

**AMERICAN BAR ASSOCIATION  
COALITION FOR JUSTICE  
COMMITTEE ON STATE JUSTICE INITIATIVES**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

RESOLVED, that the American Bar Association supports:

- 1) the use of the term “problem-solving courts” to refer to specialized initiatives such as drug courts, community courts and mental health courts, 5 as well as programs such as unified family courts;
- 2) the continued development of problem-solving courts to improve court processes and court outcomes for litigants, victims and communities;
- 3) the broad integration of the principles and methods employed by problem-solving courts into the daily administration of justice while preserving the 12 rule of law and traditional due process protections.

FURTHER RESOLVED, that the ABA encourages law schools, state, local and territorial bar associations, and other organizations to engage in education and training about the principles and methods employed by problem-solving courts.

## REPORT

### Background

Over the past decade, hundreds of experimental courts have sprung up across the country, testing new solutions to problems like addiction, domestic violence, child neglect and quality-of-life crime. These “problem-solving courts” include specialized community courts that seek to improve the quality of life in neighborhoods struggling with crime and disorder, mental health courts that link mentally-ill defendants to treatment instead of incarceration, drug treatment courts that seek to stop the revolving door of drugs, crime and jail, and domestic violence courts that emphasize victim safety and defendant accountability. While each of these initiatives targets a different problem, they all use the authority of courts in new ways -- to improve outcomes for victims, communities and defendants. And in the process, they all seek to shift the focus of courts, from simply processing cases to actively solving the problems that bring people to court.

All of this amounts to a significant shift in the traditional role of judges and the traditional format of legal proceedings. In practice, prosecutors and defenders in problem-solving courts work together to encourage defendants to succeed in drug treatment and judges become actively involved in their communities, meeting with residents and brokering relationships with local service providers. Perhaps most importantly, citizens are welcomed into the process, participating in advisory boards, organizing community service projects and meeting face to face with offenders to explain the impact of their crimes on neighborhoods.

Numerous factors have combined to drive the interest in and viability of problem-solving courts. Most often cited are escalating caseloads in state courts and a sense of frustration with “revolving door justice” - the perception, both among the public and those who operate the system, that courts recycle the same defendants through the system over and over again. As New York State Chief Judge Judith S. Kaye has written: “In many of today’s cases, the traditional approach yields unsatisfying results. The addict arrested for drug dealing is adjudicated, does time, then goes right back to dealing on the street. The battered wife obtains a protective order, goes home and is beaten again. Every legal right of the litigants is protected, all procedures are followed, yet we aren’t making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts.”

Many observers trace the story of problem-solving innovation back to the opening of the first drug court in Dade County, Florida in 1989 and the launch of the first community court in New York City in 1993, although prior antecedents can be found in the rise of problem-oriented policing in the 1970s and community mediation in the 1960s. Since the early 1990s, problem-solving justice has moved from a set of discrete experiments to an increasingly standard feature of the judicial landscape around the country. There are currently more than 500 problem-solving courts in operation. Every state has at least one. Several forces have driven this rapid proliferation. Early research has been positive – evaluations of drug courts and community courts have shown that they have helped cut crime and improve sobriety among offenders.

Government funders, both local and national, have taken note of these results. For example, Congress has authorized the U.S. Department of Justice to make grants to promote drug courts and mental health courts. In the most recent fiscal year alone, the Justice Department distributed more than \$50 million in drug court grants.

But perhaps the clearest sign that problem-solving justice has indeed arrived has been the growing embrace of this new approach by state court chief justices. Recent months have seen problem-solving courts endorsed in the annual state of the judiciary addresses of five state chief justices. More importantly, in the summer of 2000 the National Conference of Chief Justices and the Conference of State Court Administrators unanimously approved a rare joint resolution encouraging "the broad integration, over the next decade, of the principles and methods employed in problem solving courts into the administration of justice."

What is a Problem-Solving Court?

Problem-solving courts have proliferated without centralized planning or leadership; there was no presidential call to arms or breakthrough work of scholarship that summoned these specialized courts into being. Although they have developed on an ad-hoc basis, problem-solving courts do share some unifying principles, the most basic of which is their desire to look outside the traditional framework of legal proceedings for solutions to the problems presented to the court.

Greg Berman and John Feinblatt, their article "Problem-Solving Courts: A Brief Primer," define the hallmarks of problem-solving courts as follows:

**Court Outcomes.** In crafting sentences and conditions of release, judges in problem-solving courts seek to solve the underlying problems that are fueling their caseloads. For example, a drug-addicted shoplifter at a community court might receive a sanction that responds to both the offense (several days of work on a community restitution crew) and his substance abuse problem (a referral to a drug treatment provider). As New York State Chief Judge Judith S. Kaye has written, "...outcomes – not just process and precedents – matter. Protecting the rights of an addicted mother is important. So is protecting her children and getting her off drugs."

**Judicial Authority.** Problem-solving courts rely upon the active use of judicial authority, particularly post-adjudication, to solve problems and to change the behavior of litigants. Unlike traditional proceedings where probation departments and treatment programs might assume post-adjudication responsibility for supervising an offender's compliance with sentencing, judges at problem-solving courts stay involved with each case throughout the post-adjudication process. Drug court judges, for example, closely supervise the performance of offenders in drug treatment, requiring them to return to court frequently for urine testing and courtroom progress reports.

**Collaboration.** Problem-solving courts employ a collaborative approach, relying on both government and non-profit partners, such as criminal justice agencies, social service providers, community groups and others, to help achieve their goals. For example, many domestic violence courts have developed partnerships with batterers' programs and probation departments to help improve the monitoring of defendants.

**Non-Traditional Roles.** Some problem-solving courts have altered the dynamics of the courtroom, including, at times, certain features of the adversarial process. For example in drug courts, judges and attorneys on both sides of the aisle work together to craft systems of sanctions and rewards for offenders in drug treatment. By using the institution's authority and prestige to coordinate the work of other agencies, problem-solving courts may engage judges in new roles outside of the courtroom as well.

**System Change.** In addition to re-examining individual case outcomes, problem-solving courts also seek to re-engineer how government systems respond to problems like addiction, mental illness and child neglect. This means promoting reform outside of the courthouse as well as within the courthouse. For example, family treatment courts that handle cases of child neglect have encouraged local child welfare agencies to adopt new staffing patterns and improve case management practices.

## Results

Rigorous, independent evaluations of the impacts of problem-solving courts are just starting to emerge, but the early results have been promising. Drug courts, which have one of the longest track records, have achieved solid results with regard to keeping offenders in treatment, reducing drug use and recidivism and saving jail and prison costs.

The most authoritative review of drug courts is a meta-analysis by Columbia University's National Center on Addiction and Substance Abuse (CASA) that looked at 59 independent evaluations covering 48 drug courts throughout the country. Among other findings, this study revealed that drug court participants are far more likely to successfully complete mandated substance abuse treatment than comparable participants who seek help on a voluntary basis. One-year treatment retention rates are 60 percent for drug courts, compared to 10 to 30 percent among voluntary programs. In addition, the CASA analysis found that defendant drug use and recidivism are substantially reduced during the period of drug court participation. According to the CASA study, drug court participants have lower *post-program* re-arrest rates as well.

In addition to these impacts on participants, the CASA study found that drug courts generated significant cost savings, even after accounting for administrative costs. A study of the Multnomah County, Oregon, drug court, for example, found that over a two-year period, the court had achieved \$2.5 million in criminal justice cost savings.

The most detailed evaluation of a community court is the National Center for State Courts' assessment of the Midtown Community Court published in 2000. The National Center's team of researchers found that the Court had helped reduce low-level crime in the neighborhood: prostitution arrests dropped 56 percent and illegal vending dropped 24 percent. The compliance rates for community service at Midtown were the highest in New York City – an improvement of 50 percent. Supervised offenders performing community service contributed more than \$175,000 worth of labor to the local community each year.

Just as important, preliminary findings from a telephone survey of 500 area residents suggest that the Midtown experiment had made an impression in the court of public opinion. Sixty-four percent of the respondents said that they were willing to pay additional taxes for a community court. And according to evaluators, these results have been achieved without sacrificing efficiency. In fact, by keeping defendants and police officers in the neighborhood instead of transporting them to the downtown courthouse, the Midtown Court cut the time between arrest and arraignment in 1994 by 45 percent.

Much less is known about other types of problem-solving courts. The self-reported results from domestic violence courts, mental health courts, family treatment courts and other new experiments is, perhaps predictably, overwhelmingly positive. For example, domestic violence courts report that they have been able to reduce case dismissal rates and probation violation rates for offenders. And family treatment courts report significant reductions in the length of foster care stays for children neglected by drug-abusing parents. It remains to be seen whether these results stand up to the rigors of independent evaluation, but in the interim it is fair to say that the early returns on problem-solving courts have been encouraging.

#### Tensions and Concerns

To date, the most consistent concerns about problem-solving courts have focused on whether their emphasis on improving case outcomes has come at the expense of the rights of defendants. Some have claimed that defense attorneys in problem-solving courts are forced to abdicate their role as forceful advocates on behalf of their clients. As evidence of this claim, critics point to the team approach of drug courts, where all of the courtroom players work together to support defendants' participation in treatment. Other concerns include whether the courts are fundamentally fair, whether they alter the rights and protections of criminal courts and whether problem-solving courts unduly coerce defendants into treatment and other alternative sanctions.

In response, advocates of problem-solving have argued that adversarialism is, in fact, alive and well in problem-solving courts. They point to the fact that throughout the adjudication process – up until a defendant decides, by virtue of pleading to reduced charges, to enter treatment – prosecutors and defenders in problem-solving courts typically relate to one another as they always have: as adversaries. In addition to contesting the merits of each case, advocates in drug

courts also argue about eligibility criteria, the length of treatment sentences and appropriate treatment modalities.

In general, what's different about problem-solving courts are the activities that take place after adjudication, as judges and attorneys become engaged in the ongoing monitoring of defendants instead of leaving this job to probation departments or community-based organizations. As John Goldkamp of Temple University has observed, "[g]enerally, adversarial procedures are employed at the screening and admission stage and at the conclusion of drug court, when participants are terminated and face legal consequences or graduate. During the drug court process, however, formal adversarial rules generally do not apply."

As this formulation makes plain, by and large, problem-solving courts seem to emphasize traditional due process protections during the adjudication phase of a case and the achievement of tangible, constructive outcomes post-adjudication. In doing so, problem-solving courts have sought to balance fairness and effectiveness, the protection of individual rights and the preservation of public order.

### **Conclusion**

The development of problem-solving courts is consistent with the American Bar Association's long-standing support for and interest in building effective coalitions between courts and communities, and increasing public trust and confidence in the justice system. Furthermore, the innovations pioneered by problem-solving courts not only improve the way courts do business but raise the potential for professional satisfaction among prosecutors, defenders and judges.

If problem-solving courts are to reach their full potential, they need support. Resources, both financial and intellectual, are necessary to develop new problem-solving experiments; train practitioners in the principles and methods of problem-solving courts; continue to evaluate the effectiveness and fairness of problem-solving courts; and help identify and disseminate best practices in the field.

Creating new courts, pursuing on-going innovation and institutionalizing the best practices of problem-solving courts are not insignificant challenges, to be sure. But given the tangible results that the first generation of problem-solving courts has achieved, these are challenges well worth pursuing.

Respectfully submitted,

John J. Curtin, Jr.  
Chair, Coalition for Justice

August 2001

**GENERAL INFORMATION FORM**

Submitting Entity: Coalition for Justice

Submitted By: John J. Curtin, Jr., Chair

1. Summary of Recommendation(s).

This recommendation urges the American Bar Association to support the continued development of problem-solving courts, which are specialized courts such as drug courts, community courts, domestic violence courts and mental health courts, as well as programs such as unified family courts. It also urges that the principles of these courts be incorporated into the daily administration of justice and that education about problem-solving courts be promoted.

2. Approval by Submitting Entity.

The Coalition for Justice and the Committee on State Justice Initiatives approved the recommendation on February 18, 2001, at the ABA Midyear Meeting.

3. Has this or a similar recommendation been submitted to the House or Board previously?  
No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

Supports the ABA's policy on Diversionary Drug Court Programs and policy on Unified Children and Family Courts.

5. What urgency exists which requires action at this meeting of the House?

The growth of problem-solving courts is rapidly rising throughout the country. Policy supporting these courts would help to guide in their development and administration. As pressures mount on courts to provide adequate attention to the problems of litigants, support for problem-solving courts offers new alternatives for court systems attempting to address the myriad issues of administering justice.

6. Status of Legislation. (If applicable.)

Not applicable.

7. Cost to the Association. (Both direct and indirect costs.)  
This recommendation represents no costs to the Association.
8. Disclosure of Interest. (If applicable.)  
Not applicable.
9. Referrals.  
A copy of the recommendation and report has been circulated to the ABA Judicial Division, Section of Individual Rights and Responsibilities, Criminal Law Section, Family Law Section, Standing Committee on Substance Abuse, and Standing Committee on Judicial Independence, as well as the New York State Bar Association. The recommendation and report were also circulated to the staff of the Center for Court Innovation.
10. Contact Person. (Prior to the meeting.)  
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## EXECUTIVE SUMMARY

### 1. Summary of the recommendation.

The Coalition for Justice recommends that the American Bar Association support the continued development of problem-solving courts, which are specialized courts such as drug courts, community courts, domestic violence courts, and mental health courts. It also urges that the principles of these courts be incorporated into the daily administration of justice and that education about problem-solving courts be promoted.

### 2. Summary of the issue which the recommendation addresses.

Over the past decade, hundreds of experimental courts have sprung up across the country, testing new solutions to problems like addiction, domestic violence, child neglect and quality-of-life crime. These “problem-solving courts” include specialized community courts that seek to improve the quality of life in neighborhoods struggling with crime and disorder, mental health courts that link mentally-ill defendants to treatment instead of incarceration, drug treatment courts that seek to stop the revolving door of drugs, crime and jail, and domestic violence courts that emphasize victim safety and defendant accountability. While each of these initiatives targets a different problem, they all use the authority of courts in new ways -- to improve outcomes for victims, communities and defendants. And in the process, they all seek to shift the focus of courts, from simply processing cases to actively solving the problems that bring people to court.

### 3. Explanation of how the proposed policy position will address the issue.

The growth of problem-solving courts is rapidly rising throughout the country. Policy supporting these courts would help to guide in their development and administration. As pressures mount on courts to provide adequate attention to the problems of litigants, support for problem-solving courts offers new alternatives for court systems attempting to address the myriad issues of administering justice.

### 4. Summary of any minority views or opposition which have been identified.

No opposition to this recommendation has been identified.