30, 2011, courtesy of Kentucky Cabinet for Health and Family Services, Office of Inspector General, KASPER System.

<sup>5</sup> For a description of the program phases of Kentucky drug courts, see <http://courts.ky.gov/stateprograms/Drug+Court/Adult+Drug+Court/>

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medications non-medically or diverting them to friends, family or paying customers. PMP reports are also run if, at any point in the program, a participant seems to be having unexpected or unexplained setbacks, or if evidence comes to light suggesting illicit drug use (a positive drug screen) or diversion activity (unexplained cash in hand). A participant can move on to the next phase only if their behavior as monitored by the court, including the prescription purchases listed in PMP reports, passes muster.

PMP data are a useful supplement to drug screens in monitoring drug-related activity. Participants seeking to evade detection of drug use can sometimes falsify test results by providing doctored hair, blood and urine samples. But even though a drug screen might come back negative for a drug, a PMP report might come back “positive,” suggesting further investigation is in order. Drug screens testing for groups of specific substances (drug “panels”) don’t always capture all substances that a participant might be misusing, whereas these might show up in a PMP report. And while a drug screen can’t detect drug diversion, only drug use, PMP data showing medically unnecessary prescriptions are prima facie indicator of possible diversion. It should be noted that PMP reports are only indicators, not proof, of diversion or misuse. The pharmacies and doctors listed are contacted and records reviewed to confirm that the individual in question actually received the prescriptions dispensed.

A survey on the use of KASPER data by Kentucky drug courts conducted by the Kentucky Administrative Office of the Courts in July, 2011 found that of the 54 drug court programs in the state, two thirds (36) had used PMP data. The programs reported using PMP data most frequently to investigate the suspicion of new drug use; to verify a prescription, visit to emergency room, or doctor visit; and as a regular check on all participants (see Figures 1 and 2 on page 6).

### Procedures and safeguards

Judge Hickman explained that the court has a confidentiality agreement with the Kentucky Cabinet for Health and Family Services, the agency that houses KASPER, to allow use of prescription history data. KASPER reports are run by an officer with the Division of Probation and Parole who is authorized to access the database. After reviewing the information with the judge, the reports are shredded to ensure patient privacy (a shredder sits beside his desk). However, records are kept in the participant’s file on which reports were “clean” and which suggested possible doctor shopping or diversion. Some drug court judges have chosen to establish their own KASPER accounts in order to access the system directly, as also allowed under Kentucky law. Misuse of PMP data is a class D felony in Kentucky, punishable by a 1-5 year prison sentence. No instances of misuse have come to light since the program has been in operation. Overall, the system of providing KASPER data to drug courts seems to work as intended.

### Opportunity for improvement: interstate data sharing

Judge Hickman's assessment was that KASPER data are generally reliable and therefore useful indicators of a participant's compliance with the requirement to maintain abstinent from drugs, except of course for drugs deemed medically necessary. However, he pointed out that KASPER data are limited by the fact that they only capture prescriptions reported by pharmacies in Kentucky. Drug offenders involved with controlled substances often obtain prescriptions from pharmacies in other states, but such purchases won't show up in a KASPER report. The solution is for PMPs in neighboring states to share data such that KASPER reports could possibly include prescription history information originating in Tennessee, Missouri, Illinois, Indiana, Ohio, West Virginia and Virginia (only Tennessee is surrounded by more states, eight). Regional and national data-sharing agreements could cover even more states, permitting a comprehensive prescription history report for any individual.<sup>6</sup> Data-sharing agreements among states and the information infrastructure to support them are now in development, including in Kentucky.<sup>7</sup>

### Conclusion

The use of PMP data in Kentucky drug courts gives them an additional monitoring capability that contributes to their effectiveness in helping drug offenders change their behavior. Sufficient safeguards exist to prevent misuse of prescription history information, and the procedures for obtaining the information work well. Use of PMP data by drug courts is a prospective best practice, also applicable to other criminal justice diversion programs involving drug-involved individuals, such as Nevada's Pre-criminal Intervention Program.<sup>8</sup> PMPs are proving themselves to be a versatile resource for law enforcement and criminal justice agencies, as well as medical providers, as they develop effective responses to the prescription drug abuse epidemic.Ω

Note: For inquiries concerning this report, please contact the PMP Center of Excellence at Brandeis at [www.pmpexcellence.org](http://www.pmpexcellence.org) or call 781-736-3909.

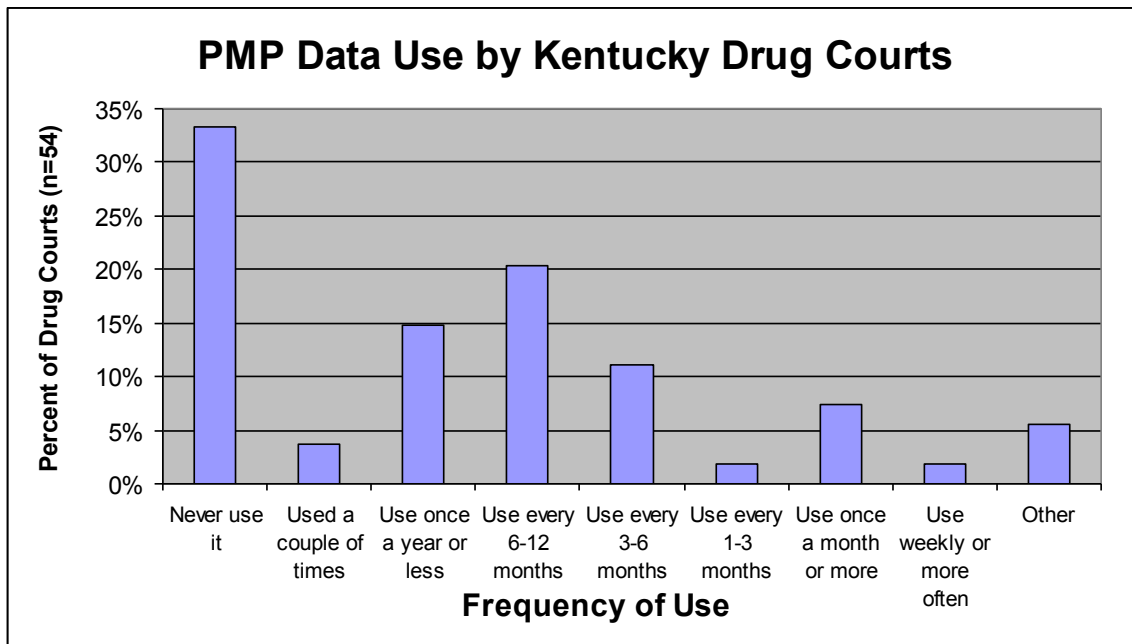
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<sup>6</sup> Safeguards on the confidentiality of patient prescription data are already in place within states hosting PMPs and would be maintained in any cross-state application of PMP data. It should be noted that in some cases discriminating unique individuals in PMP databases, both within and across states, is technically challenging given data reporting errors and omissions, and deliberate falsification of personal information by those engaged in doctor shopping and prescription fraud. Validating prescription records with pharmacies and prescribers listed in PMP reports is required to demonstrate that a particular individual actually received the controlled substances that were prescribed.

<sup>7</sup> An initiative to enable data sharing among states is described at <http://www.pmpalliance.org/content/prescription-monitoring-information-exchange-pmix>.

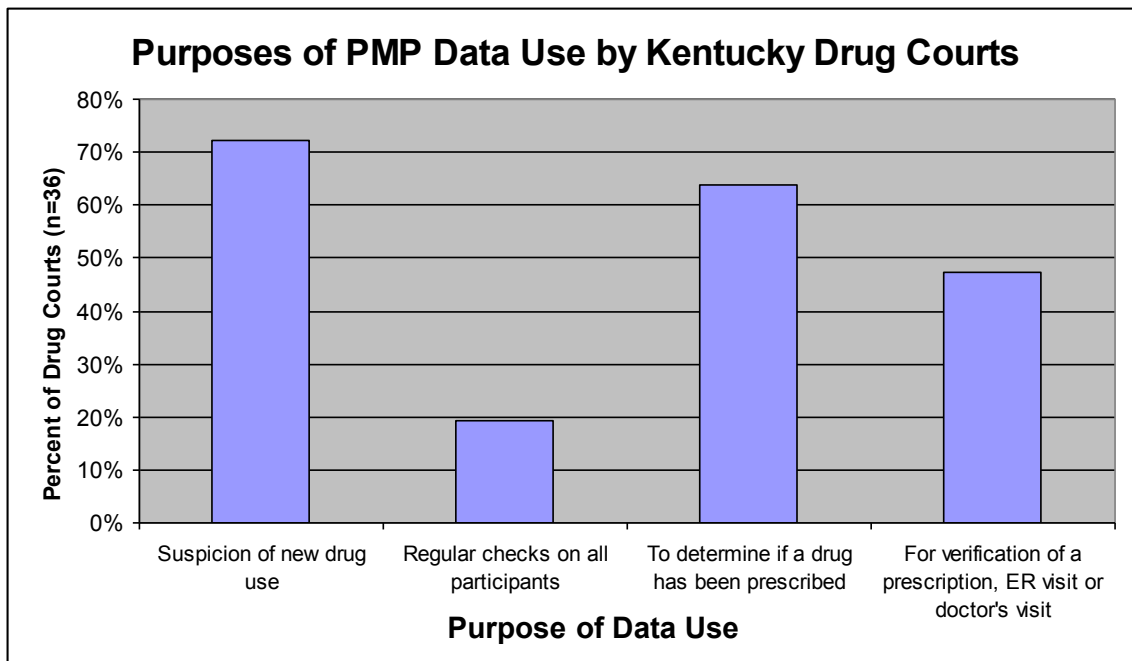
<sup>8</sup> About this program, see [http://www.pmpexcellence.org/sites/all/pdfs/2\\_nevada\\_pcip\\_nff\\_1\\_19\\_11.pdf](http://www.pmpexcellence.org/sites/all/pdfs/2_nevada_pcip_nff_1_19_11.pdf)

Figure 1



Source: Kentucky Administrative Office of the Courts, data collected July, 2011

Figure 2



Source: Kentucky Administrative Office of the Courts, data collected July, 2011