

2014-2015 Policy Paper

Problem-Solving Courts in the 21st Century



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Introduction

For Jeff the road to recovery was marked with plenty of difficult days. At his arrest in 2004, Jeff and his girlfriend were addicts who had lost everything. They were living out of their car and being allowed to sleep in the lobby floor at a local motel. Both were estranged from their parents, without employment and headed for disaster until they were saved by a local policeman. Because their charges qualified them for the local drug court, Jeff and his girlfriend were able to enter the program, get clean and sober, and have their charges dismissed without further penalties. Almost ten years removed from that life, Jeff is a successful criminal defense attorney and his girlfriend is a thriving flight attendant. Without this intervention, both would likely be in prison or deceased. Such is the story of thousands of recovering addicts across the country.

In 1989, the first “problem-solving court” was established as a drug court in Miami-Dade County, Florida.¹ Courts across the country became intrigued with the therapeutic orientation

of these courts, and the concept began to spread quickly. Now just over a quarter century later, a recent study shows that there are over 4,000 problem-solving courts in the United States, and many more courts are developing in the United States and around the world.

In its sixty-year history, the Conference of State Court Administrators (COSCA) has taken up numerous issues of importance to the nation’s state courts. In recent years, COSCA has addressed a topic of importance to the courts through the release of an annual policy paper. These policy papers address some of the most pressing and relevant issues in the field. This paper is the twentieth such publication and addresses the same topic of the first policy paper COSCA published in 1999. At the time of its publication, the *Position Paper on Therapeutic Courts* was considered controversial; the 1999 policy paper promoted a discussion of the young movement² and the advantages and disadvantages of the courts.

Table 1. Advantages and Disadvantages of “Therapeutic Courts” According to 1999 COSCA Policy Paper

Advantages	Disadvantages
Drug courts work by lowering recidivism, saving money, freeing jail beds, reducing the number of drug-exposed infants and children (avoiding medical costs), treating substance abuse problems	Potential impact on judicial neutrality with judge as part of treatment team
Promote collaboration among treatment providers, local governments, law enforcement, prosecution, defense counsel, private counsel, multiple state agencies and the courts	Rules and expectations about judicial conduct have not taken into account the new role
Participants are held accountable	Put a strain on basic court organization, administration and court resources
Tremendous public relations benefit	—

¹ <http://www.nadcp.org/learn/what-are-drug-courts/drug-court-history> (Last referenced on February 21, 2015)

² At the time of the publication of the 1999 policy paper, there were 472 drug courts in the nation (Wikipedia;

en.m.wikipedia.org/wiki/Drug_courts_in_the_United_States; last referenced on February 21, 2015)

The COSCA paper recommended that

1. Courts should assume administrative leadership in the programs;
2. Each judicial system should choose a level of programmatic and fiscal involvement;
3. COSCA and the Conference of Chief Justices (CCJ) should study and recommend changes to the Code of Judicial Conduct to address concerns; and
4. COSCA and CCJ should involve themselves in national forums to formalize and institutionalize the judiciary's role in the courts.

The years that followed saw many of the state courts implement the recommendations of the 1999 policy paper. In addition to the earlier policy paper, COSCA has adopted numerous resolutions regarding problem-solving courts.³ Now on the basis of more than fifteen years of experience with problem-solving courts, COSCA seeks to

1. establish a commonly held definition of problem-solving courts; encourage states to target the appropriate population;
2. expand the reach of problem-solving courts;

3. integrate the concept into each state's court system; and
4. ensure proper and comparable evaluation of the problem-solving courts across local and state jurisdictions, as appropriate.

Defining the Problem-Solving Court⁴

Albert Einstein once said, "If I had twenty days to solve a problem, I would spend nineteen days to define it." Yet after 25 years of the problem-solving movement, there is still no well-accepted definition of a problem-solving court, even though recent research has provided reliable information about the kinds of practices that are associated with positive participant outcomes and cost savings. Table 2 looks at the common types of "problem-solving courts" that exist and the estimated number in the United States and its territories.⁵

³ Resolution 19: In Support of ABA Proposed Standard for Procedures in Drug Treatment Courts (2001); Resolution 17: Endorsing and Supporting: *Judicial Education on Substance Abuse: Promoting and Expanding Judicial Awareness and Leadership* (2003); Resolution 3: Urging Federal Funding Entities to Allocate Drug Court Funds through the Highest Judicial Authority of States and Territories (2009); Resolution 12: In Support of Flexibility for Federal Funding for Problem-Solving Courts (2011); Resolution 10: Strengthening the Relationship between the Conference of Chief Justices and Conference of State Court Administrators and Problem-Solving Coordinators (2012)

⁴ Much of the focus in this policy paper is on drug courts. This is due to the fact that they comprise the bulk of the problem-solving courts and have the most definitive research available. However, as pointed out in the table, there are several other models. The other models have a

less-developed body of research. Federal funding has driven the problem-solving court implementation, operation and sustainability. Due to the fact that much of that funding is directed to drug courts, as opposed to community courts, mental health courts and others, drug courts continue to expand at a rate greater than the other types of problem-solving courts. It should be noted that while the Fiscal Year 2015 United States Department of Justice, Bureau of Justice Assistance Drug Court Discretionary Grant solicitation includes veterans courts and courts with co-occurring disorders, programs are still required to follow the drug court key components and model.

⁵ National Drug Court Resource Center, <http://www.ndcrc.org/content/how-many-problem-solving-courts-are-there> (Last referenced on February 22, 2015)

Table 2. Type and Number of Problem-Solving Courts in the United States and its Territories (as of June 30, 2014) Source: National Drug Resource Center

Problem-Solving Court Type	Number in the United States and Territories
Adult Drug ⁶	1,538
Juvenile Drug	433
Mental Health	414
Family Drug Treatment	303
Truancy	267
Designated Driving While Intoxicated	242
Veterans Drug Treatment	220
Domestic Violence	212
Tribal Health to Wellness	119
Child Support	63
Co-Occurring Disorder	36
Reentry Drug	36
Federal Drug	29
Prostitution	28
Community	24
Homelessness	21
Reentry	20
Sex Offender	10
Federal Veterans Drug Treatment	6
Campus Drug	6
Gun	5
Parole Violation	3
Gambling	0

The first question that must be answered is whether the problem-solving courts are indeed courts or if they are dockets or programs run by a court. Black’s Law Dictionary defines a court as “an organ of the government, belonging to the judicial department,” the function of which “is the application of the laws to controversies brought before it and the public administration of justice.”⁷

In most states, a *court* is a collection of judges who are responsible for deciding cases and administering justice.⁸ Courts typically have a set of cases that are assigned to judges to hear. The cases may be assigned to a specialized calendar or to a more generalized calendar.⁹ Judges may be assigned a civil, criminal, domestic relations, juvenile or other specific set of cases. In instances

⁶ 436 of these are Hybrid DWI/Drug Courts

⁷ The Law Dictionary; <http://thelawdictionary.org/court/> (Last Referenced on February 22, 2015)

⁸ In Texas, each judge is designated as a court.

⁹ Black’s Law Dictionary defines a calendar of cases as “a list of the causes instituted in the particular court, and now ready for trial...it is sometimes called the docket.” <http://thelawdictionary.org/court/> (Last Referenced on February 22, 2015)

in which the judge is assigned to hear juvenile cases, the caseload may be referred to as a juvenile calendar or docket. Rarely do courts refer to specific calendars as courts. Many outside of the judicial branch may assume that judges assigned to problem-solving caseloads may only hear those cases. However, in most instances, the judge is assigned to hear other types of cases as well. Thus, the problem-solving caseload is just a part of the judge's calendar of actions, although this collaborative justice calendar is every bit as important as the judge's adversarial justice calendar.

Some have asserted that problem-solving courts are simply treatment programs overseen by a judge, just a slight change from a typical probation treatment supervision program by adding the presence of a judge. While the addition of the judge is the primary difference between a probation treatment supervision program and a problem-solving court, there are other differences as well. In a problem-solving court, there is a court case that is managed by the court with regular appearances before the judge. Judges exercise somewhat traditional duties in ruling on issues from the bench but have expanded authority over offenders in the problem-solving court that the judge does not have over offenders on probation, including the ability to impose short-term incarceration as an immediate – or swift and sure – sanction for non-compliance.¹⁰ While the process may be non-adversarial and distinguishable from a traditional court case, the problem-solving court case is more like a traditional court case than, for example, a probation treatment supervision program.

Referring to problem-solving caseloads as problem-solving courts is inconsistent with other

court practice and may add to confusion; rather a problem-solving court is simply a specialized calendar or docket that is typically part of a judge's larger caseload.

The recognition that problem-solving courts are not courts in the traditional sense should not lessen the significance that COSCA places on the role that problem-solving courts play in the resolution of serious problems and cases placed before the courts. After all, most judicial stakeholders would consider the collaborative justice function of the courts and the adversarial justice function of the courts as being equally important. Since the problem-solving dockets are commonly known as problem-solving courts, and so as not to increase confusion, this paper refers to the caseloads as problem-solving courts.

The second and perhaps more important question to address is how to define *problem-solving courts*, especially because there are currently more than twenty published definitions for a *problem-solving court* used in the professional literature and many more definitions used in statutes.¹¹ With so many definitions, discussion of the concept across states and organizations is difficult and subjects problem-solving courts to adulteration of the concept in programs lacking program fidelity. This threatens to undermine the great work being done by problem-solving courts holding to the concepts underpinning their development.

After reviewing the research and synthesizing the definitions currently being used, ***COSCA recommends the adoption of a definition of a problem-solving court based upon the following six core elements.***

¹⁰ This expanded role may require states to reevaluate the Code of Judicial Conduct to determine if changes are necessary to accommodate the role judicial officers play in problem-solving courts.

¹¹ Dr. Nicole Waters, National Center for State Courts Research Division, Director of the national Census of Problem-Solving Courts funded by the Bureau of Justice Statistics (personal communication, March 17, 2015).

Table 3. Six Core Elements of a Problem-Solving Court

Core Element	Description
Specialized Court Docket or Program	The court has a dedicated docket or program that functions in a non-adversarial manner.
Judicial Authority and Ongoing Supervision	The court provides ongoing judicial interactions with participants, predominantly through a court docket and related preparations.
Team Collaboration, Community Involvement and Information Sharing	The court fosters inter-disciplinary partnerships between the court and outside agencies and between members of the problem-solving court team.
Specialized Team Expertise	The members of the court team receive training that contributes to the successful implementation and operation of the problem-solving court.
Individualized Treatment and Responses to Risk and Needs	There is a coordinated strategy in place to respond to participants' compliance or noncompliance and individual needs.
Therapeutic, Rehabilitative	Evidence-based therapeutic treatment service(s) is offered to participants in an effort to rehabilitate the participant.

Applying these six core elements to a potential “problem-solving court” will allow a determination of whether the potential program is actually a problem-solving court. COSCA is aware that some existing programs may not meet the definition. While COSCA believes that those specialized dockets might have some limited utility in dealing with certain issues participants may bring to the court, the six elements provide a common definition of which of these should be properly considered problem-solving courts. ***COSCA recommends that each state and territory review existing “problem-solving courts” and that courts not fitting the definition not be considered problem-solving courts.***

Targeting the Proper Population

Armed with a common definition of a problem-solving court, it is important to consider who

should be admitted to a problem-solving court. In 1990, the risk-needs-responsivity model was released indicating that, as its name suggests, offenders should have responses that correspond to their risk and needs.¹² The model suggests that more intense services and supervision should be reserved for high-risk and high-needs offenders, while low-risk offenders should receive lower levels of supervision and treatment. In this context, high-risk refers to individuals who “tend to have a relatively poorer prognosis for success in standard rehabilitation programs and typically require more concentrated and sustained interventions to dislodge their entrenched, negative behavioral patterns.”¹³ High-need refers to “clinical disorders or functional impairments that, if treated, substantially reduce the likelihood of continued engagement in crime.”¹⁴

¹² Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation (Bonta, J and Andrews, D.A., 2007)

¹³ Marlowe, Douglas B. (n.d.). Targeting the Right Participants for Adult Drug Courts. National Drug Court Institute. Alexandria, VA.

¹⁴ Id.

Table 4. Examples of High-Risk and High-Need Factors

High-Risk Contributing Factors	High-Need Contributing Factors
Young adult	Addiction to substance(s)
Involvement in criminal justice system at early age	Major psychiatric disorders
History of violence	Brain injury
Previous rehabilitation failures	Lack of basic employment skills
Antisocial personality disorder	Lack of daily living skills
Familial history of crime or addiction	
Criminal associations	

Additional research has shown that over-supervising low-risk offenders can result in higher recidivism and poorer outcomes.¹⁵ Thus it is vital that courts triage and target services offered to the appropriate population. This principle applies to problem-solving courts, where courts focusing on high-risk and high-need offenders have been shown to “reduce crime approximately twice as much as those serving less serious offenses.”¹⁶ Thus, *COSCA recommends that problem-solving courts target their efforts on high-risk and high-need participants.*

Targeting high-risk and high-need participants raises the need for a problem-solving court to use a validated assessment tool. This premise is consistent with previous COSCA recommendations regarding evidence-based assessment.¹⁷ Many problem-solving courts currently use only screening and professional judgment when admitting participants to a problem-solving court, which is far inferior to determining eligibility with a validated

assessment tool. A recent study found that, even though use of a validated assessment tool significantly improves participant outcomes, just over half of the problem-solving courts that were evaluated assessed a participant at screening, with many failing to use a validated assessment tool.¹⁸ *COSCA recommends that all potential participants be assessed using a validated assessment risk and need assessment tool(s).*¹⁹

Finally, the target population should not have arbitrary exclusions that disqualify certain groups.²⁰ This is not to say that problem-solving courts should not target their services to certain participants by establishing admission criteria. After all, a previous recommendation in this paper recommends such an admission criteria for high-risk, high-needs participants. However, automatic exclusions for limited-English proficiency, mental health conditions, or other factors should not exist. This is a particularly significant issue for problem-solving courts that were originally or continue to be funded by federal grants. Federal

¹⁵ Lowenkamp, C.T. and Latessa, E.J. *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*. Topics in Community Corrections (2004).

¹⁶ Adult Drug Court Best Practice Standards, Volume I (NADCP, 2013).

¹⁷ “The Conference of State Court Administrators advocates that court leaders promote, collaborate toward, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release decisions.” (2012-2013 Policy Paper: Evidence-Based Pretrial Release. Conference of State Court Administrators, 2013).

¹⁸ Shaffer, D.K. (2010). Looking inside the black box of drug courts: A meta-analytic review. *Justice Quarterly*, 28(3), 493–521.

¹⁹ A list of validated risk and need assessment tools is available in Appendix A of the Adult Drug Court Best Practice Standards. <http://www.nadcp.org/sites/default/files/nadcp/AdultDrugCourtBestPracticeStandards.pdf>

²⁰ It should be noted that there will be some exclusions for jurisdictional reasons, such as a court not having statutory jurisdiction over a case type. COSCA is not addressing these automatic exclusions.

law prohibits the inclusion of individuals charged with or who have a history of violent offenses in courts funded with federal funds under the Drug Court Discretionary Grant program.²¹ Consistent with the federal law provision, many states include the exclusion in enabling statutes.²² However, as previously discussed, problem-solving courts can have a greater impact on individuals charged with higher level offenses. Limiting prosecutorial and judicial discretion may not lead to the best interest of justice and should be avoided. Therefore, ***COSCA recommends that the federal law automatic exclusion and other state law or practice automatic exclusions be eliminated.***

Increasing Capacity

Despite the research showing the success of various problem-solving courts in reducing recidivism and reliance on drug and alcohol for participants,²³ one study estimated that there are just over 55,000 slots available for participants in drug courts.²⁴ The same study found that, with the current drug court eligibility criteria, the drug-court eligible population of arrestees was twice that size. This mismatch between problem-solving court capacity and the arrestee population in need continues today. According to the Federal Bureau of Investigation, there were over 1.5 million arrests for drug abuse violations and almost 1.2 million arrests for driving under the influence of alcohol.²⁵ Thus, the gap between available slots for problem-solving courts and the population

who would benefit from the intensive treatment and monitoring of problem-solving courts is enormous. ***COSCA urges states to expand problem-solving courts to serve all high-risk, high-needs offenders who meet eligibility criteria for problem-solving courts.***

Following this recommendation will require states and territories and each court system to evaluate the costs and benefits of such an approach. The administrative costs of operating a problem-solving court can range from \$1,500 to \$10,000 per participant, with the average cost around \$4,000.²⁶ State court systems are insufficiently funded to handle the resources needed to fully expand access to the modalities involved in problem-solving courts.

At the same time, studies have consistently shown the cost-savings to the overall justice system and society at large.²⁷ Increasing the population in drug courts to its estimated maximum eligible population would yield a cost benefit to society of \$1.17 billion dollars. However, rarely are these cost-savings arising from the problem-solving courts reinvested in the judiciary, making it difficult to fund existing courts fully or expand the courts. Additionally, several states have reduced the budgets of state courts to the point where the judiciary is faced with choosing between maintaining its constitutionally mandated functions and continuing problem-solving courts.²⁸

²¹ 42 U.S.C.A. § 3797u-1

²² Texas Government Code § 123.002; S.C. Code Ann § 16-1-130

²³ Rossman, S.B., Roman, J.K., Zweig, J.M., Rempel, M., Lindquist, C.H. *The Multi-State Adult Drug Court Evaluation*. Urban Institute Justice Policy Center (2011).

²⁴ Bhati, A.S., Roman, J.K., & Chalfin, A. *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*. Urban Institute (2008)

²⁵ Federal Bureau of Investigation. *Crime in the United States 2013*. <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/persons->

[arrested/persons-arrested](#) (Last accessed on February 27, 2015).

²⁶ Bhati, A.S., Roman, J.K., & Chalfin, A. *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*. Urban Institute (2008)

²⁷ Bhati, A.S., Roman, J.K., & Chalfin, A. *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*. Urban Institute (2008) (showing a savings of \$2.21 for every \$1 in costs – net of \$624 million). Aos et al (2005) (\$2.83 for every \$1)

²⁸ Pinkham, Paul. “Drug Court Victim of Budget Ax.” *The Florida Times-Union* (2008, May 22). Retrieved from <http://jacksonville.com/tu->

The expansion of Medicaid and introduction of the health insurance exchanges pursuant to the Affordable Care Act have provided a new funding source for individuals in need of mental health or substance abuse treatment.²⁹ When available and appropriately accessed, this new funding source will assist in providing the needed treatment in problem-solving courts, which is often a large portion of the cost of operating them.

While funding is a key component in the consideration of expanding the problem-solving concept to the masses, it is critical to remember that the funding for the problem-solving courts is designed to serve a population in need appropriately. Serving this population is as critical to court operations as the court's more traditional role of adjudication, but courts should not have to make a choice between the more traditional role and its newer problem-solving role.

Ensuring System Focus

As with many successful changes in the court system, problem-solving courts began as an innovative idea in a local jurisdiction. Many other

local jurisdictions began replicating the model and these innovations spread at the urging of passionate judges, court staff, prosecutors, defense attorneys and probation staff. Few of the early courts were created based upon the encouragement of the state court system. This has led many states to lag behind in developing a statewide system focus for problem-solving courts. The lack of system focus has been an issue of concern for the Conference of Chief Justices and COSCA for years.³⁰ In ten states and the District of Columbia the statewide problem-solving court coordinator is not employed by the judicial branch.³¹ In order for the state courts to manage problem-solving courts effectively and to ensure that the courts deliver services in a strategic way across the state, there must be coordination of the problem-solving courts at the state level within the judicial branch. This is true whether or not the state is unified in its funding and whether or not there are state funds going directly to the problem-solving courts. *COSCA recommends that each state establish a problem-solving court coordinator at the state level and that the coordinator be employed within the judicial branch.*

Table 5. Key Responsibilities of Statewide Coordination of Problem-Solving Courts

Key Responsibilities of Statewide Coordination of Problem-Solving Courts ³²	
Evaluation	Resources
Dissemination of Information	Setting Standards
Influencing Criminal Justice Policy	

[online/stories/052208/met_281501219.shtml#.VVvywWp0wqM](http://online.stories/052208/met_281501219.shtml#.VVvywWp0wqM)

²⁹ Boozang, P., Bachrach, D., & Detty, A. *Coverage and Delivery of Adult Substance Abuse Services in Medicaid Managed Care*. Centers for Medicare and Medicaid Services. (2014).

³⁰ CCJ and COSCA passed Resolution 13: In Support of the National Drug Court Evaluation (2003); Resolution 3: Urging Federal Funding Entities to Allocate Drug Court Funds through the Highest Judicial Authority of States and Territories (2009); and Resolution 10: Strengthening the Relationship between the Conference of Chief Justices

and Conference of State Court Administrators and Problem-Solving Court Coordinators (2012).

³¹ The ten states are Hawaii, Illinois, Massachusetts, New Hampshire, Oklahoma, Oregon, Tennessee, Texas, Washington and Wyoming. Current State Drug Court Coordinators. National Association of Drug Court Professionals. <http://nadcp.org/learn/state-leaders/state-drug-court-coordinators/current-state-drug-court-coordinators> (Last accessed on February 27, 2015).

³² Wolf, R.V. *A New Way of Doing Business: A Conversation about the Statewide Coordination of Problem-Solving Courts*. Bureau of Justice Assistance. (2009).

Because so many of the problem-solving courts were the creation of passionate individuals in local jurisdictions, some have stated that the courts have a cult-like following. There is risk in some jurisdictions that the courts will struggle to thrive when that passionate champion is no longer present, such as when a leading problem-solving court judge retires. In some jurisdictions with problem-solving courts, other judges in the jurisdiction have not been involved in the creation or operation of the court and have no vested interest in the program. Funding of problem-solving courts has oftentimes not been part of the traditional court budget. To ensure that the problem-solving courts sustain their momentum in jurisdictions across our states and territories, the courts must become an institutionalized part of the judicial system in those local jurisdictions. To accomplish this, other judges and court staff should be included in the problem-solving court. Their involvement might be as simple as covering a problem-solving court docket when the regular judge or staff is unavailable or as in-depth as approving the problem-solving court policies and procedures at a full bench meeting. ***COSCA recommends that local jurisdictions with problem-solving courts create system buy-in through involvement of stakeholders broader than those regularly involved in the court.***

Defining Standards and Measures

With any movement originating at the local level, there is a tendency for some variation from the original model; however, when the model involves the judicial system and the rights of

individuals in the courts, it is imperative that there be standards applied to ensure adherence to an effective problem-solving court model. Without standards, problem-solving courts that are not following best practices will call into question those that are doing well and will tend to weaken the position of the problem-solving courts overall.³³

The National Association of Drug Court Professionals began to provide direction to the problem-solving court community in the late 1990s with the publication of the *Ten Key Components*.³⁴ Subsequent problem-solving court models have replicated the “key components” for program planning and implementation.³⁵ While these components provide basic guidance to problem-solving courts, research on the problem-solving courts has led to the establishment of evidence-based best practice standards. Most recently, the National Association of Drug Court Professionals has published the *Adult Drug Court Best Practice Standards: Volume 1* and *Adult Drug Court Best Practice Standards: Volume II*.³⁶ The first volume describes effective practices in terms of target population; serving historically disadvantaged groups; the roles and responsibilities of the judge; incentives, sanctions and therapeutic adjustments; and substance abuse treatment. The second volume describes complementary treatment and social services; drug and alcohol testing; the multidisciplinary team; census and caseload standards; and monitoring and evaluation practices. Courts have long recognized the benefits of establishing standards and measuring court

³³ National Association of Drug Court Professionals. *Adult Drug Court Best Practice Standards: Volume 1*. (2013).

³⁴ National Association of Drug Court Professionals. *Defining Drug Courts: The Key Components*. (1997; reprinted in 2004).

³⁵ Bureau of Justice Assistance. *Juvenile Drug Courts: Strategies in Practice*. (2003); National Association of Drug Court Professionals. *The Ten Guiding Principles of DWI Courts*. (unk.); Thompson, M., Osher, F., & Tomasini-Joshi, D. *Improving Responses to People with Mental Illness: The Essential Elements of a Mental Health Court*. Council of State Governments Justice Center.

(2007); National Association of Drug Court Professionals. *The Ten Key Components of Veterans Treatment Court*. (2008); Office of Juvenile Justice and Delinquency Prevention. *Guidance to States: Recommendations for Developing Family Drug Court Guidelines*. (2013); Tribal Law and Policy Institute. *Tribal Healing to Wellness Courts: The Key Components, 2nd Ed.* (2014).

³⁶ National Association of Drug Court Professionals. *Adult Drug Court Best Practice Standards: Volume 1*. (2013). National Association of Drug Court Professionals. *Adult Drug Court Best Practice Standards: Volume II*. (2015).

performance.³⁷ Several states have extended the concept of standards and measuring of court performance to problem-solving courts by setting statewide problem-solving court standards and certifying courts based upon those standards.³⁸ Other states have adopted best practices, guidelines, recommendations and rules.³⁹ Because the establishment of best practice standards and certification at the state level provide problem-solving courts with guidance to ensure statewide fidelity to the problem-solving court model, ***COSCA recommends that each state court adopt a set of guidelines or standards for each problem-solving court type and certify courts based upon adherence to the adopted guidelines or standards.***

Achieving Program Integrity

While there has been a tremendous amount of research conducted on problem-solving courts, much of the early research has been criticized due to its design, weakening the case for problem-solving courts.⁴⁰

³⁷ The Trial Court Performance Standards and Measurement System was initiated in 1987 and released in 1995. The CourtTools performance measures were released in 2005. COSCA and the Conference of Chief Justices have adopted several resolutions in support of performance standards and measures, including Resolution 14: In Support of Measuring Court Performance (2005) and Resolution 13: In Support of the Model Time Standards for State Trial Courts (2011).

³⁸ Supreme Court of Pennsylvania. *Accreditation Program: Adult Drug and DUI Courts*. (2011); Judicial Council of Georgia. *Standards for Accountability Courts*. (2013); Rules of Superintendence for the Courts of Ohio. Rule 36.20-36.28 and Appendix I; Judicial Conference of Indiana. *Problem-Solving Court Rules*. (2013).

³⁹ National Center for State Courts. *Statewide Efforts for Problem-Solving Courts*. (2015). The National Center for State Courts has compiled a reference table of current statewide efforts at <http://www.ncsc.org/%7E/media/Files/WORKBOOKS/Services%20and%20Experts/Areas%20of%20expertise/Problem%20Solving%20Courts/Statewide%20Efforts%20in%20PSCs%202015%20web%20version.ashx>.

Criticism of problem-solving court evaluation has focused on four main areas⁴¹

- The lack of statewide data collection capability and infrastructure;
- The lack of a nationally accepted definition for problem-solving court recidivism or a method of how to measure the recidivism;
- The short post-program tracking period of participants who were in a problem-solving court program; and
- The lack of random assignment in problem-solving courts.

Having access to sufficient statewide and program-level data is critical to justifying the continuation of the problem-solving courts and additional investment in their expansion. Conducting appropriate and on-going evaluation allowing for cross-program comparison is critical to making program improvements that correlate with better outcomes and ensuring that the problem-solving court movement continues to be successful in its delivery of services.⁴² This type of research requires sufficient funding and data collection infrastructure dedicated for that purpose.

[lem%20Solving%20Courts/Statewide%20Efforts%20in%20PSCs%202015%20web%20version.ashx](http://www.ncsc.org/%7E/media/Files/WORKBOOKS/Services%20and%20Experts/Areas%20of%20expertise/Problem%20Solving%20Courts/Statewide%20Efforts%20in%20PSCs%202015%20web%20version.ashx).

⁴⁰ The United States General Accountability Office reviewed 117 evaluations of adult drug courts, finding only 27 that were methodologically sound. Only five of those studies used random assignment. (United States General Accountability Office. *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Other Mixed Results for Other Outcomes*. 2005).

⁴¹ Center for Court Innovation. *Recidivism 101: Evaluating the Impact of Your Drug Court*. (2005).

⁴² A May 2015 report issued by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention noted the lack of effectiveness, in fact counterproductive outcomes, of the majority of the nine sites studied due to the juvenile drug courts “not adhering to evidence-based practices.” (Blair, L., Sullivan, C., Latessa, E., Sullivan, C. *Juvenile Drug Courts: A Process, Outcome and Impact Evaluation*. Office of Juvenile Justice and Delinquency Prevention. 2015. Last referenced at <http://www.ojjdp.gov/pubs/248406.pdf> on June 21, 2015.)

COSCA recommends that states dedicate sufficient resources to collect statewide data and to conduct proper on-going evaluation of problem-solving courts in the state. In addition, COSCA recommends that the CCJ/COSCA Problem-Solving Court Committee work with interested stakeholder groups to establish a uniform recidivism definition and post-program follow-up period for use in problem-solving court evaluations.

Conclusion and Recommendations

Born as an innovation in the late 1980s, problem-solving courts serve an important role in today's judicial system. Thousands of people who struggle with addiction have benefitted or will benefit from the problem-solving courts and their dedicated staff. Despite the tremendous success to date as measured by the expansion of programs and the documentation of impressive success rates, COSCA recognizes the need for a renewed focus on the courts and recommends that each state court system and its leaders

- Adopt a definition of a problem-solving court based upon six core elements;
- Review existing "problem-solving courts" in their jurisdiction to categorize them properly;
- Ensure that problem-solving courts target their efforts to high-risk and high-need participants;
- Require that all potential participants for problem-solving courts be assessed using a validated assessment risk and need assessment tool(s);
- Expand problem-solving courts to serve all high-risk, high-needs offenders who meet eligibility criteria for problem-solving courts;
- Establish a problem-solving court coordinator at the state level employed within the judicial branch;
- Require that local jurisdictions with problem-solving courts create system buy-in through involvement of stakeholders broader than those regularly involved in the court;

- Adopt a set of best practice standards for each problem-solving court type and certify courts based upon adherence to the adopted standards; and
- Seek and dedicate sufficient resources to collect statewide data and to conduct proper evaluation of problem-solving courts in the state.

In addition to the recommendations for state courts and its leaders, COSCA recommends that

- The federal law automatic exclusion and other state laws or practice automatic exclusions be eliminated; and
- The CCJ/COSCA Problem-Solving Court Committee work with interested stakeholder groups to establish a uniform recidivism definition and post-program follow-up period for use in problem-solving court evaluations.