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**Briefing Paper**

**Statewide Coordination of Problem-Solving Courts**

*This briefing paper provides a short overview of efforts to administer problem-solving courts at a statewide level and raises questions that participants in the April 24 roundtable “Statewide Coordination of Problem-Solving Courts” will be invited to discuss.<sup>1</sup>*

Problem-solving courts have come a long way since they first emerged in the late 1980s. Throughout the 1990s, problem-solving courts—which include community, mental health, drug, domestic violence courts, and others—attracted the interest of federal agencies, academics, and criminal justice leaders. In 2000, the U.S. Conference of Chief Justices and Conference of State Court Administrators gave a joint seal of approval to the term “problem-solving courts,” and, even more significantly, called for “the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice.” The American Bar Association passed a similar resolution in 2002.

In recent years, many states have begun to coordinate or administer problem-solving courts on a statewide basis. In many respects, this is a logical next step in problem-solving courts’ progression from a handful of provocative experiments to widespread replication (it is estimated that there are more than 2,500 problem-solving courts in the U.S.) While plenty has been said and written about the history and development of problem-solving courts, to date little attention has been paid to this relatively new phenomenon of statewide problem-solving coordination.

**Current Practice**

There is wide variance in the scope and nature of the oversight currently provided to problem-solving courts in each state. States like California, Idaho and New York have devoted extensive resources to not only launching problem-solving courts but also

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<sup>1</sup> Appreciation is extended to American University, which supplied some of the data used in this report, and to the following individuals who participated in interviews conducted by the Center for Court Innovation: Stephanie Cole of Alaska, Nancy Taylor and Judge Harold Kahn of California, Chief Justice Daniel Eismann and Norma Jaeger of Idaho, Mary Kay Hudson and Judge John Surbeck of Indiana, Gray Barton and Judge Jamey Weitzman Hueston of Maryland, Phyllis Zold-Kilbourn of Michigan, Ann Wilson of Missouri, Carol Venditto of New Jersey, Judge Judy Harris Kluger of New York, Kirsten Frescoln of North Carolina, Karen Blackburn, Edward Madeira and Judge Louis Presenza of Pennsylvania, Dan Becker of Utah, Karen Gennette and Lee Suskin of Vermont, and Linda Richmond-Artimez of West Virginia.

training, technology, evaluation, and integrating problem-solving principles into more traditional court settings. States like Kentucky, Minnesota and New Jersey have confined statewide coordination efforts exclusively to drug courts. Other states are still at the conceptual stage.

While spreading new ideas and ensuring quality control is hard for any bureaucracy, it's particularly hard for state courts, most of which have highly decentralized decision-making, not to mention the tradition of judicial independence, which complicates any effort to change institutional behavior. And there are, of course, other actors within the court system, such as prosecutors, defense attorneys, and clerks, who hold different professional values and answer to their own institutional hierarchies. Short of major legislative change, getting a new idea implemented throughout a state court system is exceedingly difficult.

The reality is that “going to scale” with an innovative idea or practice in any field is challenging. Harvard Professor Lisbeth Schorr has noted that there is the tendency for policymakers to “discover one isolated success after another, only to abandon it, dilute it, or dismember it before it can reach more than a few.” To Schorr, successful institutionalization takes far more than just copying an innovative practice—what she calls the “McDonald’s Model.” According to Schorr, going to scale requires mastering a series of difficult political and operational challenges—everything from identifying the “active ingredients” of innovation to working to approximate the spirit of creativity and personal commitment that animated the program in its early days.<sup>2</sup>

The institutionalization phase can mean tackling a host of new responsibilities, among them: creating statewide offices and commissions to oversee problem-solving courts; developing best practices to guide operations; lobbying for legislation and steady funding streams; creating and implementing statewide management information systems; and developing collaborative relationships among the different branches of government.

Some states are tackling these issues with gusto. Many are using committees or advisory boards to do so. Some committees draw their membership exclusively from the judicial branch (as in Maryland and Indiana) while others draw representatives from a mixture of judicial and executive-branch agencies (as in Idaho, California, Missouri, Utah and North Carolina). Some committees/commissions meet on a regular basis. Others meet as needed.

A commission, however, isn't a prerequisite for vigorous statewide oversight. The New York State Unified Court System, for example, established an office overseen by an administrative judge to supervise the development of drug courts across the state; in 2004, the office's work was expanded to include all of the state's problem-solving courts. Through training, technical assistance, publications, evaluation and help applying for grants, the office's 12-person staff has helped the state's network of problem-solving courts grow to more than 250 courts.

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<sup>2</sup> Lisbeth Schorr. 1997. *Common Purpose: Strengthening Families and Neighborhoods to Re-Build America*. New York: Doubleday.

In California and Idaho—as in New York—those charged with overseeing problem-solving courts are involved, to at least some extent, in setting standards, training, funding and evaluation. In New Jersey and Pennsylvania, state administrators have a more limited focus, tackling a narrower menu of assignments, such as training and creating performance standards and/or manuals of operation. Indiana and Alaska have goals that go beyond supporting individual problem-solving courts or dockets, aiming to integrate problem-solving principles and practices into mainstream courts.

A number of these state commissions and offices initially focused on drug courts and only later expanded their roles to include other problem-solving courts. In Idaho, for example, the position of Idaho statewide drug court coordinator was formally reclassified in 2006 as drug court and mental health court coordinator. Some statewide commissions/offices continue to focus only on drug courts or exclude certain types of problem-solving courts from their oversight, such as domestic violence courts and truancy courts. In Utah, for example, domestic violence courts and some juvenile courts are not under the statewide coordinator's umbrella. In Indiana, an administrator and a committee comprised of mostly judges have no authority over mental health courts or family dependency courts. In Missouri, on the other hand, a nine-member commission and statewide coordinator work with 108 drug courts, 11 teen courts, 6 mental health courts, and family courts for abuse/neglect teen courts.

Some states have used legislation to codify problem-solving courts—and create ongoing funding streams. Other states have moved ahead without legislation. This decision can be a crucial one. The legislative branch has different institutional values than the judicial branch. If they are going to work together on policy reform, legislators and judges must find a way to reconcile at least some of the differences. If they don't, the alternative can be a set of rules and regulations imposed by the legislature on a reluctant or resistant judiciary. No one wins when this happens.

### *Questions*

- What are the practical advantages to combining oversight of all problem-solving courts under one coordinator or commission? What are the disadvantages?
- What's been good about states' experiences with statewide coordination so far? Are these efforts achieving what they set out to do?
- What, if any, has been the involvement of local legislatures? What are the trade-offs—both positive and negative—that come with legislative involvement?
- How have states dealt with the reality that drug courts are the most widespread problem-solving model without imposing drug court principles on other types of courts where they may not be a good fit?
- Should state and national professional organizations support statewide coordination of problem-solving courts? If so, how?
- Is it possible to sustain enthusiasm and financial support for problem-solving courts as the first (and second) generations of innovators move on?
- Is it possible to spread problem-solving principles and practices, and not just replicate problem-solving courts?

- What should be the priorities of statewide coordinators going forward?

### **Challenges**

Challenges facing statewide coordinators of problem-solving courts are many. The most common involve obtaining adequate treatment resources and securing necessary funding. Statewide coordinators cite a particular shortage of options for mentally-ill offenders, especially those with dual diagnoses (that is, those who have both drug addiction and mental illness). Many interviewed for this briefing paper reported that resources are particularly scarce in rural areas.

Sources of funding vary widely from state to state. Some problem-solving courts are funded from special sources. In Alaska, for example, DUI courts get money from the National Highway Traffic Safety Administration, while mental health courts receive support from the Alaska Mental Health Trust, a fund unique to the state. In many states, treatment courts are funded jointly by the courts and the executive branch agency that handles substance abuse treatment and/or mental health treatment. In states such as Indiana where the courts are not unified, funding tends to be funneled locally, through cities and counties. Some states, like California, have access to funds dedicated specifically to problem-solving courts through legislation or referenda. Many states have relied on federal sources for start-up funding, which raises the question of where ongoing funding will come from after the federal dollars dry up. In Utah, federal money has been used to cover start-up costs while state funding requires an application from the presiding judge, court administrator, treatment providers, defense and prosecution.

Some statewide officials are concerned about competition for resources among different types of problem-solving courts. The problem-solving court coordinator in Fulton County, Georgia, sees competition between drug courts and mental health courts: “As I see it, we can either cooperate and support each other or we will be in direct competition for scarce resources....Our being in competition puts us in danger of getting nothing because we will be categorized as not being able to work together.”

Another commonly voiced challenge is the need to foster a harmonious and functional relationship between the judicial and executive branches; some spoke of turf wars between agencies.

The administrative director of the Alaskan court system said that the entrance of a new player can also pose a challenge. “When a new politician, prosecutor, or defender comes into the system, making sure they are in agreement with the current system is always a fragile balancing act,” she said.

A number of states are seeking ways to integrate problem-solving justice into mainstream courts; one coordinator spoke of “mass integration.” Particular challenges in this regard include the need to ensure that staff are qualified and well trained. Often staff who work in problem-solving courts—in particular, social workers and treatment specialists—know very little about the fundamentals of court operations.

Some expressed a need to both define problem-solving courts and establish performance measures—particular challenges in non-unified court systems. Performance measures also pose a challenge to state courts accustomed to measuring success in terms of speed; judges in many traditional settings are measured by time to disposition and how many cases they've handled. Problem-solving courts, which often have limited caseloads and a policy of keeping cases open while defendants are in treatment, can complicate the standard units of measurement.

Another concern is the challenge of reconciling statewide oversight—which often demands uniformity and top-down management—with the founding values of problem-solving courts, which celebrate grassroots innovation, flexibility and local control. “There’s tremendous reluctance on the part of many people at the local level in our court system to take direction from a central bureaucracy,” said one judge involved in a statewide problem-solving courts committee.

Problem-solving courts began as an alternative to the mainstream judicial system: what happens when they lose that status? The worry is that by creating, in effect, statewide bureaucracies, problem-solving courts will lose some of the qualities—such as creativity and adaptability—that made them successful in the first place.

### *Questions*

- What have been some challenges of statewide coordination and how have states overcome them?
- How can statewide administrators simultaneously promote best practices and enforce standards while also encouraging innovation on the ground?
- How can statewide administrators ensure problem-solving courts remain consistent in the face of inevitable staff turnover?
- How can the “silos” of resources that have been built for specialized courts be better shared among problem-solving courts—and more widely across the justice system?
- How do problem-solving courts fit into the standards and goals that state courts have established for judges, particularly in terms of time to disposition?
- Should training in problem-solving principles and practices be provided to judges in traditional assignments? Or is this a waste of resources given other, competing demands?
- How can non-traditional staff (and practices) be incorporated into day-to-day administration of justice?
- What kind of assistance would be helpful to promote statewide coordination of problem-solving courts and to avoid or overcome the challenges identified?

**Conclusion**

Individual problem-solving courts are complex, involving new partnerships, new roles, and new players both in and outside the courthouse. Given that each problem-solving court is typically shaped by local circumstance, the challenge of supporting and overseeing problem-solving courts on a statewide level is daunting. This is, by and large, uncharted territory: no single state can claim a successful roadmap for others to follow. The stakes are significant: the success or failure of statewide administration will go a long way toward determining whether problem-solving courts fulfill their potential. The roundtable on April 24 is designed to help state court administrators share knowledge and develop innovative responses to the challenges outlined in this briefing paper.

## **Selected Web Resources**

### **CALIFORNIA**

Court Programs: Collaborative Justice Homepage

<http://www.courtinfo.ca.gov/programs/collab>

### **INDIANA**

Indiana Judicial Center: Problem Solving Court Homepage

<http://www.in.gov/judiciary/pscourts>

### **MARYLAND**

Office of Problem-Solving Courts

<http://www.mdcourts.gov/opsc/index.html>

### **MINNESOTA**

Judicial Council Strategic Plan for Problem-Solving Courts

<http://www.mncourts.gov/?page=1757>

### **NEBRASKA**

Problem-Solving and Drug Courts

<http://www.supremecourt.ne.gov/problem-solving/?sub6>

### **NEW HAMPSHIRE**

Citizens Commission on the State Courts: Research Committee on Problem- Solving Courts (recommendations for statewide coordination)

[http://www.nhcitcourts.org/committees/sc\\_problemsolving.php](http://www.nhcitcourts.org/committees/sc_problemsolving.php)

### **NEW YORK**

Problem-Solving Courts Homepage

[http://www.courts.state.ny.us/courts/problem\\_solving](http://www.courts.state.ny.us/courts/problem_solving)

### **WISCONSIN**

Problem-Solving Courts

<http://www.wicourts.gov/about/organization/programs/altproblemsolving.htm>

### **CENTER FOR COURT INNOVATION**

Problem-solving justice webpage

<http://www.problemsolvingjustice.org>

### **AMERICAN UNIVERSITY**

Focus group report on problem-solving courts and traditional case management

[http://www.sji.gov/PDF/Problem\\_Solving\\_Courts-BA3-31-08.pdf](http://www.sji.gov/PDF/Problem_Solving_Courts-BA3-31-08.pdf)

### **NATIONAL CENTER FOR STATE COURTS**

Problem-solving justice resources

<http://www.ncsconline.org/WC/CourTopics/ResourceGuide.asp?topic=ProSol>

### **NADCP**

Report on problem-solving courts in the U.S.

[http://www.ndci.org/publications/10697\\_PaintPict\\_fnl4.pdf](http://www.ndci.org/publications/10697_PaintPict_fnl4.pdf)