THE EVOLUTION OF PROBLEM SOLVING COURTS

HON. JOHN R. VASQUEZ, Austin
City of Austin Municipal Court

State Bar of Texas
SUING AND DEFENDING
GOVERNMENTAL ENTITIES BOOT CAMP
July 12, 2006
San Antonio

CHAPTER 8
John Vasquez
Biography
As of June 15, 2006

John Vasquez is a graduate of the San Antonio public school system earning his high school diploma at age 16. He earned his Bachelor of Business Administration (Accounting) from the University of Texas at Arlington in 1974 at age 19. He graduated from the University of Texas Law School and became a lawyer in 1980. Upon graduation from law school, he was awarded a Reginald Heber Smith Community Lawyer Fellowship.

He has worked as a Bank Accountant, legal services attorney, Assistant Texas Attorney General. Special Counsel for the Texas State Auditor’s Office, and as a private attorney. He has been a Municipal Judge since 1998.

Judge Vasquez has spoken at numerous events ranging from attorney legal education seminars to judicial training conferences. He is a member of the faculty of the Texas Municipal Courts Education Center that trains municipal judges from across the state. Judge Vasquez regularly volunteers his time for community organizations in Austin. He has served as a PTA President, Board Chair of Austin Families, Inc., Board President of Avance-Austin, and as Secretary of the Avance, Inc. National Board. He has received awards from LULAC and Shots Across Texas for his work on educational and children’s health issues.

He is presently Treasurer of the Government Lawyers Section of the State Bar of Texas, Treasurer of the Municipal Judges Section of the State Bar of Texas and Legislative Chair of the Texas Municipal Courts Association.

Judge Vasquez has also recently joined the faculty of St Edward’s University as an Adjunct Professor teaching Juvenile Justice/Delinquency.

Judge Vasquez married and has three daughters.
# TABLE OF CONTENTS

I. INTRODUCTION .................................................................................................................... 1  
II. RETRIBUTIVE JUSTICE, RESTORATIVE JUSTICE AND THERAPEUTIC JURISPRUDENCE ................................................................................................................ 1  
III. REVOLVING-DOOR JUSTICE .............................................................................................. 1  
   A. Burgeoning Dockets ........................................................................................................... 1  
   B. Juvenile Courts .................................................................................................................. 2  
   C. The Drug Court Movement .............................................................................................. 2  
   D. Texas Drug Courts .......................................................................................................... 3  
   E. The Expansion of the Problem-Solving Court Concept ................................................... 4  
IV. CREATING PROBLEM-SOLVING COURT ........................................................................ 5  
   A. Obstacles to Creating Problem-Solving Courts ............................................................... 5  
   B. Educating the Legal/Professional Community and the Public ......................................... 5  
   C. Expanding Drug Courts .................................................................................................. 6  
   D. PROBLEM-SOLVING COURTS FOR YOUTH OFFENSES .............................................. 6  
V. CONCLUSION ...................................................................................................................... 6
THE EVOLUTION OF PROBLEM-SOLVING COURTS

I. INTRODUCTION

The purpose of this paper is to provide the reader with a background on the theory, history, function and impact of problem-solving courts. Problem-solving courts have recently emerged to handle such diverse offenses as drug cases, offenses committed by the mentally ill, drunk driving offenses, domestic violence cases, and juvenile offenses.

Although created for very distinct purposes, these problem-solving courts share several common facets: direct interaction between defendants and the judge, a problem-solving focus, team approach to decision making, integration of social services into the problem-solving process, judicial supervision of the treatment process, community outreach and a proactive role for the judge inside and outside the courtroom.1 With a basic understanding of the theory of problem-solving courts, the reader will be better able to appreciate and possibly implement the principles and methods of problem-solving courts.

II. Retributive Justice, Restorative Justice and Therapeutic Jurisprudence

Understanding problem-solving courts begins with a review of the philosophy of justice. What is justice? In his classic work Nicomachaen Ethics, Aristotle defined justice as conduct that is both lawful and fair. By “fair”, Aristotle meant not taking more than one’s share. Aristotle believed that justice rectifies or corrects what is wrong or unequal. Judges function as mediators charged with finding a fair result.

This general theory of justice has many progeny. Very early, the concept of “retributive justice” emerged. This theory of justice is based on the axiom of lex talonis – an eye for an eye. The Code of Hammurabi in the 18th century B.C. regulated behavior by providing that vengeance be taken against those who failed to comply with the Code. Retributive justice is focused upon the offender.

In contrast to retributive justice, the theory of restorative justice is based upon repairing the harm done to the victims and to the community. In a restorative justice system, the offender is expected to contribute to the repair. In contrast to retributive justice, restorative justice is focused upon the victim, the community and the offender.

In practice, restorative justice is much simpler to administer. In a traditional court, a judge hears evidence of a criminal conduct or the defendant pleads guilty. Upon making a finding of guilt, the judge assesses a punishment. The decision regarding guilt having been made and punishment having been assessed, the involvement of the court ends. Justice is served with little or no consideration of the circumstances of the victim, community and defendant.

In contrast, a restorative justice system is more complex. In restorative justice theory, crime results from a broken connection between the offending party and the victim and/or community. The objective of restorative justice is to reintegrate the offender into the community by making the offender accountable and responsible to the community. The offender must accept responsibility for the illegal conduct and the resulting harm.2

If the defendant pleads guilty or is found guilty, the judge considers the damage to the community and the victim. The defendant may be required to meet with representatives of the community or the victim. Based upon these meetings, the defendant may be required to repair the damage to the victim or the community.

Restorative justice theory is often confused with therapeutic jurisprudence. While these theories of justice have much common ground, there are important differences. While restorative justice is premised on reintegration of the offender, Therapeutic jurisprudence is more concerned with rehabilitation. Restorative justice is also more concerned with restoring the victim. In comparison, therapeutic jurisprudence is focused on rehabilitating the offender.

What does this have to do with problem-solving courts? A great deal. Problem-solving courts are a practical mechanism for applying the principles of restorative justice and therapeutic jurisprudence.3 While traditional courts practice retributive justice, the problem-solving court practices a combination of restorative justice and therapeutic jurisprudence.

III. REVOLVING-DOOR JUSTICE

A. Burgeoning Dockets

In traditional courts, judges functioning within very limited parameters dispense justice. The traditional adversarial system of justice relies on judges making decisions based upon evidence presented by prosecutors and defense counsel.

The limitations of this system are now being tested by dockets that have grown exponentially. Judges in the lowest level courts handle tens of thousands of cases annually. Even in higher courts,

justice is dispensed assembly line style even for more serious offenses.

Chief Judge Judith Kaye of the New York State Court of Appeals describes the judicial role in New York's urban criminal courts as "pleading cases at arraignment," a portrait confirmed by Judge Legrome Davis who described how, in one year, he "had 5,000 felony defendants plead in front of me and get sentenced."

The image is of a revolving door in which a large percentage of offenders continuously spend a part of their time offending and part of their time in jail, apparently waiting to offend again. As Chief Judge Kaye has noted, "We're recycling the same people through the system. And things get worse. We know from experience that a drug possession or an assault today could be something considerably worse tomorrow."

The goal of the problem-solving courts is to provide an alternative to this revolving door, assembly line approach to "justice." In the case of the drug court, the defendant is offered a treatment program instead of incarceration. The goal is to rid the offender of her addiction. In the case of the community court, the defendant is punished for low-level crimes that usually fly below the criminal justice radar screen. The punishment is usually some form of community service. The goal is to restore a sense of order to the community, and secondarily, through selected social programs, to restore a sense of order to the offender. In the case of domestic violence courts, the defendant is constantly monitored prior to the case's disposition. The goal of this monitoring is to provide safe harbor to the victim and make an offender accountable for her conduct.

In each case, the defendant can refuse the alternative treatment. A defendant in a drug court can refuse the treatment, thus subjecting herself to the McJustice system.4

This revolving-door system has led jurist to examine court processes and consider more effective justice systems. This examination led to the creation of problem-solving courts. The concept of problem-solving courts is rooted in the reform movement that led to the creation of juvenile courts at the turn of the 20th century.

B. Juvenile Courts

Before the advent of juvenile courts in the early 20th century, criminal charges against juveniles were handled in adult courts. Juveniles and adult criminals were subject to the same potential punishments.

Reformers with two very different perspectives concluded that widespread criminal activity among underclass youth deserved special attention from the courts. For progressive reformers, courts devoted to juveniles provided an opportunity to inquire into the juvenile's circumstances and for the judge issue orders that would include treatment. This model of justice has become known as therapeutic justice.

For self-interested reformers, the creation of a special court for juveniles provided a means for controlling poor and immigrant youth in secure institutions. The self-interested reformers believed that juveniles could be disciplined away from their street life habits and into a work ethic.

Together, the progressive and self-interested reformers agreed on the creation of a dedicated juvenile court vested with unique powers to intervene in the lives of juveniles and the expansion of the juvenile reformatory system.

The newly created juvenile courts spread across the country. Unlike traditional courts, more resources were dedicated to juvenile courts. Judges had access to more information and were charged with issuing orders based on the best interest of the juvenile. In the beginning, juvenile courts were early models of problem-solving courts.

C. The Drug Court Movement

In 1971, President Richard Nixon announced a war on drug use – a concerted effort to reduce drug use by prosecuting drug offenses and imprisoning drug users. Over the next twenty years drug offenders came to be routinely be prosecuted, incarcerated, re-offend, prosecuted, incarcerated, etc. In Florida, prosecutors led by Janet Reno (who would later become Attorney General under President Bill Clinton) and the judiciary searched for a solution to this revolving door.

They identified several common themes:

- The need to address a case overload crisis in the criminal courts, which was caused by the War on Drugs
- The need to reduce high expenditures of other criminal justice agencies, a

---


result of the War on Drugs -- with particular emphasis on reducing lengthy incarceration terms of drug offenders

- New emphasis on using therapeutic approaches to ending drug addiction, including twelve-step models that can fruitfully utilize therapy combined with frequent "checking in" with an authority figure (a judge, using different methods of supervision, replaces the probation officer in this model)
- Providing an alternative to the structural pathologies of criminal courts, which rely on the adversary model devolved into assembly-line justice, thus empowering a new type of prosecutor and defense counsel
- Link to a restorative justice model in which community representatives and victims of crimes committed by drug-involved offenders can participate in designing drug court outcomes, allowing the victims to be involved in restoring both the offender and the community
- The need to ameliorate the untenable severity of mandatory sentencing in drug cases (this last is mostly an unspoken theme, but it permeates most of the others)\(^6\)

From this dialogue, the drug court concept came into being.

The first drug court was actually created in 1989. There were many motivations for creating a specialized drug court. One of the more compelling reasons was jail overcrowding resulting from new laws mandating jail terms for drug users. The drug laws were part of a massive change in jail populations in the later part of the 20\(^{th}\) century. Between 1980 and 1990 the inmate population increased from 330,000 to 774,000, an increase of 135%.\(^7\) In 1980, 1 out of every 453 U.S. Residents was in jail. By 1993, 1 out of every 189 residents was in jail.\(^8\) Between 1980 and 1993, prisoners charged with drug offenses increased from 6% to 22% in state prisons and from 25% to 60% in federal prisons.\(^9\) The cost of housing an inmate in a state prison was estimated at $22,650 in 2001.\(^10\)

Problem-solving drug courts were, in part, a response to the expense of incarcerating ever-increasing populations of prisoners and the need to reduce the growth of jail populations. The first drug court was a result of a review of how the courts were handling drug addicts. The study resulted in a finding that relapse is a common result of addiction and that treatment options were not integrated into the judicial system. The resulting drug court was intended to keep addicts in long-term treatment subject to judicial oversight. Participants were required to meet with judges frequently and were subject to immediate sanctions for misconduct.\(^11\)

Within 15 years of the opening of the Miami drug court, 1500 additional drug courts opened their doors.\(^12\) These drug courts took different forms. Some drug courts were pre-trial and others were post-judgment. Some courts focus on higher risk defendants while others work on first time offenders. These courts all share several common features: intensive drug treatment during the initial monitoring phase, frequent drug testing, and monitoring of the defendant’s progress by a judge who has the authority to impose sanctions.\(^13\)

From a financial perspective, drug courts have proven very successful. In one South Carolina program, the services administered through the drug court cost the county about $2,000 annually. Inmates with similar offenses were housed in jails at a cost of about $4,000 per inmate. Even if a drug court program lasts two years, the cost of treatment through the drug court compared to incarceration are about equal.\(^14\)

From a societal perspective, the benefits of a drug court or even more substantial. Drug court participants pay for a small portion of the services they receive. These participants also work, support their families, pay taxes and remain sober. The community benefits much more from a working drug court participant than incarcerated drug addict.

D. Texas Drug Courts

In 2001, the Texas Legislature passed HB 1287 mandating the creation of drug courts in counties with

\(^8\) See id. at 2.
\(^9\) See id. at 1.
\(^12\) See K. Burke, The Tyranny of the “Or” is the Threat to Judicial Independence, Not Problem-Solving Courts, 41 Court Review 32, 33 (2004).
\(^13\) See Kelsey at 10 S. Carolina Lawyer 32, 35.
\(^14\) See id. at 35.
populations over 550,000. Following the passage of this legislation, the number of drug courts expanded from 3 in 2002 to 44 in 2005. Nationally, there are estimated 1,600 drug courts. Texas lags far behind other states in the drug court movement.

HB 1287 also defined drug courts as program with the following characteristics:

(1) the integration of alcohol and other drug treatment services in the processing of cases in the judicial system;
(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;
(3) early identification and prompt placement of eligible participants in the program;
(4) access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;
(5) monitoring of abstinence through weekly alcohol and other drug testing;
(6) a coordinated strategy to govern program responses to participants' compliance;
(7) ongoing judicial interaction with program participants;
(8) monitoring and evaluation of program goals and effectiveness;
(9) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and
(10) development of partnerships with public agencies and community organizations.15

In January 2003, the Criminal Justice Planning Council (CJPC) issued a report evaluating the implementation of the 2001 drug court legislation. They compared the recidivism rate of 501 offenders who entered programs in Dallas, Jefferson and Travis counties between 1998 and 2001. For all participants, even those who did not complete the program, the rate of recidivism was only 12%. By comparison, those prisoners who went through the traditional court system had a recidivism rate of 26.6% - more than twice the rate of the drug court participants. Most interesting was the recidivism rate of only 3.4% of participants who completed drug court programs.16

The CJPC report also found that as of the year 2000, Texas drug courts had the capacity to handle less than 5% of the 17,234 person incarcerated for drug possession. Drug court expansion was limited by the lack of funding. While the CJPC found that a court serving 100 offenders cost $163,000 per year to operate, the state only appropriated $83,000 per court. Assuming that the annual cost to imprison an Texas inmate is $16,000, the cost to imprison these same 100 prisoners for one year would amount to $1,600,000.

E. The Expansion of the Problem-Solving Court Concept

Drug courts are not the only type of problem-solving courts. Problem-solving courts have been created to handle special types of charges and special populations including mental health, domestic violence, driving while intoxicated and juveniles. All of these courts share common core elements customized to the type of cases being handled.

Through the 1950s, the mentally ill were consigned to state hospitals and institutions. Often these facilities were overcrowded and deteriorating. Legislative action and court intervention led to the closing of many of these facilities in the 1960s and 1970s. But the more humane option of community mental health centers never materialized.17 The mentally ill moved onto the streets and into correctional institutions. An estimated 40 to 50% of the homeless are seriously mentally ill. About half of those persons suffer from treatable schizophrenia.18

In 1996, the national spending for state and federal prisons was an estimated $24.5 billion. An estimated 16% of the inmates in these prisons are mentally ill.19

A partial remedy to the cost of incarcerating the mentally ill and treatment may lie in the growing movement toward the creation of mental health courts. To a large measure, the success mental health courts wrest upon the knowledge, temperament and training of the judge. Mental health courts require judges who possess the appropriate judicial temperament, sensitivity to the defendant’s therapeutic needs, tolerance for remission, knowledge of DSM-IV categories of mental illnesses and their treatment, the ability to objectively evaluate expert medical testimony, and an advanced understanding of mental illness treatment options.

These skills are necessary due to the cooperative nature of mental health courts. In contrast to traditional courts, mental health courts are non-adversarial. The judge engages the prosecution, defense, correctional staff, law enforcement, and treatment providers in a discussion of the defendant’s

18 See id. at 269.
19 See id. at 271, 272.
condition. The defendant may be asked to discuss his/her therapeutic needs. From these discussions, the judge will mold a conditional release plan for treating the Defendant.20

Mental health courts are expected to produce substantial savings over traditional courts. The long term saving stem from the reduced need for prolonged incarceration or imprisonment for subsequent offenses.

IV. Creating Problem-Solving Court
A. Obstacles to Creating Problem-Solving Courts
If problem-solving courts save money and produce better results than traditional courts, how come there are relatively few of such courts? First and foremost is the general lack of knowledge about problem-solving courts. Among those who are aware of problem-solving courts, some believe that such courts do not hold law violators accountable. Other obstacles include lack of funding and judges who are committed to the retributive justice practiced by traditional courts.

B. Educating the Legal/Professional Community and the Public
Before the community at large can be persuaded to support problem-solving courts, the legal/professional community must be educated as to the benefits of a community court. In 2003, the Conference of Chief Justices and State Court Administrators passed a resolution that expressed the Conference’s support for “national and local education and training on the principles and methods employed in problem-solving courts and on collaboration with other community and government agencies and organizations.”21

Judicial educational conferences offer a logical starting point for informing the judiciary. As much as any other group, judges are aware of the revolving door on much of the criminal justice system. Judges will also need to understand the theory of therapeutic justice in a problem-solving court. Ultimately, trial court judges must decide what constitutes the essence of justice: whether justice is about punishment and paying one’s debt to society or about solving problems in a way that reduces criminal activity and benefits the community.22

Those judges who adopt a pragmatic concept of justice will have to further consider how problem-solving courts protect the individual rights of defendants. Without thoughtful consideration of the rights of defendants, problem-solving courts could wind up confronting the very same problems that affected juvenile courts in the mid-1960s: the imposition of increasingly severe and punitive requirements on juveniles charged with minor criminal conduct. By the 1960s, the original intent of juvenile courts to serve the best interests of children disintegrated into unchecked abusive exercises of judicial discretion leading the Supreme Court to announce the historic decision In re: Gault, 387 U.S. 1 (1967).23

Having some consensus will help the judiciary explain problem-solving court to the larger legal community. No doubt the defense bar will be particularly concerned about the protection of the rights of defendants. This is a legitimate concern and should be addressed. A discussion of the problem-solving courts will also require reconsideration of the role of prosecutors and defense lawyer. Both prosecutors and defense counsel in problem-solving courts must operate very differently from traditional courts. Prosecutors and defense counsel must understand and accept the benefits of a “team” approach to the administration of justice. For those prosecutors and defense lawyers who prefer the adversarial system, traditional courts will continue to operate.

The education of the general public may well prove more daunting than the education of the legal community. First, the public may well have a false view of the legal system spoiled by years of exposure to television shows such as Perry Mason, Matlock, LA Law, etc. The public will need to be educated about the spiraling costs of imprisoning defendants and the high rates of recidivism. Undoubtedly, some members of the public will come to believe that problem-solving courts constitutes a retreat from “law and order”. Nothing could be further from the truth. Problem-solving courts will make defendants more accountable for their conduct than traditional sentences and at a lower cost.

The public must also be educated about the benefits of expanding the number of courts. While the number of courts gradually increases, arrests and conviction have doubled and tripled. An investment in the court system that will reduce correctional costs and reduce rates of recidivism makes absolute sense.

Community based organizations service organizations will also need to be educated about problem-solving courts and the new, expanded role for non-legal professionals and specialist. In drug courts, for example, the observations of case managers and treatment experts will be an important part of the problem-solving process. Quality

20 See id. at 295.
23 See id. at 1554, 1555.
information will serve the court as it tries to mold an effective order.

Only by educating the judiciary, the legal community and the community at large, including community based organizations, can problem-solving courts move from promise to reality. How does this process begin? With those judges and lawyers who see the benefits of problem-solving courts educating the broader community about the promise of problem-solving courts.

C. Expanding Drug Courts

Inadequate funding has hampered Texas drug courts. Even so, Texas drug courts have proven successful. Drug courts have reduced recidivism rates and saved the State money that would have otherwise been spent on incarceration.

The Texas Criminal Justice Planning Council estimates that every day the prison population grows by 12 more inmates.\(^\text{24}\) State prisons are operating at 97% capacity and State is paying counties and privately owned prisons to house several thousand more inmates. Based on current projections, another 14,000 prison beds will be needed by 2010.\(^\text{25}\) These additional prison beds will cost the State an estimated $1.24 billion (about $88,000 per prison bed).\(^\text{26}\)

Channeling a portion of the construction costs to the creation of new drug courts and other problem-solving courts would alleviate some of the need for prison construction. Parole might also be accelerated for the more than 32,000 inmates charged with non-violent drug offenses.\(^\text{27}\) Re-entry programs for paroled offenders would be subject to specialized drug courts having the power to exercise intermediate sanctions. Before a non-compliant parolee is returned to jail, the drug court would employ intermediate options.

D. Problem-solving courts for youth offenses

Juvenile courts are not alone in jurisdiction over juvenile offenses. Municipal courts and justice of the peace courts both have jurisdiction over class “C” misdemeanor charges filed against juveniles. These offenses include both status offenses such as failure to attend school, violation of city curfew ordinances and minor in possession of alcohol and non-status offenses such as theft less than $50, simple assault and possession of drug paraphernalia.

While juvenile courts handle higher-level offenses that would be charged as jailable offenses if committed by an adult, municipal courts and justice of the peace courts handle non-jailable offenses. The offenses charged against juveniles in municipal and justice of the peace courts are criminal offenses. Cases handled by juvenile courts are quasi-civil cases.

In 2005, the Texas legislature passed HB 1575 authorizing cities and counties to assess a charge of up to $5 on each conviction in municipal court and justice of the peace court to fund juvenile case managers. In Travis County, the Austin Municipal Court and the Justice of the Peace courts will raise almost $1,000,000 annually through the implementation of the juvenile case manager fee. Collectively, the Austin Municipal Court and the Travis County Justice of the Peace courts handle about 10,000 class “C” offenses charged against juveniles.\(^\text{28}\)

For Texas cities and counties, the collection of the juvenile case manager fee provides a rare opportunity to apply the theory of problem-solving courts. For the cost of establishing a countywide court, first-time juvenile offenders who plead guilty can be evaluated by competent juvenile case mangers and referred into treatment programs. Juveniles with no need for case management can be handled efficiently and quickly. At-risk juveniles can be evaluated at the earliest opportunity and referred into treatment programs intended to address their needs.

Assuming the experience of the drug courts is accurate, the creation of such problem-solving misdemeanor youth courts will improve both school attendance and reduce youth crime.

V. Conclusion

The spread of problem-solving courts will remake the justice system. We can and should expect that the revolving door of traditional courts will be reduced as recidivism rates will decline. We should also expect that the overall cost of the criminal justice system declines even as the budget for the judiciary and community treatment programs increase.

The primary obstacles to expanding problem-solving courts are ignorance and the false impression that problem-solving courts are soft on criminals. Compared to traditional courts, problem-solving courts hold offenders to a higher degree of accountability and force to take remedial action. If an offender is non-compliant, prison is always an option.

\(^{24}\) See Texas Criminal Justice Planning Council, Biennial Report to the Governor and the 78\(^{th}\) Legislature, January 2003, at 15.


\(^{26}\) See Id.

\(^{27}\) See M. Levin, Drug Courts: The Right Prescription for Texas, at 3, (February 2006).

\(^{28}\) The estimated collections and caseloads for the City of Austin and Travis County are based upon a study done by the author of this article. The data is drawn from court records for the period August 1, 2004 to July 31, 2006.
Problem-solving courts will spread. Both drug courts and misdemeanor youth courts make too much sense to be ignored. The expansion of problem-solving courts depends upon how well the community is educated about this innovation and the potential benefits.
CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS

CCJ Resolution 22
COSCA Resolution IV

In Support of Problem-Solving Courts

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators appointed a Joint Task Force to consider the policy and administrative implications of the courts and special calendars that utilize the principles of therapeutic jurisprudence and to advance strategies, policies and recommendations on the future of these courts; and

WHEREAS, these courts and special calendars have been referred to by various names, including problem-solving, accountability, behavioral justice, therapeutic, problem oriented, collaborative justice, outcome oriented and constructive intervention courts; and

WHEREAS, the findings of the Joint Task Force include the following:

- The public and other branches of government are looking to courts to address certain complex social issues and problems, such as recidivism, that they feel are not most effectively addressed by the traditional legal process;
- A set of procedures and processes are required to address these issues and problems that are distinct from traditional civil and criminal adjudication;
- A focus on remedies is required to address these issues and problems in addition to the determination of fact and issues of law;
- The unique nature of the procedures and processes encourages the establishment of dedicated court calendars;
- There has been a rapid proliferation of drug courts and calendars throughout most of the various states;
- There is now evidence of broad community and political support and increasing state and local government funding
for these initiatives;

- There are principles and methods grounded in therapeutic jurisprudence, including integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multidisciplinary involvement, and collaboration with community-based and government organizations. These principles and methods are now being employed in these newly arising courts and calendars, and they advance the application of the trial court performance standards and the public trust and confidence initiative; and

- Well-functioning drug courts represent the best practice of these principles and methods;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators hereby agree to:

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 on the principles and methods employed in problem-solving courts and on 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 this resolution that includes the following actions:
a. Request that the CCJ/COSCA Government Affairs Committee work with the Department of Health and Human Services to direct treatment funds to the state courts.

b. Request that the National Center for State Courts initiate with other organizations and associations a collaborative process to develop principles and methods for other types of courts and calendars similar to the *10 Key Drug Court Components*, published by the Drug Courts Program Office, which define effective drug courts.

c. Encourage the National Center for State Courts Best Practices Institute to examine the principles and methods of these problem-solving courts.

d. Convene a national conference or regional conferences to educate the Conference of Chief Justices and Conference of State Court Administrators and, if appropriate, other policy leaders on the issues raised by the growing problem-solving court movement.

e. Continue a Task Force to oversee and advise on the implementation of this resolution, suggest action steps, and model the collaborative process by including other associations and interested groups.

*Adopted as Proposed by the Task Force on Therapeutic Justice of the Conference of Chief Justices in Rapid City, South Dakota at the 52nd Annual Meeting on August 3, 2000.*

*top of page*
What Are Problem-Solving Courts?

Problem-solving courts began in the 1990s to accommodate offenders with specific needs and problems that were not or could not be adequately addressed in traditional courts. Problem-solving courts seek to promote outcomes that will benefit not only the offender, but the victim and society as well. Thus problem-solving courts were developed as an innovative response to deal with offenders' problems, including drug abuse, mental illness, and domestic violence. Although most problem solving court models are relatively new, early results from studies show that these types of courts are having a positive impact on the lives of offenders and victims and in some instances are saving jail and prison costs.

In general, problem-solving courts share some common elements:

- **Focus on Outcomes.** Problem-solving courts are designed to provide positive case outcomes for victims, society and the offender (e.g., reducing recidivism or creating safer communities).
- **System Change.** Problem-solving courts promote reform in how the government responds to problems such as drug addiction and mental illness.
- **Judicial Involvement.** Judges take a more hands-on approach to addressing problems and changing behaviors of defendants.
- **Collaboration.** Problem-solving courts work with external parties to achieve certain goals (e.g., developing partnerships with mental health providers).
- **Non-traditional Roles.** These courts and their personnel take on roles or processes not common in traditional courts. For example, some problem-solving courts are less adversarial than traditional criminal justice processing.
- **Screening and Assessment.** Use of screening and assessment tools to identify appropriate individuals for the court is common.
- **Early identification of potential candidates.** Use of screening and assessment tools to determine a defendant's eligibility for the problem-solving court usually occurs early in a defendant's involvement with criminal justice processing.

This program area includes evaluation information on:

- **Drug Courts**
- **Mental Health Courts**
Resources:

For more information about problem-solving courts, please visit the following websites:

http://www.courtinnovation.org/

http://www.ojp.usdoj.gov/BJA/grant/cb_problem_solving.html

http://spa.american.edu/justice/drugcourts.php

http://www.courts.state.ny.us/ip/domesticviolence/index.shtml

http://consensusproject.org/mhcp/

http://www.ndaa-apri.org/apri/programs/community_pros/cp_home.html

http://www.abanet.org/justice/01summary/traditionalact/problemsolving.html

http://www.nlada.org/DMS/Documents/1019501190.93/document_info

http://www.appa-net.org/

http://ojjdp.ncjrs.org/

http://www.ndaa-apri.org/apri/programs/juvenile/jj_home.html

http://www.ncsconline.org/