

PROBLEM-SOLVING COURTS: MODELS AND TRENDS

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For over thirty years, the National Center for State Courts (NCSC) has existed to improve the administration of justice through leadership and service to the state courts.

Established by Chief Justice Warren E. Burger and the chief justices of the United States in 1971, NCSC is the focal point of research, information, education, and direct technical assistance for the courts, and the source of many innovations that have led to significant improvements in judicial systems across the United States and around the world.

Among its initiatives, NCSC works with the Conference of Chief Justices and the Conference of State Court Administrators in their efforts to implement their resolution in support of problem-solving courts.

PROBLEM-SOLVING COURTS: MODELS AND TRENDS

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PROBLEM-SOLVING COURTS: MODELS AND TRENDS

OVERVIEW

During the last decade, problem-solving courts have become an important feature of the American court landscape. Developed in response to frustration by both the court system and the public to the large numbers of cases that seemed to be disposed repeatedly but not resolved, problem-solving courts offer the promise of a more meaningful resolution of court cases involving individuals with psychosocial problems as well as legal issues.

Problem-solving courts vary considerably from jurisdiction to jurisdiction and by different case types within a jurisdiction, but all focus on closer collaboration with the service communities in their jurisdictions and stress a collaborative, multidisciplinary, problem-solving approach to address the underlying issues of individuals appearing in court. This paper describes four prominent American problem-solving courts: community, domestic violence, drug, and mental health courts. Each description provides an overview of the origins, evolution, variety, and success to date of the problem-solving court model and notes special issues related to each type of court.

Three years ago, the Conference of Chief Justices and the Conference of State Court Administrators, the policy leaders of the state court systems in the United States, passed a resolution in support of problem-solving courts. The resolution called for, in part, “the careful study and evaluation of the principles and methods employed in problem-solving courts and their application to other significant issues facing state courts.” It also encouraged, “where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice to improve court processes and outcomes.”

Problem-solving courts are now at a critical juncture: Will they remain on the periphery of the court system or be integrated within the traditional system as suggested by the Chief Justices and State Court Administrators? Section 3 offers some current trends and factors likely to affect the next generation of problem-solving courts.

PROBLEM-SOLVING COURT MODELS

COMMUNITY COURTS

Background and Goals

Community courts emerged with the convergence of several trends. First, trial courts in the United States became overly centralized and consolidated; court outreach programs from downtown courthouses did not bridge the gap between courts and communities. Second, court interventions in repeat misdemeanor offenses were not effective, creating a revolving door syndrome. Third, widespread implementation of community policing seemed to demonstrate the value of a locally informed, problem-solving approach to criminal justice. Finally, the “broken windows” perspective provided a policy umbrella under which locally focused courts were a logical component.¹

These trends converged most forcefully in New York City where, after two years of intensive planning, the Midtown Community Court opened in 1993 “as a three-year demonstration project, designed to test the ability of criminal courts to forge closer links with the community and develop a collaborative problem-solving approach to quality-of-life offenses” (Sviridoff et al., 2000, p.1). Located in New York City’s Times Square area, it serves a residential community of 120,000 in addition to a concentration of corporate, commercial, and tourist businesses. Nationally, 20 cities now have operating community courts; at least five others are being planned.²

An authoritative statement of a community court’s goals was articulated by the Bureau of Justice Assistance (an agency of the U.S. Department of Justice), whose funding was and is instrumental to community justice projects nationally. The Bureau’s former director observed that the existing community courts, “all have implemented a new way of doing business that imposes immediate meaningful sanctions on offenders, truly engages the community, and helps offenders address problems that are at the root of their criminal behavior” (Lee, 2000, p. 4).

Special Issues Related to Community Courts

- Use of treatment and services as a sanction
- Court commitment to macro-level change
- Criminalizing the inconvenient and disorderly
- Vagueness of what represents “the community” of a court
- Court participation in business improvement projects

Common Practices and Key Elements of Community Courts

- Community service and other alternative sanctions replace jail and fines
- Increased court time and resources devoted to “minor” misdemeanors
- Extensive inventory of information on defendants gathered through expanded intake interviews and access to other criminal justice databases
- Extensive (often two to three years) planning process
- Community service work crews or improvement projects posted as the products of community service
- Offender compliance with sentence conditions strictly monitored
- Non-compliance with sentence conditions strictly sanctioned
- Immediacy in start of community service and treatment programs
- One or more mechanisms that provide ongoing communication with the community, as distinctly defined by each community court project
- Access to a comprehensive package of treatment and social services through a mix of government and nonprofit agencies
- Dual commitment to changing the lives of individual offenders and the quality of life in communities
- Treatment and services as a component of sanctions.

Evaluations

Variations Across Courts

- Definition of the Court's Community:
 - Primary link to residential, business, or nonprofit sectors partners
 - Located downtown or inner city
 - Breadth of community providing input to the court
- Cases and Offenders Targeted:
 - Low-level only or most/all misdemeanors
 - Criminal only or multi-jurisdictional (juvenile, family, housing, environmental)
 - Local, citywide, or both
 - Size of court's caseload
- Organization of the Court Process:
 - Initial assignment to community court by police, prosecutor, or judge
 - Diversion or post-plea
 - Legal representation universal or on request
 - Trials conducted
 - Initial appearance only or multiple appearances
 - Court held daily or on periodic schedule
- Treatment and Social Service Provision:
 - Services and treatment on- or off-site
 - Court involved in treatment and social services as provider, coordinator, or referral source
 - Available to local residents
- Funding and Staffing:
 - Sources of funding (traditional only or mix of government agencies, nonprofit organizations, etc.)
 - Traditional or enhanced staffing levels and positions

Two community courts have been subject to particularly comprehensive evaluations. The Midtown Community Court was evaluated from its inception through 1998. Findings from focus groups, comparative (to the traditional court) patterns of sentencing and sentence compliance, treatment outcomes, a cost-benefit analysis, an ethnographic study of changing street conditions, and a public opinion survey are available (Sviridoff et al., 2000 and 2002). A multifaceted evaluation is also available on the first year of the Hennepin County Community Court (Hennepin County District Court Research Project, 2001; Weidner and Davis, 2000). Some data are available from the early operations of the Hartford Community Court (Weidner, 1999; Goldkamp, Weiland, and Irons-Guynn, 2001). Evaluations are underway on the Red Hook Community Justice Center (conducted by the Criminal Justice Research Institute and the Columbia University Center for Violence Research and Prevention).

With rich data but few cases, the following conclusions are supported by the evaluations of the Hennepin County and Midtown Community Courts, supplemented by documentation of processes in Hartford (Johnstone, 2000; Weidner, 1999) and elsewhere (Lee, 2000).

Changes in sentencing practices have occurred, with community service and treatment sanctions as the most common sanctions; jail, fines, or time served are rare. The rate of case disposition at arraignment is higher. Repeat offenders find community courts more intrusive than traditional courts because non-compliance with court orders is monitored, enforced, and sanctioned with long (for the kind of case) jail sentences. Sentences to community service or treatment programs commence immediately. Compliance with community service and short-term treatment is higher than in traditional courts. Cases are concluded, on average, more quickly in community courts than in traditional misdemeanor courts.

The public responds favorably to the components of a community court, particularly strict monitoring (in Midtown) and treatment services (in Hennepin County). About one person in five is familiar with his or her community court.

Community courts are costly in terms of (a) subsidies from the justice system (e.g., higher than standard court staffing levels, expanded pre-trial services interviews with defendants); (b) frequency of "secondary jail"—longer sentences served by those who fail to meet the conditions of their alternative sanctions; and (c) lost economies of scale. The public, though, believes that the benefits of community courts exceed their costs. Community courts generate significant savings in overall jail time relative to traditional courts.

Community courts can be change agents, producing "demonstration" effects that improve practice in a locality's traditional courts. In partnership with local organizations and government agencies' initiatives, community courts can play an important role in alleviating chronic neighborhood problems like street prostitution.

PROBLEM-SOLVING COURT MODELS

DOMESTIC VIOLENCE COURTS

Background and Goals

The promise of domestic violence (DV) courts is that they “can institutionalize procedures that promote victim safety, ensure accountability for domestic violence perpetrators and enhance informed, educated judicial decision-making. The court also can build on an extensive collaboration with agencies and community-based organizations, in an effort to strengthen the entire community’s response to domestic violence” (Sack, 2000, pp. 1-2). Such procedures do not take root in traditional courts, where jurisdiction over domestic violence cases, and individuals involved in those cases, is fragmented across courts or court divisions; measures to track and sanction non-compliance are lacking (particularly in misdemeanor cases, the major share of the domestic violence caseload); victims are relevant only as witnesses; and the needs of children are rarely assessed.

The first identifiable DV court was the integrated (civil and criminal) domestic violence division established in Dade County (Miami), Florida in 1992. This lagged by nearly two decades experimentation by police (e.g., mandatory arrest policies) and prosecutors (special DV prosecution units) with new approaches to address domestic violence in response to the belated “discovery” that violence between intimates in their living spaces is a criminal justice matter.³ The establishment of dedicated DV calendars or dockets, however, was preceded in some jurisdictions by court participation in comprehensive domestic violence programs implemented in the mid-1980s (beginning with Quincy, Massachusetts, in 1987).

The Violence Against Women Act of 1994 and the funding it made available to localities did not enhance the ability to address dissatisfaction with traditional court responses to domestic violence cases.⁴ Funding for court programs did not become available until 2000, and represented only a small proportion of the total funding. Nevertheless, the best estimate is that at least 300 special DV court programs exist.⁵

Court professionals and others are hesitant to put DV courts under a problem-solving umbrella. Compared to other problem-solving courts, the offenses involved are violent, not non-violent (and often victimless); court proceedings are primarily adversarial, not therapeutic; and the perpetrator’s behavior is viewed as learned rather than rooted in treatable addiction.⁶ Batterer’s programs are used primarily because they monitor defendant/perpetrator conduct and promote accountability.⁷

The principal goals of a DV court are victim safety and batterer accountability. A national survey of more than 100 DV courts asked for the objectives being pursued. Most courts (over 75 percent) shared the objectives of better assisting victims, increasing victim safety, improving case management, and increasing offender accountability.⁸ Other common goals include increasing the visibility of domestic violence as a social problem⁹ and communicating the seriousness of the offense to the perpetrator. Some DV courts include reducing recidivism as a stated objective.¹⁰ There is also some limited application of therapeutic jurisprudence principles to perpetrators, as when the judge-offender interaction is structured to “confront perpetrators with their cognitive distortions that minimize their own behavior or blame the victim” (Levey et al., 2001, p. 11).¹¹

Common Practices and Key Elements of Domestic Violence Courts¹²

- Dedicated judge and staff
- Specialized intake services to coordinate court and community resources
- Early access to advocacy and services for victims
- Integrated information systems
- Screening for related cases
- Coordination of a set of community partners
- The court facility and process are victim- and child-friendly
- Ongoing training and education for judge and staff in domestic violence dynamics
- Close monitoring of compliance with court orders pre- and post-disposition
- Judicial interaction with offenders that promotes the defendant’s understanding of court conditions

Variations Across Courts

- Judicial (and court and services staff) assigned exclusively to DV cases or carry a mixed caseload
- Subject matter jurisdiction civil, criminal, or both
- If criminal, felony cases included or excluded
- If civil, child custody, visitation, and child support included or excluded
- Involvement of lawyers post-disposition
- Perceived potential for batterer change
- One judge or multiple judges involved in a case
- Access/Use of integrated data systems (criminal and civil)
- Sub-specializations (e.g., juvenile)
- Location of responsibility for monitoring
- Presence of pre-trial monitoring programs
- Involvement of probation staff
- Role of advocates in the courtroom

Special Issues Related to Domestic Violence Courts

- Some question whether specialized DV courts may downplay the seriousness of DV by treating them as different from other crimes of violence
- DV courts may not have the same impact on victims and offenders of different racial and ethnic groups (Berman and Gulick, 2003; Lyon, 2002; Helling, 2000, p. 22)
- A solid “wall” between the judge’s fact-finding and therapeutic roles may be difficult to maintain given the amount of information the judge has on the family and its history
- Co-occurrence of domestic violence and child abuse and neglect
- Conflict between a victim’s interest in safety and the system’s interest in prosecution of the perpetrator

Evaluations

Evaluations of DV courts are accumulating, adding to existing research on the effectiveness of various DV court components (Berman and Gulick, 2003). Currently, the largest amounts of data are available on subjective reactions to DV court involvement through surveys and systematic interviews with victims, perpetrators, advocates, judges, and staff from the court and batterer programs. More comprehensive studies (with control groups to compare case processing and case outcomes measures) are available from DV courts in Brooklyn (Newmark et al., 2001), District of Columbia (Steketee, Levey, and Keilitz, 2000), Fort Lauderdale, Florida (Feder and Forde, 2000), Lexington, Kentucky (Grove et al., 2003), Miami (Goldkamp, 1996), Minneapolis (Hennepin County District Court Research Division, 2002 a and b), San Diego (San Diego Superior Court, 2000), and three Connecticut courts (Lyon, 2002).

Conclusions about DV courts are limited by the lack of adequate control groups, an acute case of underreported recidivism, restrictions to the analysis associated with the small numbers of offenders and victims included, and rapid changes in law enforcement practices and in statutes that diminish the value of before/after comparisons. Not all studies report tests of statistical significance.

Nonetheless, sufficient points of agreement among these studies support some tentative conclusions. DV courts enhance victims’ and perpetrators’ satisfaction with court processes and outcomes and deliver more services to victims and their families. DV courts also tend to process cases faster, reduce the rate of case dismissals, increase the rate of guilty pleas, and make it more likely that perpetrators comply with judge-ordered conditions and remain in batterer and other programs. This finding

may, in turn, reflect the subjective perceptions by victims and perpetrators that DV courts meet widely held expectations of procedural fairness (Petrucchi, 2002). All of these conclusions reflect differences of degree, generally small improvements that DV courts make over the performance of traditional courts in the same types of cases.

There is some evidence that DV courts might enhance law enforcement’s attentiveness to domestic violence (although the greatest impact is likely to be on judicial attentiveness) and reduce recidivism (studies differ in their criteria for failure, the length of time perpetrators’ are “at risk” of re-offending, and the persuasiveness of the comparison groups used).

The evidence remains inconclusive on whether participation in batterer’s programs on its own changes perpetrator behavior (Jackson et al., 2003; Bennett and Williams, 2001). The evidence also is unclear on whether DV courts are cost-effective. There is little evidence on the broader impact of DV courts on the well-being of children or on the ability of such courts to reduce the level of domestic violence in the community.

A more definitive assessment of DV courts will be possible in a few years. More courts are undergoing evaluation, including a comparative evaluation of three courts by the Urban Institute and an evaluation with an experimental design of court monitoring and Battering Intervention Programs in the Bronx Misdemeanor DV Court.

PROBLEM-SOLVING COURT MODELS

DRUG COURTS

Background and Goals

Drug courts developed in response to the enormous increase in drug case filings in the 1980s and 1990s. The rise in filings resulted from the nation's War on Drugs that included more intensive anti-drug law enforcement efforts and more severe sanctions for drug-related offenses (Hora, Schma, and Rosenthal, 1999; National Association of Drug Court Professionals, 1997). The effects of the increase were felt throughout the court system as described by one state court administrator at the time:

It seems to me that at no other time in our country's history have we seen anything quite like this consume all of our resources, time and attention. The dramatic impact these cases are having on the totality of the judicial system cannot be overstated. What we're seeing is, in fact, important activities such as family and juvenile law being relegated to almost inaccessibility. And simultaneously the access to the civil justice system is much more difficult and is, therefore, giving rise to all sorts of other things, not the least of which is private judges and other endeavors. (Drugging of the Courts, 1990, p. 316.)

Courts initially responded by implementing case management strategies to process more cases more quickly, but significant backlogs continued. The repetitive cycle of many of the cases prompted some in the criminal justice community to consider alternatives. In 1989, the Circuit Court in Miami, Florida, initiated a diversion and treatment program for drug offenders to address the "root cause" of cases involving substance abuse. Similar programs began appearing in other jurisdictions. Federal funding to support the development of additional programs encouraged further expansion. By May 1, 2003, there were 1,042 drug courts in operation in the United States, and an additional 429 courts were in the planning stage (Office of Justice Programs Drug Court Clearinghouse, 2003).¹³

The mission of drug courts is to stop legal and clinical recidivism among nonviolent offenders with substance abuse problems. To accomplish the mission, drug courts integrate case-processing and drug treatment services. The coercive power of the court is married with a variety of services to encourage the drug-involved individual to stay in treatment.

Most drug courts employ a cooperative, nonadversarial approach. Typically the prosecutor, defense attorney, treatment providers, law enforcement officers, probation officers, program coordinator, and case managers operate as a team when addressing individual case issues. The team supports the judge who oversees the individual's progress in treatment. The judge uses positive reinforcement and sanctions to encourage positive behavioral changes. If the individual successfully completes the drug court program, the original charges are dismissed, the plea is stricken from the record, or the individual's sentence is reduced, depending on the type of drug court program. The majority of drug courts employ a combination of two or more types of the following programs: pre-plea, post-plea/deferred judgment, post-adjudication, and probation violators (Office of Justice Programs Drug Court Clearinghouse, 2001a).

Common Practices and Key Elements of Drug Courts¹⁴

- Integration of alcohol and other drug treatment services with justice system processing
- Nonadversarial approach—prosecution and defense counsel promote public safety while protecting participants' due process rights
- Early identification and placement in drug court program
- Access to a continuum of alcohol, drug, and other related treatment and rehabilitation services
- Frequent alcohol and other drug testing
- A coordinated strategy to govern responses to participants' compliance
- Ongoing judicial interaction with each drug court participant
- Monitoring and evaluation to measure the achievement of program goals and gauge effectiveness
- Continuing interdisciplinary education to promote effective drug court planning, implementation, and operations
- Partnerships among drug courts, public agencies, and community-based organizations to generate local support and enhance program effectiveness

Evaluations

Numerous evaluations of drug courts have been conducted. Generally, they report positive results in reaching their targeted populations; retaining individuals in drug court and, consequently, in treatment; providing better supervision and monitoring than other forms of community supervision; and saving jail costs (Belenko, 1998). These findings, however, are tempered by the lack of scientific rigor employed by many of the studies. Belenko (2001) reports that most drug court evaluations have been relatively small scale to fulfill grant requirements, and they vary considerably in terms of quality, comprehensiveness, use of comparison groups, and the definition of key variables such as recidivism. The variation among studies allows both proponents and skeptics to find data in support of their positions. This is particularly true with the issue of long-term recidivism rates once drug court participants are graduated. Overall, the evidence seems to favor positive results for drug courts (Barnoski and Aos, 2003; Belenko, 2001), but the range of recidivism rates—from negative to very positive—indicates that much additional research is needed to determine what features of drug courts contribute to and interfere with long-term positive recidivism rates (Lowenkamp, Holsinger, and Latessa, 2003).

Variations Across Courts¹⁵

- Party or parties (e.g., drug court staff or coordinator, probation department, Treatment Alternatives to Street Crime agency, pretrial services agency, treatment provider, county health department) responsible for screening, assessment, case management, and treatment services
- Sources of funding (e.g., federal agency, state agency, local government, client fees, private insurance, Medicaid/state health coverage, private foundations)
- Type and frequency of incentives and sanctions used to reward progress and address relapse

Special Issues Related to Drug Courts

- Federal guidelines that prohibit offenders from participating in drug courts if they have ever committed a violent offense
- Expansion of eligibility requirements and limited availability of treatment resources
- Addressing the needs of dually diagnosed defendants—those with both substance abuse and mental health problems

PROBLEM-SOLVING COURT MODELS

MENTAL HEALTH COURTS

Background and Goals

“The premise of a mental health court is that with proper diversion, monitoring and intensive supervision, there is no gap between the court and service providers so a person will not fall through the cracks and re-offend.... I would see the same people coming back and felt really inadequate in how to deal with them, and I knew there had to be services to link them up to and speed it up.” (Barayuga, 2003, p. 2.)

Hawaiian Circuit Judge Marcia Waldorf’s reasons for starting a mental health court are typical. The Bureau of Justice Statistics (1999) estimates that 16 percent of the state prison population, those in local jails, and those on probation have a mental illness. Of those with a mental illness, 52 percent of state prisoners and 54 percent of jail inmates reported three or more prior sentences, and about 10 percent of state prisoners and 13 percent of jail inmates reported eleven or more prior sentences.

Deinstitutionalization often is cited for the increase of individuals with a mental illness in the criminal justice system. The number of individuals in hospitals for a mental illness dropped from 559,000 in 1960 to 60,000 in 1999 (Trupin et al., 2001). Unfortunately, the promise of treatment services available at the community level to support these individuals was never realized, leaving many individuals with a mental illness without services or medication. The Bureau of Justice Statistics report found high rates of homelessness, unemployment, alcohol and drug use, and physical and sexual abuse among the mentally ill offenders prior to their incarceration.

In response to the number of individuals with a mental illness in the criminal justice system, some jurisdictions have implemented special calendars intended to divert a defendant with a mental illness into treatment rather than incarceration. Early prototypes of mental health court diversion programs date back to the 1960s, but the Mental Health Court in Broward County, Florida generally is cited as the first mental health court in the United States (Goldkamp and Irons-Guynn, 2000). Since the opening of the Broward County court in 1997, mental health courts also have been implemented or are being planned in other jurisdictions, and the number is growing with the passage of the America’s Law Enforcement and Mental Health Project Act (P.L. 106-515), a federal law authorizing support for additional mental health court programs.¹⁶

Although mental health courts vary in their approach and procedures, they focus on similar goals. The purposes listed by the Anchorage Mental Health Court (Alaska Court System, 2001) characterize mental health court goals:

- to preserve the public safety
- to reduce inappropriate incarceration of mentally disabled offenders and promote their well-being
- to relieve the burden on the Department of Corrections presented by inmates with mental disabilities
- to reduce repeated criminal activity among mentally disabled offenders (legal recidivism)
- to reduce psychiatric hospitalization of mentally disabled offenders (clinical recidivism)

Common Practices and Key Elements of Mental Health Courts¹⁷

- Voluntary participation
- Early identification and intervention
- Emphasis on a therapeutic environment to reduce trauma often experienced by persons with a mental illness in the criminal justice system
- Implementation of practices to reduce stigma associated with mental illness
- Promotion of participation of individuals before the court in proceedings
- A dedicated team approach with an involved judge, legal representatives, and an interdisciplinary team of court and treatment professionals
- A less formal court process
- Essential role of case management and coordination of treatment
- Client-centered treatment, focusing on the individual’s specific needs
- Regular status hearings to review progress and assess effectiveness of treatment plan
- Consideration of public safety issues in any court decision

Variations Across Courts

- Mental health criteria for program eligibility
- Offense criteria for program eligibility
- Requirement of plea before entering mental health court
- Terms of supervision
- The use of sanctions to address noncompliance
- Method of closing the case (e.g., Goldkamp and Irons-Guynn, 2000, identify different approaches: adjudication is withheld, and no conviction is entered; guilty plea is entered with credit for time served; the conviction stands, and the sentence is suspended; or deferred dispositions result in the dismissal of charges)

Evaluations

Currently there are few evaluations available on mental health courts. Many courts keep statistics on their operations (e.g., how many cases processed and the outcomes of the cases) but have not undertaken rigorous evaluations with matched comparison groups. Many courts simply have not been in operation long enough to provide data on post-mental health court successes and failures. Evaluation data likely will increase as courts become more established. In addition, the National Institute of Justice recently awarded a grant to conduct an evaluation of mental health courts receiving funding from the federal government as a result of the passage of the America's Law Enforcement and Mental Health Project Act.

Goldkamp and Irons-Guynn (2000) conducted a qualitative review of four mental health courts. In addition, an evaluation has been conducted for the Seattle, Washington, Municipal Mental Health Court (Trupin et al., 2001), and evaluations are underway for the Broward County (Fort Lauderdale), Florida, Mental Health Court (Boothroyd et al., 2003; Petrila, 2002), and the Clark County (Vancouver), Washington, Mental Health Court (Herinckx, 2003). The Seattle Municipal Mental Health Court evaluation was conducted two years after the court began and includes process information and preliminary outcome data.¹⁸ The Broward County evaluation includes a matched control group from another jurisdiction. Because the evaluation is still underway, recidivism data are not available at this time. Preliminary information also is available from the Clark County study.

Data from these studies suggest that a) mental health courts are effective in linking participants to treatment services, b) participants receive more treatment while involved in the mental health court compared to the level of treatment they received prior to entering the program, c) treatment plans are based on individuals' specific needs, and d) bookings decrease for individuals once enrolled in the mental health court compared to prior mental health court involvement. Additional studies are needed to confirm these preliminary conclusions.

Concerns have been raised regarding the voluntary nature of mental health court participation. The National Mental Health Association (2001), for example, is concerned that mental health courts use coercion to compel treatment. The evaluation data is mixed regarding whether participants understand the voluntary nature of the mental health court program. Although the Broward County evaluation found that mental health court participants perceive the court as very non-coercive (Petrila, 2002), a content analysis of court transcripts found that the issue of voluntary participation was explicitly discussed in only 15.7 percent of the transcripts (Boothroyd et al., 2003). Slightly more than half of the participants indicated during the enrollment interview that they knew the program was voluntary. This suggests that many participants are informed about the voluntary nature of the program from sources outside the court and raises the question of whether all participants understand the court is voluntary even though they do not consider it coercive.

Special Issues Related to Mental Health Courts

- The use of sanctions with individuals with mental illness
- The criteria for "graduation" from a mental health court
- Addressing the needs of individuals with substance abuse problems
- Concern by advocates that mental health courts risk further criminalization of individuals with mental illness and drain resources from the community mental health treatment system (see National Mental Health Association, 2001)

PROBLEM-SOLVING COURT TRENDS

Although some problem-solving court models are relatively recent, the problem-solving approach generally has been in practice for over a decade. As the approach moves into its adolescence, there are several factors that could affect its maturation. The twelve trends outlined in this section were developed for an international audience interested in the status and future direction of the United States experiment in problem-solving courts. In identifying the trends, we drew upon our observations of state court systems generally and problem-solving courts, specifically. Some factors identify issues that have been resolved, and others identify controversies and tensions still challenging the problem-solving approach.

Proliferation of problem-solving courts stabilizing. The Drug Court Clearinghouse maintains national information on the number of drug courts planned, implemented, and suspended each year. Comparable information is not available for community, domestic violence, and mental health courts. Information regarding the number of these courts is culled from various sources and may not capture all recently implemented courts and existing and planned courts that suspended operations. With these caveats, the growth rate of new problem-solving courts seems to be declining. In 2002, 103 adult drug courts were implemented. Based on the first five months of 2003, the estimated number of new adult drug courts is 53. One reason for the decline in growth is clearly financial. The state court systems are facing severe fiscal shortfalls. Many states are struggling to maintain their existing services and do not have the resources to start new initiatives. The exception to this trend is mental health courts. Their proliferation is buoyed by federal funding authorized by the America's Law Enforcement and Mental Health Project Act (P.L. 106-515).

The sustainability of problem-solving courts. Problem-solving courts are proving that they can absorb a sufficient share of the court system's overall caseload to justify their existence. Early evaluations suggest that problem-solving courts can be as expeditious as the traditional courts hearing comparable types of cases. The additional pre- and post-plea appearances held for defendants in problem-solving courts do not prevent those courts from carrying their share of the court workload or make problem-solving court judges less productive than other judges.

Evaluations of problem-solving courts are becoming more rigorous. Early evaluations of problem-solving courts tended to be highly positive, but they focused primarily on process issues. Those that did look at outcomes rarely employed

rigorous scientific methods. This made it easy for opponents of problem-solving courts to dismiss findings of effectiveness. Over time, the evaluations have become more sophisticated. The conclusions drawn from more recent studies remain positive, although the advantage found for the problem-solving approach is often modest. A new generation of evaluations is underway using experimental designs. Preliminary findings will become available over the next few years.

More realistic expectations. As more evaluation data on problem-solving courts accrues, advocates are offering more realistic appraisals of what problem-solving courts can do. Although generally positive, the evaluation data indicate that these courts are not a panacea for solving complex societal problems. Although we are able to say more and more about problem-solving courts, we know little about what specific factors contribute to the positive results being observed. Additional research that explores which practices and processes are most effective with different kinds of offenders will contribute further to the reasonableness of promises about what these courts can accomplish.

Increased information sharing. Integrated information systems created for problem-solving courts represent a quantum leap in the quantity and quality of information available to judges. New sources of information are being tapped to identify other cases involving a defendant or a family and to learn about the employment and health situations of defendants. Information on non-compliance with court orders and completion of alternative sanctions, a weak link in traditional courts, has become reliable. As a result, problem-solving court judges are better placed to assess risks, to order appropriate services to address the defendant's specific needs, and to calibrate sanctions when offenders relapse. Some courts have new staff positions to direct the flow of information. The focus on information raises the bar for all courts in terms of what is possible.

Tension between standardized models and local practice.

Continuous innovation is a hallmark of problem-solving courts. Those at the forefront of the problem-solving court movement stressed the importance of local flexibility to address local issues, resources, and culture. As problem-solving courts join the mainstream, there is pressure to standardize practices across courts both to ensure fairness and equality and facilitate resource management and accountability. The question is what level of standardization these courts can tolerate and remain effective.

More discourse on ethical and legal issues. As problem-solving courts become more of a fixture on the landscape of American jurisprudence, they are capturing the attention of the established legal community. As a result, more discussion and debate about the proper role of the court, judge, attorneys, and other professionals in problem-solving courts is expected. Although ethical issues have been raised since the inception of these courts, they tended to be raised and debated by those specifically for or against the problem-solving court approach. A broader range of voices and perspectives is likely as law schools and professional organizations join in the discussion. This broader vetting of the problem-solving approach is an important step in the acceptance of the approach by the more mainstream judicial and legal community.

Cost savings. The substitution of alternative sanctions and treatment programs for pre- and post-plea jail time produces system savings that help justify the costs of problem-solving courts. That gain is counterbalanced, in part, by the increased use of jail space for offenders who failed to comply with court conditions and receive jail time as a sanction. The net savings through reduced jail use may disappear as problem-solving courts experiment with handling cases involving more violent offenders.

A sense of procedural fairness. The demeanor and the style of interaction of problem-solving court judges track closely with the elements of fair procedures that have emerged from social psychological research. Problem-solving court proceedings are rated more highly than traditional court proceedings on the dimensions of respect, neutrality, voice, and trustworthiness. As the procedural justice perspective would predict, people taking part in problem-solving courts show higher levels of satisfaction with the process and outcomes than in traditional courts. Judges, court staff, treatment and service providers, and lawyers report improved satisfaction with their work.

Tensions over the allocation of treatment and social services. Problem-solving courts can strengthen the network of treatment and service providers in an area through coordination and coalition building. Although beneficial for the target population, some worry that the court's involvement in the allocation of treatment services to offenders changes the dynamics of service provision for the general population, leaving some in the community with inadequate treatment options.

Continued public support. For the most part, the public has embraced the concept of problem-solving courts. Legislators can argue the virtues of problem-solving courts from both a law and order/more accountability perspective and a rehabilitation and treatment perspective. Public opinion polls indicate broad support for typical problem-solving court practices. Problem-solving courts also tend to engage the community much more in their operations than traditional courts. In an environment in which public trust and confidence in the courts is uninspiring, problem-solving courts are an oasis of good will and public support.

Expansion of the problem-solving approach. Although the number of problem-solving courts may be stabilizing, several options for expanding the overall approach to reach a greater target population of offenders are under consideration. The resolution in support of problem-solving courts passed by the Conference of Chief Justices and the Conference of State Court Administrators calls for the integration of problem-solving court principles and methods into court processes more generally. The U.S. Department of Justice's Bureau of Justice Assistance recently held a focus group to explore the feasibility of expanding the problem-solving approach to include a system-wide screening, assessment, and referral process that targets a population of offenders with diverse problems. In addition, some members of the drug court community are considering expanding the eligibility criteria to include violent offenders. Federal funding for drug courts restricts eligibility criteria to non-violent offenders. As some jurisdictions transition to funding from other sources, broadening the eligibility criteria becomes a possibility.

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END NOTES

¹ The “broken windows” concept “contends that a broken window left unfixed is a sign that nobody cares and leads to more damage; similarly, disorderly conditions and behavior left untended are signs that nobody cares and lead to serious crime, abandonment of neighborhoods to criminals, and urban decay. The policy corollary is that minor problems warrant serious attention, a premise that challenges reigning criminal justice practice” (Kelling, 1998, p. 1). This is strongly reflected in the Midtown Community Court’s focus on quality-of-life crimes “that erode a community’s morale” (Lee, 2000).

² Operational Community Courts include Atlanta, Georgia (4/00), Austin, Texas (10/99), Denver, Colorado (5/00), Harlem, New York (5/01), Hartford, Connecticut (11/98), Hempstead, New York (6/99), Indianapolis, Indiana (4/01), Los Angeles, California (Van Nuys) (5/01), Memphis, Tennessee (2/00), Minneapolis, Minnesota (6/99), Midtown Manhattan, New York (10/93), Philadelphia, Pennsylvania (2/02), Portland, Oregon (98/01), Red Hook, New York (4/00), San Diego, California, South Tucson, Arizona (3/01), Syracuse, New York (4/01), Waterbury, Connecticut (10/01), West Palm Beach, Florida (4/99), Wilmington, Delaware (6/00), and Washington, D.C. (9/02). Plans for a community court are being pursued in Dallas, Texas, Los Angeles, (Downtown), California, San Diego, California, Seattle, Washington, and elsewhere.

³ The term “domestic violence” dates back to the 1970s and the first batterer’s program to 1975.

⁴ For the courts, rising domestic violence caseloads exacerbated longstanding inadequacies to court processes. Domestic violence caseloads grew 228 percent between 1985 and 1998 (Court Statistics Project, National Center for State Courts, calculated using information from 21 states).

⁵ See Keilitz (2000, p.3). Domestic violence courts are the most difficult problem-solving court to enumerate. One obscuring factor is the point at which a special docket becomes a “court”: can a civil protection order docket constitute a DV court? The best enumeration is from California, which in 2000 had 39 DV courts operating in 31 of the state’s 58 counties (MacLeod and Weber, 2000).

⁶ Sack (2002, pp. 2-3).

⁷ See Jackson et al. (2003) and Bennett and Williams (2001).

⁸ Keilitz et al. (2000).

⁹ MacLeod and Weber (2000, p. 19).

¹⁰ Evaluation Report for the San Diego County Domestic Violence Courts, (2000, p. 3).

¹¹ The mix of objectives pursued by a domestic violence court is at times uneasy. One domestic violence court (in San Diego) renamed itself the “Family Violence Solutions Center.”

¹² Sack (2002) has a more comprehensive list of components, including judicial demeanor, leveraging the role of the judge, evaluation and accountability, protocols for evaluating dangerousness, sentencing models, and use of conditional discharges.

¹³ The figures include adult, juvenile, family, and combination drug courts. They also include 51 Tribal Drug Courts in operation and 46 in the planning stage. The Office of Justice Programs Drug Court Clearinghouse (2003) also reports that an additional 7 courts were consolidated with other drug courts, and 47 drug courts suspended operations.

¹⁴ See National Association of Drug Court Professionals, 1997.

¹⁵ See Office of Justice Programs Drug Court Clearinghouse (2001b) for comparison of drug courts on a variety of factors.

¹⁶ There is no national list of all operating mental health courts. Some are known through research studies, news articles, and funding agencies supporting mental health courts. These include courts in Anchorage, Alaska; Broward County, Florida; Orange, Riverside, San Bernardino, and Santa Clara counties, California; Boise, Idaho; Indianapolis, Indiana; Greene, Jackson, and St. Louis counties and St. Louis city, Missouri; Washoe County, Nevada; King and Cheshire counties, New Hampshire; New York; Orange County, North Carolina; Akron, Cincinnati, and Fairfield, Ohio; Allegheny County, Pennsylvania; and Clark and King counties, Washington. In addition, Los Angeles, California, operates a juvenile mental health court.

¹⁷ These elements were drawn from the responses of problem-solving court judges to a modified Delphi survey conducted by the National Center for State Courts in the summer of 2002; draft key components of mental health courts identified by Judge Randall Fritzler of Clark County, Washington; and reports of mental health courts prepared by Goldkamp and Irons-Guynn (2000), Petrila (2002), and Trupin et al.(2001). Common practices and key elements may change as more mental health courts are established and adapted to specific jurisdictional needs.

¹⁸ In the appendix, the authors compare the Seattle Municipal Mental Health Court participants with two other groups. The first comparison group includes individuals referred to the court during the same period of time as the mental health court participants but who did not continue to participate in the mental health court. The second comparison group includes individuals from the King County District Court-Mental Health Court. The authors consider the data preliminary given the comparison groups are not control groups.



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