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# What Makes a Court Problem- Solving?

Universal Performance Indicators  
for Problem-Solving Justice

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SUBMITTED TO THE STATE JUSTICE INSTITUTE  
FEBRUARY 2010

## **ACKNOWLEDGEMENTS**

This project was supported by Grant No. SJI-06-N-074 awarded by the State Justice Institute. Points of view or opinions are those of the authors and do not represent the official position or policies of the State Justice Institute.

The authors would like to thank the many people who participated in this research.

Liz Bartell, Justin Barry, Hon. Alexander Calebrese, Regina Cannon, Martin Carrillo, Sherri Casey, Bruna Dibase, Michael Doucette, Jacqueline Ellerbe, John Giordano, Robert Hood, Jim Imperatrice, Doug Knight, Nancy Mangold, Regan Savalla, Madeline Singas, Robin Steinberg, and Brian Wynne provided thoughtful engagement in focus groups.

Steven Belenko, Greg Berman, Hon. Judy Kluger, Jerry McElroy, Michele Sviridoff, Marsha Weisman, and Douglas Young generously participated in detailed interviews.

Charles Amrhein, Hon. Miriam Best, Steven Clark, Hon. John Collins, Martha Epstein, Ilan Gilbert, Liliana Montana, Hon. Eugene Oliver, Hon. Gail Roberts, Terri Roman, and Hon. Laura Safer-Espinoza participated in a very useful roundtable discussion of findings. Particular thanks go to Bruna DiBiase, Hon. John Collins, Hon. Judy Harris Kluger, and Hon. Eugene Oliver for helping to arrange that roundtable.

At the Center for Court Innovation, our colleagues in the research department, Sarah H. Bradley, Kelli Henry, Zach Hamilton, Shani Katz, Melissa Labriola, and Rachel Swaner, provided insightful comments on the project. Also at the Center, Liberty Aldrich, Jethro Antoine, Raye Barbieri, Greg Berman, Carol Fisler, Aubrey Fox, Julius Lang, Valerie Raine, and Alfred Siegel offered vigorous debate and valuable insight at a final roundtable discussion. Additional thanks to Greg Berman and Robert Wolf, who improved the final report with their careful reviews. Finally, we owe a debt of gratitude to our former colleague Amy Muslim for beginning this project and amassing a sizable literature to get us started.

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# Executive Summary

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This report identifies a set of universal performance indicators for specialized “problem-solving courts” and related experiments in problem-solving justice. Traditional performance indicators related to caseload and processing efficiency can assist court managers in monitoring case flow, assigning cases to judges, and adhering to budgetary and statutory due process guidelines. Yet, these indicators are ultimately limited in scope. Faced with the recent explosion of problem-solving courts and other experiments seeking to address the underlying problems of litigants, victims, and communities, there is an urgent need to complement traditional court performance indicators with ones of a problem-solving nature.

With funding from the State Justice Institute (SJI), the Center for Court Innovation conducted an investigation designed to achieve three purposes. The first was to establish a set of universal performance indicators against which to judge the effectiveness of specialized problem-solving courts, of which there are currently more than 3,000 nationwide. The second purpose was to develop performance indicators specific to each of the four major problem-solving court models: drug, mental health, domestic violence, and community courts. The third purpose was to assist traditional court managers by establishing a more limited set of indicators, designed to capture problem-solving activity throughout the courthouse, not only within a specialized court context.

## Methodology

The findings in the report are based on multiple methods. We conducted a literature review of existing problem-solving court evaluations and performance measures. We held two focus groups, one focused on New York State and the other on national problem solving experiments, in which a broad range of practitioners participated. We also conducted in-depth qualitative interviews with eight additional experts. After formulating initial conclusions, we then reviewed our findings with two final groups. First, we presented findings to a roundtable of judges and court administrators in a single county (Bronx, New York) that maintains a wide range of problem-solving courts and high-volume traditional courts. Second, at the Center for Court Innovation, we presented findings to the research department and senior managers who oversee initiatives related to drug courts, mental health, domestic violence, and community courts.

## Organizing Principles

Based on our research, the performance indicators can be grouped into three organizing principles: problem-solving orientation, collaboration, and accountability:

- **Problem-Solving Orientation:** This principle indicates a focus on solving the underlying problems of litigants, victims, or communities. The concept often implies an interest in individual rehabilitation; but sometimes the defining “problems” of interest belong less to the presenting litigant than to the victims of crime, including the larger community.
- **Collaboration:** This principle highlights the role of interdisciplinary collaboration with players both internal and external to the justice system, including court administrators, judges, attorneys, supervision agencies, service providers, and community members.

- **Accountability:** This principle focuses on promoting compliance by participants/litigants, quality services among service providers, and accountability by the court itself to the larger community to implement its intended model and track its performance.

Under each organizing principle, the following sections outline the major goals and objectives of problem-solving justice. Specific performance indicators are detailed in the body of the report.

## **Universal Performance Indicators for Problem-Solving Courts**

Our first set of recommendations involves performance indicators that are universally applicable to all problem-solving courts (see Chapter 5 – Tables 5.1 to 5.3).

***Problem-Solving Orientation:*** We developed five goals within this category:

1. Individualized Screening and Problem Assessment
  - Objective a: Potential participants/litigants are screened and assessed
  - Objective b: Early identification through coordination with courthouse staff
2. Individualized Treatment or Service Mandate
  - Objective a: Court links participants/litigant to appropriate services
  - Objective b: Court uses continuum of treatment modalities/services
  - Objective c: Court revisits treatment plan/mandate based on progress/compliance
3. Direct Engagement of Participant/Litigant
  - Objective a: Judge engages in direct interaction with participant/litigant
  - Objective b: Judge explains responsibilities and decisions to participant/litigant
  - Objective c: Court staff and attorneys engage with participants/litigants
4. Focus on Outcomes
  - Objective a: Court retains participants/litigants in program
  - Objective b: Court focuses on behavior changes beyond case completion
5. System Change
  - Objective a: Stakeholders learn about underlying causes of justice involvement
  - Objective b: Court reaches sizable population of defendants or other litigants

***Collaboration:*** We identified three goals within this category:

1. Justice System Collaboration
  - Objective a: Justice stakeholders collaborate on court policies and case decisions
2. Social Service Provider Collaboration
  - Objective a: Court and service providers collaborate to offer services
  - Objective b: Court and service providers both participate in case review meetings
3. Community Collaboration
  - Objective a: Court and community are mutually responsive

***Accountability:*** We identified three goals within this category:

1. Offender Accountability
  - Objective a: Participant/litigant progress monitored
  - Objective b: Participants/litigants have practical incentive to complete mandates
  - Objective c: Participants/litigants understand and expect specific penalties and incentives (in response to noncompliance or progress)
  - Objective d: Participants/litigants expect sanctions/incentives to match behavior

2. Service Provider Accountability
  - Objective a: Service providers accurately and regularly inform court about participant/litigant progress
  - Objective b: Service providers use a specified and effective program model
  - Objective c: Court assesses social service delivery
3. Court Accountability
  - Objective a: Court relies on up-to-date data for case decisions and tracking
  - Objective b: Court monitors its implementation and outcomes
  - Objective c: Court coordinated by single point person

### **Performance Indicators for Four Problem-Solving Court Models**

The second set of recommendations provides performance indicators that are unique to drug, mental health, domestic violence, and community courts (see Chapter 6 – Tables 6.1 to 6.4).

***Drug Courts:*** These courts seek to ameliorate the circumstances that led to substance abuse with program mandates of a substantial length, usually one year or longer. Key goals and objectives beyond those that are relevant for all problem-solving courts involve:

1. Individualized Screening and Assessment
  - Target substance abusers
  - Target offenders who would otherwise face significant legal sanctions
2. Focus on Outcomes
  - Reduce drug use

***Mental Health Courts:*** Mental health courts focus on rehabilitating defendants through a substantial period of court-mandated mental health treatment. Specific goals and objectives are:

1. Individualized Screening and Assessment
  - Target mentally-ill defendants
  - Target offenders who would otherwise face significant legal sanctions
2. Focus on Outcomes
  - Reduce mental health symptoms and increase independent functioning
3. System Change
  - Increase understanding of mental illness among court stakeholders

***Domestic Violence Courts:*** These courts have a particular focus on victim safety, victim services, and offender accountability. Specific goals and objectives are:

1. Cohesive and Respectful Process for Victims
  - Accommodate and acknowledge victim needs for services and information
2. Victim Safety
  - Victims linked with safety planning services
3. Offender Accountability
  - Engage in close offender monitoring
  - Track conviction and sentencing outcomes
4. System Change
  - Increased collaboration with domestic violence victim services
  - Courthouse-wide education about domestic violence

**Community Courts:** These courts focus on improving conditions in whole neighborhoods, not only on addressing individual litigant needs. As such, they are uniquely accountable to the communities they serve and uniquely concerned with community input. Specific goals and objectives are:

1. Community Collaboration
  - Court solicits information about community needs
  - Court maintains community presence
2. Community Restitution
  - Court requires offenders to perform restitution
  - Court regularly reports on performance to community

### **Problem-Solving Performance Indicators for Traditional Courts**

The final set of recommendations is for traditional courts seeking to implement and measure problem-solving activity throughout a courthouse, not only in specialized courts. The indicators are designed to provide efficient and low- or no-cost tools for traditional courts. At minimum, we recommend that courts track the number of litigants who are mandated to each type of alternative sanction and their compliance rates. Other objectives are as follows (see Chapter 7 – Table 7.1):

1. Problem-Solving Orientation:
  - *Individualized screening and problem assessment:* Court screens or assesses potential litigants for key circumstances, including drug and alcohol use, mental illness, and prior court involvement.
  - *Individualized service mandate:* Court tracks the number of litigants linked to each type of service, including community service, drug treatment, mental health treatment, batterer program, GED class, and parenting class.
  - *Focus on outcomes:* Court achieves a positive outcome/completion rate for litigants assigned to each type of service mandate.
  - *Direct engagement of participants:* Court engages in clear communication to litigants, enhancing their understanding and confidence in court proceedings; and court solicits litigant feedback (in comment boxes or comment via website).
  - *Courthouse training and education:* Court educates staff about the context of offending and other litigant problems through informal and formal trainings.
2. Collaboration:
  - *Social service provider collaboration:* Court fosters linkage with community-based service providers (maintaining an up-to-date provider list or making provider brochures, materials, or referral forms available in court).
  - *Community collaboration:* Court has presence in local community (for example, through presentations to community groups and user-friendly website about court services and case filing information)
3. Accountability:
  - *Court accountability:* Court routinely assesses up-to-date data that tracks mandates to each type of problem-solving intervention and court outcomes.
  - *Early Coordination of information:* Court routinely collects relevant case information; and litigants have access to forms, instructions and other information needed for a case.
  - *Compliance review:* Court requires defendants to return to court to report on compliance with mandates.

# Chapter 1

## Introduction

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Performance indicators are information points used to help program managers and other stakeholders assess whether an initiative is operating as intended. Such indicators are typically quantitative, consisting of numbers, percentages, or straightforward check-offs (yes or no). They capture whether intended activities are in fact taking place (“process indicators”) and whether those activities are achieving their desired goals (“impact indicators”).

With funding from the State Justice Institute, the Center for Court Innovation sought to produce an inclusive set of problem-solving performance indicators. The investigation focused primarily on specialized “problem-solving courts,” with specific attention paid to drug, mental health, domestic violence, and community courts. However, the ultimate purpose was to assist all court managers, including those who oversee conventional courts, in tracking the extent to which their courts incorporate a problem-solving focus. This introductory chapter further delineates our purposes and describes how the report will be organized.

### **The Rise of Specialized Problem-Solving Courts**

Over the past two decades, the “problem-solving court” movement has grown exponentially. The movement began with the creation of the Miami Drug Court in 1989. Since then, more than 2,100 drug courts have opened nationwide (Huddleston, Marlowe, and Casebolt 2008). An array of other problem-solving court models have followed, including more than 200 domestic violence courts, 200 mental health courts, 30 community courts, and 500 other courts, including homeless, truancy, teen, sex offense, and veterans courts (see Center for Court Innovation 2009; Huddleston et al. 2008; Karafin 2008). To manage these experiments, 46 states have appointed a statewide drug court coordinator, and 13 have established the broader position of statewide problem-solving court coordinator. These 13 states reflect the full geographic and cultural diversity of the nation, including states as diverse as Alaska, California, Indiana, New York, and Utah.

Problem-solving courts each seek to address a different set of problems, from systemic concerns such as exponential increases in criminal caseloads, growing jail and prison populations, and decreasing public confidence in justice, to individual-level problems like drug addiction, domestic violence and community disorganization. Yet, several authors have sought to identify common elements that these courts share, either by capturing the views of judges (Farole et al. 2004) or developing an original synthesis (e.g., Berman and Feinblatt 2001; Casey and Rottman 2003; Wolf 2007). Commonly cited problem-solving court elements include a collaborative approach to decision-making; individualized justice for each litigant; a focus on defendant accountability; community engagement; enhanced information through staff trainings and better data collection on each case; and an interest in producing better substantive outcomes, such as lower recidivism, improved safety for victims, or stronger communities.

It is perhaps their focus on the *outcomes* generated after a case has been disposed that most distinguishes problem-solving courts from conventional courts. Like all courts, problem-solving



courts seek to uphold the due process rights of litigants and to operate efficiently; but their outcome orientation demands that they seek to address the underlying issues that precipitate justice involvement.

Of course, not all problem-solving courts confront the same problems, nor do they all contain analogous policies and practices. Domestic violence courts in particular differ from many of the elements found in drug and mental health courts (see Labriola et al. 2009). Many domestic violence courts provide extensive services to the victims of crime, as opposed to the focus of drug and mental health courts almost exclusively on the defendant/litigant. Furthermore, domestic violence court stakeholders do not all presume that community-based programs and services can successfully reduce the defendant's underlying criminal propensities. In domestic violence courts, defendant accountability and deterrence from re-offending often emerge as more integral goals than defendant rehabilitation per se.

### **Three Problem-Solving Court Paradigms**

In framing how problem-solving courts vary, three major paradigms can be identified: (1) therapeutic jurisprudence, (2) accountability, and (3) community justice.

- Therapeutic Jurisprudence: This paradigm promotes a coordinated and remedial response to the underlying service needs of the involved parties, while still upholding the due process rights of all litigants (see Rottman and Casey 1999). The therapeutic jurisprudence paradigm is most commonly associated with drug and mental health courts, whose main purpose is to treat and rehabilitate the individual (i.e., reducing drug use, mental illness, and recidivism).
- Accountability: This paradigm focuses less on treatment and more on holding defendants (or other litigants) responsible for their behavior and on increasing judicial supervision to deter future criminal behavior. The accountability paradigm is most commonly associated with domestic violence and sex offense courts and, as such, tends to be combined with an emphasis on *victim services* (see Labriola et al. 2007).
- Community Justice: This paradigm stresses improving public trust in justice, the importance of restorative justice, and involving the local community in identifying the major problems to be addressed. Community courts are obviously the prime exemplar. Newer models such as homeless, and truancy courts also tend to emphasize their engagement with the community and its problems (Berman and Feinblatt 2005; Wolf 2006).

Whereas some problem-solving court models can more easily be categorized as following one or another of the three core paradigms, they are not mutually exclusive. A range of therapeutic, accountability, and community justice-oriented activities can and typically do occur within all types of problem-solving courts. To offer but one example, besides their manifest emphasis on community engagement, most community courts link defendants to services in an effort to further their rehabilitation; and community courts are known for achieving better compliance rates than downtown courts, advancing the goal of accountability as well (see Kralstein 2005).

To summarize, it is useful both to recognize the wide variation across today's problem-solving court models as well as to conceptualize how these courts represent a general phenomenon.

Accordingly, this report will provide a set of general problem-solving court performance indicators, but their application or appropriateness may vary by model type – and for this reason, a separate chapter (chapter 6) will be devoted to indicators that are respectively unique to drug, mental health, domestic violence, and community courts.

### **Problem Solving without Specialized Courts**

As problem-solving courts have spread and gained nationwide acceptance, interest has grown in a closely related idea: adopting the goals and methods of specialized problem-solving courts but without funneling cases into a separate, stand alone court (Farole et al. 2004, 2005). In recent years, the Conference of Chief Justices and Conference of State Court Administrators repeatedly validated such efforts. In a 2000 resolution, these conferences advocated for “Encourag[ing], 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.”

In light of the 2000 resolution, which the Conferences reaffirmed again in 2004, the national commitment to problem-solving justice has continued to expand. Demonstrating this commitment, a CCI, BJA-funded random survey of general trial court judges nationwide found that 75 percent approved of using problem-solving methods in their current assignment, with most indicating that they already use one or more specific problem-solving practices (Farole 2009). Furthermore, the Bureau of Justice Assistance recently completed a 10-site community-based problem-solving demonstration project, where the sites were able to adopt a variety of approaches to problem-solving, not limited to the establishment of a stand alone “problem-solving court” presided over a single, dedicated judge (Wolf 2007).

Indeed, problem solving can encompass plea negotiations, judicial updates, and alternative sentencing – this even when they do not take place in discrete courts and are not identified as problem-solving interventions. If problem solving is increasingly happening outside of specialized courtrooms, court administrators will need standard ways to assess this activity, especially as it is still unknown whether problem solving on a *general* calendar is as efficacious. For this reason, our current project does not focus exclusively on performance indicators for specialized courts but seeks also to engage general court managers with simple ways to capture their problem-solving activities.

### **Organization of This Report**

Our investigation proceeded as follows. First, before seeking to identify specific performance indicators, we sought to clarify the general goals, norms, and elements that most crucially define the substance and purpose of today’s experiments in problem-solving justice. Given the known differences across problem-solving models, we also needed to explore which goals or elements are specific to some, but not all, models. Accordingly, in presenting our findings, our analysis begins with the results of several broad-based literature review and original research activities. We then, in sequence, developed sets of performance indicators respectively (1) for all specialized problem-solving courts; (2) for each one of the four most established problem models – drug, mental health, domestic violence, and community courts; and (3) for problem-solving justice in general, whether implemented in or outside a specialized court setting.

Thus, the report is organized as follows. Chapter 2 describes the methodology for our investigation. Chapter 3 provides an overview of the literature to date regarding the effectiveness of problem-solving justice initiatives and, more importantly, regarding possible indicators to use for performance monitoring. Chapter 4 reports the results of two focus groups and interviews that were conducted to gain insight from practitioners on the major problem-solving goals and indicators that are appropriate for traditional as well as problem-solving courts. Chapters 5 through 7 then present the major findings and conclusions of this investigation -- i.e., our recommended performance indicators: Chapter 5 proposes and describes a set of universal performance indicators for specialized problem-solving courts; Chapter 6 presents four sets of additional indicators, respectively tailored to drug, mental health, domestic violence, and community courts; and Chapter 7 proposes a core set of problem-solving performance indicators for use in traditional courts (i.e., by general court managers). Chapter 8 offers concluding thoughts and recommendations for next steps in disseminating the indicators proposed therein or similar ones to state court systems nationwide.

#### **What This Report Does Not Provide**

This report does not provide a single matrix to determine whether or to what degree an individual court practices problem-solving. The recommended indicators are intended to be used as a menu according to the priorities of individual court's missions. We do not provide targets for success because this report is not intended as an instrument for evaluation, but rather as a tool that can help court managers – and evaluators – isolate those elements of the court that define its problem-solving capacity. It is our hope that courts will use these performance indicators to conduct site-specific priorities and thus be able to conduct evaluations that adhere to the fundamentals of problem-solving justice.

## Chapter 2 Methodology

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To develop preliminary indicators we used a combination of methods to collect data and then analyzed patterns to refine the indicators into three sets of performance indicators: for problem-solving courts generally; for specific models of problem-solving courts; and for traditional courts. We combined a literature review, focus groups, stakeholder interviews, expert review, and the Center for Court Innovation's previous experience in developing and researching experiments in problem solving justice.

### **Literature Review**

The current investigation relied primarily on material that could point to replicable components of problem-solving courts and appropriate performance indicators. We did not draw upon research that focused on the minutia of problem-solving court implementation, though such research may be useful for individual courts, because the goal for this project was to develop a set of performance indicators that would be broad enough to be applied to a wide variety of problem-solving and traditional courts. The literature review included reviews of significant impact evaluations; implementation evaluations that were coupled with impact evaluations; and theoretical and other literature that attempted to develop models of problem-solving courts. Other relevant works related to the use of performance indicators in general, as well as a very small number of past publications that examined performance indicators in a problem-solving court context.

### **Focus Groups**

Two focus groups were conducted early in the project, respectively in New York City and Atlanta, Georgia. Researchers from the Center for Court Innovation worked with the state Office of Court Administration, for the New York group, and with the Bureau of Justice Assistance (BJA), for the Atlanta group, to identify potential participants. Center staff then invited participants directly.

Eligibility for focus group participation was based on experience working in problem-solving courts for at least two years; current involvement in a problem-solving court; or experience working in traditional courts for at least two years. The first focus group was held in New York City in March 2007 and was comprised of ten New York practitioners. They included two court administrators with specific problem-solving court oversight responsibilities, four general court administrators, one problem-solving court judge, two prosecutors, and one defense attorney. The second focus group was held in Atlanta, Georgia in May 2007, with representatives who were attending a two-day cross-site training hosted by the Center for Court Innovation, in coordination with a national meeting of BJA grantees. This group included stakeholders from BJA-funded community-based problem-solving initiatives in eight states. Participants in the New York focus group all knew each other while those in the national focus group held in Atlanta did not. Participants were not paid for their time, but refreshments were provided.

The focus groups were structured to generate expert experience and opinions about working in established problem-solving courts as well as assessing problem-solving practice from a general court perspective. Topic areas included court goals; eligibility and intake; working with colleagues in the court; case conferences; participant monitoring; measuring success and failure; and implications for traditional courts. The groups lasted between 90 minutes and two hours. They were moderated by two researchers from the Center for Court Innovation. One additional senior staff member from the Center sat in on the New York group.

Focus groups were recorded and transcripts were analyzed. Transcripts provided exact quotes used throughout the analysis. All participants were informed that direct quotes would likely be used but not be personally attributed.

## **Interviews**

To supplement the focus groups, a senior Center researcher conducted a series of targeted open-ended interviews with established experts in problem-solving courts. Respondents all had at least ten years of experience with problem-solving courts and included administrators, researchers, attorneys, a direct service provider, and a judge. Eight interviews were conducted either in person or by telephone between June and October 2008. Interviews followed an instrument developed for this project and lasted approximately one hour each. They addressed three areas: (1) What were the major contributions of problem-solving courts; (2) How do problem-solving courts achieve their goals; and (3) What can traditional courts learn from problem-solving courts.

## **Bronx Stakeholders Roundtable**

After the initial data was collected from the literature review, focus groups, and interviews, researchers developed a draft list of performance indicators for all problem-solving courts, for the four key problem-solving court models, and for traditional courts interested in examining their problem-solving potential (following the respective organization of chapters 5, 6, and 7 in this report). These findings were presented to a group of court stakeholders in a single jurisdiction (Bronx County, New York) in order to test whether the indicators met four criteria:

1. They captured essential components of problem-solving courts;
2. They adequately detailed differences between problem-solving court models;
3. They could readily be implemented; and
4. They provided realistic crossover measures for traditional courts.

The roundtable was coordinated with the assistance of the Administrative Judge for Bronx County and the Office of the Chief of Policy and Planning at the New York State Office of Court Administration. Participants were invited based on: their experience in the jurisdiction; their experience with problem-solving courts; and the diversity of their professional roles. Ten people participated, including four judges and four administrators. Participants were given a brief presentation on the project and the indicators. They were then led in a 90-minute discussion by the principal researcher for the project. The Center's research director also participated in the roundtable. The discussion was recorded and reviewed for analysis.

## **Center for Court Innovation Review and Internal Roundtable**

The final research activities were two internal discussions capitalizing on internal expertise at the Center for Court Innovation. The first was a presentation and analysis with Center research

department staff. The second was a roundtable discussion with senior Center staff, including technical assistance directors of all four focal areas (drug, mental health, domestic violence, and community justice initiatives) as well as longstanding senior management. Many of the participants had contributed to a series of previous internal discussions that led to the Center's own conceptual framework delineating the major elements of all experiments in problem-solving justice (see final product in Wolf 2007).

The internal reviews were intended to elicit feedback on three elements:

1. Whether the indicators successfully captured the essential functioning of problem-solving courts and other experiments in problem-solving justice;
2. Whether the indicators were appropriately grouped across all courts and appropriately distinguished by court type (e.g., drug court or domestic violence courts); and
3. Whether the indicators could feasibly be measured by problem-solving court staff or, as appropriate, by general court administrators.

In both discussions, report goals were presented, and the group was led through the main findings tables (presented in Chapter 5 of this report). The discussions focused on detailed analysis and debate about the content and specifications of the tables. The discussion proceeded cell-by-cell and involved input from many senior staff, leading to a thorough review and enabling us to fine-tune the context and implications of each indicator. Finally, research staff paid particularly close attention to the usability of the indicators and the potential burden that data collection would play on court staff seeking to apply them to measure court performance.

## **Data Synthesis**

To develop and refine the recommendations made in this paper we categorized data from all of the sources described here according to shared themes, foci, goals and perspectives. We examined each key concept identified in the literature and in interviews, focus groups and roundtable and attempted to reduce it to its essential quality related to problem-solving. From these we developed a set of court goals which we further defined by re-examining the categories and reordering them into court objectives that would contribute to each court goal. Finally, we distilled the final set of organizing principles from these goals and objectives seeking to include those elements most widely cited and those that, even when relatively uncommon, reflected the considerations of the most inclusive group of experts, practitioners and stakeholders.

## Chapter 3

### Findings from the Literature on Problem-Solving Courts

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This chapter will examine performance indicators that have been either explicitly identified or implicitly used in literatures that have assessed problem-solving courts. The examination incorporates indicators of success in implementation (e.g., did the courts perform the assessment, service linkage, judicial oversight, sanctioning, and other activities that they intended to perform?) and success in impact (e.g., did these activities in turn reduce recidivism, achieve higher compliance rates, or produce effective solutions to neighborhood problems?).

This chapter first presents significant literature on the *defining characteristics* of problem-solving courts. This literature, which typically offers suggested components or key “principles” of problem solving, provides the foundation for impact evaluations and practitioner guidelines. The second section provides an overview of the *evaluation literature*, synthesizing what has been learned from both the implementation and impact evaluation literature. The final section describes *performance indicators* from these literatures in this order: indicators used in implementation evaluations (process indicators); indicators used in impact evaluations (impact indicators); and indicators specific to each of four respective models: drug, mental health, domestic violence, and community courts.

#### **Defining Characteristics of Problem-Solving Courts**

Problem-solving courts have their antecedents in other alternative sentencing programs, including specialized dockets and family courts, stretching back decades. Some of these programs began through the impetus of judges and advocates interested in employing rehabilitative means to address the perceived causes of criminal offending (e.g., Hiller et al. 1996). Other programs began through prosecutors’ offices seeking to use their coercive leverage to achieve similar therapeutic goals (Young 1996). Both efforts sought to reduce re-offending and increase public safety beyond what was apparently achieved through incarceration alone – in essence expanding the role of the court process from the administration of the law to a factor in remedying the problem of re-offending (e.g., Leukefeld and Tims 1988; Anglin et al. 1996).

Problem-solving courts seek to adapt these goals to a comprehensive model that is neither charge-specific nor limited by the uncoordinated utilization that is fostered by unspecified eligibility criteria (as characterized many of the preceding efforts). While problem solving has entered mainstream court administration (New York State, for example, has more than 250 problem-solving courts, and every other state has some), problem-solving approaches continue to reach only a small fraction of all court cases (Bhati, Roman, and Chalfin 2008). The potential for bringing the problem-solving court model to scale (including the significant cost-savings and crime-reduction that is associated with the model) remains largely unrealized and suggests the need to distill those components that can feasibly be replicated to incorporate more cases in more locales.

Within the theoretical literature, several authors with extensive experience developing or evaluating these courts have sought to outline their central components. Perhaps the most widely

distributed is the document created in 1997 by the U.S. Department of Justice that identified what it called the ten “key components” relating to court orientation, collaboration among justice and non-justice actors, service utilization, and defendant obligations. Most documents that have followed have addressed these same themes, sometimes focusing on a specific model (e.g., Sack 2002; Feinblatt and Berman 1997; Rubio et al. 2008) and sometimes on overarching principles intended to span all problem-solving court models (e.g., Wolf 2007).

What follows is a summary of principles identified by five institutions involved closely in the development, implementation and evaluation of problem-solving courts in the United States.

- **Drug Courts Program Office (DCPO 1997) *Defining Drug Courts: The Key Components***: This document focuses on five areas of drug court function: judicial role, court activities, defendant accountability, interaction between court actors, and information management. While the document specifies drug courts, that is because these were the earliest problem-solving courts; however, many of the same components have been used and referred to in the development and assessment of other problem-solving court models. The ten specific components cited within these areas are:
  1. *Treatment* that is integrated with case processing;
  2. *Nonadversarial case processing* in which prosecution and defense work with the judge to monitor the case;
  3. *Rapid participant identification*, assessment and placement into the drug court and into treatment;
  4. Defendant access to a *continuum of therapeutic care* as appropriate based on a clinical evaluation;
  5. *Frequent monitoring* of defendant compliance with all court mandates including reports from therapeutic and other social service providers and drug testing;
  6. *Coordinated response to participant behavior* that combines court and service agency authority with timely sanctions and incentives;
  7. *Regular direct judicial interaction with participants* as a monitoring mechanism that increases or decreases according to defendant compliance;
  8. *Drug treatment court program evaluation* to assess program implementation and impact in accordance with the treatment court model;
  9. *Interdisciplinary education* about the nature of addiction for court staff including the judge; and,
  10. *Community partnerships* with treatment and other social service agencies to maximize service availability for defendants and develop a range of community-based services that are knowledgeable about criminal justice populations and willing to work with them including after treatment court completion.
- **The Center for Court Innovation (2001, 2005, 2007)**: The Center for Court Innovation has created more than two dozen problem-solving courts and other experiments in problem-solving justice, as well as provided technical assistance and independent evaluations of countless other such initiatives. In *Problem-Solving Courts: A Brief Primer* (Berman and Feinblatt 2001), *Good Courts* (Berman and Feinblatt 2005) and, later, in *Principles of Problem-Solving Justice* (Wolf 2007), key Center staff collaborated to distill their experiences and identify several characteristic elements common to all problem-solving models. The more recent 2007 publication was designed to encompass not only specialized courts but also problem solving justice as implemented outside the specialized court context. In this publication, the Center understood problem solving to contain six common elements:



1. *Enhanced information*, including education of court staff, clinical assessment for placement, contextual information about the offence and offender and data systems that enable regular defendant monitoring as well as facilitate evaluation;
  2. *Community engagement* both to respond to community concerns about offending and its consequences and to develop a network of community-based social service providers who deliver therapeutic and other interventions for the offender and relevant third parties (such as family members);
  3. *Collaboration between justice system actors* that capitalizes on the intersection of law enforcement, corrections and prosecution at the court to maximize understanding of how to best monitor offenders and assist them as they work to maintain law-abiding lifestyles;
  4. *Individualized justice* based on the premise that each offender must be individually assessed in order to understand the specific behaviors and circumstances that contribute to offending for that person, and that services and other interventions should dynamically meet the needs uncovered in that assessment;
  5. *Offender accountability* to the court, to victims, to their family members and to themselves as enabled through regular monitoring, rapid and appropriate sanctions upon behavior infractions and incentives for responsible and laudable behavior; and
  6. *A focus on outcomes* of the court through standardized and routine data collection that enables evaluation of court adherence to the model, cost burden and savings and court impact on recidivism, sobriety and social indicators of stability such as employment and family ties.
- **The RAND Corporation (2001) *Drug Courts: A Conceptual Framework***: Drawing together an expert panel of both in-house and external researchers, RAND developed a “conceptual framework” for drug courts. The resulting document (Longshore et al. 2001) acknowledged DCPO and other efforts, but distilled just five dimensions, which (although the authors do not propose it) could easily be generalized to other problem-solving court models. They are:
    1. *Leverage* or the legal jeopardy for court participants based largely on whether the court requires a guilty plea (that may be mitigated upon successful completion) for participation, and a corresponding incentive to avoid discharge;
    2. *Population severity* as measured both by criminal history (e.g., the ratio of felonies to misdemeanors in a person’s criminal record) and current charges as well as drug use and treatment history;
    3. *Program intensity*, specifically what is required of participants in terms of weekly hours of therapeutic and social service interventions, participant monitoring and additional obligations such as community service or fines;
    4. *Predictability of response to participant behavior*, specifically as indicated by the certainty and swiftness of sanctions for noncompliance, but also the use of incentives to reward compliance with court mandates; and
    5. *Rehabilitation emphasis* modeled on principles of restorative justice and therapeutic jurisprudence models that seek an interventionist, rather than strictly punitive, role (and culture) for the justice system in the lives of offenders.
  - **The National Research Advisory Council (NRAC 2006)**: Through a series of meetings, a group of experts in drug courts and mandated drug treatment developed a set of indicators for drug courts focusing on participant performance and post-program impact (see Heck and Thanner 2006). They are:
    1. *Retention* as a ratio of the number of people who complete the program to the total number of the people entering the program;

2. *Sobriety* based on professionally accepted drug screens such as urine samples (not self-report), it can be measured as length of time testing negative and/or number and decrease of positive tests over time in program;
3. *In-program recidivism*, measured by the number of arrests during program participation and detailed by the type of offence committed; and
4. *Units of service*, ideally detailing the content and quantity (hours/day, days/week) of therapeutic and other social services attended by the participant; and
5. *Post-program recidivism*, an additional recommended measure, expands in-program recidivism to examine impact on behavior after program exit.

It is noteworthy that the NRAC's indicators, in contrast to those implied by the RAND and the Center for Court Innovation frameworks, do not posit long-term change in re-offending as a critical indicator of success – recidivism is noted in-program only.

- **National Center for State Courts (2003, 2008):** In *Problem-Solving Courts: Models and Trends* (Casey and Rottman 2003), the National Center (NCSC) articulated key elements of several problem-solving models as well as “special issues” confronted by each model. Following that effort, NCSC developed their *Problem-Solving Justice Toolkit*, which describes recommended steps and resources to implement problem-solving models. While these documents do not propose a universal set of characteristics for all problem-solving courts, several common elements are detailed throughout. They are:
  1. *Early intervention and rapid placement* facilitated by clear case eligibility and extensive clinical assessment;
  2. *The use of alternative sanctions* to respond to offending and a corresponding willingness to spend more time on each case;
  3. *The integration of social services* with the sanction function of the court coupled with the resources and will to closely monitor adherence to sanctions and other court mandates; and
  4. *Coordinated management of court process through collaboration* with court actors and relevant community-based organizations.

NCSC also developed a set of performance indicators for drug courts that could be readily applied to other courts mandating therapeutic interventions that expanded the NRAC indicators but reduced the original number of performance measures developed for trial courts (Rubio, Cheesman, and Federspiel 2008). NCSC is now continuing its research program in seeking to identify appropriate performance indicators for mental health courts.

Taken together, these frameworks emphasize the importance of maintaining participant accountability through engagement with a dynamic and individualized sentencing process, rather than a prescribed and static sentence (e.g., jail, fine, conditional discharge, etc.). They highlight the centrality of defendant/litigant change of attitude and behavior through programs; and the importance of careful surveillance of offender behavior by the judge and other actors in a court. Court culture (e.g., proactive, collaborative, and reflecting an outcome orientation) and social science (e.g., use of effective behavior modification techniques) play critical roles in sustaining these components and in shaping the importance of improved and complete information on each case – coupled with formal training in social scientific findings and recommended practices. Finally, what emerges when the various lists of key elements are compared is the centrality of *collaboration* among justice system actors, community stakeholders, and litigants themselves. In

this regard, it is notable that the state of California developed the label “collaborative justice courts” to describe what are elsewhere known as “problem-solving courts.”

Where these (and other) pieces most often differ is on defendant responsibilities and community engagement. Many problem-solving courts seek to address the underlying causes of criminal behavior (Casey and Rottman 2000; Hora et al. 1999). However, some models, notably domestic violence courts and to a lesser extent community courts, focus less on therapeutic interventions for the defendant and more on defendant responsibility to the party harmed – whether that is an individual or a community (Sack 2002; Sviridoff et al. 1997).

## **The Evaluation Literature**

### ***Research on Problem-Solving Court Implementation and Key Elements***

Frameworks such as those described in the previous section tend to describe a theoretical ideal while in practice many problem solving courts depart from these components. Implementation evaluations, on the other hand, can identify elements of problem-solving courts that are considered critical by court planners, funders, and other stakeholders. Often, studies of individual courts have used qualitative analyses of individual components (e.g., obtaining the views of court stakeholders or participants).

As backdrop for this discussion it is useful to consider the degree to which research has documented whether any of these elements are efficacious. For example in a 2005 analysis, the U.S. Government Accountability Office found that most studies have not demonstrated the impact of key problem-solving courts elements, such as the role of the judge, the use of sanctions, and the impact of treatment programs (GAO 2005; see also Marlowe, DeMatteo, and Festinger 2003).

Several rigorous studies have been conducted that have shown a positive impact of legal leverage (Rempel and DeStefano 2001; Young and Belenko 2002); judicial status hearings for “high risk” defendants (Marlowe et al. 2003); judicial sanctions (Harrell and Roman 2001); and intensive probation for domestic violence offenders (Klein and Crowe 2008). Bringing together many of these strands of analysis, two studies have sought to tease out the impact of multiple components in one analysis (Carey et al. 2008; Gottfredson et al. 2007). In the second of these studies, a randomized trial of the Baltimore Treatment Court, Gottfredson and colleagues (2007) found that the following practices all contribute to reduced crime or drug use: (1) more judicial status hearings, (2) more drug tests, (3) more days in treatment, and (4) greater participant perceptions of procedural justice.

Although these findings have substantially increased what is known about what works, most of these studies convey results from only a single site. Furthermore, the effectiveness of any single element has been tested in, at most, two or three studies, and nearly all of the completed studies pertain only to adult drug courts. Consequently, most problem-solving court elements have yet to be validated with regard to their general impact on individual success.

At the same time, problem-solving court stakeholders repeatedly point to the importance of many court characteristics as both defining and critical features for achieving successful outcomes. In a study of critical elements of problem-solving justice in California and New York, two states that

have widely embraced problem-solving courts, judges participating in focus groups emphasized four principles as critical in differentiating problem-solving courts from standard court models (Farole et al. 2004; see also Taxman 1999). They are: (1) an orientation towards the causes of criminal behavior (the “problem”) rather than the legal case outcome; (2) collaborative rather than adversarial case processing; (3) a proactive and interactive judge rather than a silent observer and arbiter; and (4) active solicitation of community input.

Many implementation evaluations have followed the lead of the Department of Justice by assessing the fidelity of their site with reference to the 1997 “key components” document. For example, many implementation evaluators have described the frequency and nature of ongoing judicial oversight in drug courts and other problem-solving models. While most of these evaluations provided *process indicators* only and did not examine the *impact* of judicial status hearings, Marlowe and colleagues isolated updates to the judge as a significant predictor of court completion and reduced drug use, especially when participant risk of failure is high (Marlowe et al. 2003). However, Goldkamp and colleagues found a more equivocal position regarding the judge when they examined a long-standing drug court in Portland, Oregon. Their research does not question the importance of judicial status hearings per se, but their findings suggest that a single judge, long held to be a cornerstone of the drug court model, may not be critical to maintaining compliance or reducing recidivism (Goldkamp et al. 2001). This finding is particularly compelling for jurisdictions considering whether to assign dedicated judges to problem-solving courts or to implement problem-solving elements in traditional courtrooms.

Many evaluations and planning documents have promoted the application of graduated sanctions as a key indicator that the court is fair and responsive to participant behavior (DCPO 1997; Frazer 2006). Two characteristics of the problem-solving model of sanctions are particularly noteworthy. First, graduated sanctions in drug courts imply an understanding of the dynamic nature of addiction and recovery that is significantly more nuanced than the approach to drug-related crimes typically used in traditional courts. Specifically, graduated sanctions recognize that infractions are likely to occur, especially early in treatment, and need not be interpreted as indicative of defendant unwillingness or absolute inability to address addiction (Rempel et al. 2003). Second and more critically, sanctions are defined as part of the treatment process. They are rehabilitative rather than retributive in intent (Miller and Shutt 2001). Whereas sanctions are consistently stressed in implementation evaluations and practitioner documents, there is some evidence that problem-solving courts do not always apply sanctions in a fashion that is consistent with best practices in behavior modification (Rempel et al. 2003; Labriola et al. 2009).

Information Management: Several of the synthetic pieces described in the previous section identified enhanced information (Wolf 2007) or a focus on evaluation (DCPO 1997) as among the defining elements of problem-solving courts. These elements point to the importance of careful screening and psychosocial assessment (Miller and Shutt 2001), data management (Feinblatt and Berman, 1997), and reporting (Harrell and Roman, 2001). Through the implementation evaluation literature, it is evident that problem-solving courts engage in more extensive tracking and data collection than do traditional courts. While traditional courts have the capacity to track limited case processing measures such as time to arraignment, to key hearings, or to disposition, problem-solving courts routinely collect detailed electronic data about defendant psychosocial needs, social service placements and mandates, and compliance with

judicial orders. Problem-solving courts also collect information over time, allowing judges and other stakeholders to observe participant progress – and presumably to make suitable adjustments in response (SEARCH 2003; Heck 2006; Newmark et al. 2001).

On the other hand, while the emphasis on data management is one of the defining features of the problem-solving court model, this feature is not always fully realized and can be one of the costlier elements of problem-solving courts (SEARCH 2003). Yet, tracking compliance has long been seen as critical in assuring that offenders do what courts tell them to do (McDonald 1986; Petersilia and Turner 1993). Additionally, for many models social services are an integral – and mandatory – component, used to develop offenders’ abilities to avoid anti-social behavior in the future. Indeed, many documents listing central problem-solving court elements cite the importance of access to treatment and other social services, frequently specifying availability of a “continuum of treatment” to address individual needs (e.g. Belenko 2001; Casey and Rottman 2003; DCPO 1997; Feinblatt and Berman 1997; Sack 2002; The Council of State Governments 2005).

Not only is tracking important at the level of the individual participant (e.g., what services did each participant attend and with what level of compliance), but it can be a useful tool for monitoring the quality of service providers. Indeed, the National Institute of Justice notes that for drug courts, service delivery models are often incomplete, inconsistent, or improperly implemented (NIJ 2006; Anspach and Ferguson 2003).

### ***Research on Problem-Solving Court Impacts: A Brief Overview***

As has been noted elsewhere, many early evaluations of problem-solving courts (almost all of which were of drug courts) either did not examine court impacts or used insufficiently rigorous methodologies (e.g., see criticisms in Belenko 1998; Roman and DeStefano 2005). However as research increased and strengthened, the early optimism of many drug court advocates was confirmed in several studies that found adult drug court participants more likely to remain arrest-free than similar offenders not participating in drug courts. One widely cited review found that 48 of 55 studies detected lower recidivism rates among drug court participants than comparison groups composed of otherwise similar defendants (Wilson, Mitchell, and MacKenzie 2006). Other reviews examining different numbers of studies, and in some cases focusing only on those that employed a particularly strong methodology, have similarly concluded that adult drug courts reduce recidivism (Aos et al. 2001; Government Accountability Office 2005; Roman and DeStefano 2004; Shaffer 2006).

Far fewer studies have been conducted of juvenile and family drug courts than of the adult model. Some propose that juvenile drug courts may be less successful, since juveniles do not tend to be addicted to drugs but, instead, face a series of other social or psychological problems, including involvement in deviant peer groups, low family functioning, poor educational performance, or developmental disabilities (Butts and Roman 2004). Indeed, a review of the juvenile drug court literature indicates mixed results, with about as many studies showing no effect as those showing a positive effect on re-offending (Kralstein 2008). This literature offers an important caution that not all problem-solving court models should be presumed equally effective. These results also suggest that exceptionally careful implementation of any juvenile

drug court (i.e., measured through appropriate “process indicators”) may be critical if the program is to exert a positive impact.

A recent multi-site evaluation of four family drug courts from three different states found that participants were more likely to receive treatment and to be reunited with their children than comparison groups composed of otherwise similar litigants facing child abuse and neglect cases (Worcel et al. 2007). Although promising, this literature remains in an early stage of development.

Research on mental health courts is less developed than adult drug courts. However, the small number of completed studies virtually all detected some effect on reoffending. Focusing on “second generation” mental health courts that incorporate ongoing judicial supervision, three of four evaluations reported significant recidivism reductions. The fourth study reported a significant reduction after one but not after two years (see Redlich et al. 2006 on defining “second generation” mental health courts; and evaluations by Bess 2004; Cosden et al. 2005; McNeil and Binder 2007; and Moore and Hiday 2006). According to a review of mental health court evaluations by Casey and Rottman (2003), these courts have also been shown to successfully link participants to treatment services, provide more services than participants were receiving prior to participation, and develop treatment plans based on individual needs.

Domestic violence courts have produced mixed results in terms of both rehabilitation and recidivism – though many insist that these measures are less relevant for domestic violence courts. Of ten sites evaluated, three produced significant reductions in re-arrest rates (Gover, MacDonald, and Alpert 2003; Harrell et al. 2007; San Diego Superior Court 2000); five failed to show a positive effect (Harrell et al. 2007; Henning and Kesges 1999; Newmark et al. 2001), and two produced mixed results depending on the measures used (Harrell et al. 2006; Davis, Smith, and Rabbitt 2001).

On the other hand, domestic violence courts have been able to achieve positive results in other areas. Several studies have found that these courts are more likely than non-specialized courts to engage in ongoing judicial supervision after sentencing (Newmark et al. 2001; San Diego Superior Court 2000); and to impose sanctions when defendants are noncompliant (Harrell et al. 2006; Newmark et al. 2001; San Diego Superior Court 2000). Domestic violence courts have also been shown to link a much higher percentage of victims with services (Henning and Klesges 1999; Newmark et al. 2001). Research indicates that these courts elicit higher victim satisfaction and fairness ratings than non-specialized courts (Eckberg and Podkopacz 2002; Gover et al. 2003; Hotaling and Buzawa 2003); and increase the likelihood of victims expressing that they will report future violence and cooperate with future prosecutions (Newmark et al. 2001).

Community courts are the last of the major problem-solving court models about which some research literature has emerged (see Kralstein 2005; Henry and Kralstein 2010). Like domestic violence courts, it is debatable whether recidivism reduction is an important or attainable goal, in the case of community courts due to the short mandates that most offenders receive. However, these courts have been shown more likely than traditional courts to link their defendants to alternative sanctions and less likely to use short-term jail sentences or “walks” (defined as fines, time served sentences, or conditional discharges without specific conditions attached).

At the Midtown Community Court, a recent study found that 74% of sentences involved community or social service, compared with 55% in the nearby downtown court (Hakuta, Soroushian, and Kralstein 2008). After implementing Bronx Community Solutions, a model that seeks to apply community court principles throughout a centralized courthouse, community and social service sanctions went up by 67%, whereas all other types of sentences decreased (Katz 2009). Part of the rationale for the characteristically heavy use of community service sentences is to hold quality of life offenders accountable for restoring the harm that their behavior caused within the community. Indeed, in two separate studies, community courts were shown to have produced higher compliance rates than nearby traditional courts (Sviridoff et al. 2001; Weidner and Davis 2000). Unfortunately, the achievement of other community level outcomes, such as engaging local community members and incorporating their input has not been rigorously quantified through research – although many community court practitioners cite such outcomes as important (Karafin 2008).

Considered as a whole, the problem-solving court impact literature demonstrates consistent attention to recidivism but also shows the relative dearth of consistent measures for the full range of elements that make problem-solving courts unique. Beyond recidivism, other outcomes that have been examined include: treatment retention rates; drug use; access to treatment; services for victims; offender compliance with court mandates; enforcement of noncompliance through imposition of further sanctions; distribution of misdemeanor sentencing options; case processing time; and dollar value of community service to the community. Yet these measures are not routinely applied by problem-solving courts around the country.

## **Research on Performance Indicators**

### ***A General Overview***

Performance indicators have been used in corporate, nonprofit, and public settings to measure activity against goals. These goals can be broad and systemic such as reducing neighborhood crime; they can be targeted goals such as reducing criminal behavior through the rehabilitation of offenders (e.g., as opposed to the mechanism of deterrence); or they can be activity-specific goals such as increasing accountability through increased judicial monitoring (Vera Institute of Justice 2003; Home Office 2008). At the program level, measures of specific activities (assessment, treatment linkages, judicial monitoring, etc.) allow program managers to assess the implementation of individual program elements and procedures. Clear and accurate performance indicators will demonstrate program success and failure – or at least demonstrate fidelity to the intended model. Performance indicators should distinguish between systemic outcomes – which typically are influenced by an array of factors – and specific outcomes that can reasonably be assumed to reflect the work of program staff and resources (Giuffrida et al. 1999).

In a series of papers designed to assist programs in measuring outcomes, researchers at the Urban Institute and the Center for What Works developed a taxonomy of outcome indicators that differentiates between intermediate (or process) indicators and end (or impact) indicators (Lampkin et al. 2007). For example, a program may have an end goal of reducing recidivism, but assessing everyday performance may also require developing indicators for specific activities (conducting drug tests, holding judicial status hearings, assembling accurate progress reports, etc.).

The National Center for State Courts (NCSC) developed Courttools in 2005, a set of ten measures designed to assess the functioning of state courts. Those measures are: access and fairness; clearance rates; time to disposition; age of active pending caseload; trial date certainty; reliability and integrity of case files; collection of monetary penalties; effective use of jurors; court employee satisfaction; and, cost per case. These basic measures are useful for problem-solving courts because they assess the capacity of courts and capture elements of both procedural and substantive justice. The Courttools system is currently used in several states including California, Texas, Minnesota, and New York.

In addition, NCSC recently updated their efforts to assist states in assessing drug court performance (Rubio et al. 2008). This project built on earlier efforts to use performance measures for trial courts, specifically those suggesting that effective performance measures should be limited in number, prioritized according to both resources and relevance, and shepherded with strong leadership.

### ***Applications to Problem-Solving Justice***

Performance indicators are a tool for administrators and managers to monitor program activities and make mid-course adjustments as needed (Cheesman, Rubio, and Duizend 2004; Heck and Thanner 2006). Evaluation plans and guides such as those produced by the National Drug Court Institute, Bureau of Justice Assistance, and the National Center for State Courts provide useful suggestions for both program measures and their indicators in data.

Specifically the efforts of the National Research Advisory Committee, composed of national experts in drug courts, suggested that performance measures focus on: (1) retention, (2) sobriety, (3) in-program recidivism, and (4) units of service; and should be assessed within specified time periods to ensure that these measures reflect feasible outcomes (Heck 2006).

In providing technical assistance to 12 states, NCSC expanded these measures considerably. The NCSC list added (5) time in program; (6) post-program recidivism; (7) accountability (through community service and maintaining financial obligations); (8) social functioning (e.g., maintaining employment, family and social ties); (9) program processing (a wide range of activities, such as screening efficacy, timeliness, monitoring, sanctions, incentives, and workload); (10) interaction with other agencies; (11) costs; and (12) quality adherence (to US Department of Justice's "key components"). It is worth noting that none of the states that have implemented the NCSC approach have used all of these measures or even all of the domains (Rubio et al 2008).

### **Specific Problem-Solving Court Models: Unique Issues and Applications**

As the above review suggests, the most robust literature about problem-solving courts addresses drug courts in particular. The three other models specifically addressed in this report use several drug court principles but diverge in key respects. This section will briefly address elements of those three models mental health courts, domestic violence courts and community courts that differ from the literature already discussed.



- Mental Health Courts are designed to use problem-solving methods to increase the responsiveness of the criminal justice system to seriously mentally-ill offenders, linking them with needed social and health services in an effort to reduce the likelihood of re-offense. These courts typically accept participants accused of more diverse and more serious offenses than most other problem-solving courts, trying to use positive incentives to help participants avoid jail sanctions (Council of State Governments 2005, Griffin, Steadman, and Petrilla 2002). Mental health courts are particularly attentive to the legal and ethical limitations regarding coercion – since court participants may have particular difficulties understanding that choosing to participate is truly their choice (O’Keefe 2006). This attention to participant autonomy in the decision to enter and remain in a mental health court also affects the willingness of these courts to rely heavily on sanctions to maintain compliance. Mandates are fluid, as the court relies heavily on reports from clinicians to assess the utility of various interventions (NYUCS 2008). While mental health courts seek reductions in recidivism just as drug courts do, they also seek a range of other outcomes including fewer hospitalizations, compliance with medication schedules, stable employment and family contact (Ridgely 2007; O’Keefe 2006).
- Domestic Violence Courts are unique in focusing heavily on the court experience of the victim. In domestic violence courts, there is substantially less identification of the defendant as a “participant” and, indeed, the goal at the heart of these courts is victim safety. Unlike drug or mental health courts, the involvement of defendants is typically mandatory – based on charge or relationship criteria; the defendant cannot opt for conventional case processing instead. Of even more fundamental significance, while domestic violence court defendants are often mandated to batterer programs, there is significant skepticism about the efficacy of treatment for domestic abuse, based on research literature that has indicated little reduction in offending (see Babcock, Green, and Robie 2004; Feder and Wilson 2005). Domestic violence courts use programs where they are available, but in some courts, the programs are used more to occupy an offender’s time and monitor offender behavior than to behavioral change. Indeed, monitoring is one of the primary functions of these courts (Newmark et al 2001; Mazur and Aldrich 2003). So while accountability is an element of all problem-solving courts, it is uniquely central as an outcome for domestic violence courts and can be measured by the rate of domestic violence arrests, prosecutions, and convictions; and by sentencing severity. For cases that do not warrant a jail sentence, some have proposed that the offenders are held accountable to the extent that the court imposes swift and certain sanctions in response to noncompliance with probation, batterer program attendance, judicial monitoring, or other court conditions (Harrell et al. 2007; Labriola et al 2007; Mazur and Aldrich 2003).

In part since it is questionable whether long-term recidivism reductions can be feasibly anticipated, domestic violence court impacts, unlike those for many other problem-solving courts, tend to be principally concerned with during-program rather than post-program events. The response to non-compliance is designed to send a message to the defendant, the victim and the larger community that domestic violence is unacceptable. More than any other problem-solving court, domestic violence courts devote resources to victim services and support (Mazur and Aldrich 2003). Therefore, effectiveness in serving victims is repeatedly examined in the research literature (Newmark et al 2001; Harrell et al 2007; Labriola et al. 2009).

- Community Courts focus on improving safety in communities affected by crime. These courts are typically hear low-level misdemeanor cases that affect communities directly, such as prostitution, shoplifting, and pick-pocketing. Because the crimes do not carry long sentences, the court intervention is shorter than in other problem-solving courts and focused on restitution as much as rehabilitation. However, community courts also focus on participant needs by conducting assessments similar to those used in other problem-solving models and providing access to services through on-site providers and referrals to providers in the community (Henry and Kralstein 2010). A key goal of community courts is to restore public confidence in justice by engaging local residents in the justice process. Accordingly, many community courts take pains to measure community attitudes towards courts, local crime and other relevant neighborhood conditions.

***Constraints in Measurement: A Cautionary Note***

Generally, both research guides and recommendations for performance measurement are written for specific models of problem-solving courts (primarily drug courts), and typically assume that courts have an independent research capacity. Consequently, they may be impractical or prohibitive for many court practitioners. Scant literature exists that explicitly describes measures that could be taken from evaluations and *feasibly* transferred to managers of problem-solving courts, who seek to monitor and respond to their courts' successes and setbacks, without adding impractical costs that might be involved if new research staff had to be hired and new management information systems developed.

## Chapter 4

# The View from the Ground: Findings from Focus Groups and Interviews with Experts in Problem-Solving Justice

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To supplement the literature review, we conducted two focus groups in 2007, one in New York City with criminal justice professionals from that metropolitan area, and one in Atlanta with national practitioners. Participants included attorneys, administrators and practitioners. Additional interviews with experts in problem-solving justice were conducted in 2008. Finally, researchers conducted a practitioner roundtable discussion about preliminary findings in early 2009. This chapter presents findings from all of these activities as follows.

- Court Goals: In the first section, we discuss goals for problem-solving justice, as identified in the focus groups and interviews, and how stakeholders distinguish between goals associated with problem solving and those associated with traditional courts.
- Problem-Solving Court Performance Indicators: The second section describes indicators suggested by the discussions and interviews for problem-solving courts generally and the four problem-solving models: drug, mental health, domestic violence and community courts.
- Problem-Solving Justice in Traditional Courts: The final section describes stakeholder views on key indicators for traditional courts seeking to measure their problem-solving capacity and activities.

### **Court Goals**

In comparing goals of traditional sentencing with those of problem solving, many stakeholders indicated that the entire notion of “goals” receives greater emphasis in problem-solving courts than in their traditional counterparts. In a traditional context, according to some stakeholders, court goals were viewed largely as an administrative concern, with the emphasis on court volume and case flow. In problem-solving courts, goals relate to individual or community outcomes more than to case processing outcomes. For example, one attorney compared the traditional goal of average time from arraignment to disposition with the problem-solving goal of a defendant remaining arrest-free and drug-free.<sup>1</sup>

### ***Case Processing, Recidivism, and Individual Outcomes***

Experts generally agreed that traditional courts typically view case processing efficiency as a central outcome of interest. Thus, indicators related to efficiency, number of cases, time to arraignment, and time to disposition are routinely collected and assessed. While several people noted that traditional courts are interested in recidivism, both in the focus groups and the interviews respondents acknowledged that recidivism data was not collected because it was considered beyond the court’s control and therefore not critical in assessing court performance.

In contrast, experts generally perceived recidivism as a primary outcome measure for problem-solving courts. Indeed, several people cited recidivism as the key measure by which problem-

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<sup>1</sup> Identification in parentheses indicates focus group number and page of transcript.

solving courts should be judged. One respondent went so far as to say that any crime committed at any point after entry into a problem-solving court (she exempted domestic violence courts as not rehabilitation oriented) indicated an incomplete success, if not a failure on the part of the court. From this person's perspective, defendants in problem-solving courts are "no longer really defendants, they are participants" and as such are given an opportunity to prove themselves worthy of a less severe sentence and criminal record. If that opportunity is squandered, it is a fundamental disappointment of expectations for what these courts can achieve. Other respondents were less demanding. One focus group participant drew broad agreement when he described any reduction in severity or time to new arrest as an improvement: "One of the things we look at is if you have a kid who comes in on [first degree robbery] and he gets arrested four times in the next year but he gets arrested for turnstile jumping and marijuana, we consider that to be a huge success."

Several respondents agreed with the notion of outcomes as tied to individual change. One attorney noted the expectation that participants would have trouble early, making longer-term behavior an especially useful indicator of change. A key outcome then for these respondents is retention in the court – the operational theory being that the longer a participant stays in the problem-solving system, the greater the ultimate benefit to that person is likely to be.

In addition to recidivism, respondents noted various other goals associated with individual change including: sobriety, educational achievement, job placement and stability, consistent family relationships, good healthcare, and stable housing. While many of these are difficult to measure, especially after participants leave problem-solving programs, there was broad agreement that all of these issues are squarely within the mission of problem-solving courts.

### ***Rehabilitation and the Context of Offending***

More than any other outcome, focus group participants identified measures of rehabilitation as critical, focusing heavily on sobriety in this regard.. One participant expressed it this way:

You want more meaningful results. You want to address the problem that brought the [defendant into the court]. Community safety is still obviously a strong concern, but at the same time you're trying to come out with a result that is more far-reaching, more long-term that -- hopefully -- by addressing the defendant's issues you stop the recycling [of that person] through the courts.

Some participants expressed frustration that efforts to place defendants into therapeutic services, especially drug treatment, were only likely to be accepted by defendants who already had extensive criminal records and a correspondingly long history of drug abuse and other problems:

We are dealing with a dysfunctional population and they are not interested in going and getting help. They are interested in going and getting high. I know the defense corps has an obligation to do what is in the best interest of their client...It is very frustrating from a clinical point of view, from a District Attorney's point of view...They have done their time in jail because the reality is that they know that they are going to do less jail time and get back to the streets [sooner] than they would if they went into a treatment program...It is only when their backs are against the wall that everybody starts clamoring about putting them into an alternative program.

### ***Procedural Fairness***

Participants in both focus groups found problem-solving courts more oriented towards improving the experience of the court users. Elements of procedural fairness included: court users' understanding of court proceedings; perceptions of fairness; and trust and confidence in the justice process. There was general agreement with one participant in New York said: "There is a huge benefit to society to having people go through the criminal justice system feel as if they have been treated fairly and given opportunities – even if they do not succeed." Some participants also noted the importance of voice for both defendants and victims. For example, a practitioner in New York noted that many defendants might never have had positive or respectful interactions with officials prior to appearing in a drug court. An official from South Carolina spoke about the importance for victims of domestic violence to "get a sense that they're being heard or that their problem is being paid attention to." In some cases, these experiences were tied to the outcome of creating stronger communities, as when an attorney said, "The community problem-solving efforts are trying to create a sense of fairness and fitting whatever the sanction is with the offense instead of just handing down a sentence."

### **Performance Indicators for Problem-Solving Courts**

Beyond outcomes, the data from the focus groups yield a variety of characteristics that experts see as either unique or critical to problem-solving courts. Focus group participants and interview respondents were asked to consider and debate the essential qualities of problem-solving that could be used in determining performance in any problem-solving court.

### ***The Judge***

The role of the judge in fostering a problem-solving culture was highlighted repeatedly as an important feature. Respondents spoke about the authority of the judge and the leverage that a judge can wield to encourage compliance. Several also noted the symbolic importance of judicial authority for defendants, many of whom may never have had a positive experience with authority figures. One focus group participant put it this way:

Judges interact with the accused or interact with participants and the players in the system in an entirely different way of talking to people. That is a very, very real distinction...When you walk in you start to go: Oh my god. The judge is actually looking the client in the eyes and talking to them like he's a person. In traditional courts, judges try hard not to do that [because] they are trying to maintain their objectivity.

The importance of a single judge was raised by some focus group participants, who felt that a single judge was more able to follow a person's progress and to establish a meaningful rapport with a participant, thus encouraging compliance and, at a more human level, a desire to please the court.

### ***Culture***

Perhaps more than any other element of problem-solving, stakeholders agreed that the culture of problem-solving courts differed from traditional courts. Specifically, court actors were willing to move away from the deliberately impersonal or "objective" roles they traditionally maintain towards each other, defendants, and victims. Instead, judges, attorneys, and court staff in problem-solving courts embrace a vision of their professional responsibilities that allows them to

consider the context in which a crime takes place and the circumstances and conditions that contribute to criminal behavior.

One of the central components of this culture is a broad awareness of treatment options. One focus group participant noted that in traditional courts, treatment options are largely up to individual court actors:

You'll have defense attorneys, the same ones, always try to facilitate a high level of justice and then you'll have others who really don't rise to the same level...So if you happen to get arrested and you get assigned an attorney who is very conscientious and treatment savvy, then you're in luck. But if you were assigned an attorney who doesn't care about alternative sentencing, then you are out of luck. You see it over and over again.

Instead of using social services according to the whims and interests of individual court actors, problem-solving courts "standardize" the therapeutic options available to the court. As a result, victims and defendants may be able to access a broader array of social services.

### ***Monitoring***

Focus group participants identified several aspects of monitoring defendant compliance that were central to problem solving and an improvement on traditional courts. One of the most frequently cited elements of monitoring was the expectation that programs would accurately describe participant activities, progress, and compliance. One prosecutor noted that while traditional courts could mandate treatment programs:

Nobody had ever been to that program. They don't know if it is good or bad. If the person is [noncompliant] what happens? What happens after the program...Problem-solving is professionalizing [the use of treatment mandates].

Another prosecutor added:

As Das, we're used to people coming in and saying "I'm putting him into this program of the defense attorney." And I'd say: "Fine, can you give me paperwork on the program?" And then when I'd call the program, it wasn't really a program...When [the prosecutor's office has] resources we can hire someone to check out these programs before we okay them. And then that sort of became ingrained and institutionalized in the problem-solving courtroom where we have resource coordinators [so that we can] assure ourselves that these programs are legitimate.

In the practitioner roundtable, this ability to know and control programs was directly challenged by several participants, who noted that service programs were frequently difficult to assess and could not be relied on to deliver the services they claim to provide, especially for populations with special needs.

Several people noted that monitoring goals varied based on the population a court is intended to serve. For example, one prosecutor suggested that for mental health courts working with severely and persistently mentally ill defendants, simply "showing up to court each week" is considered a "huge success." This prosecutor went on to say that even conducting a mental health evaluation while a defendant is incarcerated is a success.

### ***Collaborations***

There was some disagreement regarding the ultimate importance of collaboration among court actors. For example there was this focus group exchange between representatives from a prosecutor's office and defense organization:

Prosecutor: ...For me successful would be putting someone in jail for a long period of time and somebody else would define success as treatment...

Defense: You should be working that individual towards a certain goal...Success is defined as the agreement between the parties...

Prosecutor: I don't think there is such an agreement...I think that all of the players are at the table and we can open up discussion, but I might look at a defendant and say, you know what? I think there are real problems here.

Yet those same participants also agreed:

In a problem-solving court there has to be buy-in as to what the resolution of the case should be. In traditional court, there doesn't need to be buy-in.

While the idea of collaboration among court actors (particularly the judge, defense and prosecution) remains controversial, problem-solving courts also seek to promote partnerships outside the doors of the courthouse. Several of those interviewed suggested that early involvement in the court planning process was important to develop relationships between service providers and the court. This was both for the treatment and other services that the providers could offer and for the secondary role of the providers as a monitoring agent. One person interviewed expressed some regret that social service agencies could turn into agents of the court, but acknowledged, "These are partnerships that are very hard to sustain in any volume and problem-solving courts can facilitate them."

### ***Court Performance***

Several administrators noted that they need to know "how the court is doing" both for internal purposes and to describe the court to colleagues in traditional courts, funders, and policy makers. One defense attorney asked, "How are these courts different? Well, for one thing traditional courts don't look at how many people come back. I mean, sure, everyone has a sense of a 'revolving door' but do they really know the numbers? No way." Several court stakeholders expressed the importance of tracking what the court was doing but expressed concern about the cost of maintaining databases and systems to collect up-to-date information. A few people also mentioned the challenge of maintaining confidentiality in data systems shared by diverse stakeholders.

Several people spoke about the significance of small achievements such as compliance when a participant had been reluctant or disengaged, or communication with estranged family members. One practitioner from Seattle, however, expressed some skepticism of the value of these indicators if recidivism does not go down: "We cannot give up on proving recidivism reduction because...I don't think communities care that people are dealing with their social problems. I

don't think they really care about [community service] work being done. They would rather have a crime-free, vibrant community.”

### ***Community***

Particularly for community courts, practitioners felt that it was important for problem-solving courts to demonstrate efficacy to the communities they serve. An administrator from Oregon voiced concern that “the neighborhood gets to see there is some accountability which serves the community – there is something being done.” Another person picked up the theme of community, noting that problem-solving courts have to work hard to make themselves seen as community resources because communities are hard to define and hard to incorporate, especially into a bureaucratic structure such as the court.

### **Problem Solving in Traditional Courts**

A prosecutor in one of the focus groups pointed out that rehabilitation is not rejected in traditional courts:

It's not completely unique to problem-solving courts. You know, it is easy to go into a regular courtroom with a regular judge and say, Judge, I've got this case for the third time on a drug charge. My social worker got him into treatment. Here's the program. Here's the letter. He's got a bed tomorrow: will you release him to the drug program? And the judge will almost always say yes. You know, it's no different in terms of 'let's solve the problem'.

Several participants concurred, one noting, “It's always the stories that are important, and many judges recognize that [it is important to understand] defendant needs.” However, there remained concern that traditional courts lack the resources needed to monitor any mandate for drug treatment, community service, or other alternative sanctions. Several respondents were skeptical that courts without the resources available to problem-solving courts would succeed at keeping track of defendants. But one prosecutor noted that many service programs were willing to take on monitoring functions to maintain a court-based caseload.

Another participant pointed out that the culture of problem-solving courts accepts setbacks in treatment, whereas a judge in a traditional court is more likely to impose the alternative custodial sentence after a single infraction. By implication, for problem solving to be effective outside the specialized problem-solving court context, some aspects of the court culture of problem-solving courts would have to be disseminated more broadly to general calendar judges.

Some focus group participants, notably prosecutors, did not see a role for problem solving (whether inside or outside a specialized court) after cases crossed an undefined level of severity. One participant used the example of rape:

Say we have a sex offense part, every sex offense is going into that part. They might be very different. I may have somebody who flashes somebody versus someone who pulls out a knife or a gun and rapes a woman coming off a train when she's coming home. As a prosecutor, those are two very different cases for me, but I am in front of the same court. The second [scenario] there is no treatment for that guy, I am going to insist on a jail sentence. The first one I might be open to it, you know, I mean, you know, a gunpoint rape and that guy is going to jail.



As this example makes clear, for some court actors problem-solving implies alternative non-custodial sanctions which may be viewed as inappropriate for some cases.

At the same time, other experts *were* interested in exploring what the problem-solving model could offer to general calendar courts trying very serious offenses. One person mused: “Problem-solving is a lens to use when you look at a case. What can it offer to murder cases? This is the hardest thing to operationalize, but the broad view of analyzing the context of the crime is central to problem-solving.”

## Chapter 5

# Universal Performance Indicators for Problem-Solving Courts

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This chapter describes a set of universal problem-solving court performance indicators for use by practitioners and researchers alike. The indicators, which were developed by examining and categorizing findings from both the literature on problem-solving courts and focus groups and interviews conducted for this project, are intended for *all* problem-solving courts. In practice, however, they may not apply evenly to all models (e.g., drug vs. domestic violence courts). Indicators whose significance is limited primarily to one model are reserved for Chapter 6, where we present separate additions for drug, mental health, domestic violence, and community courts. Chapter 7 then proposes a brief list of indicators for *conventional courts* that wish to document their problem-solving activity.

In developing the performance indicators, we focused on those that practicable. Many measures are dichotomous (either yes or no), can be collected quarterly or annually, and are intended to make data collection as easy as possible. The indicators fall into three organizing principles that appeared to elicit broad agreement in the previous literature and project focus groups.

- 1. Problem-solving orientation (Table 5.1)**
- 2. Collaboration (Table 5.2)**
- 3. Accountability (Table 5.3)**

### Reading the Tables

For each organizing principle, a summary table lists the applicable problem-solving court goals, objectives, indicators, and sources in the previous literature (Chapter 3) or focus groups or interviews (Chapter 4). The meaning of each key term is as follows:

- Goal: One of the defining purposes of a problem-solving court.
- Court Objective: Specific activities necessary to achieve the broader goal. Objectives should be sufficiently specific, concrete, and quantifiable to lead directly into the identification of one or more appropriate performance indicators.
- Performance Indicator: A discrete, specific, and quantifiable measure of progress towards the specified objective. If the objective has been met, the indicator(s) will be favorable.
- Unit of Analysis: The exact method for measuring the specified performance indicator (e.g., how many people did X, what percentage of cases did Y). The unit of analysis virtually always involves a number, percentage, or an answer to a yes/no question about whether a given activity took place.
- Source and Concept: Key citations where the given objective or indicators were previously introduced or (in many cases) implied but not formalized. Wherever the applicable citation is to Chapter 4 of this report, it is represented as “CCI 2010.”

- Notes and Caveats: In the rightmost column, the tables indicate whether any important caveats apply to an indicator's use. Such caveats typically concern the indicator's applicability to one of the core problem-solving court models. For instance, because many domestic violence courts do not focus on the goal of offender rehabilitation, several of the indicators may have more limited application in a domestic violence court context.

To make it as easy as possible to collect data on the indicators, many complex dynamics have been distilled to simple yes/no indicators (e.g., whether the court conducts a screening/assessment, engages in judicial status hearings, or has dedicated staff). This simplification may sacrifice important detail and nuance, frequently reducing complex qualitative questions to quantitative measures. If courts have the resources to conduct more nuanced data collection on indicators of success, they should certainly expand the indicators that are displayed in the tables.

To avoid redundancy, each table only includes unique indicators. To suggest possible cross-referencing, symbols are used where the indicator first appears. They are: □ to indicate a possible cross-reference to problem-solving orientation; ○ cross-reference to collaboration; and ● cross-reference to accountability.

The tables generally refer to defendants and other litigants as “participants/litigants.” The term “defendants” would have omitted civil problem-solving courts, and the term “participant” by itself is inappropriate for some models, notably domestic violence or sex offense courts.

### **Problem-Solving Orientation (see Table 5.1)**

The concept of a *problem-solving orientation* points to similar features as several other concepts in the literature, including *problem-solving culture*, *outcome orientation*, and *individualized justice*. The concept indicates a focus on solving the problems that precipitated justice involvement by addressing the underlying needs of litigants, victims, or the broader community. In some cases the concept implies an interest in rehabilitation through individualized assessments, services, and treatment plans. Such an interest, however, may be less applicable to domestic violence or community courts, where the defining “problems” are less the psychosocial issues of the presenting litigant as the impact of anti-social behavior on the victims of crime, a particular community, or the larger society.

As shown in table 5.1, a problem-solving orientation entails five distinct goals:

1. *Individualized screening and problem assessment*
2. *Individualized treatment mandate*
3. *Direct engagement of participant*
4. *Focus on outcomes*
5. *System change*

#### ***Goal 1: Individualized Screening and Problem Assessment***

Early identification and assessment incorporates the traditional goal of speedy case processing, along with the problem-solving goal of understanding the full nature of each litigant's individual situation, including the underlying issues that led to justice involvement. An expedient court

screen (e.g., based on charges, criminal history, and willingness to participate) can be used to limit more time-consuming assessment activities only to those who are “paper eligible” for court entry. For those who are deemed viable candidates, a standardized assessment tool can be used to determine specific litigant needs.

- a. Potential participants/litigants are screened and assessed: After the initial screen (for paper eligibility), the more detailed assessment typically examines drug use and criminal history, physical and mental health, educational and vocational attainment, and family history. Preferably, the courts will use tools that have been empirically validated for their ability to detect both the prevalence and severity of psychosocial needs – e.g., both whether the litigant is addicted to drugs (prevalence) and, if so, how serious is the addiction and what is the most appropriate treatment plan (severity). *CAVEATS:* Staff at many domestic violence courts may deem individualized assessments of defendants as unnecessary or possibly inappropriate, particularly if the court prioritizes offender accountability over offender rehabilitation. Assessment practices may also be limited in some community courts that emphasize restitution due to constraints in leverage and jurisdiction that dictate relatively limited sanctions (e.g., community service mandates) over rehabilitation (e.g., social services).

*RECOMMENDATIONS:* To determine basic performance, track the following simple measures: Does the court use screening (yes/no) and assessment instruments (yes/no) to determine eligibility and/or individual needs? Does the court use a validated assessment tool (yes/no)? How many people are screened per year? Of those screened, how many are found eligible and ineligible and how many in fact enter the court?

- b. Early identification through coordination with courthouse staff: One tenet of problem-solving courts is to use the crisis moment of an arrest/case filing as an opportunity to motivate the litigant to participate in therapeutic interventions. Efficient screening requires trained courthouse staff to review every incoming case and refer eligible ones (based on charge and criminal history criteria) to the problem-solving court. Even after charge eligibility is determined, the more nuanced and time-consuming work of clinical assessment should still proceed as rapidly as possible. *CAVEATS:* The potential for speedy identification and placement may be limited where problem-solving court does not meet daily or where community-based treatment resources are limited. Additionally, since domestic violence court involvement is typically mandatory once it has been determined that a case is charge-eligible, this objective is inapplicable to that model.

*RECOMMENDATIONS:* Track the number of days from arrest/case filing to formal problem-solving court enrollment. Court stakeholders should set locally appropriate benchmarks (i.e., how many days is acceptable), given that it is not feasible for all courts to achieve the same average performance.

### ***Goal 2: Individualized Treatment or Service Mandate***

A problem-solving orientation generally presumes that litigant needs vary. Accordingly, the goal of individualized mandates allows problem-solving courts to respond to the problems of each individual participant/litigant. *CAVEATS (to all three objectives):* Domestic violence and community courts typically link defendants with programs, but those courts sometimes focus less on crafting highly individualized treatment plans or making available a wide range of treatment modalities than on achieving offender accountability, victim services, or community restitution.

- a. Court links participants to appropriate services: Linkage with community-based services and programs is a universal tenet of problem-solving justice. The tenet recognizes that the court is frequently well positioned to provide service referrals, because litigants are often unconnected when they first arrive in court, unwilling to accept services without a court mandate or both.

*RECOMMENDATIONS:* Track the total number and percentage of all participants/litigants who are linked to each general type of service or alternative sanction: e.g., community service, substance abuse treatment, mental health treatment, batterer program, GED class, employment program, life skills class, health education class, etc.

- b. Court uses continuum of treatment modalities: A continuum of services must be available to respond to the variety and degrees of need that participants/litigants present. For example, a court that assigns participants to substance abuse treatment will want to have available long-term residential treatment, short-term rehabilitation (typically 30 days), and a continuum of outpatient modalities.

*RECOMMENDATIONS:* Track the number of available treatment and service modalities and track the number of providers, overall and for each modality.

- c. Court revisits treatment or service plan based on progress: A problem-solving orientation comes with recognition that it may take some participants a few tries before they can find the services that can best address their problems. Therefore, the judge should use clinical updates to reevaluate past decisions. The availability of clear, regular progress reports signals whether the judge has the information necessary to do this. The ability to revisit treatment plans is especially valuable in cases of drug addiction and mental illness, where participants often require more or less supervision than was initially assessed; and where relapse to drug use (or non-compliance with medication) may require an intensification to help participants avoid failure.

*RECOMMENDATIONS:* Confirm whether the court obtains regular clinical updates through a simple dichotomous measure (yes/no); track whether or not the court uses such updates to determine appropriate mandates, potentially altering the treatment plan when necessary (yes/no); and track the percentage of participants that are in fact reassigned from one modality to another during their participation.

### ***Goal 3: Direct Engagement of the Participant***

In speaking directly to participants, the judge seeks to become more directly engaged in producing positive change; and acknowledges that the problem-solving process depends on participants' perception that they were heard and that the process was fair. The goal of direct engagement implies two objectives:

- a. Judge engages in direct interaction with participant: First, and counter to convention, the judge should directly address and engage with the participant/litigant at regular (i.e., frequent) judicial status hearings.

*RECOMMENDATIONS:* Measure direct engagement with a simple dichotomous affirmation (yes/no); and record the average number of required status hearings (e.g., per month).

- b. Judge explains responsibilities and decisions to participant: The judge should personally confirm that the participant understands the court mandate and should regularly reaffirm that understanding. This indicator (again measured dichotomously, yes/no) establishes that participants remain engaged and informed concerning court expectations, increasing the likelihood of compliance (Young and Belenko 2002). In addition, the indicator demonstrates that the judge is willing to translate legal jargon into plain English as needed to establish understanding – a key element of procedural justice (e.g., per Tyler 1990; Frazer 2006).

*RECOMMENDATIONS*: Check-off whether the judge initially provides (yes/no) and consistently reiterates a clear, non-technical explanation of key responsibilities (yes/no).

- c. Court staff engage in direct interaction with participant: All staff in the court (with the possible exception of prosecutors) may directly interact with participants/litigants to provide consistent support and generate a culture of respect within the courtroom.

*RECOMMENDATIONS*: Measure direct engagement with a simple dichotomous affirmation (yes/no).

#### ***Goal 4: Focus on Outcomes***

A problem-solving orientation requires a fundamental expansion of the judicial role beyond adjudicating cases and rendering legally appropriate decisions to a focus on the *outcomes* achieved through court intervention (see Hora et al. 1999). In most problem-solving courts, these outcomes involve addressing the underlying problems of participants/litigants, but some models (especially domestic violence and community courts) also seek to produce positive outcomes for crime victims and local communities. Performance indicators that target victim and community level outcomes are reserved for Chapter 6.

- a. Court retains participants in the program: To measure program retention, adult drug courts generally use a one-year retention rate. It is the percentage of participants who have graduated or are still actively participating one year after entry (see Belenko 1998; Heck 2006; Rempel 2005a; Rubio et al. 2008). Participants who have failed as of the one-year mark, or have disappeared from program contact, are considered not retained. For community courts and misdemeanor drug courts that employ shorter mandates, a shorter retention period may be identified (90 days, six months). Other key indicators include the time in the program for those who respectively complete and dropout; and the completion rate, preferably tracking variance over time – i.e., to test whether completion rates increase as the program refines its policies and gains experience.

*RECOMMENDATIONS*: Track the court's one-year retention rate (or its retention rate over other appropriate periods, e.g., 90 days, six months, 18 months, two years); and track the court's completion rate. To determine the typical program dosage, track the average number of months of participation, separately for program completers and dropouts.

- b. Court focuses on behavior changes beyond program completion: The following indicators must include all participants who initially enroll. Tracking graduates only or comparing graduates to failures is uninformative, since people who comply with a program by graduating will generally be predisposed to comply in other ways as well (e.g., by not re-offending). Recidivism, as measured by re-arrest (or re-conviction) is analyzed at intervals, such as during program or 6, 12, or 24 months after completion. Additional nuance can be provided by examining the severity

(e.g., felony vs. misdemeanor) or type (e.g., drug vs. property-related) of re-offending. While more difficult to track, outcomes such as drug use, family contact, and employment all indicate long-term impact. To rigorously measure impact, it is necessary to employ a comparison group, composed of similar individuals who did not have the opportunity to participate, for one reason or another (see Rempel 2005a). *CAVEATS:* Staff at many courts may be practicably unable to identify a comparison group. For this reason, staff may prefer to focus primarily on tracking program retention and completion (Objective a) and comparing retention and completion rates to other similar programs. Alternatively, court staff may wish to invest in a formal evaluation by a trained independent evaluator that would include a rigorously constructed comparison group.

*RECOMMENDATIONS:* Track re-arrest rates (and other psychosocial outcomes if possible) for court participants and, ideally, an appropriate comparison group. *CAVEAT:* As noted above, ongoing tracking may be unfeasible for courts with limited evaluation resources; two alternatives are to limit tracking to retention rates (Objective A) or to conduct a one-time only formal evaluation (rather than continue track these outcomes on an ongoing basis).

### ***Goal 5: System Change***

While problem-solving courts typically seek to address the problems of individual victims and defendants they also seek a broader impact, both within the justice system and in the broader community. Two objectives capture this goal of cultural change:

- a. Stakeholders learn about the underlying causes of justice involvement: Most problem-solving courts should educate key players about the nature of relevant health and behavioral problems, such as drug abuse, mental illness, and domestic violence. Indeed, it is an explicit goal of many domestic violence courts to change attitudes about domestic violence. Education may involve formal trainings, brown bag sessions, or site visits, but all courts should devote resources to improving the knowledge of the local judiciary, attorneys, and court staff.

*RECOMMENDATIONS:* To make data collection easy, simple dichotomous indications of whether key team members have attended any formal training is a good start (e.g., yes/no for judge, prosecutor, and defense representative). Where possible, such indicators can be enhanced by noting the type(s) of trainings, the number of participants attending each one, and the frequency of trainings.

- b. Problem-solving courts seek to affect the most cases they can in a jurisdiction: One of the consistent critiques of problem-solving courts has been that they serve as “boutiques” and are unable to affect significant numbers of cases in a jurisdiction (see Bhati et al. 2007). In order to produce truly systemic change, these courts must be able to demonstrate significant impact in terms of numbers or the percentages of cases handled within a jurisdiction.

*RECOMMENDATIONS:* Although ideal, estimating the total number of eligible cases in a jurisdiction may be unfeasible. However, a minimum effort should involve regularly tracking the number of people (1) screened, (2) found eligible, and (3) participating in each problem-solving court (e.g., on a per year basis; or perhaps quarterly or monthly where feasible). Court staff should strive to maximize these numbers to ensure a systemic impact in the courthouse and, ultimately, in the affected communities.

**Table 5.1  
PROBLEM-SOLVING ORIENTATION**

<b>Court Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>	<b>Source and Concept*</b>	<b>Notes and Caveats</b>
<b>Goal 1: Individualized Screening and Problem Assessment</b>				
a. Potential participants/litigants are screened and assessed ○	<ul style="list-style-type: none"> <li>• Court administers psychosocial screening or assessment prior to finalizing entry</li> <li>• Court uses validated screening or assessment tool</li> </ul>	Administers screening or assessment (Y/N); Uses validated tool (Y/N); Number of people screened, assessed and found eligible or rejected	DCPO (1997) identified as <i>Rapid identification</i> ; NCSC (2003) as <i>Early intervention</i> ; and CCI (2007) as <i>Individualized justice</i> ; and CCI (2010)	Not all tools have been formally validated through research.
b. Early identification through coordination with courthouse staff ○	<ul style="list-style-type: none"> <li>• Time from arrest/case filing to entry in problem-solving court</li> </ul>	Number of days	DCPO (1997) identified as <i>Rapid identification</i> ; and NCSC (2003) identified as <i>Early intervention</i>	(1) In mental health courts, early identification may not be a priority. (2) Different time markers may apply to juvenile courts.
<b>Goal 2: Individualized Treatment or Service Mandate</b>				
a. Court links participants/litigants to appropriate services ○	<ul style="list-style-type: none"> <li>• Number and percent of participants/litigants linked to each type of service or program (e.g., community service, drug treatment, mental health treatment, batterer program, GED class, parenting class, etc.)</li> </ul>	Number and percent of participants/litigants assigned to each service type	Rand (2001) identified as <i>Rehabilitation and Program Intensity</i> ; DCPO (1997) as <i>Continuum of treatment</i> ; CCI (2001) as <i>Outcomes</i> ; and CCI (2010).	Besides offenders, domestic violence courts also link victims with services (and may consider doing the latter to be more important)



<b>Court Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>	<b>Source and Concept*</b>	<b>Notes and Caveats</b>
b. Court uses continuum of treatment modalities and services ○	<ul style="list-style-type: none"> <li>• Number of treatment modalities and services</li> <li>• Number of providers per modality or service type</li> <li>• New services are developed as needed</li> </ul>	Number of modalities overall; Number of service types; Providers identify service gaps (Yes/No); Providers have ever added services (Yes/No)	DCPO (1997) identified as <i>Continuum of treatment and Community partnerships</i> ; RAND (2001) as <i>Program intensity</i> ; CCI (2001) as <i>Collaboration</i>	(1) The need for a continuum of modalities may apply less to domestic violence and community courts. (2) Some providers may offer multiple services/modalities
c. Court revisits treatment plan/mandate based on progress/compliance ○	<ul style="list-style-type: none"> <li>• Clinical indicators of progress used to determine case movement</li> <li>• Participants can be reassigned to different modalities or services based on need</li> </ul>	Court uses clinical indicators of progress (Yes/No); participants/litigants can be reassigned (Yes/No)	DCPO (1997) identified as <i>Treatment integrated with court process</i> ; NCSC (2003) as <i>Integrated Social Services and Monitoring</i> ; Rand (2001) as <i>Program Intensity</i> ; and CCI (2007) as <i>Outcomes</i>	Revisiting “treatment” plans may apply less to domestic violence courts (where addressing clinical issues may be less important) and to community courts (whose initial mandates may be extremely short).
<b>Goal 3: Direct Engagement of Participant/Litigant</b>				
a. Judge engages in direct interaction with participants/litigants	<ul style="list-style-type: none"> <li>• Regular judicial compliance hearings</li> <li>• Judge directly converses with participants/litigants about behavioral progress</li> </ul>	Average number status hearings/month; Judge directly converses (Yes/No)	DCPO (1997) identified as <i>Judicial Interaction</i> ; and CCI (2001) as <i>Judicial authority</i>	

Court Objective	Performance Indicator	Unit of Analysis	Source and Concept*	Notes and Caveats
b. Judge explains responsibilities and decisions to participants/litigants ●	<ul style="list-style-type: none"> <li>Judge explains mandates and decisions in plain language</li> <li>Judge reiterates responsibilities at each status hearing</li> </ul>	Judge explains in plain language (Yes/No); and reiterates responsibilities (Yes/No)	DCPO (1997) identified as <i>Judicial Interaction</i> ; and CCI (2001) as <i>Judicial authority</i>	
c. Court staff and attorneys engage with participants/litigants ●○	<ul style="list-style-type: none"> <li>Staff address and respond to participants/litigants</li> <li>Staff reiterate court mandate, goals and purpose</li> </ul>	Job responsibilities include direct interaction with participant/litigant (Yes/No)	CCI (2001) identified as <i>Non-traditional roles</i>	Prosecutors are not expected to interact with participant/litigant
<b>Goal 4: Focus on Outcomes</b>				
a. Court retains participants/litigants in program ●	<ul style="list-style-type: none"> <li>Completion rate</li> <li>One year (or other appropriate) retention rate</li> <li>Total time in program (for both graduates and failures)</li> </ul>	Percent graduated, still active, failed at one year; Average days from enrollment to discharge/completion; graduates/(graduates + failures)	CCI (2001) identified as <i>Case outcomes</i> ; and CCI (2009)	Retention rate should correspond with anticipated length of court participation (e.g., much shorter than one year in community courts)
b. Court focuses on behavior changes beyond case completion ●	<ul style="list-style-type: none"> <li>Recidivism rate during program and/or at 6, 12, 24 and 36 months after program exit, ideally compared with similar offenders not involved in problem-solving court**</li> </ul>	Re-arrested or re-convicted (Yes/No) for court participants/litigants and comparison group; Yes/No for different levels of re-offending (felony, misdemeanor)	CCI (2001) identified as <i>Case outcomes</i> ; Rand (2001) identified as <i>Rehabilitation</i> ; and CCI (2009)	(2) Either arrest or conviction data can be used, but the chosen measure should be used consistently. (2) For civil cases, measure violations or modifications.

Court Objective	Performance Indicator	Unit of Analysis	Source and Concept*	Notes and Caveats
<b>Goal 5: System Change</b>				
a. Stakeholders learn about context of justice involvement ○	<ul style="list-style-type: none"> <li>● Court stakeholders and team members have formal training in relevant social issues (drug addiction for drug courts, domestic violence for domestic violence courts, etc.)</li> </ul>	Yes/No for dedicated judge and attorney representatives (e.g., prosecutor and defense in a criminal context), preferably distinguished by problem area (drug addiction, mental illness, domestic violence, sex offending, juvenile delinquency, etc.)	CCI (2001) identified as <i>Non-traditional roles</i> ; DCPO (1997) as <i>Interdisciplinary Education</i>	
b. Court reaches sizable population (relative to size of the eligible target population)	<ul style="list-style-type: none"> <li>● People screened for court entry</li> <li>● People accepted into court</li> </ul>	Number screened/Number eligible; Number participating	<i>Concern introduced within project focus groups and expert interviews (CCI 2010)</i>	Financial constraints on serving a large volume of cases may be noted, but such constraints do not obviate the goal of system change or need to track court reach.

\* In all tables, the “source and concept” column references literature cited in Chapter 3 by organization and year, and refers to findings from the focus groups and interviews conducted as part of this project, and presented in Chapter 4 of this report, as CCI (2009).

\*\* Additional indicators can include employment, housing stability, family contact, and substance use.

○Cross-reference to Collaboration ●Cross-reference to Accountability

## **Collaboration (see Table 5.2)**

From planning to start-up, today's problem-solving courts routinely seek interdisciplinary collaboration with players both internal and external to the justice system. For this reason, the California court system refers to problem-solving courts instead as "collaborative justice courts." In theory, collaboration enables the court to generate greater shared knowledge about the causes and impacts of justice involvement; to share information and discuss unique features of each participant's case; to plan court mandates and identify appropriate therapeutic interventions; and to monitor participant compliance.

Importantly, collaboration as intended here does not require teamwork or the notion of a "non-adversarial process" (e.g., as described in DCPO 1997). Even domestic violence courts and community courts, which typically maintain an adversarial process within the courtroom, routinely promote a dynamic of collaboration through planning meetings and outreach to community-based service providers and advocacy groups (e.g., see Henry and Kralstein 2010; Labriola et al. 2009; Newmark et al. 2001).

To avoid repetition, table 5.2 only presents performance indicators that are unique to collaboration. As conceived, collaboration entails four distinct goals:

- 1. Justice System Collaboration**
- 2. Social Service Provider Collaboration**
- 3. Community Collaboration**
- 4. Participant Collaboration (discussed elsewhere: Table 5.1, Goal 3; Table 5.3, Goal 1)**

### **Goal 1: Justice System Collaboration**

One of the early defining characteristics of drug courts was the willingness of judges, attorneys, probation, and others to work together to develop court policies and resolve individual cases. This kind of collaboration often led to the development of shared definitions of court success, including the goal of reduced recidivism. Two simple measures for such collaboration are whether multiple justice players (e.g., judge, attorneys, courthouse administrators, probation, law enforcement) participated in court planning; and whether dedicated staff has been assigned to the problem-solving court. Other features such as a reduction in adversarial communication (e.g., see especially DCPO 1997) are more difficult to measure. In this respect, court staff may be able to simply check-off (yes/no) whether the structure of judicial status hearings – typically held after a plea has been taken – necessarily entails an easing in the normal adversarial process. Such an easing might be conceptualized as occurring if prosecutors do not routinely speak at every hearing and/or if the judge interacts directly with participants (not through their attorneys). *CAVEATS:* Achieving a reduction in the adversarial process was first proposed for drug courts (DCPO 1997), but this particular indicator does not generally apply to domestic violence courts.

*RECOMMENDATIONS:* Confirm whether the problem-solving court has a dedicated judge, prosecutor, and defense attorney (or other type of dedicated attorney in a civil context). Check-off whether the structure of judicial status hearings entails less adversarial communication than in a traditional court hearing (e.g., as when the judge interacts directly with participants rather than through the attorneys throughout the court appearance (yes/no; omit this indicator for domestic violence courts).

## ***Goal 2: Social Service Provider Collaboration***

External collaboration involves actors from the justice system working in partnership with other public agencies, social service providers, and community representatives. Service providers offer the crucial treatment and other programmatic interventions that are intended to monitor or change participant/litigant behavior. Courts that successfully incorporate service providers will consult with clinical experts to develop appropriate progress markers and will use those markers to assess the appropriateness of court mandates. The court will also need to balance clinical with legal considerations, such as the amount of participation in services it is legally appropriate to require, given the severity of the underlying offense. Such considerations may pose a particular problem for community courts, where the interventions must be short (because the underlying offenses tend to be low-level), even if they are unlikely to be efficacious without a longer duration. All of these issues benefit from collaborative discussion among justice and service provider representatives, as seen in the following two objectives:

- a. Court and service providers collaborate to offer services and assess participant progress: When developing court mandates, judges and other justice actors will benefit to the extent that they are willing to learn from local providers about the clinical implications of participant behavior and the likely timing and dynamics of recovery. Once court policies have been established, justice and community-based partners will need to exchange information regularly regarding participant behavior – i.e., just prior to each judicial status hearing. The information from outside agencies permits the problem-solving court to acknowledge progress, sanction noncompliance, and appropriately adjust mandates as needed. Importantly, in a domestic violence court context, progress reports may focus primarily on compliance (e.g., did participants attend services as ordered and demonstrate a proper demeanor), whereas in more rehabilitative models, the reports may expand on clinical considerations.

*RECOMMENDATIONS:* Track whether community-based service providers and supervision agencies are included in court planning (yes/no); whether providers are informed about scheduled status hearings (yes/no); and whether providers deliver progress reports to the court before each hearing (yes/no).

- b. Court and service providers both participate in case review meetings: Service providers will maintain their own rules of conduct for their clients as well as their own sanctions for rule violations. To work with a problem-solving court, providers must communicate these procedures and resolve any conflict between them and the rules of the court. While more challenging, the same holds true with departments of probation and parole. This is easiest if providers are included in planning the court (see Objective A). Once the court opens, regular meetings can serve to identify problem cases, ensure that all stakeholders understand court policies, and provide a forum for refining policies based on experience.

*RECOMMENDATIONS:* Track whether case review meetings occur (yes/no). If they do, track how often (number of times per week, month, or year); whether each of several key roles is represented (yes/no: judge, prosecutor, defense, probation, and service provider(s)); and whether the meetings involve actual decisions on the cases that are discussed (e.g., phase promotion will be granted; sanction will be imposed, etc.).

### **Goal 3: Community Collaboration**

In one way or another problem-solving courts seek to address the community impact of offending and to increase public confidence in justice. Problem-solving courts can demonstrate community involvement through contact with local residents and community-based organizations and participation in community events. In regular concrete community and court user input regarding appropriate court focus and policies. Effective and legally appropriate community outreach is difficult to quantify and may be limited for models other than community courts. (Thus, indicators pertaining to community collaboration are expanded in the section of Chapter 6 that focuses on community courts.) The recommendations below incorporate several simple measures to determine the extent to which community outreach is attempted at all.

*RECOMMENDATIONS:* Track the number of community appearances (e.g., per year) by court staff and the number of visits to the court by community stakeholders. In addition, document the number of court solicitations of community or court user input (e.g., through meetings of a community advisory board, neighborhood or user satisfaction surveys, or other mechanisms).

#### **Dichotomous Data: Coming to YES or NO**

Many of the performance indicators suggested in this chapter ask for dichotomous responses: Yes, the indicator does happen, or No, it does not. There are two reasons to use simple responses like this. First, it is the *easiest* data to collect. Second, it provides clear information that can highlight both achievements and challenges. To collect dichotomous information, it is important that the questions to be answered “yes” or “no” are clear and unambiguous. For example, to assess whether a problem-solving court increases substantive understanding of domestic violence in a jurisdiction, we recommend tracking whether the judge and key attorneys have attended a formal training. The indicator would be, “Do staff receive training on domestic violence?” A “Yes” or “No” answer should be determined by assessing whether the training content indeed addresses domestic violence and whether the relevant staff members attend. Additional data to enrich the Yes or No response could assess whether the training is repeated when new staff are assigned; whether it has any discernible impact on courtroom decision-making and the extent to which staff appear to have learned or retained any of the information the training is intended to deliver.

In other dichotomous responses, such as whether the judge explains the consequences of infractions, there is perhaps still an element of subjectivity in rendering the required yes/no determination. With such measures, a simple courtroom observation session, or even reflection about whether the given policy (explaining consequences) happens automatically as a matter of course, can facilitate an appropriate yes/no response.

**Table 5.2  
COLLABORATION**

Court Objective	Performance Indicator	Unit of Analysis	Source and Concept	Notes and Caveats
<b>Goal 1: Justice System Collaboration</b>				
a. Justice stakeholders collaborate on court policies and case-level decisions □	<ul style="list-style-type: none"> <li>• Attorneys, supervision agencies, judiciary and other stakeholders involved in court planning</li> <li>• Dedicated attorneys and dedicated judge</li> <li>• Less adversarial communication in courtroom</li> </ul>	Yes/No for each group of stakeholders; Yes/No for reduction in adversarial communication	DCPO(1997) identified as <i>Non-adversarial</i> ; CCI (2001) as <i>System change</i> ; and <i>Non-traditional roles</i> and (2007) as <i>Collaboration</i> ; NCSC (2003) as <i>Alternative sanction</i>	(1) All courts are expected to maintain due process. (2) Domestic violence courts typically retain adversarial courtroom communication (making the third bulleted indicator inapplicable).
<b>Goal 2: Social Service Provider Collaboration</b>				
a. Court and service providers collaborate to offer services and assess participant/litigant progress/compliance ●	<ul style="list-style-type: none"> <li>• Service providers and supervision agencies (e.g., probation) included in court planning</li> <li>• Service providers and supervision agencies informed about case hearings</li> <li>• Clinical case reports routinely delivered to court</li> </ul>	Yes/No	DCPO (1997) identified as <i>Treatment integrated with court process</i> and <i>Coordinated response</i> ; NCSC (2003) as <i>Integrated Social Services and Monitoring</i> ; Rand (2001) as <i>Rehabilitation</i> and <i>Leverage</i> ; CCI (2001) as <i>Collaboration</i> ; and CCI (2007) as <i>Outcomes</i>	

<b>Court Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>	<b>Source and Concept</b>	<b>Notes and Caveats</b>
b. Court and service providers both participate in case review meetings ●	<ul style="list-style-type: none"> <li>• Case review meetings regularly held</li> <li>• Case review meetings include central stakeholders</li> <li>• Case review meetings result in decision-making for each case discussed</li> </ul>	Yes/No and number of meetings/month or year; Yes/No for each stakeholder; Yes/No for decisions made	DCPO (1997) identified as <i>Treatment integrated with court process</i> and <i>Coordinated response</i> ; NCSC (2003) as <i>Integrated Social Services and Monitoring</i> ; Rand (2001) as <i>Rehabilitation and Leverage</i> ; CCI (2001) as <i>Collaboration</i>	In some courts, such as community courts, not all participants may be mandated to services; thus, case review meetings may be limited in focus to a smaller subset of the court's caseload.
<b>Goal 3: Community Collaboration</b>				
a. Court and community are mutually responsive ●	<ul style="list-style-type: none"> <li>• Community stakeholders involved in court planning</li> <li>• Attendance by court staff at community events and meetings</li> <li>• Visits to court by community stakeholders</li> <li>• Court solicits input from community, including litigants, victims and family members</li> </ul>	Number of stakeholders from community involved in planning; Number of contacts (per year); Number of meetings, surveys, or other formal solicitations of community or court user input (per year)	DCPO (1997) identified as <i>Community Partnerships</i> ; and CCI (2001) as <i>Collaboration</i> and <i>Non-traditional roles</i>	Some courts may not involve community stakeholders directly, e.g. some felony courts may limit community outreach to service providers and others directly affiliated with the court.

● Cross-reference with Accountability □ Cross-reference with Problem-Solving Orientation



## **Accountability (see Table 5.3)**

In its most common usage among problem-solving court practitioners, the concept of *accountability* refers to the responsibility of court participants/litigants to comply with their mandates or face additional penalties, up to and including incarceration. However, the literature review and project focus groups identified two other uses that are also outlined below. They respectively concern the accountability of social service providers to deliver the services they have claimed to provide and the accountability of the court itself to collect appropriate self-assessment data and to take responsibility for monitoring its performance.

Table 5.3 highlights performance indicators related to accountability. Indicators that were already introduced are not repeated below. The general goals associated with accountability are:

- 1. Offender Accountability**
- 2. Service Provider Accountability**
- 3. Court Accountability**

### **Goal 1: Offender Accountability**

Problem-solving courts seek to hold participating offenders – and other litigants – accountable for their criminal behavior and for complying with court mandates. To comply, the offenders must understand their obligations (see Frazer 2006; Tyler 1990) and have a clear incentive to comply (e.g., threat of jail, see Rempel and DeStefano 2001; Young and Belenko 2002). For its part, the court must monitor and respond to compliance and noncompliance as it happens (see Labriola et al. 2007; Marlowe and Kirby 1999). Typically, problem-solving courts ensure their ability to respond to participant/litigant behavior by maintaining updated information; holding regular judicial status hearings; and using concrete sanctions (and perhaps incentives) in response to specific behaviors. Some models add other tools, such as drug testing; required case management meetings; and monitoring compliance with orders of protection.

The goal of offender accountability has five objectives. They are (a) to monitor participant progress; (b) to maintain practical incentives for participants to comply; (c) to ensure that participants understand and expect specific court penalties and incentives; (d) to ensure that participants expect the court to impose a promised sentence; and (e) to ensure that participants expect sanctions and incentives to match behavior. These objectives can be divided into two categories: monitoring (objective A) and participant understanding and expectation (all the rest).

- a. Participant/litigant progress monitored: Problem-solving courts engage in specific forms of monitoring, typically judicial status hearings, case management meetings, and drug testing (the latter in only some models). Of these, judicial status hearings are perhaps the most universal. Simply measuring whether status hearings occur, their frequency, and whether judges directly address participants, will indicate achievement of this objective.

*RECOMMENDATIONS:* Track whether court participants attend judicial status hearings (and if so, how often) as well as ongoing case management or probation supervision meetings (and if so, how often). Measures described above under “direct engagement of the participant” also apply (see Problem-Solving Orientation, Goal 3).

- b. Participants/litigants have practical incentive to complete court mandates: For many problem-solving courts, a classic incentive to comply is a custodial sentence if the participant fails. If the sentence is long enough to be perceived as burdensome, the court has “leverage” over the participant to complete the mandate (Rempel and DeStefano 2001; Young and Belenko 2002). Alternatively, many problem-solving courts offer considerable inducements to encourage compliance including charge reductions and case dismissals.

*RECOMMENDATIONS:* Note the average length of the jail or prison alternative that is imposed on offenders who fail their mandate and the average legal consequence (e.g., benefit) of successful completion.

- c. Participants/litigants understand and expect specific court penalties and incentives: Research suggests that it is not enough to have leverage over participants; they must also understand and believe that a custodial sentence will indeed be imposed if they fail to complete the mandate. The RAND framework (Longshore et al. 2001) frames this concept as “predictability.”

*RECOMMENDATIONS:* All of the requisite indicators can be measured with simple dichotomous (yes/no) answers as to whether sentence, sanctions, and court rules are specified by the judge to the participant; whether they are also provided in writing; and whether sentences for failure, sanctions for infractions, and incentives for achievements are applied as promised.

- d. Participants/litigants expect sanctions and incentives to match behavior: This objective focuses specifically on the use of intermediate sanctions and incentives. Extending the concept of predictability introduced above, sanctions and incentives should be specific, clearly explained at the outset of court participation, and consistently applied to all participants (see Longshore et al. 2001; Marlowe and Kirby 1999). Participant, attorney, and other stakeholder views can be solicited to examine their perceptions of the predictability of sanctions and incentives. A sample of cases can also be examined to determine whether court rules and policies are indeed adhered to in practice. More simply, courts can measure whether rules for case advancement and sanctions for violations are described somewhere in official policy and procedure materials; and whether they are presented in writing to participants. *CAVEATS:* Domestic violence courts generally use interim sanctions only, not *positive* incentives.

*RECOMMENDATIONS:* Record the number and types of common sanctions and incentives. Check-off (yes/no) whether the court maintains a schedule linking infractions to sanctions and achievements to incentives; adheres to its schedule as a matter of policy (i.e., in virtually all instances); and achieves certainty in sanctioning (imposes a sanction in response to every infraction, as recommended by the behavior modification literature).

### ***Goal 2: Service Provider Accountability***

All problem-solving courts must maintain awareness of what participants do at community-based treatment and social services agencies. The court must be certain that services are based on coherent models and that those models are adhered to.

- a. Service providers accurately and regularly inform the court about participant progress: Courts must be able to affirm that they receive regular, timely, and accurate reports about participant/litigant activities, behavior, and compliance. In particular, reports should include standardized information such as attendance (days present/late absent); assessment of

participation (e.g., regularly contributes to group activities); and drug test results if appropriate. Ideally, court administrators will be prepared on occasion to verify the accuracy of the reports.

*RECOMMENDATIONS:* A simple dichotomous (yes/no) assessment of whether progress reports are received as requested demonstrates provider responsiveness and accountability.

- b. Service providers use a specified and effective program model: At a minimum, problem-solving court administrators should be able to elicit an understandable and coherent description of program goals and strategies for achieving them for service providers. Through site visits or review of curricular materials, court administrators should be able to verify the connection between services delivered and the program model and to discuss the implications of deviations from the model. *CAVEATS:* Some domestic violence courts may use programs more as an appropriate sanction and monitoring tool than because it is believed that the model is efficacious as “treatment.” Service providers should still be able to connect the model to best practice documents or guidelines.

*RECOMMENDATIONS:* Through conversations, review of provider documents, and/or site visits, problem-solving court administrators should periodically check-off (yes/no) whether they understand the program models that their participants are attending; whether the models are supported by literature.

- c. Court assesses social service delivery: In addition to relying on information that the court requests of service providers, problem-solving courts should maintain service provider accountability through verification of state licensing requirements and regular visits to service sites. Social service efficacy can also be measured through periodic surveys of participants/litigants on the availability and utility of program services. The court should be able to demonstrate the mechanisms that are in place to routinely find out what goes on in community-based programs and whether program descriptions match actual services and match participant perceptions of services.

*RECOMMENDATIONS:* Track whether the court verifies licensing compliance (yes/no); and whether the court had conducted periodic site visits to community-based providers (yes/no). In addition, indicate whether participants are ever surveyed about their experiences in social service programs (yes/no).

### ***Goal 3: Court Accountability***

The final goal associated with accountability has to do with the court’s ability to monitor its outcomes and hold itself to the same high standards that are expected of participants and stakeholders. Accurate data is essential to monitor cases, coordinate supervision with therapeutic goals, and assure predictability.

- a. Court relies on up-to-date data for case decisions and tracking: The court must be able to maintain and use data systems that track participant compliance. The system should not only be able to track individual cases but also produce aggregate results, demonstrating the distribution of background characteristics, services, compliance, and completion rates among court participants.

*RECOMMENDATIONS:* Check-off whether the court maintains: linkage agreements to define services and share information with involved agencies; an appropriate spreadsheet or

management information system with information from the initial defendant screen and assessment; and regularly updated information about participant status in the court, compliance and the types of services assigned.

- b. Court monitors its implementation and outcomes: Ideally courts will use outside evaluators to conduct full evaluations of their programs, but at a minimum, problem-solving courts should review and make aggregate data available to stakeholders. In other words, the court should apply an action research model of regularly reviewing court performance and implementing operational protocols that respond to findings (see Rempel 2005b).

*RECOMMENDATIONS:* Check-off whether the problem-solving court collects and reviews aggregate data on participant characteristics, distribution of program types and modalities, and compliance information (including graduation rates and time-in-program). The information should be collected for everyone who enters the court (not only for graduates) and assessed at least annually.

- c. Court is coordinated by single point person: As in all organizations, court accountability ultimately rests with having a clear operational model and a coherent line of authority. An operations manual indicates that a clear court model has been developed. Having a clearly identified operational leader who is responsible for implementing court policies, tracking outcomes, and reporting to the public about court performance indicates whether an effective structure is in place. Cissner and Farole (2009) have documented that in problem-solving justice experiments, the absence of strong operational leadership routinely creates implementation problems and challenges.

*RECOMMENDATIONS:* Confirm the existence of a comprehensive operations manual. Confirm whether a single individual, generally a “project coordinator,” has been assigned operational leadership (yes/no).

**Table 5.3  
ACCOUNTABILITY**

Court Objective	Performance Indicator	Unit of Analysis	Source and Concept	Notes and Caveats
<b>Goal 1: Offender/Litigant Accountability</b>				
a. Participant/litigant progress monitored ○	<ul style="list-style-type: none"> <li>• Participants/litigants mandated to ongoing judicial monitoring hearings</li> <li>• Participants/litigants mandated to ongoing court-mandated case management and/or probation supervision</li> </ul>	Number and type of mandated contacts; Yes/No	DCPO (1997) identified as <i>Frequent monitoring</i> ; CCI (2007) as <i>Accountability</i> ; and Rand (2001) as <i>Predictability</i>	Measures under this goal are not relevant for civil problem-solving courts
b. Participants/litigants have practical incentive to complete court mandates ○	<ul style="list-style-type: none"> <li>• Average sentence or (e.g., in a civil court context) other legal consequence for failure</li> <li>• Average charge, sentence reduction, or other positive legal outcome for successful completion.</li> </ul>	Average months/years custody or other consequence for failing; average charge and sentence upon completion	RAND (2001) identified as <i>Leverage</i> ; CCI (2010)	
c. Participants/litigants understand and expect specific court penalties and incentives	<ul style="list-style-type: none"> <li>• Judge specifies consequences of compliance and noncompliance to participant (intermediate incentives, sanctions, and/or final sentence)</li> <li>• Participants/litigants receive written document specifying consequences of compliance and noncompliance</li> <li>• Stated consequences always or nearly always adhered to in practice</li> </ul>	Yes/No	RAND (2001) identified as <i>Predictability</i>	

Court Objective	Performance Indicator	Unit of Analysis	Source and Concept	Notes and Caveats
d. Participants/litigants expect sanctions and incentives to match behavior	<ul style="list-style-type: none"> <li>Continuum of sanctions and incentives are used</li> <li>Court maintains a formal schedule linking infractions to sanctions and achievements to incentives.</li> <li>Court adheres to schedule specifications in practice (i.e., official policy dictates adhering to the schedule)</li> <li>All or nearly all infractions incur a sanction response in practice (certainty)</li> </ul>	Types of common sanctions and incentives (first indicator); Yes/No for all other indicators	RAND (2001) identified as <i>Predictability</i> ; and CCI (2007) as <i>Accountability</i>	Domestic violence courts do not generally use positive incentives.
<b>Goal 2: Service Provider Accountability</b>				
a. Service providers accurately and regularly inform court about participant/litigant progress ○	<ul style="list-style-type: none"> <li>Clinical case and service reports are timely and accurate</li> <li>Reports include all pertinent information (e.g., details about attendance, participation, compliance, progress)</li> <li>Reports are provided in specified format (paper, oral, electronic)</li> </ul>	Yes/No	DCPO (1997) identified as <i>Treatment integrated with court process</i> ; NCSC (2003) as <i>Integrated Social Services and Monitoring</i> ; and Rand (2001) as <i>Program Intensity</i>	Some reports may not satisfy all specifications, but most from a given provider should meet the indicators. If some, but not all, providers routinely deliver inadequate reports, courts might address the problem with the provider(s) in question.

Court Objective	Performance Indicator	Unit of Analysis	Source and Concept	Notes and Caveats
b. Service providers use a specified and effective program model □	<ul style="list-style-type: none"> <li>• Program model is clearly described in provider materials</li> <li>• Program has and adheres to an operations manual that reflects program model</li> <li>• Program model is justified by literature about treatment efficacy, best practices, and/or evidence-based practices</li> <li>• Participants receive services that correspond to program model in quality and quantity</li> </ul>	Yes/No	Rand (2001) identified as <i>Program intensity</i> ; CCI (2010)	(1) Not all clinical and other service models have established best practices, but all possible rigor should be used to assess model efficacy. (2) Not all domestic violence courts use programs as “treatment” per se.
c. Court assesses social service delivery	<ul style="list-style-type: none"> <li>• Court verifies licensing and compliance with state requirements</li> <li>• Court conducts periodic site visits</li> <li>• Court queries participants/litigants about experience in social service programs (e.g., survey, exit interview)</li> <li>• Court addresses participant claims of incident with service providers, as appropriate</li> </ul>	Number of sites visited within one year; Yes/No to all other indicators	Introduced and emphasized in project interviews and in the Bronx roundtable (CCI 2010)	Not all assessment activities are necessary where community-based programs and services are not mandated (as in some community courts).

Court Objective	Performance Indicator	Unit of Analysis	Source and Concept	Notes and Caveats
<b>Goal 3: Court Accountability</b>				
a. Court relies on up to date data for case decisions and tracking □○	<ul style="list-style-type: none"> <li>• Information system includes screening, assessment, participation status, service, and compliance data</li> <li>• Court uses linkage agreements to define scope of service, share data and maintain confidentiality</li> </ul>	Yes/No	CCI (2007) identified as <i>Enhanced information</i>	Financial constraints may prohibit a comprehensive database, but indicator still relevant
b. Court monitors its implementation and outcomes	<ul style="list-style-type: none"> <li>• Participant characteristics, program placement, compliance, and outcome information (i.e., graduates and failures) collected and aggregated at least annually</li> <li>• Court shares outcomes with justice system and community stakeholders</li> </ul>	Yes/No	DCPO (1997) identified as <i>Program Evaluation</i> ; and CCI (2007) as <i>Accountability</i>	Financial constraints may prohibit a comprehensive database, but indicator still relevant.
c. Court coordinated by single model and point person	<ul style="list-style-type: none"> <li>• Dedicated coordinator/manager</li> <li>• Court has and adheres to an operations manual</li> </ul>	Yes/No	NCSC (2003) identified as <i>Coordinated management</i> ; and CCI (2007) as <i>Accountability</i>	

○Cross-reference with Collaboration □Cross-reference with Problem-Solving Orientation



## **Chapter 6**

### **Four Models of Problem-Solving: Performance Indicators for Drug Courts, Mental Health Courts, Domestic Violence Courts, and Community Courts**

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This chapter discusses the application of the aforementioned universal indicators to four common problem-solving court models: drug, mental health, domestic violence, and community courts. More importantly, the chapter presents four new tables, providing additional goals and performance indicators that are unique to these models.

#### **Drug Courts**

Drug courts were the first problem-solving court model and the one that was most often the focus of previous conceptual frameworks or discussions of performance indicators (e.g., DCPO 1997; Heck 2006; Longshore et al. 2001; Rubio et al. 2008). For this reason, drug courts arguably provide the best fit for the indicators introduced in Chapter 5 and require the least supplementing.

The few additional indicators listed in Table 6.1 focus on the specific problem of substance addiction. First, to understand the target population, it is useful to track some measure of problem severity, including drug of choice, years of drug use, age of first use, history in treatment and, if possible, scoring results from validated assessment tools.

Most adult drug courts enroll their participants for at least one year, and research indicates that the average time to graduation is 15 months (Zweig and Rossman 2010). Consequently, in many jurisdictions, the drug court mandate may be particularly suitable for felony offenders, who would have elicited a significant probation or custodial sentence in the absence of drug court. Those drug courts that do attempt to work with misdemeanor offenders may respond with shorter mandates, perhaps ranging from three months to one year at the most. To understand whether the court has reached an appropriate match between the participant population and mandate policies, drug courts should track the basic criminal justice status of its participants (e.g., percent arrested and pleading guilty to, for example, felony vs. misdemeanor charges upon enrollment).

Since drug courts are distinguished from other problem-solving courts by focusing on reduced drug use they will want to focus on the use and frequency of drug testing and the percentage of participants who achieve significant drug-free periods during participation. It would of course be ideal if drug courts could compare the rates of post-program drug use among their participants to an appropriate comparison group. While collection of such information may be unfeasible for many courts and is therefore not listed, courts could enlist local researchers to examine their long-term impact on drug use.

**Table 6.1**  
**DRUG COURTS: ADDITIONAL PERFORMANCE INDICATORS**

<b>Court Goal</b>	<b>Court Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>
1. Individualized screening and problem assessment (Problem-Solving Orientation)	Targets substance abusing participants who would otherwise merit significant court intervention (e.g., would face a significant probation or custodial sentence in a criminal context)	<ul style="list-style-type: none"> <li>• Primary drug of choice</li> <li>• Criminal severity (e.g. felony vs. misdemeanor; likely length of sentence)</li> </ul>	Percent with each primary drug of choice (crack, powder cocaine, heroin, methamphetamine, marijuana, alcohol, other); Percent with felony vs. misdemeanor charges at arrest and, again, at enrollment (if post-plea model)
2. Focus on outcomes (Problem-Solving Orientation)	Reduction in drug use	<ul style="list-style-type: none"> <li>• Frequency of required drug testing</li> <li>• Percent of participants achieving drug-free milestones</li> </ul>	Number of tests administered (per week or month); Percent negative for significant period (e.g., 90 days, 4 months, 8 months)

**Mental Health Courts**

Like drug courts, mental health courts are also primarily concerned with rehabilitating their participants through a lengthy course of treatment. Regarding intake, mental health courts place greater emphasis than drug courts on behavioral progress as a continuum, with a focus not on complete abstinence but improved social functioning and stability.

The first goals in Table 6.2 encourage mental health courts to report on the nature and severity of participants’ underlying mental illness and criminal offenses including the percent whose initial charges were violent in nature.

In addition, mental health courts should measure indicators of participant stability, such as health care and housing, compliance with prescribed medication management, and avoidance of hospitalizations while participating.

Finally, mental health courts should assess whether stakeholders have acquired an appropriate perspective on mental illness, recognizing the continuum of symptom severity and challenges of recovery – i.e., that expecting absolute and total recovery may be unrealistic.

**Table 6.2**  
**MENTAL HEALTH COURTS: ADDITIONAL PERFORMANCE INDICATORS**

<b>Court Goal</b>	<b>Court Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>
1. Individualized screening and problem assessment (Problem-Solving Orientation)	Targets participants with mental illness who would otherwise merit significant court intervention (e.g., a significant probation or custodial sentence)	<ul style="list-style-type: none"> <li>• Participants meet defined levels of mental health need (indicated as percent with each eligible form of mental illness)</li> <li>• Criminal severity (e.g. felony vs. misdemeanor)</li> </ul>	Percent with each type of Axis I or Axis II diagnosis; Percent with felony vs. misdemeanor charges; and with violent charges at arrest and, again, at enrollment (if post-plea model)
2. Focus on outcomes (Problem-Solving Orientation)	Reduction in mental health symptoms; Development of independent functioning	<ul style="list-style-type: none"> <li>• Participants linked with appropriate aftercare upon completion</li> <li>• Participants maintain stable health care and reduced need for hospitalizations</li> <li>• Participants have stable housing</li> <li>• Participants have stable financial support</li> </ul>	Percent enrolled in aftercare at graduation; Percent compliant with medication regime; percent with hospital admission during participation; Percent in stable housing during participation; Percent with stable health care and coverage during participation
3. System change (Problem-Solving Orientation, cross-referencing Collaboration)	Stakeholders understand the challenges of mental illness and view recovery on a continuum	<ul style="list-style-type: none"> <li>• Court stakeholders attend training about mental health court-specific clinical issues</li> </ul>	Yes/No

### **Domestic Violence Courts**

Although many domestic violence courts identify offender rehabilitation as an important goal, this goal is not universally embraced, and there is a far wider consensus surrounding the goals of victim safety and services and offender accountability and (Labriola et al. 2009). Furthermore, while domestic violence courts often mandate programs for their offenders, sometimes with therapeutic objectives in mind, there is, as yet, little empirical support for their therapeutic efficacy (e.g., Babcock et al., 2004; Feder and Wilson 2005; Rempel 2009). As noted previously,

this means that some of the indicators listed in Chapter 5 under problem-solving orientation may not apply to domestic violence courts.

In table 6.2, we divided performance indicators related to victims into three basic categories:

1. Cohesive and respectful court process for victims: Domestic Violence courts typically attempt to improve the court process for victims. By administering surveys or convening focus groups Domestic Violence courts can measure whether victims think that they are treated fairly and respectfully, that the court process is comprehensible, and that their voice is heard. In the absence of such resource-intensive activities, Table 6.2 identifies a few concrete indicators, answerable with yes/no check-offs. Do court staff routinely inform victims of the location of advocacy services whenever they appear in court? Does the court automatically (and promptly) mail any applicable orders of protection? Does the court routinely accommodate the scheduling concerns of victims when they must appear in court?
2. Victims linked with safety planning and other services: Ideally, domestic violence courts can provide an array of services to victims, including safety planning, legal assistance, counseling, and housing. We suggest that the courts note which services are available onsite and through outside referrals and track the percent of victims connected at some point with a victim advocate or service provider.
3. Engage in close offender monitoring: The implementation of close offender supervision and reporting requirements can provide victims with important reassurance – and perhaps have real effects on their safety as well. We suggest that domestic violence courts track the percentage of convicted offenders who are subject to post-conviction supervision by the judge or probation. We also suggest that courts indicate (yes/no) whether they automatically use protection orders, both temporary orders while a case is pending and final orders post-conviction.

In addition to the measures regarding offender accountability highlighted in Chapter 5 the research literature makes clear that domestic violence courts are frequently evaluated based on their ability to hold offenders accountable through conviction and sentencing on the initial case (e.g., see Labriola et al. 2009). Table 6.2 adds performance indicators related to tracking the conviction rate and percent of cases receiving each sentence or sentencing condition, including jail or prison, probation, and program mandates.

Finally, we propose tracking whether the victim advocacy community has been incorporated into court practice and whether the courthouse has made education available on the legal and social issues pertaining to domestic violence. Regarding the involvement of victim advocates, their involvement can be assessed in terms of meetings (e.g. does a victim services representative attend regular stakeholder meetings?) and facilities (e.g. does the courthouse provide space for victim advocates to meet with victims?). Regarding courthouse education, we propose a simple indicator for whether general courthouse events or trainings have been held. For a more nuanced assessment of the effectiveness of education, changes in stakeholder knowledge could also be measured, for example using brief before-and-after questionnaires.

**Table 6.3**  
**DOMESTIC VIOLENCE COURTS: ADDITIONAL PERFORMANCE INDICATORS**

<b>Court Goal</b>	<b>Court Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>
Cohesive and respectful court process for victim (Problem-Solving Orientation)	Accommodate and acknowledge tangible victim needs for information and services	<ul style="list-style-type: none"> <li>• Victims informed of availability and location of services (i.e., of victim advocacy staff)</li> <li>• Copies of protection orders automatically mailed to victim (i.e., victims are not required to appear in court)</li> <li>• Victim scheduling and other concerns routinely accommodated</li> </ul>	Yes/No
Victim safety (Problem-Solving Orientation)	Victims linked with safety planning and other services	<ul style="list-style-type: none"> <li>• Percent of victims linked to victim advocate</li> <li>• Victim services available at courthouse or adjacent location</li> <li>• Court representatives or victim advocates make additional community-based service referrals</li> <li>• Separate courthouse waiting area established for victims</li> </ul>	Percent linked to advocates; Listing of each type of service made available to victims (1) onsite or (2) through outside referrals; Yes/No for waiting area
Victim safety (Problem-Solving Orientation)	Engage in close offender monitoring	<ul style="list-style-type: none"> <li>• Convicted offenders routinely supervised (via probation and/or judicial status hearings)</li> <li>• Enforcement of temporary protection orders for pending cases</li> <li>• Enforcement of final protection orders for convicted/adjudicated cases</li> </ul>	Percent of convicted offenders subject to supervision (excluding those sentenced to jail); Yes/No on protection order items

<b>Court Goal</b>	<b>Court Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>
Offender Accountability at disposition and sentencing (Accountability)	Track conviction rate and sentencing outcomes for convicted offenders (or track dispositions in civil domestic violence courts)	<ul style="list-style-type: none"> <li>• Percent of offenders convicted (criminal courts)</li> <li>• Percent of offenders with each key type of sentence or condition: jail, probation, batterer program, other type of program, judicial monitoring</li> </ul>	Percents
Collaboration with Victim Service Community (Collaboration)	Increased awareness and responsiveness to domestic violence	<ul style="list-style-type: none"> <li>• Stakeholder or case review meetings include victim advocate</li> <li>• Victim advocates receive courthouse space to meet with victims</li> </ul>	Yes/No
System Change (Problem-Solving Orientation)	Courthouse-wide education efforts concerning domestic violence	<ul style="list-style-type: none"> <li>• Courthouse trainings or workshops held (not only for domestic violence court staff)</li> </ul>	Yes/No

## Community Courts

There is an element of community responsiveness in nearly all problem-solving courts. They are all established to address community problems that intersect with the justice system, whether related to drugs, juvenile delinquency, violence, or other threats to public safety. For this reason, all problem-solving courts should arguably be engaged in ongoing dialogue with their communities.

Nonetheless, because their mission is explicitly to improve neighborhoods, community courts explicitly seek to hold themselves accountable to the communities they serve. Most community courts focus on criminal offenses such as vandalism, shoplifting, and prostitution that directly affect the everyday quality of life in individual neighborhoods. Some community courts that extend their jurisdiction to non-criminal matters (e.g., juvenile or housing cases) generally do so in response to an expressly articulated community interest and need.

As shown in Table 6.4, simple indicators of community collaboration and outreach involve the creation of a community advisory board (yes/no); frequency of advisory board or other community meetings; and the breadth of the community stakeholders attending such meetings. The court's involvement in the community should also be measured through an examination of the reciprocity between the two parties – i.e., not only hearing from the community but also

disseminating information. Thus, Table 6.4 includes an indicator for how often the court shared findings with community members and organizations.

Finally, nearly all community courts seek to restore local communities through community service. In this regard, the courts might be expected to track the exact percentage of their offenders who are ordered to community service and the quantity of service hours rendered (on an annual basis).

**Table 6.4**  
**COMMUNITY COURTS: ADDITIONAL PERFORMANCE INDICATORS**

<b>Court Goal</b>	<b>Court Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>
Community collaboration (Collaboration; cross referencing Accountability)	Court solicits information about community needs; information informs court operations	<ul style="list-style-type: none"> <li>• Community Advisory Board (CAB) established</li> <li>• Frequency of CAB meetings</li> <li>• Frequency of other community meetings</li> <li>• Range of community stakeholders represented in meetings and outreach</li> </ul>	Yes/No (advisory board established); Number of CAB meetings/year; Number of other community meetings/year; Affiliations of those attending meetings in past year
Community collaboration (Collaboration; cross referencing Accountability)	Court maintains community presence	<ul style="list-style-type: none"> <li>• Court located in community</li> <li>• Court communicates findings to community stakeholders</li> </ul>	Yes/No; Number of times court disseminated project results in past year
Community restitution (Problem-Solving Orientation)	Court requires offenders/litigants to perform restitution for anti-social behavior	<ul style="list-style-type: none"> <li>• Percent of cases ordered to community services</li> <li>• Number of hours of community service performed per year</li> </ul>	Percent of all cases and Percent of all convicted cases ordered to community service; Number of hours

## Chapter 7: Universal Performance Indicators for Problem Solving in Traditional Courts

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In recent years, a number of publications have pointed to the potential for applying problem-solving principles and practices in traditional courts (e.g., Farole et al, 2004; Farole 2009). In fact, many traditional courts already use aspects of problem-solving, alternative sanctions in particular. Yet, too often the use of problem-solving methods, even when supported and encouraged, is not systematically tracked. Accordingly, this final chapter presents ways that traditional criminal and civil courts can measure their problem-solving capacity. We proceed by adapting a limited number of indicators that have already been introduced within earlier chapters and that are most expeditiously applied to traditional courts. In other words, our aim is to be realistic, presenting general courts with a feasible list of measures that can reveal the basic nature and extent of their problem-solving activity, without posing an unduly onerous tracking burden. A single table (7.1) summarizes all of the essential findings and recommendations. Major themes highlighted in the table are briefly summarized in the sections that follow.

### Problem-Solving Orientation

Any court can prioritize and track its use of alternative sanctions. Similarly, any court can engage litigants appearing before it and use that engagement to improve the chance of compliance and litigant perceptions of court fairness. Even without special resources, courts can inform litigants about the court process and encourage service linkages. All such efforts can be made with relatively few resources, and many of them require no additional funding at all.

- Individualized Justice. Traditional courts can use an array of mandates such as community service and drug treatment. For each type, courts can track the number of litigants assigned (per year) and the compliance rate. Without overstepping the line distinguishing information from advice, judges and other court staff can provide clarity to defendants, for instance asking litigants whether they have questions about the charges or the mandates. Such simple measures as direct eye contact, direct address, and moderating tone can radically change the experience of litigants (and victims and families).

*RECOMMENDATIONS:* Track service mandates and compliance; Direct interaction with litigants; Screening for and access to services; Effort to assess litigant experience.

- Substantive Education for Court Staff. Judges and other key players can convene brown bag talks. Outside experts can talk about major populations such as those who are substance users, the mentally ill, and non-English speakers. Similarly, court staff can be trained on topics as diverse as cultural competency and correlates of re-arrest. Familiarity with underlying problems that defendants often have can help improve decision making and increase the possibility that the court can serve as a link to needed social services.

*RECOMMENDATIONS:* Number and type of problem-solving-related trainings, brown bags and presentations per year



**Table 7.1**  
**PROBLEM-SOLVING PERFORMANCE INDICATORS FOR TRADITIONAL COURTS**

<b>Problem-Solving Goal</b>	<b>Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>
Individualized Screening and Problem Assessment (Problem-Solving Orientation)	Potential litigants are screened or assessed for key circumstances and needs	<ul style="list-style-type: none"> <li>• Court administers psychosocial screening or assessment instrument at some point pre-sentence</li> <li>• Defendants screened specifically for: (a) drug and alcohol use, (b) mental illness, and (c) prior family court involvement</li> <li>• Court uses validated screening or assessment tool</li> <li>• Data sharing agreements put in place that protect due process</li> </ul>	Administers screening or assessment (Y/N); Screen includes drug/alcohol use, mental illness, and family court involvement (Y/N for each); Uses validated tool (Y/N); Number of people screened or assessed per year; Data sharing agreements exist (Y/N)
Individualized Treatment or Service Mandate (Problem-Solving Orientation)	Court links litigants to appropriate services	<ul style="list-style-type: none"> <li>• Community and social service/treatment referrals are available</li> <li>• Number and percent of litigants linked to each type of service or treatment: i.e., community service, drug treatment, mental health treatment, batterer program, GED class, parenting class, etc.)</li> </ul>	Community service available (Y/N); number and specific types of other social or treatment services available; Number and percent of all cases and (for criminal matters) of convicted cases that are mandated to each type of service (per year)
Focus on Outcomes (Problem-Solving Orientation)	Court achieves positive outcomes/completion rates for litigants assigned to each type of service	<ul style="list-style-type: none"> <li>• Completion/compliance rate for cases assigned to each type of service (see sample of service types under previous performance indicator)</li> </ul>	Percent compliant (completed mandated) by service type
Direct Engagement of Participant (Problem-Solving Orientation)	Enhance litigant understanding and confidence in court proceedings; solicit litigant views about their court experience	<ul style="list-style-type: none"> <li>• Judges receive formal training about appropriate level of explanation and comment from bench (i.e., training in “procedural justice” or “courtroom communication”)</li> <li>• Litigant opportunity to comment on experience (e.g. in comment box or comment via website)</li> </ul>	Yes/No

<b>Problem-Solving Goal</b>	<b>Objective</b>	<b>Performance Indicator</b>	<b>Unit of Analysis</b>
Courthouse Training and Education (Problem-Solving Orientation)	Educate court staff about the context of offending and other disputes; develop culture of discussion of themes across cases; Create links with experts outside court	<ul style="list-style-type: none"> <li>• Number of problem-solving-related trainings for staff</li> <li>• Number of brown bag and other discussion forums re: problem-solving topics</li> <li>• Number of presentations by outside experts</li> </ul>	Number and subject matter of trainings, expert presentations, or other forums
Social Service Provider Collaboration (Collaboration)	Court fosters linkages with community-based social service providers	<ul style="list-style-type: none"> <li>• Court maintains up-to-date list of social service providers</li> <li>• Social service providers' materials (brochures, referral forms, etc.) available in court</li> </ul>	Yes/No; types of social services available; types used
Community Collaboration: Enhance court presence in community (Collaboration)	Court has presence in local community; court seeks to increase understanding of court in communities; court seeks to increase usability of court websites	<ul style="list-style-type: none"> <li>• Presentations about the court made to community groups;</li> <li>• Materials about the court distributed in the community;</li> <li>• Court web-site contains detailed practical information that litigants can use (such as hours, required steps for common concerns such as divorce or family court filings)</li> </ul>	Presentations ever made (Yes/No); Number of presentations (per year); Number of community sites with materials available about the court; Court web content lists hours, courthouse locations, and steps to take for pro se filings (Y/N)
Early Coordination of Information (Accountability)	Court is responsive to litigant need for information; Court seeks all relevant information pertaining to a case	<ul style="list-style-type: none"> <li>• Court informational materials, forms and other relevant information available for litigants;</li> <li>• Court routinely collects relevant case information</li> </ul>	Yes/No; content of informational materials is clear and accurate (Y/N); Court uses checklist of potentially relevant information to consider (Y/N)
Compliance Review (Accountability)	Court requires defendants to return to court to report on compliance with mandates	<ul style="list-style-type: none"> <li>• Compliance reviews are routinely held</li> <li>• Average number of compliance reviews</li> </ul>	Yes/No; Number of compliance reviews per case(per year)/ Total number of cases

Problem-Solving Goal	Objective	Performance Indicator	Unit of Analysis
Court Accountability (Accountability)	Court relies on up to date data for case; court routinely assesses data to track compliance and examine court outcomes	<ul style="list-style-type: none"> <li>• Court has data system that tracks mandates to problem-solving interventions (e.g. community service, drug treatment, treatment readiness, mental health treatment, GED, and job training); and that tracks the compliance outcome for each case</li> <li>• Data system is accurate and routinely updated</li> <li>• Data regularly analyzed (e.g., annually) and findings appropriately discussed</li> </ul>	Yes/No

## Collaboration

Traditional courts can use collaboration with service providers and community partners identify litigant needs and increase public confidence in justice.

- Links with Community-Based Agencies. Such links can provide courts with resources to address litigant and family needs including drug treatment, community service, and job training. These services may be used in combination with traditional sentences or as alternative sentences. Collaboration between agencies and courts can serve the interest of both because the court gets services and the agencies get clients. Relationships with community-based agencies can assist civil and family as well as criminal courts.

*RECOMMENDATIONS:* Number of community based agency partners

- Court presence in community can be bolstered by hosting site visits from community groups, expanding information about the court that is available on-line and in libraries, schools and other public centers, and encouraging transparency in how courts operate.

*RECOMMENDATIONS:* Number of community outreach initiatives

## Accountability

A problem-solving approach to accountability links concerns of due process and public safety with rehabilitative goals. Several facets of accountability require almost no additional cost to courts and can easily be assessed.

- Compliance Reviews that require the defendant or litigants to report back to the court allow the judge to track compliance and behavior change. They also demonstrate to defendants and litigants that the court watches and cares about their behavior. Finally, they provide an ongoing opportunity for the court to communicate with litigants and defendants and to respond to their concerns and circumstances.

*RECOMMENDATIONS:* Use and number of adjournments

- Early Coordination of Information. Courts that provide up-to-date information to litigants and family members address the needs of court users to understand the process and assist court users in preparing and filing necessary paperwork. And by providing information about cases -- including, wherever possible, information about litigants' underlying social service needs -- to the judge and other court actors, traditional courts can help improve the quality of court orders and encourage individualized justice.

*RECOMMENDATIONS:* Availability and content of materials for and from litigants

- Court Data Systems. Courts that invest in electronic data systems can use that information to provide monitoring details about defendants to judges. Data systems can also be used to aggregate data and examine overall impact of the court on case outcomes.

*RECOMMENDATIONS:* Electronic database used; Compliance data maintained; Awareness of caseload characteristics by key court staff.

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