
Applying the problem-solving model outside of problem-solving courts

by Donald J. Farole, Jr., Nora Puffett, Michael Rempel, and Francine Byrne

In recent years, an array of innovative courts has emerged throughout the country in an effort to address the underlying needs of defendants, victims, and communities. Adult drug courts, which seek to

break the cycle of addiction, crime, and repeat incarceration by mandating addicted defendants to treatment, were the first such innovation. The first drug court opened in Dade County, Florida, in 1989; since then,

more than 1000 others have opened.

Analogous models have also arisen, including family and juvenile drug courts, domestic violence courts, community courts, and mental health courts. These "problem-solving" courts all attempt to use the authority of the judiciary in new ways and are characterized by a number of unique elements: a problem-solving focus; a team approach to decision making; referrals to treatment and other social services; ongoing

judicial monitoring; direct interaction between litigants and judge; community outreach; and a proactive role for the judge inside and outside of the courtroom.

As the first generation of drug courts has been proven effective and received public attention and support,¹ several states have begun efforts to institutionalize—or take to scale—problem-solving innovations throughout their court systems. For example, under the leadership of Chief Judge Judith S. Kaye, New York State has implemented adult drug courts in every county and plans to implement an “integrated” criminal/family domestic violence court in all counties by 2007.

A growing number of policy makers have also expressed interest in applying problem-solving court practices *outside* the specialized court setting. Among those interested are the Conference of Chief Justices and the Conference of State Court Administrators, who advocated,

where appropriate, the broad integration over the next decade of the principles and methods of problem solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, and meeting the needs and expectations of litigants, victims, and the community.²

In an effort to aid this process, the California Administrative Office of the Courts, in collaboration with the Center for Court Innovation in New York, conducted research to explore how court systems might integrate problem-solving court practices into conventional court operations. Focus groups were conducted with problem-solving court judges in California and New York, two states at the forefront of testing new problem-solving models.³ The discussions were wide-ranging but focused on which problem-solving court practices are most easily applied in conventional courts, barriers to the more widespread adoption of problem solving, and strategies to overcome these barriers. The participating judges were cautiously optimistic, identifying many oppor-

tunities to practice problem solving in mainstream courts, while noting numerous barriers as well.⁴

Possible practices

Focus group participants identified several practices they felt could be effectively applied in conventional courts, including:

Problem-solving orientation. Participants felt that judges in a variety of criminal and civil court settings could be more proactive—asking more questions, reaching out to service providers, and generally seeking more information about each case. Using that information, they could craft more individualized and at times unconventional court orders.

Interaction with defendants/litigants. Focus group participants considered direct engagement with defendants to be one of the easiest practices to apply in conventional courts, perhaps because it requires no additional resources. Concerns were raised that, in criminal cases, defense attorneys might prevent such interaction for fear that clients might incriminate themselves. But several judges reported that they routinely address defendants directly, with few objections from the defense bar.

Treatment and social service integration. Participants identified opportunities to integrate social service mandates (drug treatment, job training, anger management, etc.) into more areas of the conventional court process. At the same time, there was recognition of the need for increased access to, and coordination of, services.

Judicial supervision. Requiring defendants to report back to court to discuss progress with court mandates was identified by participants as one of the most effective practices that could be applied in conventional criminal courts. While acknowledging the limited time available, many judges said that they have integrated ongoing supervision into their conventional court practice.

Team-based, non-adversarial approach. There was less agreement about whether it is feasible or appropriate to lessen the adversarial nature of the

conventional court process. But many judges felt that there were opportunities to craft resolutions agreeable to all parties, particularly in juvenile and family law settings, which already foster such an approach. Participants cautioned that a non-adversarial approach cannot be imposed by the judge alone but is contingent on the willingness of attorneys. They emphasized that defense attorneys in particular must come to trust that the judge will not allow such a team approach to compromise the defendant’s interests.

Barriers

Focus group participants identified two key categories of impediments to the practice of problem solving in conventional courts. The first and most significant is limited time and resources. Judges, particularly those in higher-volume jurisdictions, emphasized that they had little time for individualized attention to cases and for ongoing supervision, citing pressures to “move cases along.” Participants also noted that conventional courts lack the technology, case management staff, and other resources that help make specialized problem-solving courts effective.

1. A series of rigorous studies demonstrated positive effects for adult drug courts, leading the United States Government Accountability Office (GAO) to conclude early this year that adult drug courts significantly reduce criminal re-offending. See GAO, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, GAO-05-219, February 2005. See also Wilson, Mitchell, and MacKenzie, “A Systematic Review of Drug Court Effects on Recidivism,” draft M.S. (2003).

2. Becker and Corrigan, *Moving Problem-Solving Courts into the Mainstream: A Report Card from the CCJ-COSCA Problem Solving Courts Committee*, 39 COURT REV. 4 (2002).

3. Four focus groups—two each in California and New York—were conducted in August and September 2003 involving a total of 29 problem-solving court judges who had simultaneous or subsequent general court assignments. The sessions, averaging two hours in length, were audio recorded and transcribed; participants were assured that no comments would be attributed to them. The Center for Court Innovation research team worked with the California Administrative Office of the Courts and New York State Office of Court Drug Treatment Programs to identify and invite judges familiar with the issues of interest. Participants were not paid but were provided lunch and travel reimbursement.

4. A more detailed report of the research findings appears in Farole, Puffett, Rempel, and Byrne, *Applying Problem-Solving Principles in Mainstream Courts: Lessons for State Courts*, 26 JUST. SYS. J. 57-75 (2005).

Could these resource-related barriers be overcome? Some participants were pessimistic, but several strategies did emerge from the discussion. For example, judges might adopt a “triage” approach, selecting only the most appropriate cases for increased attention and ongoing judicial supervision. Also discussed were longer-term, more systemic (and costly) solutions, such as establishing court-wide screening, assessment and case management systems; sharing specialized problem-solving courts’ case management resources with other courts; and developing directories of community-based service providers to inform all judges about available programs.

The second key barrier is conflicting philosophies. Many focus group participants felt that judges with a “traditional” role orientation (“deciding cases,” not “solving problems”) are unlikely to embrace problem solving. Others disagreed, arguing that problem solving is a “learned behavior” and that “exposure to the concept” is the key to changing attitudes. For this reason, many judges believed that educational efforts would be most effective with newer judges who are less set in their philosophy and practices and more open to learning new skills. The judges conceded, however, that attitudes among longer tenured judges may be slow to change and,

therefore, the widespread adoption of problem solving would inevitably be a long-term process. Participants also felt that there are many judges who would potentially be receptive to problem solving yet lack the necessary skills or are unaware of opportunities to practice it in conventional courts.

Steps were suggested to better educate the bench, such as including relevant training courses in new judge orientations and judicial college curricula. Most judges felt that it would only make a difference if these courses were mandatory to avoid a “preaching to the choir” effect. Also recommended were less formal ways to expose judges to problem solving—observing specialized problem-solving courts, holding brown bag lunches to discuss relevant issues, sharing success stories. A common theme was that judges should “hear it from other judges” rather than from administrators, attorneys, or academics. Focus group participants also encouraged similar training for prosecutors and defenders.

In California, there was discussion of the need for “encouragement” and “institutional validation” from presiding judges and other judicial leaders. They suggested that these leaders might encourage bench judges to practice problem solving when appropriate and to volunteer for specialized problem-solving court

assignments. Focus group participants did not, however, favor *mandatory* assignment to these courts, fearing that an assigned judge might be hostile to the court’s goals or methods, or that too-frequent rotation might introduce discontinuity and reduce efficiency. One participant suggested that when making promotions judicial leaders place less emphasis on traditional skills (e.g., scholarly publications or timely case flow management) and greater emphasis on solving problems.

Should problem solving be encouraged in general courts? Some may object that elements of the problem-solving court model are inconsistent with conventional court processes. There are also unresolved questions. We do not yet know how effective problem solving might be when practiced in conventional courts, with their heavier caseloads, more adversarial process, and untrained court personnel. Nor do we know what might be lost when judges and courts, rather than adopting the entire problem-solving court model, selectively apply just some of its practices and principles. What this research project makes clear, however, is that the potential exists for problem solving to be practiced both in specialized and conventional court settings. 

DONALD J. FAROLE, JR.

is a senior research associate at the Center for Court Innovation.
(dfarole@courts.state.ny.us)

NORA PUFFETT

is a senior research associate at the Center for Court Innovation.
(npuffett@courts.state.ny.us)

MICHAEL REMPEL

is research director at the Center for Court Innovation.
(mrempel@courts.state.ny.us)

FRANCINE BYRNE

is a senior research analyst with the Judicial Council of California Administrative Office of the Courts.
(francine-byrne@jud.ca.gov)