

**THE NATIONAL  
CENTER FOR  
STATE COURTS**

**EXECUTIVE SUMMARY  
MENTAL HEALTH COURT CULTURE:  
LEAVING YOUR HAT AT THE DOOR**



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## PARTICIPATING SITES

### California

San Francisco's Behavioral Health Court  
Santa Clara County's Court for the Individualized Treatment of Adolescents

### Minnesota

Fourth Judicial District Criminal, Hennepin County Mental Health Court

### Missouri

*Jackson County Mental Health Courts*  
Kansas City Municipal Court  
Kansas City State Drug Court  
Lee's Summit Municipal Court

### Vermont

Chittenden County Mental Health Court

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## EXECUTIVE SUMMARY

### A NEW CULTURE FOR MENTAL HEALTH COURTS: LEAVING YOUR HAT AT THE DOOR

Mental illness is a disorder that haunts individuals in our criminal justice system. The current system often fails to address underlying clinical risk issues — at times exacerbating mental illnesses with incarceration — and leaves the defendant spinning in a revolving door of crime and punishment, with little or no resolution. When in jail defendants with mental illnesses struggle to maintain medication regimens, housing, a job, or volunteer opportunities, all of which are the crux of their ability to function within society. Then, after a relatively short period of time (1-6 months) the defendant with mental illness is released back into the community in a condition worse than that at the time of arrest and without the support necessary to maintain his daily life. Ultimately, the cycle of arrest and decompensation threatens public safety and additional expense is incurred by tax payers who fund a system that is ill-equipped to serve this population.

Fortunately, the criminal justice system has acknowledged that the traditional model of punishment is poorly equipped to handle defendants with mental illnesses and that a new, problem-solving model will better serve their needs. A number of courts have taken the problem-solving approach as an innovation and have applied it across many social problems (e.g., Drug Court, Community Court, Domestic Violence Court). In the realm of mental health Broward County, Florida (in 1997) and King County, Washington (in 1999) were among the first in the nation to implement a mental health court (hereinafter, MHC) model. The overarching philosophy of MHCs is to reduce recidivism through court-monitored, community-based treatment. There are as many mental health court models as there are mental health courts, and, aptly describing these differences practitioners proclaim, “when you have seen one MHC, you’ve seen one MHC.”<sup>1</sup> As such, mental health courts are distinguished or categorized by numerous program components including legal and clinical eligibility requirements, type and duration of court monitoring and supervision, treatment and services available, and adjudication alternatives.

### THE MENTAL HEALTH COURT TEAM

The typical MHC decision-making team includes: judge, prosecutor, defense attorney, boundary spanner (also known as the case manager, court liaison, or court monitor), court staff, criminal justice staff (e.g., probation, police representative, jail representative) and mental health or treatment staff.<sup>2</sup> Throughout the MHC evaluation and treatment process, it is common for the MHC team members to develop a fiduciary relationship with the participant, especially with the judge.

Mental health court judges play a very different role than that of traditional judges. As one judge described this unconventional role,

*I’m not sitting back and watching the parties and ruling. I’m making comments. I’m encouraging. I’m making judgment calls. I’m getting very involved with families. I’m making clinical decisions to some extent, with the advice of experts. So I have much greater opportunities, I think, to harm someone than I would if I just sat there, listened, and said guilty or not guilty.<sup>3</sup>*

This statement underscores a common critique of the MHC system — the challenge for the judge to remain a neutral fact finder. The judge listens to the opinions of individuals who comprise the mental health court team (sometimes contributing his or her own opinions to that discussion), compiles the information received, and renders the final decision about the participants’ compliance in treatment.<sup>4</sup>

Judges must navigate through the information gathering maze, which means being cognizant of competing priorities held by team members who provide information about the participant.

Competing priorities are a natural part of the adversarial system and are expected to exist, in some form, in a collaborative effort such as a problem-solving court. Since MHCs operate across several disciplines it is not deemed unusual for mental health professionals, attorneys, and justice system staff (specifically defense attorneys and prosecutors) to be hesitant to join a MHC team as they weigh the professional “risk.” Mental health professionals may not feel qualified to deal with criminal issues and be afraid that if the treatment fails, government funding would be at stake.<sup>5</sup> On the other hand, criminal justice staff often feel inadequately prepared in mental health diagnoses, treatment, lingo and protocol, ultimately limiting their knowledge of mental health issues to behavioral manifestations.

Attorneys are in a unique position in that they grapple with ethical decisions in which they must act in the best interest of their clients. For example, while a defense attorney recognizes the urgent need of his client to receive mental health treatment, he may feel that advising the client to opt into a

*Motivations and biases, or the professional lenses through which one views a situation, impact how information is interpreted.*

longer mental health treatment program (beneficial to the client in the long-run) would be contradictory to his responsibility to decrease the client’s sentence (beneficial in the short-run).<sup>6</sup> As another example, a prosecutor, while sensing the offender’s need for mental health treatment, may discourage participation in a MHC, ignoring the long-term cost to the offender in order to serve immediate needs for public

safety, and if applicable, victim protection. These motivations and biases, or the professional lenses through which one views a situation, impact how information is interpreted. Ultimately, it is the judge’s responsibility to wade through these conflicting agendas and accurately assess the participant’s situation.

It is also the judge’s responsibility to interpret the expert evidence that is presented to her. In the problem-solving model, MH expertise is presented to the judge in a nuanced and informal manner, and there are multiple events during the program in which expert, or mental health, treatment recommendations are shared with the team. Essentially, experts both formally and informally share advice and recommendations on a routine basis throughout the client’s participation in the program yet it is ultimately the judge’s decision as to how she will assess this information.

The job of the team’s “boundary spanner”<sup>7</sup> is to facilitate effective communication among the team members as well as between the team and external agencies. A breakdown in communication may occur because of the use of misunderstood role-specific jargon or other competing motivations. The boundary spanner, much like the judge, must navigate communication barriers to ensure that the participant’s case progresses and treatment is properly defined and executed.

It is this complex and collaborative communication process that the current National Center for State Courts (NCSC) project addresses. While there is abundant literature on communication theory, there is a paucity of research that discusses communication and decision-making within the problem-solving court setting. As such, the NCSC developed, and introduces here, a communication model that effectively integrates the concerns of all members of the MHC team, both internal and external to the court. Furthermore, the NCSC presents a set of best practices that foster better managed MHCs, generates cultural changes suitable for MHCs within the criminal justice system, and encourages multi-disciplinary trust and cooperation among the MHC team.

The NCSC, with the valuable guidance of an advisory council, conducted field research to gather information about the experiences and communication patterns of select MHC teams. During the

summer and fall of 2008 NCSC staff visited the following mental health court dockets: Chittenden County MHC (Burlington, Vermont), Hennepin County MHC (Minneapolis, Minnesota), Jackson County MHC (which includes three separate dockets within Kansas City and Lee's Summit, Missouri), San Francisco Behavioral Health Court (San Francisco, California), and the Court for the Individualized Treatment of Adolescents (San Jose, California), collecting data through interviews with team members and observations of both in-court docket hearings and pre-docket staff meetings.<sup>8</sup>

### DECISION-MAKING IN MENTAL HEALTH COURTS

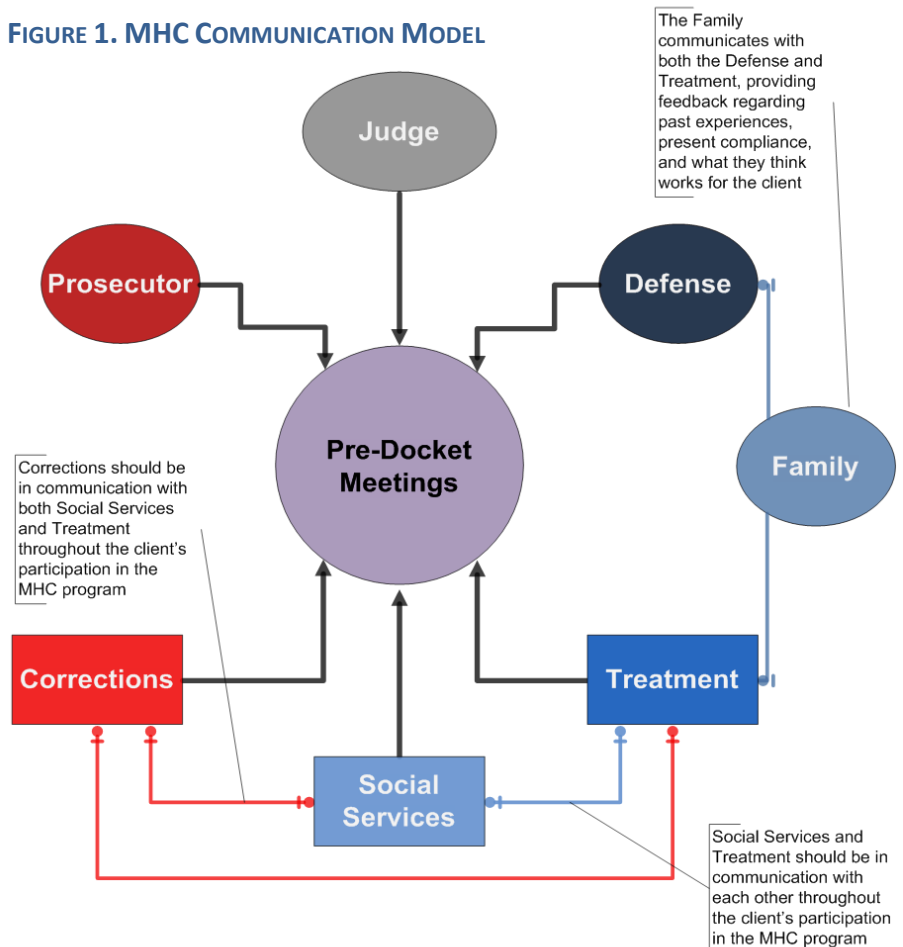
In a problem-solving court setting communication typically starts with a planning or stakeholder group that directly influences the nature of the MHC and sets the stage for its overarching culture. A broad set of forces “shape the contours” of the MHC, including politics, community resources, services, and opinions.<sup>9</sup> While there will certainly be representatives from those agencies that ultimately form the MHC team, the stakeholder group should also incorporate the perspectives of community agencies that work with mental health issues outside of the problem-solving court model.

Although we refer to a MHC as a “court,” it is not a stand-alone organization.<sup>10</sup> Judges who preside over MHCs may be responsible for other dockets and MHC team members may not be solely responsible for the MHC clients, with an exception in high-volume problem-solving courts. For this reason, how the MHC is situated within the larger court influences the flow of communication, and the influx of cases referred to a MHC is often dependent on team members’ other responsibilities and associations.

The MHC is a team of individuals, each representing a key interest at stake. A diagram of each of the networked interests is depicted above. The judge, prosecutor, and defense attorney comprise the traditional criminal court “team.” In the MHC, as seen in most problem-solving courts, representatives from treatment providers, social services, and corrections are also integrated as part of the team (see Figure 1).

Information is exchanged at four organizational levels: within the community, between the groups upon which the MHC is dependant, between MHC team members, and within individuals. Therefore, understanding the culture, role, and perspective of each agency represented in the MHC

FIGURE 1. MHC COMMUNICATION MODEL



will advance the level of communication and the effectiveness of the interactions among team members. The purpose of team interaction is to make legal and clinical decisions about clients. This team approach may seem inconsistent when MHCs are referred to as “judicially supervised treatment,”<sup>11</sup> but the description underscores the fact that, even though the court relies on others to coordinate and resolve client problems, it still maintains the locus of control and, through the boundary spanner, serves as the hub of the communication center. Due to the multiple perspectives and possible conflicting priorities that are inherent in team interactions, the team setting permits, even requires, a cross-over of roles across agencies and interests. For this reason each MHC team member is encouraged to “leave their hat at the door” and to leave stereotypes and one-sided or linear thinking behind. It is the successful MHC program that can balance the need to have input from all team members, yet be cognizant of where the role of one team member ends and another role begins.

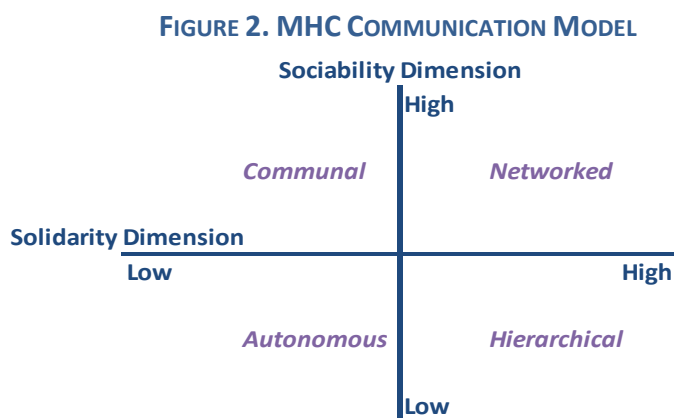
### MANAGING MHC CULTURE

Theories of communication and the forces that influence team interactions illuminate the underpinnings of culture. The term “local legal culture” is a phrase used to understand what drives variations in performance across state courts.<sup>12</sup> From a scientific perspective, the beauty of state courts lies in their differences. These variations provide a ripe opportunity to explore alternatives that offer innovative and effective solutions to improve courts’ services. While such differences exist, commonalities across court cultures define models or typologies from which other courts learn, and at times, emulate.

Building on previous work in this area, Ostrom and his colleagues present a framework to understand the culture of courts.<sup>13</sup> Culture is:

*Reflected in what is valued, the norms and expectations, the leadership style, the communication patterns, the procedures and routines, and the definition of success that makes the court unique. More simply: ‘The way things are done around here.’ ~Ostrom et al., 2007*

The structure and processes employed by judges, administrators, managers, and court staff dictate a court’s culture. Values held most indispensable by the organization, such as fairness, efficiency, and independence, depend on court culture. Empirical field work by Ostrom and colleagues draws on assessment tools and observations to describe the viewpoints, values, and prevailing norms of judges, attorneys, and court staff and explain four basic typologies. The four typologies identify where viewpoints fall along two dimensions, creating a two by two matrix:



the importance of cooperative social relations. A second dimension is *Solidarity*, the degree to which judges and court administrators pursue shared goals, common tasks, and agreed upon procedures.”<sup>14</sup>

Courts do not rigidly fall within one typology; they more often fall along a continuum of each scale.<sup>15</sup> The pioneers of the court culture work emphasize that there is typically a culture in operation



and that culture, at times, aligns with the vision of the court's leaders, and at times, does not. In addition, court staff and judges often hold unique perspectives of what culture is preferred.

Communication styles are mired in culture. For example, in a communal court, the MHC team limits the psychological and physical distance between members and works through stereotypes that stand in the way of effective teamwork. Team communication and interaction is less hierarchical and more egalitarian in this culture. MHC judges operating in the networked typology emphasize and promote the diversity of shared ideas, the inclusion of all staff, and encourage professional training and development.

It is essential to underscore that court culture typologies are not value-laden as good or bad.<sup>16</sup> Knowing the culture of a MHC is best used to understand a vision and recognize whether the MHC is operating within the intended typology. Furthermore, recently implemented MHCs will achieve better results if, as the court becomes more established, the envisioned typology shifts towards a culture enabling sustainability and consistency.

### **MHC BEST PRACTICES & RECOMMENDATIONS**

We present four key recommendations. First, we recommend that MHCs develop clear, written policies and procedures (e.g., admittance, termination, graduation, and succession planning). Second, we recommend that a balanced set of performance measurements be designed specifically for MHCs. Performance measures should incorporate accountability, efficiency, social functioning, recidivism, and procedural justice. Third, we propose that a culture assessment tool be adapted specifically for MHCs. Fourth, due to the level of interagency collaboration essential for MHCs, cross-training on substantive mental health issues should be required for all team members along with less formalized trust building exercises to eliminate stereotypes and misunderstandings of terminology.

#### **RECOMMENDATION 1: DEVELOP WRITTEN POLICIES AND PROCEDURES**

Individuals with mental illness thrive on consistency. Their illness, as well as the state of their affairs, is often unpredictable, but in a therapeutic environment — where all team members provide a consistent message — clients make progress. Consistency is delivered to the MHC clients when the team has a shared vision of the purposes and goals of the MHC. Therefore, it is important to the success of the court for the team to agree upon a goal. While consistency is important, we do not recommend that courts present a “one size fits all” approach since a hallmark of the MHC model is that clients deserve individualized treatment plans.

In addition to agreeing on a shared goal, and as another means for presenting a consistent message, the MHC team, alongside a planning committee, should set policies for three principle areas: (1) Who should be admitted?; (2) What determines when the client qualifies for graduation?; and (3) What is the program's succession policy? The first fundamental policy for MHCs is setting the program's target population. The planning committee of any MHC should set clear and realistic goals regarding admittance to the program, and the MHC team bears responsibility for communicating this information to the client and those who screen or identify potential clients. Setting a target population, and committing that target to paper, helps MHC staff to avoid a phenomenon known as “widening the net” or the acceptance of clients that fall outside of the agreed upon program requirements.

The second fundamental policy for the planning committee to set is that of clear graduation criteria. Graduation requirements are, understandably, individual and fluid. However, the client must be told what criteria are used to determine when he or she meets the expectations of the program.

The third fundamental policy, the development of a succession plan, is also the one least likely to have been considered by the planning committee. Specialized dockets typically emerge out of a single judge's agenda to resolve the revolving door phenomenon, but court leadership should also require that additional judges develop the necessary expertise (and temperament) to oversee those dockets.

#### **RECOMMENDATION 2: DESIGN AND IMPLEMENT PERFORMANCE MEASUREMENTS**

Performance measurement is considered an essential activity in many government and non-profit agencies. Effectively designed and implemented performance measurement systems provide tools for managers to exercise and maintain control over their organizations, as well as to act as a mechanism for governing bodies and funding agencies to hold organizations accountable for producing the intended program results.

Effectively designed and implemented performance measurement systems provide tools for managers to exercise and maintain control over their organizations

We propose four primary areas of concern that could effectively be addressed by the creation of MHC specific performance measures. The four areas, referred to as measurement domains, are: 1) accountability, wherein MHCs are accountable to funding sources, stakeholders, and the community within which they operate; and by the individual client to the community for their crime; 2) efficiency, wherein MHCs are

efficient at serving clients and coordinating interagency interactions; 3) recidivism and social functioning, wherein clients are expected to improve social functioning and establish a productive life in the community, reduce recidivism, and establish a network of support; and 4) procedural justice, wherein the court is evaluated from a public perspective (i.e., MHC is not just a loop hole for serving jail time), a legal perspective (i.e., due process and privacy rights are respected), and from the client's perspective (i.e., years of judicially supervised therapeutic justice is not judged as more punitive than the conventional punishment of several months in jail).<sup>17</sup>

#### **RECOMMENDATION 3: ADAPT CULTURE ASSESSMENT TOOL FOR MHCs**

We recommend that a modification of the culture assessment tool be adapted specifically for MHCs. Our hypothesis is that MHCs practice in a communal culture, yet often envision a networked culture as their ideal culture. Based on the work of Ostrom et al., both the communal and networked cultures are high on the sociability dimension providing considerable overlap across typologies.<sup>18</sup>

The hallmark of the communal culture is egalitarianism, in which there is a mentality to work together to get the job done and improvisation is encouraged. Similar to the communal culture, a networked culture thrives on creativity and innovation. MHCs place considerable value on external relations with community agencies. This is true of most problem-solving courts. In fact, the role of the judge in a networked culture is defined by his or her unique role change. A judge is not a passive, detached referee, but a problem-solver and plays a more therapeutic role. The strength of the networked culture lies in its ability to effect change and manage case processing efficiently. From our field work, we encourage courts to consider their operating culture and whether it is aligned with their envisioned or preferred culture. Adapting a court culture tool for MHCs will enable more courts to assess their program's culture and adjust as needed.

#### **RECOMMENDATION 4: REQUIRE TRAINING**

Cross-training on substantive mental health and criminal justice issues should be required for all team members. During our fieldwork, the predominant training that team members reported receiving was a "101 on Mental Illness" that enables the team to better understand mental illnesses



and the types of behaviors or symptoms that are typically exhibited. This training was primarily provided to those with backgrounds in the criminal justice field. Courts offered less criminal justice-related training to those with mental health backgrounds, despite the fact that the court's processes and the legal issues such as privacy, due process rights, compliance with court orders, and sanctions are but a few of the issues MHC team members grapple with daily.

Empirically-based research...has not identified which specific components of the problem-solving approach are adaptable to the mainstream dockets and which are the driving force behind the effectiveness of this innovation.

Trust building is a key component of any problem-solving court team and is primarily developed through longevity as colleagues. Unfortunately, the MHC teams are relatively new and there is comparatively high turnover among some critical roles. Two strategies to improve trust among team members are through management of physical proximity and another is to use the age-old forum of a retreat. The ability to meet outside of formal meetings and courtrooms is particularly constructive when trying to establish interpersonal relationships.

While we are recommending training for MHC teams, some commentators in this field are exploring how to mainstream problem-solving techniques into conventional court settings, drawing partly on a 2000 resolution by the Conference of Chief Justices and Conference of State Court Administrators in support of this effort.<sup>19</sup> While research finds widespread support of problem-solving methods among the mainstream judiciary, evaluators have not yet produced empirically-based research to adopt this endeavor. The research has not identified which specific components of the problem-solving approach are adaptable to the mainstream dockets and which are the driving force behind the effectiveness of this innovation. It is simply too early to be embracing the adaptation of MHC methods without an informed evaluation of current programs.

## CONCLUSION

The NCSC developed a communication model that effectively integrates the concerns of all members of the MHC team, both internal and external to the court. Additionally, the NCSC presented a set of best practices that promote better managed MHCs, generate cultural changes suitable for MHCs within the criminal justice system, and encourage multi-disciplinary trust and cooperation among the MHC team.

As a fairly recent innovation, MHCs have an opportunity to develop and refine policies and procedures for the program. As expected, each court faced inefficiencies and yet all courts implemented creative solutions to manage their caseload and administer their programs. All of the participating courts faced struggles to include a full spectrum of collaborator's interests. Logistical, legal, political, and financial factors were but a few of the reasons offered to explain the absence or minimal participation in the MHC. For the purposes of bolstering community and stakeholder support and to enrich the capabilities of a team-based approach, all interests should be represented in the program's planning, implementation, and evaluation stages. An added benefit of this inclusive approach is that it creates multiple opportunities for effective cross-training.

Fieldwork in the participating sites inspired the following four recommendations. First, MHCs should develop more thorough, written policies and procedures. This is not to say that MHCs should standardize treatment plans. On the contrary, a comprehensive and standardized set of procedures and policies will enable the court to better carry-out the individualized treatment that MHC clients require. While the culture of problem-solving courts embraces flexibility and creativity, it may also lack

the solidarity and consistent procedures that are needed if the team is to fulfill its goal of providing a unified message to both the client and the court's stakeholders. Second, MHC specific performance measures should be developed. The measures should focus on domains such as accountability, efficiency, recidivism and social functioning, and procedural justice.<sup>20</sup>

Third, a MHC Culture Assessment Tool should be developed. This tool would be part of a set of tools to assess the operation of the program, yet account for the unique culture and communication dynamics inherent in a team-based MHC. The culture assessment tool would be sensitive to the higher order political and funding influences as well as interpersonal relationships with members of the MHC team. The primary use would be to monitor the implementation of the program, as intended, and to conduct periodic assessments as to whether the program's current culture is aligned with the court's vision.

A final recommendation is to develop model curriculum for training those working in MHCs. With the widespread support of problem-solving methods among the mainstream judiciary, it is anticipated that more courts will embrace MHCs as an alternative to traditional criminal justice sanctions for the mentally ill population. However, it requires the court's commitment to train and prepare the MHC team for their problem-solving role. Both substantive and trust building training are key components for an effectively operating MHC.

It is the desire of the NCSC that this project will enlighten the communication and decision-making processes of MHCs in order to improve outcomes for individuals with mental illness and better serve the affected community. Certainly, additional research is required to identify what aspects of this relatively new, multi-disciplinary approach are conducive to reducing recidivism for defendants with mental illnesses and improving public safety.

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<sup>1</sup> Council of State Governments Justice Center, *Mental Health Courts: A Primer for Policymakers and Practitioners* (New York: Council of State Governments, 2009), 7.

<sup>2</sup> This team composition is similar to Indiana's Drug Court Rules (see Section 15). Also note, during our site visit, the judge did not participate in the pre-docket meetings in Lee's Summit or Kansas City Municipal courts, both of which are pre-plea programs.

<sup>3</sup> G. Berman, "What is a Traditional Judge Anyway?: Problem solving in the state courts," *Judicature* 84 (2000): 82. Hon. Cindy Lederman quoted.

<sup>4</sup> L. Arkfield, "Ethics for the Problem-Solving Court: The New ABA Model Code." *The Justice System Journal* 28 (2007): 317.

<sup>5</sup> D. Denckla and G. Berman, *Rethinking the Revolving Door: A Look at Mental Illness in the Courts* (New York: Center for Court Innovation, 2001), 1-32.

<sup>6</sup> L. Arkfield, (2007).

<sup>7</sup> H. Steadman, "Boundary-Spanners: A Key Component for the Effective Interactions of the Justice and Metal Health Systems," *Law and Human Behavior* 16 (1992): 75-87.

<sup>8</sup> For a detailed discussion of the methodology, see the full report at: [www.ncsc.org/MentalHealthCourtsCulture](http://www.ncsc.org/MentalHealthCourtsCulture).

<sup>9</sup> N. Wolff and W. Pogorzelski, "Measuring the Effectiveness of Mental Health Courts: Challenges and Recommendations," *Psychology, Public Policy and the Law* 11 (2005): 542.

<sup>10</sup> See Brief of *Amici Curiae* in the Court of Appeals of MD, September Term, 2008, No. 118 *Brown v. Maryland*, explaining that problem-solving courts are not "new courts in that they are not separate, free-standing judicial institutions. Rather, [they] are specialized, alternative-sentencing dockets that offer diversionary programs to qualified offenders." Footnote 2.

<sup>11</sup> Council of State Governments, *A Guide to Mental Health Court Design and Implementation* (New York, NY: Council of State Governments, 2005), 63-70.

<sup>12</sup> See, R. Nimmer, *The Nature of System Change: Reform Impact in Criminal Courts* (Chicago, IL: American Bar Foundation, 1978). T. W. Church, Jr. et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts*. (Williamsburg, VA: National Center for State Courts, 1978).

<sup>13</sup> B. J. Ostrom et al., *Trial Courts as Organizations* (Philadelphia, PA: Temple University Press, 2007).

<sup>14</sup> B. J. Ostrom et al., "Court Cultures and their Consequences," *Court Manager* 20 (2005): 15.

<sup>15</sup> See Appendix C in the full report for the detailed value matrix for each typology.

<sup>16</sup> Ostrom et al., (2007), p. 134.

<sup>17</sup> These four domains, as part of a larger set of balanced and comprehensive performance measures, are currently under review by the NCSC as part of a BJA funded project on performance measures for MHCs. The results of this project are forthcoming in 2010.

<sup>18</sup> Ostrom et al., (2007).

<sup>19</sup> D. J. Farole, Jr., et al., *Problem Solving and the American Bench: A National Survey of Trial Court Judges* (New York: Center for Court Innovation and California Administrative Office of the Courts, 2008).

<sup>20</sup> This effort is underway through a Bureau of Justice Assistance grant to the NCSC. A group of national experts and representatives from MHCs across the nation will convene to develop an inclusive, yet manageable number of performance measures. The measures will be tools designed to better manage and effectively administer MHCs. These measures will undergo a field test to gauge the practicality of implementation.



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