

Challenges and Solutions to Implementing Problem-Solving Courts from the Traditional Court Management Perspective

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TABLE OF CONTENTS

Introduction and Definitions.....	1
Focus Group Results.....	3
The Court’s Role and Other Challenges.....	3
The Court’s Role.....	3
Courts as Gatekeepers.....	3
Suspending the Adversarial Approach.....	4
Applicability of Problem-Solving Techniques.....	4
Confusing the Purpose of the Court.....	5
Strategies for Creating a Viable Problem-Solving Court.....	6
Goals of the Problem-Solving Solution Must be Defined, Clearly Stated, and Realistic...	6
Collaboration Among All Players Is Critical.....	7
Program Monitoring and Accountability Must Occur.....	8
Knowledge of What Works for Problem-Solving Approaches Is Essential.....	8
Resources and Funding Opportunities Should be Carefully Considered and Developed...	9
Conclusion.....	11
References.....	12

INTRODUCTION AND DEFINITIONS

Recent years have seen the exponential growth of “problem-solving courts,” also known as “specialty courts” or “therapeutic justice courts.” Since the first drug court was implemented in Florida in 1989, the concept of “therapeutic justice” has spread dramatically across the United States, with close to 2,000 adult and juvenile drug courts implemented in all 50 states, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and Guam (Bureau of Justice Assistance Drug Court Clearinghouse Project, 2007). The concept of problem-solving courts also has expanded to address societal issues outside of illegal drug use that affect the court system. These issues have emerged with the creation of homeless courts, family treatment drug courts (also called “dependency courts”), mental health courts, domestic violence courts, and tobacco courts.

Much work has been done to examine the effectiveness of problem-solving courts, particularly drug courts (e.g., Belenko 2001, 2005; Carey and Finigan, 2004; Carey et al., 2005; U.S. Government Accountability Office, 2005; Center for Court Innovation, 2007). The overall conclusions are that problem-solving courts—specifically drug courts—are successful in reducing criminal recidivism rates and are an effective use of taxpayer dollars.

In 2000, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) formed a joint task force to consider the policy and administrative implications of problem-solving courts and to advance policies and recommendations in support of the future of these courts. The outcome of this task force included the resolution that steps should be taken by courts nationally and locally to integrate problem-solving principles into ongoing court operations. Some research has been performed to examine how the expansion of problem-solving courts into other areas of traditional courts can be accomplished (e.g., Byrne et al., 2005; Center for Court Innovation, 2007). However, this work has mainly been accomplished through the use of focus groups with judges and other court or

criminal justice system staff who work directly with problem-solving courts. Much less work has been done to examine how these specialty courts have affected the court system from the point of view of overall court operations, which would offer the perspective of those staff who do not work directly with problem-solving courts. This viewpoint is key in developing a complete picture of the impact of problem-solving courts on the court system and what it would take to expand the use of problem-solving principles into additional areas of justice system processing.

In 2006, the U.S. Department of Justice, Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), and the State Justice Institute (SJI)—with the support of BJA’s National Training and Technical Assistance Project at American University (AU)—jointly sponsored a 2-day focus group of judges and court administrators who did not directly work with any problem-solving court program, but who had extensive experience with court management issues within jurisdictions where problem-solving courts operated. Three judges and 7 court administrators from 10 variously sized and located courts participated in this focus group. Representatives from BJA, SJI, OJP’s

National Institute of Justice, and BJA's National Training and Technical Assistance Project also attended. The purpose of this focus group was to discuss the challenges these individuals had experienced in incorporating a problem-solving court in their court system and recommended solutions to these challenges. This perspective is intended to supplement the perspectives provided by persons directly involved with problem-solving initiatives. The results of the focus group will help inform BJA and SJI regarding the appropriate next steps for policy development and implementation in this area.

Before presenting the results of this focus group, it is helpful to develop some common definitions for the terms that are the main focus of this discussion, namely the "traditional court process" and the "problem-solving court process." The court, in law, is the official body charged with administering justice. As described by COSCA's policy committee in 1999, the "traditional role of courts and judges is to provide a fair process for those with a dispute or criminal charge. The process

generally involves an adversarial forum at which each side has the opportunity to present its side before an impartial judge, according to agreed-upon rules and procedures." In criminal cases, the focus is on the facts and the law related to the specific charge. The most important goal is a fair process (Conference of State Court Administrators, 1999).

The problem-solving court process combines a therapeutic model with traditional jurisprudence. That is, problem-solving courts refer to court interventions, generally including the use of treatment, that focus on chronic behaviors of criminal defendants, with the intention of addressing the underlying cause of the chronic illegal (or inappropriate) behavior and of reducing recidivism rates. This kind of intervention often results in the court acting in a nontraditional (particularly, a non-adversarial) manner. The focus in problem-solving courts is on the individual and addressing the underlying issues that have brought the individual into contact with the justice system and the repercussions of that contact, rather than on the specific charge.

Did You Know...?

Problem-solving courts also have been referred to by other names, including accountability, behavioral justice, collaborative justice, problem oriented, outcome oriented, and constructive intervention courts. But in 2000, the Conference of Chief Justices and the Conference of State Court Administrators resolved to call these court dockets by the single name, "problem-solving."

FOCUS GROUP RESULTS

The concerns from the traditional court management perspective expressed by focus group participants are relevant to both traditional and problem-solving courts. Specialized problem-solving court programs function within and are influenced by the traditional court system. In turn, the implementation of a specialty court creates changes in the traditional court process. The concerns described below are germane to those operating from both the problem-solving and traditional court process perspectives; thus, both must be considered in implementing a viable problem-solving court program.

The points of view described in this document are intended to serve as a reflection of the discussion of the individuals who participated in the focus group on problem-solving courts. These points of view do not necessarily reflect BJA's or SJI's viewpoints.

The Court's Role and Other Challenges

One of the first challenges for those working from the traditional court process perspective was the consideration of whether the role of the court is to solve societal issues or to adjudicate. Does taking on societal problems fit in the mission of court functions? Does the court have the jurisdiction to be involved? Although these questions were not intended to be the focus of the group discussion, attendees spent several hours on the first day of the focus group discussing whether the court should be taking on this role. Clearly, these concerns were important from the perspective of the overall mission of the court and the traditional court process.

The Court's Role

The questions in the above paragraph sparked much debate, and many different opinions were expressed. There was concern that problem-solving courts were attempting to take on societal issues that were not truly within the jurisdiction of the court. For example, being homeless or mentally ill is not technically illegal, although that status can sometimes lead to illegal activities. An example was given that many of those

enrolled in a homeless court were only there on public nuisance charges, which did not give the court the same hold on these individuals as more serious charges. One focus group member stated, "Program staff want to put people in the program that legally don't belong before the court because they think it will be good for the offender."

A number of the participants raised the question as to whether taking on cases involving "gray areas"—in terms of illegal activity that would bring the offender within the court's jurisdiction—could raise political and legal issues. In the example of homeless courts, there was a concern about fair treatment. Are all individuals with the same types of charges being treated the same way by the court, or are the homeless being treated differently (e.g., being brought into the court on nuisance charges when others would not be) because they are homeless?

Courts as Gatekeepers

Some focus group participants felt that courts were being pushed to be the gatekeepers for social services or health problems that were more appropriately handled by the relevant systems involved, such as social services and health care. Others felt that courts added some authority

and/or a more holistic view of the problem, thus they were more likely than other systems to make things happen.

Focus group participants also argued that courts are better at case management than community health or other similar social systems. Problem-solving courts were seen by these participants as an opportunity for courts to show themselves to be community-relevant and helpful. Judges are good at getting resources. They have the power to do it and the power to punish if things are not done. This then led to the question: Because the court can, does that mean it should? Some focus group participants said yes, others no. It was suggested that rather than taking on some of these additional responsibilities, the court could use its ability to leverage resources to help those whose function it is to provide treatment or other service coordination.

was understood more fully. The participants agreed that the adversarial process could have a detrimental affect, where the sides could become overly contentious and in turn slow or prevent the resolution of a case. In spite of this concern, the participants acknowledged that the original principle behind the adversarial process was still a good one and should not be lightly put aside.

Applicability of Problem-Solving Techniques

While participants felt that it is possible to consider problem-solving techniques for many types of cases, it was suggested that in some cases the most appropriate therapeutic solution may not have been designed yet. There was a concern that the drug court model was being expanded and used to address problems other than drug use for which the model may be ineffective.

What Is the Court's Role?

During the focus group, many questions were raised, including:

- **Should the court solve societal issues that result in cases being filed, or simply adjudicate cases that come before them?**
- **Does taking on societal problems fit within the mission of the court's functions?**
- **Does the court have the jurisdiction to be involved in certain cases considered within the gamut of problem-solving court activity?**
- **Just because a court *can* help, does that mean it *should*?**
- **If courts take on problem-solving approaches, will their role or mission be confused?**

Suspending the Adversarial Approach

Another challenge from the traditional court perspective was the practice of suspending the adversarial process and having defendants "give up their rights to the traditional process in order for the court to help them." The adversarial process was described in this group not as contentious, but rather as the taking of differing positions to ensure that the situation of the defendant

Although the drug court model has practices that have proven to be effective with drug abuse and criminal behavior related to the use of drugs, it does not necessarily follow that these practices will be equally effective with other criminal or civil issues. For example, the types of rewards and sanctions used in the typical drug court model did not necessarily have the same impact on homeless individuals as drug users. For

example, putting homeless court participants in jail results in providing homeless individuals with shelter and regular meals. Is this a sanction or a reward? Of course, sanctions and rewards could and should be adjusted to have the intended impact on problem-solving court participants.

Other situations may be more difficult to solve. One focus group participant described the predicament of a judge in domestic violence court. The judge in a drug court can develop an understanding of drug addiction as a disease and can have a certain amount of empathy for relapses and other difficulties participants may have in their lives related to their past or current drug use. The relationship between the judge and the participant is a key component of drug courts (National Association of Drug Court Professionals (NADCP), 1997). In the case of a domestic violence court, however, the judge's role is quite different. It is more in keeping with the traditional adjudicatory role and not designed to promote the type of therapeutic approach characteristic of a drug court.

Confusing the Purpose of the Court

The above issues reflect the concern of some participants that when a court attempts to take on a problem-solving approach, it may be creating confusion in terms of its perceived role or mission.

For example, some participants felt that practices such as the drug court model's nonadversarial nature changed court processes in a way that created confusion regarding the purpose of the court system. They felt that the court was trying too hard to be everything to everyone, and this was taking on too much and doing it poorly. They also felt that judges were expected to "fix everything," yet judges had too few resources to meet their core functions already. Problems also were created when so many of the specialty courts were tied to a

specific judge—rather than institutionalized. These participants expressed a need for maintaining the cohesiveness of the court as an institution.

There were no conclusive answers or clear solutions to these challenges during the focus group discussions, nor was this expected since resolution of these issues would go well beyond the scope of the 2-day meeting. However, all participants agreed that, regardless of whether they believed it was appropriate for the court to take on these problems, the court was already doing it. Problem-solving courts already exist on a mass scale, the movement is continuing to grow, and the court system must face this phenomenon.

For the remainder of the meeting, the group discussed several strategies they believed would prevent or alleviate some of the challenges described above and would assist those wishing to begin a new problem-solving court in their jurisdiction. The consideration of these strategies may result in more buy-in and therefore lead to the implementation of a more viable program. The rest of this paper describes these strategies.

To Be Noted

Although not discussed at the focus group, it should be noted that not all problem-solving courts are therapeutic in nature. Specifically, domestic violence courts may not be therapeutic in goal; rather, they are established to provide more efficient and consistent administration of the various issues arising out of domestic violence cases (e.g., protection orders, custody, support, etc.). In this case, the judge would not be expected to develop a therapeutic relationship with the offender.

Strategies for Creating a Viable Problem-Solving Court

Focus group participants agreed there is clear evidence that judicially supervised drug offenders experience lower recidivism rates and better outcomes in many other areas. However, what is not known is whether specific problem-solving court activities, such as drug court techniques, will work on other populations and other problems. Individuals planning to implement a problem-solving court may be approaching this process with a solution or a program already in mind, but the focus group participants recommend going through the following planning processes (i.e., considering the following strategies) before deciding to implement this solution.

At the same time, participants discussed their preference to not extinguish the “spirit of adventure” involved in trying a new solution such as a problem-solving approach. Therefore, for those interested in developing problem-solving approaches, the focus group participants highlighted the following planning issues and strategies that, based on their experiences, they had identified as important to address.

Goals of Problem-Solving Solutions Must be Defined, Clearly Stated, and Realistic

The problem in need of a solution must be clearly defined, and the presence of that problem should be clearly apparent in the court cases. As one participant said, “We can’t determine the solution before we understand the problem.”

Determine the extent of the problem. Document the basis of the need for the solution prior to implementation.

This documentation will avoid the concern that a specialty court program is being implemented because a solution has been found, not because a problem exists that would be alleviated by that solution. (There is no need for a hammer if there aren’t any nails.)

Documenting the problem also will allow baselines (the outcomes for cases and individuals who currently have this problem) and performance indicators (how these outcomes are expected to be improved) to be created *before* a problem-solving approach is implemented. This in turn will allow the approach’s success to be confirmed after implementation is complete. Individuals planning a problem-solving approach should think about how success will be defined. Create an explicit definition so it can be measured. Define the kind of statistics that are needed to demonstrate

success. Also, think about the timeline. What do you expect to accomplish in what amount of time?

Performance indicators should reflect the program’s goals, which in a court-run program should include lowering recidivism rates. A problem-solving court approach also should focus on modifying individual client’s behaviors, as well as resolving the case. Other goals should be considered, as appropriate, for the specific problem. (Refer to the BJA Drug Court Clearinghouse document, *Taking Aim: How to Develop and/or Redefine Your Target Drug Court Population*, when developing goals for a new problem-solving court program.)

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Collaboration Among All Players Is Critical

One court administrator said, “Think about the broader aspects of what you are doing and its impact on the service delivery system. Consider the impacts on law enforcement and other agencies that must be involved in the process.” Problem-solving approaches require collaborative planning and community engagement to ensure success and program sustainability.

Informed consent of the players about the problem-solving process is important. All agencies that commonly work with the potential participants of a new problem-solving court should be informed of the new approach, and their buy-in should be solicited. For example, create a team that includes players who deliver services, and have them attend team meetings. Be selective about who is at the table, but make sure the right people are there. A nonsupportive partner can lead to serious roadblocks.

As one judge said, “Collaboration does not necessarily mean abandoning your traditional role, but you can abandon the dysfunctional parts.” It is important to be very clear about each player’s role and the activities within each role. Further, a plan should be created to revisit these roles occasionally to see if any role or activity has been left out.

As the leader, the court should make sure that there each player benefits by doing what it is supposed to do. Ensure the players understand what they are getting out of it. And continually check in to make sure the plan provides a “win-win” situation for all players.

A critical piece of this collaboration is communication. Agency-to-agency communication is key to a successful problem-solving approach. Determine the

need for memoranda of understanding (MOUs) between agencies to safely share confidential information, and be sure to develop these MOUs as needed before

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implementation. This is particularly important for communication between treatment providers and the court, as well as other agencies involved in the problem-solving approach. MOUs will serve to ensure that all agencies understand what is needed and what is allowable, including issues surrounding due process and the adversarial nature (or lack of the adversarial nature) in the relationship between the attorneys. Information Exchanges must consider Health Insurance Portability and Accountability Act (HIPAA) requirements, as well as applicable confidentiality provisions of the Code of Federal Regulations (e.g., 42 CFR Part 2. See 42 CFR §§2.11 and 2.13(a) “Privacy Rule” in particular).

A process also should be developed to address issues that may come up between team members. One way by which to fulfill this goal is to use a working group or oversight committee to create MOUs. Such MOUs also can outline a process for sharing information—including information kept in an electronic database or management information system (MIS).

Last, but certainly not least, a shared MIS is key for consistent and regular communication between agencies and team members. An MIS that includes information from all collaborating agencies allows problem-solving teams to see all the pieces of the puzzle at once and more quickly be “on the same page.” Some strong opinions were expressed about the need for an MIS. It was believed that, without an MIS, communication can be slowed or stalled,

thus much more staff time would be required to perform necessary tasks. In addition, in relation to program goals (discussed in the previous section), it is difficult to measure a program's success without good data.

Data kept in the MIS should speak to the performance measures that were defined when implementing the problem-solving approach. Use of an MIS is described further in the next section on program monitoring and accountability.

Program Monitoring and Accountability Must Occur

Focus group members agreed that careful monitoring of progress toward meeting goals is needed. Continuous evaluations and monitoring must be conducted from early stages of implementation to long-term outcome evaluations to ensure the program is functioning as planned.

More specifically, monitoring and accountability of all players to their own agency/system, each other, and the public must occur. For the collaboration to lead to a viable program, each agency must understand its role and do its part. This includes providing feedback on and monitoring service delivery, as well as monitoring the target population, to ensure the program is on track and that adjustments can be made as necessary. The public also has program expectations. To achieve community support, it is important to first determine what information would be useful for the public, then educate the public about what the program was supposed to impact, and finally determine whether those impacts were achieved.

Methods of tracking and monitoring must be solid and available for all, such as via the use of a collaborative MIS. Providing statistics to each agency on activities and program outcomes can help to ensure that

each agency's role supports the program's goals. The statistics can also be used to determine if the role or activities need adjustments.

In addition, a mechanism should be created for changing program processes in response to evaluation feedback. Periodic, consistent review of statistics and ongoing program evaluation should be planned as a part of the process to determine if changes need to be made to improve program/participant outcomes and if the program should or can be sustained.

Finally, the process of implementing a new problem-solving program should be in the spirit of a true pilot program and include strategies for different actions in response to both positive and negative evaluation feedback. A plan should already be in place for institutionalizing the program if evaluation of the pilot shows the program is successful and should be sustained. This avoids the issue of uncertain funding from year to year. Conversely, a "graceful exit strategy" should be prepared in advance for use in case the pilot program does not produce the desired effect. "Plan for the program to succeed, but recognize that it might not work and be willing to let it go." If the program is not working, then the funds being used to sustain it may be better used in some other endeavor.

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Knowledge of What Works for Problem-Solving Approaches Is Essential

A thorough understanding of the nature of the problem, as well as what can solve that problem, are key to developing a viable, effective, problem-solving court program.

Representatives of the collaborating agencies should receive a thorough education on the problem(s) of interest and research potential solutions. The collaborating team should determine whether judicial involvement is essential or if the court's organizing power could be more effectively used to address the particular problem in another manner. A range of alternative solutions should be identified, and the pros and cons of each should be specified so the most appropriate solutions can be selected. Then determine what service delivery models would best address this problem.

Participants agreed that potential problem-solving solutions should be heavily weighted toward evidence-based practices, particularly in situations where the problem is common (e.g., drug abuse). When best practices already exist, these practices should be put into place; however, team members must be sure that the solution is actually available or can be made available in the particular jurisdiction. This is an area of planning where collaborative preparation is essential to program success.

Although, as noted above, most focus group members believed that possible solutions should be based on evidence-based practices, others were concerned that total reliance on evidence-based practices could discourage innovation. If the court is piloting something new, for which best practices do not exist, then new ideas and strategies should be encouraged. However, as discussed in the section on program monitoring and evaluation, the plan should include a "graceful exit strategy" in case the experiment is not successful. As one judge said, "Evidence-based practices should be strongly encouraged, but we need to leave the door open to new ideas."

Resources and Funding Opportunities Should be Carefully Considered and Developed

There are times when resources or funding (e.g., federal grants) are available to support a specific solution for a particular problem. However, focus group participants encourage courts to look carefully at both the solution and problem, as the funding available may not be what is needed in a particular jurisdiction. "Don't jump to grab funding unless the issue being funded is appropriate to your court docket and the solutions are available in your jurisdiction." Be wary of establishing a problem-solving approach simply because of an idea's popularity. If the problem does not actually exist in a particular jurisdiction, or the extent of the problem in the jurisdiction is not great enough that the solution will have an impact on outcomes, the program may appear to be unsuccessful.

In cases where the problem does exist and can be documented, keep in mind that, while funding may currently be available to start a problem-solving program, it may not always be there. Remember to plan for future funding, and, in particular, plan for ways to institutionalize the program if it proves to be successful.

Other resources (besides federal funding) to consider carefully include the staff time collaborating agencies will provide to implement a problem-solving solution. It is important to get complete buy-in from all agencies within the jurisdiction prior to implementing a program.

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In addition, resources can be found from many agencies outside of the criminal justice and treatment systems, including

employment agencies and agencies that provide housing and job training. Look for what resources are already available in the community.

Conversely, when gathering these resources, the needs of the community members who are not involved in the court process should also be kept in mind. Consider resources available for treatment, and consider the effect of implementing the specialized court on those resources. The resources that exist in the community are finite, and the more the court uses, the less there may be available to others who also need them. Be careful to avoid “depleting the field.”

Problem-solving strategies call for wide and continuous education of all judges and court staff on the problems being addressed and the solutions being implemented. Determine whether sufficient judicial resources are available to support regular training. Also consider the trickle-down effect of assigning judges to problem-solving courts and whether the resources will be available for the cases that still exist in the traditional system. This kind of judge assignment leads to changes in other court staffing. Although one of the original ideas behind using problem-solving strategies in some courts was to have the problem-solving court judge, such as the drug court judge, take over all cases of a particular type (e.g., drug

charges) and therefore free other judges to work on other types of cases, in some jurisdictions this has not occurred as expected. The problem-solving judges need specialized education, which requires funding, and the caseload they originally maintained must, in some courts, now be taken on by other judges. In some jurisdictions this has required a new judge and other court staff to be assigned. It is important to examine ways to implement the problem-solving strategies in such a way as to help alleviate the burden on the court system rather than add to it.

Finally, consider where in the system funds should be appropriated to ensure that the problem-solving solutions can be controlled at the most effective place. For example, there can be some confusion as to how much control the court may have over participant requirements (particularly sanctions) when the funding is controlled by the treatment provider. The same is true if the funding goes to the court and the treatment provider wants to have some control over the program completion requirements of individual participants. The collaborating agencies should recognize where the funds are controlled, and the program’s collaborative design should reflect that control so that all team members are working from the same assumptions.

Strategies for Creating a Viable Problem-solving Court

- **Goals of the problem-solving solutions must be defined, clearly stated, and realistic.**
- **Collaboration among all players is critical.**
- **Program monitoring and accountability must occur.**
- **Knowledge of what works for social problems is essential.**
- **Resources and funding opportunities should be carefully considered and developed.**

CONCLUSION

Focus group members unanimously believed in the widespread applicability of lessons learned from problem-solving courts to general court and case management. Courts must be willing to adapt some problem-solving lessons learned into mainstream administration, hopefully using those elements that are supported by sound, empirically based criteria. Many problem-solving strategies have been shown to be an efficient and effective use of court resources, resulting in more positive outcomes (e.g., lower recidivism rates) for program participants.

However, it also was agreed that courts must exercise caution and seek to balance traditional versus problem-solving-type roles. One should not prevail to the exclusion of the other. Care should be taken to determine what types of problems are best served by problem-solving solutions and what types are best served by traditional court processes.

As one judge wrote after the focus group, “For long-term success in meeting court goals, inclusion or not of problem-solving principles should not be viewed as an either/or approach (as it sometimes seemed in our focus group discussions), but rather the development of a new approach combining elements of both to address contemporary court issues.”

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