

# Moving Problem-Solving Courts into the Mainstream:

## A Report Card from the CCJ-COSCA Problem-Solving Courts Committee

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**F**ive years ago the term “problem-solving courts” was not commonly used or understood in the court community. Today, however, the term describes over a thousand courts around the country. Problem-solving courts generally focus on the underlying chronic behaviors of criminal defendants. Acting on the input of a team of experts from the community, a problem-solving court judge orders the defendant to comply with an individualized plan and then the judge (with the assistance of the community team) exercises intensive supervision over the defendant to ensure compliance with the terms of the plan. Individualized plans may include participating in a treatment program, submitting to periodic substance abuse screenings, and providing restitution. If the defendant successfully complies with the terms of the individualized plan, criminal charges are favorably resolved either by dismissal of charges, reduction of sentence, or the imposition of some lesser penalty. Examples of problem-solving courts in operation in the United States include drug courts, mental health courts, domestic violence courts, homeless courts, teen courts, tobacco courts, and some forms of family courts.

### ORIGIN OF PROBLEM-SOLVING COURTS

Problem-solving courts originated with the drug court movement. After judges and other community leaders first learned about the anecdotal successes of drug courts, they applied the same techniques to other types of cases, including mental health, domestic violence, and gun violence.

The movement began and flourished at the local level in trial courts. The

speed and acceptance of the problem-solving courts movement surprised many court observers. The speed and acceptance of these courts was fueled, in large part, by the availability of federal dollars to plan and implement these courts and the large number of anecdotal success stories across the nation.

### ROLE OF STATE COURT LEADERS

State court leaders were initially skeptical about the long-term viability of these courts and concerned about their impact on unified court systems. In 1999, however, it was obvious that problem-solving courts had been proliferating both in numbers and in types of cases handled. Recognizing this, the Conference of State Court Administrators (COSCA) developed a white paper to present to their membership in August 1999. The white paper hypothesized that state court leaders were “playing catch up” with this movement that had developed and flourished under the direction of local court judges. The white paper established a framework for state court leaders to discuss their appropriate role in the administration and expansion of problem-solving courts. The consensus was that the Conference of Chief Justices (CCJ) and COSCA should assume a leadership role in providing direction and the appropriate court-based focus for these courts.

CCJ and COSCA jointly appointed a Task Force on Therapeutic Justice in August 1999 and charged them with developing specific recommendations and an action plan for the two conferences. The task force presented their recommendations to the two conferences in August 2000 in the form of a resolution. The resolution clearly identified an agenda for the two conferences. The

main points of the resolution were:

- (1) Call these new courts and calendars “problem-solving courts,” recognizing that courts have always been involved in attempting to resolve disputes and problems in society, but understanding that the collaborative nature of these new efforts deserves recognition.
- (2) Take steps, nationally and locally, to expand and better integrate the principles and methods of well-functioning drug courts into ongoing court operations.
- (3) Advance 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.
- (4) Encourage, 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 while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims, and the community.
- (5) Support national and local education and training regarding the principles and methods employed in problem-solving courts and collaboration with other community and government agencies and organizations.

- (6) Advocate for the resources necessary to advance and apply the principles and methods of problem-solving courts in the general court systems of the various states.
- (7) Establish a national agenda consistent with the resolution.

The most significant aspect of the resolution was the vision and challenge contained in its fourth point—to encourage, 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. This aspect is significant because it articulated a proactive vision and goal for the future on the part of both organizations and it encompassed a statement of responsibility on the part of both conferences for realizing that vision. The task force was renamed the Problem-Solving Courts Committee and continued for the purpose of overseeing the implementation of the resolution and realization of the vision.

Evaluating the various approaches taken in designing and implementing problem-solving courts is an integral part of ensuring the integration of their principles and methods into the administration of justice. Although, for example, every state either has a drug court or is planning a drug court,<sup>1</sup> few jurisdictions have utilized the same approach in the design and implementation of those courts. As of June 2001, 38 states had enacted or introduced legislation regarding the planning, operating, or funding of drug courts, including three states that allocated tobacco settlement funds for drug courts.<sup>2</sup> Ten states had enacted court rules regarding drug courts.<sup>3</sup> The various approaches allow experimentation, which in turn allows the evaluation of the effectiveness of various models of implementation and the unique challenges each model raises.

### THREE APPROACHES TO THE INSTITUTIONALIZATION OF PROBLEM-SOLVING COURTS

This section explores three different approaches to the institutionalization of problem-solving courts: local court-initiated implementation, statewide implementation, and higher court-led implementation. These approaches are illustrated through a discussion of the implementation of problem-solving courts in three states: Michigan, Idaho, and New York. We will briefly describe each of these problem-solving courts and the steps taken to integrate these courts into the judicial system. The experience of these courts is instructive and points the way to further innovation.

#### A. Michigan: Local Court-Initiated Implementation

Problem-solving courts, especially drug courts, have proliferated in Michigan.<sup>4</sup> Originally, these drug courts were initiated and implemented by the local district courts, with minimal guidance or direction from state court leaders or the legislature. In addition, some district courts—the rough equivalent, in other states, of municipal courts—started problem-solving courts to deal with other issues, including domestic violence courts and family drug courts, aimed at combating parents' drug problems that threatened their children's health and safety. Michigan's problem-solving courts have developed rules and procedures well suited for local problems, because the state allows district courts some latitude to address local issues and budget priorities. That same flexibility, however, raises some concerns. In extending the scope of problem-solving courts, district courts may inadvertently develop rules that create due process and separation of powers problems.

The potential for serious problems stems, in part, from the lack of explicit statutory authority for problem-solving courts. The state legislature has not yet addressed this issue. The judiciary budget, which provides funding for problem-solving courts, states that problem-solving courts are responsible for “. . . handling cases involving substance-abusing nonviolent offenders through comprehensive supervision, testing, treatment, services, immediate sanctions, and incentives.”<sup>5</sup> The legislature apparently believes that problem-solving courts are important, but it has not yet set up a structural framework to ensure that constitutional rights are protected and that each court follows similar sentencing and operational guidelines. The State Court Administrative Office, which administers grant programs for problem-solving courts, and the federal government both require the courts to meet 10 key criteria for funding. Although these guidelines describe a minimum level of services, they do not provide the sentencing and other safeguards that an institutional change of this magnitude requires. In creating committees to design and implement problem-solving courts, many district courts appointed respected defense attorneys to protect defendants' due process rights.<sup>6</sup> Attorney participation in local experiments, however, will not guarantee a properly structured court system.

The judges who sit on Michigan's problem-solving courts are among the best in the state. But even the best judges benefit from a clear statutory or rule-based framework from which to operate their courts. Proponents of problem-solving courts believe that flexibility is crucial to their effectiveness. The current challenge facing Michigan's problem-solving courts is to provide a basic framework while preserving flexibility.

#### Footnotes

1. Press Release, United States Department of Justice, Communities Nationwide to Receive Federal Funds for Drug Courts (June 6, 2002), available at <http://www.ojp.usdoj.gov/dcpo/publications.htm>.
2. OJP DRUG COURT CLEARINGHOUSE AND TECHNICAL ASSISTANCE PROJECT, DRUG COURT ACTIVITY UPDATE: SUMMARY INFORMATION ON ALL PROGRAMS AND DETAILED INFORMATION ON ADULT DRUG COURTS (June 20, 2001), available at <http://www.american.edu/justice/publications/allcourtactivity.pdf>.

3. *Id.*

4. See L.L. Braiser, *Addicts Turn to Court for Help; Program Strives for Participants' Recovery, No Jail*, DETROIT FREE PRESS, Jan. 22, 2002, at 1B.

5. H.R. 5648, 91st Leg., Reg. Sess. (Mich. 2002), available at <http://courts.michigan.gov/supremecourt/AboutCourt/Budget.htm>.

6. Heather H. Wilson, *Sobriety Courts Are Gaining Momentum in Michigan*, MICH. LAW. WKLY., May 20, 2002, at 16.

## B. Idaho: Statewide Implementation

In Idaho, all three branches of state government worked together to design, implement, and oversee problem-solving courts. Indeed, the chief justice, governor, and legislature have embarked on a joint venture to ensure that every county has a drug court. Governor Dirk Kempthorne has made it a priority in a tight budget year to fully fund state drug courts, despite a substantial decrease in federal grants for the programs.<sup>7</sup> Idaho's judicial leadership has been deeply involved in the development of these courts. Chief Justice Linda Trout, in her address to the state legislature, spoke of her desire to extend the benefits of drug courts to every county.<sup>8</sup>

Despite this push for drug courts from the judicial, executive, and legislative branches, local courts have maintained their flexibility. First District Court Judge James Michaud has tailored his program to the particular drugs that plague his jurisdiction.<sup>9</sup> He believes that successful drug courts all share certain characteristics, but retain the flexibility to respond to local problems.<sup>10</sup> "It's a regional thing," according to Judge Michaud: local laws and problems call for a variety of treatment and enforcement options.<sup>11</sup> It appears that Idaho has worked diligently to strike the right balance between flexibility for local communities and judicial, legislative, and executive involvement from the top down.

At the same time, Idaho's experience highlights a problem faced by every state: a tight budget year. While the legislature has increased funding for the drug court system, it has given relatively smaller increases to the rest of the judiciary, and is cutting funding in some areas. The executive branch and the judiciary are pushing to expand drug courts to all counties, but a budget shortfall may arise elsewhere. If drug courts are effective in the long term, they can save the taxpayers money. At the same time, problem-solv-

ing courts should not be funded at the expense of the rest of the justice system.

## C. New York: Higher Court-Led Implementation

Under the leadership of Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman, New York has been a national leader in adopting a problem-solving model of jurisprudence. New York is home to dozens of drug courts, community courts, domestic violence courts, and other problem-solving experiments. These include the nation's first community court, opened in 1993 in the Times Square neighborhood of Manhattan; the first multi-jurisdictional community court, hearing civil, criminal, and family court cases in the same courtroom; one of the largest drug treatment courts in the country in Brooklyn; and several new experiments known as "integrated domestic violence courts," in which a single judge hears civil, criminal, and matrimonial matters involving a single family.

Based on the independently documented results of New York's first generation of problem-solving experiments, the state court system has embarked on perhaps the most ambitious effort in the country to "go to scale" with problem-solving. In October 2000, Judge Kaye and Judge Lippman launched a statewide initiative that seeks to forever change the way that courts handle cases involving addicted offenders. The goal is to make the drug court approach—links to drug treatment, rigorous judicial monitoring, graduated sanctions and rewards—standard operating practice in the courts. As a first step to achieving this goal, the court system will create at least one drug court in each of New York's 62 counties by 2003. A year into the effort, the number of drug treatment courts operating in New York had gone up 39%, to 43; an additional 50 are in the planning stages. In addition to promoting drug court

replication, the state court system is investing in an infrastructure to support a new system-wide approach to drugs, creating statewide trainings for practitioners, a state-of-the-art technology application, and an evaluation plan to track results.

In addition to the statewide drug reform effort, New York has embarked on a series of other initiatives designed to embed problem-solving within the judicial culture of the state:

- *Integrated Domestic Violence Courts:* There are currently six integrated domestic violence courts in operation or in the planning stages in New York. These courts address a fundamental concern expressed by court users—the difficulty of navigating the jurisdictional boundaries of the court system, which frequently require the same family to appear in front of multiple decision makers in multiple locations. While these experiments are still new, they have already generated significant enthusiasm among users for streamlining court processes. Accordingly, the court system is currently exploring "going to scale" with this model, in much the same way it has sought to institutionalize a new approach to drug cases.
- *Additional Experiments:* The court system's research and development arm, the Center for Court Innovation, has been charged with testing additional adaptations of the problem-solving model (demonstration projects currently in the works include a mental health court, a juvenile intervention court, and a parole reentry court).

These efforts represent a multifaceted institutional effort to move problem-solving justice from the margins to the mainstream of court operations.

7. Governor Dirk Kempthorne, Budget Speech to the Idaho Legislature (Jan. 9, 2002), available at <http://www2.state.id.us/legislat/sday3.pdf> (noting prior year's funding to begin "to implement drug courts in every judicial district").

8. Linda Copple Trout, *State of the Judiciary Address – 1999*, ADVOC. (Idaho), May 1999, at 21.

9. Susan Drumheller, *Counties Drug Court Plan Gets Boost*,

*Governor's Initiative Promises Funding; To Change Approach to Meth "Epidemic,"* SPOKESMAN-REV. (Spokane, Idaho), Mar. 31, 2001, at A1.

10. *Id.*

11. *Id.*

## CONCLUSION

Overall, our “report card” shows promising results as these three states develop long-term plans to integrate problem-solving courts into their established judicial systems. Experimentation throughout the states will allow jurisdictions to evaluate the effectiveness of various implementation approaches and models. Although the results are promising, the unique challenges posed by problem-solving courts still need to be addressed:

- What makes a problem-solving court effective?
- How can problem-solving courts set standards to protect constitutional rights?
- How can these courts be funded, without depriving traditional courts?
- What degree of specialization is necessary and when does specialization become harmful and make courts unnecessarily complex?

The CCJ and COSCA Problem-Solving Courts Committee will continue to address these and other related issues so that the vision of “broad integration of the principles and methods of problem-solving courts” is realized.



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*Maura D. Corrigan was elected to the Michigan Supreme Court in 1998 for an eight-year term. She was elected chief justice in 2001. In practice, she was an assistant prosecuting attorney in Wayne County, Michigan from 1974 to 1979; in 1979, she became chief of appeals in the United States Attorney's Office in Detroit; in 1986, she became the first woman to be Chief Assistant United States Attorney in Detroit; and in 1989, she entered private practice as a partner in the firm of Plunkett & Cooney. She was appointed to the Michigan Court of Appeals in 1992 and became its chief judge in 1997. Corrigan graduated magna cum laude from Marygrove College in Detroit in 1969 and cum laude from the University of Detroit Law School in 1973.*

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