# PROBLEM SOLVING COURTS
# INTRODUCTION

Definition of Problem Solving Courts

Problem Solving courts, (also known as therapeutic courts, drug courts, wellness courts or specialty courts) have developed nationally and in Utah to deal with individuals in the justice system using an alternative approach to justice.

There are certain components that are essential to Problem Solving projects. In general, what's different about these courts are the activities that take place, as judges and attorneys become engaged in the ongoing monitoring of defendants. Judges are actively involved in the process, including monitoring defendants, developing relationships within the community and working closely with service providers.

Most successful problem solving courts are connected in a direct way to treatment. The underlying goal is to get at the root of the problem rather than watch helplessly as the same individuals return again and again to the same court to face the same charges, through the so-called "revolving door". Collaboration among numerous individuals and entities is perhaps the most important element of a successful and enduring Problem Solving court.

All Problem Solving projects are based to some extent on the drug court model developed in the late 1980's. The drug court model has ten key components,[1] which are listed below. Other types of therapeutic projects may not have every one of these characteristics, but they will substantially follow this model.

- **Key Component #1**

  Drug Courts integrate alcohol and other drug treatment (substance abuse) services with justice system case processing. The mission of drug courts is to stop the abuse of alcohol and other drugs and related criminal activity. Drug courts promote recovery through a coordinated response to offenders dependent on alcohol and other drugs. Realization of these goals requires a team approach, including cooperation and collaboration of the judges, prosecutors, defense counsel, probation authorities, other corrections personnel, law enforcements, pretrial services agencies, evaluators, an array of local service providers, and the greater community.

- **Key Component #2**

  Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights. To facilitate an offender's progress in treatment, the prosecutor and defense counsel must shed their traditional adversarial courtroom relationship and work together as a team. Once an offender is accepted into the drug court program, the team's focus is on the offender's recovery and law-abiding behavior-not on the merits of the pending case.

- **Key Component #3**

  Eligible participants are identified early and promptly placed in the drug court program. Judicial action, taken promptly after arrest, capitalizes on the crisis nature of the arrest and booking process. Rapid and effective action also increases public confidence in the criminal justice system.

- **Key Component #4**

  Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services. While primarily concerned with criminal activity and alcohol and drug use, the drug court team also needs to consider co-occurring problems such as mental illness, primary medical problems, unemployment, domestic problems, and educational deficits. The origins and patterns of alcohol and drug problems are complex and unique to each individual. They are influenced by a variety of accumulated social and cultural experiences. If treatment is to be effective, it must also call on the resources of primary health and mental health care and make use of social and other support services.

- **Key Component #5**
  Abstinence is monitored by frequent alcohol and other drug testing. Frequent court-ordered alcohol and drug testing is essential. An accurate testing program is the most objective and efficient way to establish a framework for accountability and to gauge each offender's progress. Alcohol and drug testing is central to the drug court's monitoring of offender compliance.

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[1] Adapted from *Defining Drug Courts*: The Key Components (NASCP, 1997)

- **Key Component #6**

  A coordinated strategy governs drug court responses to participant's compliance. A coordinated strategy can provide a common operating plan for treatment providers and other drug court personnel. Drug courts must reward cooperation as well as respond to noncompliance. An offender's progress through the drug court experience is measured by his or her compliance with the treatment regimen. Cessation of drug use is the ultimate goal of drug court treatment. There is value in recognizing incremental progress toward the goal, such as showing up at all required court appearances, regularly arriving at the treatment program on time, attending and fully participating in the treatment sessions, cooperating with treatment staff and submitting to regular testing.

- **Key Component #7**

  Ongoing judicial interaction with each drug court participant is essential. The judge is the leader of the drug court team. The structure of the drug court allows for early and frequent judicial intervention. A drug court judge must be prepared to encourage appropriate behavior and to discourage and address inappropriate behavior. The drug court judge needs to be knowledgeable about treatment method and their limitations while also recognizing that he is not the expert and deferring to the treatment professional where appropriate. Regular status hearings are used to monitor offender performance.

- **Key Component #8**

  Monitoring and evaluation measure the achievement of program goals and gauge effectiveness. Fundamental to the effective operation drug courts are coordinated management, monitoring, and evaluation systems. The design and operation of an effective drug court program result from thorough initial planning, clearly defined program goals, and inherent flexibility to make modifications as necessary. Management and monitoring system provide timely and accurate information about program operations to the drug court's managers, enabling them to keep the program on course, identify developing problems, and make appropriate procedural changes.

- **Key Component #9**

  Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations. All drug court staff and leaders should be involved in education and training. Education and training programs help maintain a high professionalism, provide a forum for solidifying relationships among criminal justice and alcohol and drug treatment personnel, and promote a spirit of commitment and collaboration. Periodic education and training ensures the drug court's goals and objectives, as well as policies and procedures, are understood not only by the drug court leaders but also by those indirectly involved in the program.

- **Key Component #10**

  Forging partnerships among drug courts, public agencies, and community-based organizations generate local support and enhances drug court effectiveness. The drug court is a partnership among organizations. Because of its unique position in the criminal justice system, a drug court is especially well suited to develop coalitions among private community-based organizations, public criminal justice agencies, and alcohol and drug treatment delivery systems. Forming such coalitions expands the continuum of services available to drug court participants and informs the community about drug court concepts.

# How to Plan and Open a Problem Solving Court Project

**How does a problem solving court project become established?**

**Step 1. Initial exploration of a project concept.**
When a judge (or other person) has an interest in beginning a project that may be characterized as a problem solving court project, the judge should first determine if the scope and character of the project triggers the problem solving project review process. As a general rule:

A. Does the change in court process proposed by the judge only impact the conduct of proceedings within the judge's courtroom, without impacting the court calendar and workload of court staff, and without affecting the workload and resources of justice agencies (e.g. county attorney, public defender, probation or treatment services)? If the answer to this question is "yes" the judge does not need to initiate this review procedure to review the proposed change in court process.

B. Does the proposed change in court process impact the court calendar (in multi-judge locations) and/or the workload of court staff but not the workload or resources of justice agencies? If the answer to this question is "yes" the judge should discuss the plan with the presiding judge, who is responsible for workload allocation and calendaring decisions.

C. Does the proposed change impact the court calendar and/or workload of court staff and impact the workload or resources of justice agencies? If the answer is "yes" the judge should first discuss the plan with the presiding judge. Then, the judge should request a planning packet from the Administrative Office of the Courts (Rick Schwermer) which will contain:

   a. A definition/description of "problem solving court project," and

   b. The form "Application for Initial Project Planning Approval" for the judge to complete that requires some basic information about the judge's vision for the proposed project including the target population, motivating factors, scope of the problem and funding ideas.

   *NOTE:* Even if the proposed project does not completely meet the definition of a problem solving court, the presiding judge may still want the review process to be followed, if it is projected to have a significant impact on court system operations.

**Step 2. The "Application for Initial Project Planning Approval" is submitted.**
The interested judge submits this form (with comments by the TCE and presiding judge) to the AOC. Staff may schedule a meeting or teleconference

with the judge to discuss the proposal. The Management Committee of the Judicial Council then makes a recommendation to the Council as to whether the project should be approved to proceed, and if so, offers resources and possibly a mentor for the planning of the project.

**Step 3. Formal planning begins.**

If the Judicial Council approves the plan, the formal planning for the project commences.

The planning guide lists the standards to be met and guides the judge (and the working committee that is customarily formed to plan the project) through the steps towards meeting the standards.

*Note:* In some instances a grant may have already been received to hire a project manager who is tasked with planning the project and meeting the standards described in the planning guide. In all instances, the project manager works closely with the interested judge. The planning process may take several months or longer.

**Step 4. Submission of the Planning Document**

A planning document which addresses the requirements of the "Standards for the Development of Problem Solving Court Projects" is submitted to the AOC.

**Step 5. Judicial Council Review**

The Management Committee approves or disapproves the project moving forward as a pilot.

**Step 6. Pilot Project Begins**

The pilot moves forward with particular requirements relating to continuation standards, which include requirements for data collection and evaluation. The pilot will be for a 2-3 year period, with annual progress reports. At the end of the pilot period, the Management Committee will review the project's success and make a recommendation to the full Council about continuation.

# STANDARDS FOR THE DEVELOPMENT OF PROBLEM SOLVING COURT PROJECTS

The following are the standards that have been established for proposals for new Problem Solving court projects. A proposal for a new project should be submitted in writing to the Management Committee via the AOC. The Management Committee will make a recommendation and forward the proposal to the Judicial Council for consideration. The proposal should describe the planned project and discuss each of the standards below, in relation to the proposed plan.

These standards have been approved by the Judicial Council. Although they may seem initially to be complex, project plans that meet these standards will have an enhanced probability for success and continuing support. In the experience of both the Utah courts and other courts throughout the nation, a thorough planning process is essential.

Sometimes well-thought out proposals may not meet all of the standards listed below, because of the necessary phasing of the project. For example, the funding strategy may not be completely assured (perhaps because of pending grant applications) or all interagency agreements may not yet be in place. The Management Committee will still consider the proposal in such circumstances. However, in such cases, proposals should include an explanation of why one or more of the standards cannot currently be met.

**I. The plan must identify a target population with a common characteristic or characteristics that will have better outcomes if their court cases are handled in a problem solving setting.**

*The plan must identify the types of legal cases and/or common characteristics of litigants (for example, a specific class of offender, category of offense, geographic area, type of issues) that are not successfully handled by conventional court processes and in which improved tangible outcomes for litigants, victims, offenders and the public could be expected if handled in a problem solving court setting. Tangible outcomes include reduced recidivism, reduced stays in jail, in juvenile detention or in foster care for children, increased sobriety for addicts, family reunification, etc.*

*The plan should explain why a problem solving project (which customarily involves the ongoing monitoring of participants by a multidisciplinary criminal justice and treatment team) might be expected to improve tangible outcomes.*

**II. The plan must list all of the justice, community, treatment and service partners who will participate in the project, and their roles. The partners must agree to participate in the project, and to devote sufficient resources to the project, as appropriate.**

*Problem solving court projects employ a collaborative approach. As such, it is very important that all affected entities are fully informed about the project and*

*agree to participate. The plan should state how the proposed project was developed through a planning and implementation process that included all the key stakeholders. The roles and responsibilities of all the criminal justice, social service providers, non-profit partners, community groups, and others who will directly be participating in the project should be listed with considerable specificity.*

**III. The relationships and obligations among justice, community and treatment partners should be defined in interagency agreements.**

*Because the success of these types of projects depends upon the continuing cooperation of the affected justice partners (as described in II, above), these partners should be asked to execute interagency agreements that specify the roles and responsibilities of each entity. Because interagency agreements obligate the court system, they must be executed by the appropriate TCE and State Level Court Administrator.*

**IV. The plan must specify the staffing model for the project (i.e., the individual positions within the court and other affected entities which will be devoted, in whole or in part, to support the project.) If the staffing proposes new positions, a description of the duties of the positions and the funding source for the new positions must be provided.**

*Problem solving court projects consume more judicial and court staff resources than the traditional model initially but with reduced recidivism there may be a long term benefit. The plan should list the support requirements and a court team staffing model for the project (i.e. the individual positions, in whole or in part, that will be devoted to the project, both within the court system and within collaborating entities). The roles and responsibilities of each contributing individual should be described. If the staffing model includes new positions, a position description and funding source for each new position should be included. The plan should describe the physical location for each individual, and if court space is being proposed for use, the TCE must approve the plan.*

**V. The plan must include calendaring and case assignment protocols that are approved by the presiding judge.**

*Problem solving court projects rely on the active use of judicial monitoring and authority coupled with treatment to solve underlying and complex behavioral and social problems. This active judicial monitoring usually requires the scheduling of additional and more frequent court hearings. Especially in multi-judge locations, these additional hearings will affect calendaring practices. The plan should include a proposal for calendaring and case assignment protocols that take into consideration the overall needs of the court to expeditiously process all cases that come before it. The plan must be approved by the presiding judge.*

VI. **The plan must develop a system for early identification and prompt placement of eligible participants. The plan must explain how individuals will be screened and assessed in anticipation of their possible acceptance into the project. The plan must specify how these screenings and assessments will be funded.**

*It is desirable that participants be advised of available problem solving court options, and be assessed to determine if they are appropriate for participation in these options, at a very early stage of the court case. The plan should explain how possible participants are initially identified, and how they will be screened and assessed for placement in the program and for treatment. The plan should explain how the participant will be linked to treatment and other services, and how the services will be funded. (See VII, below.)*

VII. **The plan must identify treatment services and any other essential services (e.g. drug testing) that will be integral to the court project. The plan must specify how these treatment services will be obtained, provided to the participants and funded. The plan must specify how and with what frequency information and reports will be transmitted from the service provider to the court and other team members.**

*Treatment resources are often difficult to obtain. Problem solving projects work closely with treatment providers. An appropriate treatment provider (or providers) must be identified and must agree to provide services on terms acceptable to the court. Typically other community services are also integral to the project, and these must also be identified. The plan must explain how participants will be linked to treatment and other services, and how these services will be funded.*

VIII. **A funding strategy must be developed that will explain how the project will be financially supported. If the project will be supported initially by grant funds (or other temporary funding), the plan must also contain an exit strategy to either continue or end the project at the end of the grant funding period. If the program will be ended, the plan should also indicate what will happen to active program participants at that point.**

*The additional resources needed to support a problem solving project usually translate into the need for additional financial support for the court system and/or for other participating entities (such as the public defender, the county attorney, the municipal attorney and the probation office and treatment provider(s)). The plan must explain how this additional financial support will be obtained. Often, grant funds are available to "jump start" a project. However, grant funds are time-limited and usually only are available, for a period of one to three years. Therefore, if grant funds are a funding source, a continuation or exit plan must be included, which indicates how the program will be continued after grant funding is no longer available, or how the program will be ended when grant funds are no longer available.*

**IX. The plan must define how success will be measured, and include a specific evaluation plan to measure the success of the project. The evaluation plan will define the data elements and how those elements will be collected. The plan will specify when evaluation(s) will take place, which will be responsible for conducting the data analysis and evaluation report, and the source of funding for the evaluation(s).**

*A credible evaluation component is an essential element of every problem solving project. How will you know whether you've succeeded or not? Is the expenditure of extra time and funding for the project justified by the outcome? The plan must define the improved tangible outcome measures expected and include a specific evaluation plan to measure the stated outcomes. The plan should also specify the data elements that will be needed to conduct the evaluation, and how those data elements will be collected and compiled.*

*Information submitted should include a description of the information collected on behalf of the participants, the method of collection, by whom it will be collected and where it will be stored.*

**X. The plan should specify anticipated initial and ongoing training and cross-training needs of all staff (judges, attorneys, treatment providers and court staff) and include a plan for how such training will be obtained, accommodated and funded.**

*Because problem solving projects operate on principles that are somewhat different from the traditional court process, judges, court staff and justice partners often need to participate in training about problem solving principles and the operation of problem solving projects. Sometimes this training is available in-state (at judicial conferences, or from mentoring opportunities with experienced judges and staff) or at out-of-state conferences (such as trainings provided by the National Drug Court Institute). There are two major issues associated with such training, especially with regard to training opportunities that remove the judge or staff from the calendar: (1) what is the funding source for conference fees, travel, hotel and per diem costs?, and (2) can the court accommodate the absence of judges and staff for the trainings (with regard to calendaring, caseload needs, etc.) With regard to consideration (2) above, judges may want to discuss this issue with their presiding judges early in the planning process.*

**XI. The plan should attach an overall budget for the project.**

*Various funding elements have been discussed in the standards above. The budget (prepared on a standard form) brings these funding issues together and provides an overall financial snapshot of the project.*

**XII. The plan should attach any specialized court forms that will be needed for the project (or describe them with specificity, if the forms have not yet been finalized.)**

*The problem solving court process often requires different court forms. These forms should be included as an attachment to the plan. If these forms do not yet exist, the plan should describe which additional forms will be needed, why they are needed, and (to the extent available) should include the language of new provisions to be included. If the forms are not available, the plan should also indicate who is developing the forms, the timeline for forms development, and the current stage of development.*

# STANDARDS FOR THE CONTINUATION OF PROBLEM SOLVING COURT PROJECTS

## Annual Report

Each project is to prepare an annual report, due no later than one month after the anniversary of the court's opening.

Listed below in the information to be included in the report:

1. Statistics on the program participants. The number of opt ins and opt outs during the year, the number of participants discharged from the project, the number of graduates and the number of active participants at the end of the year.

2. Recidivism rate (convictions) of participants and graduates during the past year.

3. Statement about whether the partnering agencies continue their support and cooperation.

4. Summary of actual expenses incurred during the year with a breakdown by type. Also list the source of funding for all expenses.

5. List any specialized training any team members received.

6. Describe any challenges/ needs encountered during the reporting period and what the outcomes were.

7. A funding/ budget projection for the next year: a simple budget showing projected expenditures and sources of funding.

8. Statement from the presiding judge and TCE regarding support, concerns etc.

Note: the annual reports are sent to the AOC, which will forward them to the Management Committee.

## End of Pilot Report

Note: an "End of Pilot" report ("EOP" report) is also required. The EOP report should contain the same information as the annual report described above.