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Problem-Solving Courts in Illinois: Courtroom Innovation Favoring Adjustment Instead of Adjudication

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Recent Development

Problem-Solving Courts in Illinois: Courtroom Innovation Favoring Adjustment Instead of Adjudication

*Arielle Berens**

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I. INTRODUCING THE CRIMINALIZATION OF MENTAL ILLNESS AND CIRCUITOUS NATURE OF THE PRISON SYSTEM

Over the last few decades, the way the criminal justice system handles criminal offenders has shifted away from the standard, one-size-fits-all approach toward a new method of individualized alternatives that better serve offenders with specific needs.¹ This shift occurs pursuant to the awareness that the generalized approach to the criminal justice system has had little to no impact on rates of recidivism for adult offenders with mental illness and drug-involved offenses.² Without an impact on

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1. David DeMatteo et al., *Community-Based Alternatives for Justice-Involved Individuals with Severe Mental Illness: Diversion, Problem-Solving Courts, and Reentry*, J. CRIM. JUST. 64, 64 (2012).

2. *Id.*; PEW CHARITABLE TRS., ONE IN 100: BEHIND BARS IN AMERICA 2008, at 3 (Feb. 2008) http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/onein100pdf.pdf; see ROBERT V. WOLF, CTR. FOR COURT INNOVATION,

recidivism, the amount of incarcerated mentally ill individuals will likely increase because communities are often inundated with prisoners reentering society in need of treatment and services.³ And because more mentally ill individuals reside in jails, rather than hospitals, the United States has experienced an increase in jail administration costs due to the increased surveillance and medical services.⁴ Furthermore, if the population of incarcerated individuals decreased, they would need a corresponding increase in mental health and substance abuse services upon reentry to society; a void that must be filled.⁵

But new community-based interventions that provide specific care and assistance to mentally ill inmates can better address their needs and reduce their chances of offending again.⁶ This Article focuses on one specific community-based diversion program: problem-solving courts. Problem-solving courts are special courts that address the wide range of underlying risk factors for offenders in the criminal justice system and develop effective methods to correct these issues and behaviors.⁷ These courts utilize judicial authority, beyond deciding who goes to prison or not, through a problem-solving focus to create a team approach to decision making for treatment, social services, judicial monitoring, community outreach, and proactive efforts.⁸ They offer judges the unique ability to act as cheerleaders and social workers in addition to

CALIFORNIA'S COLLABORATIVE JUSTICE COURTS: BUILDING A PROBLEM-SOLVING JUDICIARY 3 (2005), http://www.courts.ca.gov/documents/California_Story.pdf ("One study of drug courts in California found that arrest rates for drug court participants—many of whom are chronic offenders—declined by 85 percent in the first two years after admission to drug court compared to the two years prior to entry. The same study also found that 70 percent of participants were employed upon completion of drug court compared to an employment rate of only 38 percent at entry."); Leslie Eaton & Leslie Kaufman, *In Problem-Solving Court, Judges Turn Therapist*, N.Y. TIMES (Apr. 26, 2005), <http://www.nytimes.com/2005/04/26/nyregion/in-problemsolving-court-judges-turn-therapist.html> ("Drug courts generally have a positive track record. A 2003 study of six New York drug courts found that participants were almost a third less likely to be rearrested than similar defendants in the regular criminal courts.").

3. Beverly D. Frazier et al., *The Impact of Prison Deinstitutionalization on Community Treatment Services*, HEALTH JUST. (Dec. 3, 2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5151559/pdf/40352_2015_Article_21.pdf ("As prisoners are released from incarceration, the community is often called upon to provide treatment and other services in order to reduce recidivism.").

4. Michael Ollove, *New Efforts to Keep the Mentally Ill Out of Jail*, PEW CHARITABLE TR. (May 19, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/5/19/new-efforts-to-keep-the-mentally-ill-out-of-jail>.

5. Frazier et al., *supra* note 3.

6. DeMatteo et al., *supra* note 1, at 65.

7. *Id.*

8. Eaton & Kaufman, *supra* note 2; Donald J. Farole et al., *Applying the Problem-Solving Model Outside of Problem-Solving Courts*, 89 JUDICATURE 40, 40–41 (July–Aug. 2005) <http://www.courtinnovation.org/sites/default/files/Applying%20Problem-SolvingModel.pdf>.

determining innocence or guilt.⁹

More than 100 problem-solving courts operate in Illinois.¹⁰ In November 2015, the Administrative Office of Illinois Courts and the Special Supreme Court Advisory Committee for Justice and Mental Health Planning developed statewide standards that provide accountability, uniformity, and administrative oversight over these courts and the certification and application process.¹¹ In December 2015, the Illinois Supreme Court adopted these statewide standards.¹² Although it is unclear if courts retain consistency when judges are given greater discretion, this Article argues that problem-solving courts provide several large potential benefits such as decreasing recidivism, reducing costs, and increasing public safety.¹³

II. INCARCERATING MENTALLY ILL INDIVIDUALS: CAUSING MORE HARM THAN GOOD?

The United States incarcerates more people than any country in the world; but the extensive prison time has failed to reduce the nation's rate of recidivism or overall crime rate.¹⁴ Evidence not only demonstrates that prison time is ineffective, but also recognizes the astonishing cost that the United States spends on its prison system.¹⁵ The ineffectiveness and the extreme cost of the American prison system stems, in part, from the high number of mentally ill inmates.

Pursuant to a principle that communities should treat mentally ill

9. Eaton & Kaufman, *supra* note 2.

10. *Problem-Solving Courts*, WELCOME TO ILL. CTS., http://www.illinoiscourts.gov/Probation/Problem-Solving_Courts/Problem-Solving_Courts.asp; Morgan Yingst, *Illinois Supreme Court Certifies 3 New Problem-Solving Courts*, ILL. ST. B. ASS'N (Nov. 22, 2016), <https://iln.isba.org/blog/2016/11/22/illinois-supreme-court-certifies-3-new-problem-solving-courts>.

11. *Problem-Solving Courts*, *supra* note 10.

12. Yingst, *supra* note 10.

13. DeMatteo et al., *supra* note 1, at 65–66; Eaton & Kaufman, *supra* note 2 (highlighting that “when judges have been given so much discretion in the way they handle cases, the results have been uneven, so uneven that they led to the imposition of strict sentencing guidelines in some courts as a way to restore consistency”); *Problem-Solving Courts: Smart Justice*, ECONOMIST (Feb. 11, 2016), <http://www.economist.com/news/britain/21692920-government-once-again-tries-make-courts-more-caring-smart-justice> [hereinafter *Smart Justice*].

14. DeMatteo et al., *supra* note 1, at 65–66; Aimee Picchi, *The High Price of Incarceration in America*, CBS MONEY WATCH (May 8, 2014, 5:33 AM), <http://www.cbsnews.com/news/the-high-price-of-americas-incarceration-80-billion/> (“Changes in how America deals with low-level crimes such as drug offenses mean the country now has an incarceration rate of 710 inmates per 100,000 residents . . .”).

15. Picchi, *supra* note 14 (specifying that “each U.S. resident is paying about \$260 per year on corrections, up from \$77 per person in 1980, thanks to the country's annual \$80 billion price tag for incarceration”).

individuals in a least-restrictive setting, the deinstitutionalization movement of the 1960s shut down many state-run psychiatric hospitals.¹⁶ Though well intentioned, the movement placed a heavy burden on local communities to support mentally ill individuals. Ultimately, communities lacked the monetary support necessary to meet the demand for mental health services; therefore, some mentally ill individuals lacked proper attention, medication, and support.¹⁷ The movement, therefore, merely shifted from institutionalizing mentally ill individuals in hospitals to institutionalizing these vulnerable individuals in jails.¹⁸

The number of psychiatric beds fell from 550,000 in 1960 to 40,000 in 2015.¹⁹ But the actual number of mentally ill individuals residing in the United States has not decreased consistent with the decreased rate of psychiatric beds. As of 2005 there were more than three times as many people with severe mental illness in jails and prisons than in hospitals.²⁰

The increased amount of imprisoned inmates with mental illness reflects the lack of education and research regarding mental illness and the need for more effective support systems.²¹ Individuals with mental illness have a greater arrest rate because many mental disorders exhibit unsettling symptoms, such as belligerence and verbal abuse.²² Police officers often lack the knowledge to determine whether a behavior is

16. E. FULLER TORREY, *OUT OF THE SHADOWS: CONFRONTING AMERICA'S MENTAL ILLNESS CRISIS* (1988), as reprinted in *Deinstitutionalization: A Psychiatric "Titanic,"* FRONTLINE (May 10, 2005), <http://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html> [hereinafter *Deinstitutionalization*].

17. JOEL E. MILLER, NAT'L ASS'N OF STATE MENTAL HEALTH PROGRAM DIRS., *TOO SIGNIFICANT TO FAIL: THE IMPORTANCE OF STATE BEHAVIORAL HEALTH AGENCIES IN THE DAILY LIVES OF AMERICANS WITH MENTAL ILLNESS, FOR THEIR FAMILIES, AND FOR THEIR COMMUNITIES*, at vii (2012), <https://www.nasmhpd.org/sites/default/files/Too%20Significant%20To%20Fail%287%29.pdf> (noting that the "National Association of State Mental Health Program Directors . . . estimates that in the last four years, states have cut \$4.35 billion in mental health services, while an additional one million people sought help at public mental health facilities during this period"); Caitlin T. Harrington, *Breaking the Cycle and Stepping out of the "Revolving Door": Why the Pre-Adjudication Model is the Way Forward for Illinois Mental Health Courts*, 2013 U. ILL. L. REV. 319, 323; Ollove, *supra* note 4.

18. *Deinstitutionalization*, *supra* note 16.

19. Ollove, *supra* note 4.

20. E. Fuller Torrey et al., *More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States*, TREATMENT ADVOC. CTR. 1, 1 (May 2010), http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf.

21. Jennifer M. Reingle Gonzalez & Nadine M. Connell, *Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity*, 104 AM. J. PUB. HEALTH 2328, 2328 (Dec. 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4232131/pdf/AJPH.2014.302043.pdf>.

22. Linda A. Teplin, *Keeping the Peace: Police Discretion and Mentally Ill Persons*, NAT'L INST. JUST. J. 8, 12 (July 2000), <https://www.ncjrs.gov/pdffiles1/jr000244c.pdf>.

indicative of a severe mental disorder.²³ But cities have begun to train police officers to spot and handle mental health crises and have created mental health support centers.²⁴ Although the effort is present, the criminal justice system is often forced to serve as a mental health care provider for those who cannot access or receive treatment.²⁵ This has supported the contention that the judicial system was not created to function as an access point to mental health services.²⁶

According to a study from the Urban Institute, 49 percent of mentally ill criminals are jailed for violent offenses, however the mentally ill offenders who are incarcerated for minor offenses such as trespassing, disorderly conduct, or illicit drug use are the most frequent repeat offenders.²⁷ Regardless of the severity of the offense, mental illness is present in a significant portion of those involved in the justice system, yet few receive treatment. Mentally ill offenders serve longer jail sentences than those without mental illnesses, return to jail more frequently, and incur more management costs and attention while incarcerated.²⁸

III. PRODUCTIVELY TAILORING THE CRIMINAL JUSTICE SYSTEM THROUGH PROBLEM-SOLVING COURTS

In response to rising prison costs and inadequate care that mentally ill inmates receive in American prisons, several states, including Illinois, are expanding two specific types of problem-solving courts—drug and mental health courts—as a way to reduce costs and address the underlying issues that lead a person to commit a crime.²⁹ These courts offer an effective use of incarceration time by providing tools for

23. *Id.*

24. Harrington, *supra* note 17, at 321; Ollove, *supra* note 4.

25. Harrington, *supra* note 17, at 321.

26. *Id.*; Teplin, *supra* note 23, at 10.

27. KIDEUK KIM ET AL., URBAN INST., THE PROCESSING AND TREATMENT OF MENTALLY ILL PERSONS IN THE CRIMINAL JUSTICE SYSTEM: A SCAN OF PRACTICE AND BACKGROUND ANALYSIS 9 (Mar. 2015), <http://www.urban.org/sites/default/files/publication/48981/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf>; Harrington, *supra* note 17, at 336–37.

28. INST. OF MED., ETHICAL CONSIDERATIONS FOR RESEARCH INVOLVING PRISONERS 45 (2007), https://www.ncbi.nlm.nih.gov/books/NBK19882/pdf/Bookshelf_NBK19882.pdf; see DORIS J. JAMES & LAUREN E. GLAZE, U.S. BUREAU OF JUST. STATISTICS, MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1, 1 (Sept. 6, 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf> (noting that “[o]ver 1 in 3 State prisoners, 1 in 4 Federal prisoners, and 1 in 6 jail inmates who had a mental health problem had received treatment since admission”).

29. Judge Annette A. Eckert, *Problem-Solving Courts: Benefits of Thinking Outside of the Box (Part 2 of a 2-Part Series)*, OJP DIAGNOSTIC CTR. (Dec. 22, 2015), <https://www.ojpdagnosticcenter.org/blog/problem%E2%80%9393solving-courts-benefits-thinking-outside-box-part-2-2-part-series-0>.

rehabilitation and recovery in hopes of eliminating the revolving door between recidivism and subsequent jail time.³⁰

Problem-solving courts stem from the concept of therapeutic justice, where the court serves as an active participant in the treatment process for the defendant.³¹ When coupled with preventive law and restorative justice, therapeutic justice can provide a humanistic foundation for an allied partnership between law and the psychological well-being of the individual.³² The traditional adversarial approach of the criminal justice system can exacerbate the psychological ailments of an individual.³³ Problem-solving courts differ from traditional criminal courts by maintaining:

- (1) a separate docket for defendants with a specific problem;
- (2) a dedicated judge who presides over the initial hearing and subsequent status hearings;
- (3) dedicated prosecution and defense counsel;
- (4) a less adversarial approach, in which decisions are made collaboratively among the judge, counsel, and relevant professionals;
- (5) voluntary participation by defendants who agree to follow some form of treatment regimen;
- (6) intensive judicial monitoring of defendants; and
- (7) the promise of dismissal or reduction of charges or sentence if the defendant complies with treatment.³⁴

In 1989, Miami-Dade County, Florida, created the first problem-solving court in the United States to address the issue of drug offenders by providing a court the option of sending first- and second-timers to treatment programs instead of prison.³⁵ These drug courts offered a new way to rehabilitate offenders through addressing the unique causes for the offenders' behavior by providing them with judicially supervised social services, case management, and a plethora of treatment options.³⁶ After studies found drug courts successful in reducing recidivism and drug use, many states began to implement these courts.³⁷ The courts served as a

30. Eaton & Kaufman, *supra* note 2; see WOLF, *supra* note 2, at 8 (specifying that this revolving door describes how "the same drug-addicted offenders cycle in and out of the criminal justice system on a regular basis").

31. DeMatteo et al., *supra* note 1, at 67; David B. Wexler, *Two Decades of Therapeutic Jurisprudence*, 24 TOURO L. REV. 17, 21–28 (Mar. 2008) (noting that therapeutic jurisprudence is an interdisciplinary approach to therapeutically apply the law on defendants).

32. Harrington, *supra* note 17, at 330–31 (specifying that "restorative justice seeks to understand each defendant's needs and provide treatment that will repair the disruptions that mental disorders and criminal behavior caused in his life"); Wexler, *supra* note 31, at 28.

33. Wexler, *supra* note 31, at 26.

34. DeMatteo et al., *supra* note 1, at 67; Marlee E. Moore & Virginia Aldigé Hiday, *Mental Health Court Outcomes: A Comparison of Re-Arrest and Re-Arrest Severity Between Mental Health Court and Traditional Court Participants*, 30 L. & HUM. BEHAV. 659, 660 (2006).

35. DeMatteo et al., *supra* note 1, at 67; *Smart Justice*, *supra* note 13.

36. DeMatteo et al., *supra* note 1, at 67.

37. *Id.*; STEVEN BELENKO, NAT'L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA

cheaper option to administer a dose of rehabilitation mixed with tough justice to drug offenders.³⁸ The idea spread throughout the United States, and by 2012, 1,122 problem-solving courts existed to tackle issues ranging from gun crime to school truancy.³⁹

Some jurisdictions also created mental health courts (“MHCs”) pursuant to the success drug courts exhibited in diminishing criminal recidivism and drug use as a way to implement therapeutic jurisprudence and restorative justice for repeat offenders afflicted with mental illness.⁴⁰ States recognize that the scarcity of treatment resources for the mentally ill perpetuates the revolving door of the prison system that these individuals repeatedly cycle through.⁴¹ Thus, when these individuals attempt to reenter society, they lack the proper resources to control their own illnesses.⁴² Therefore, states use MHCs as a way to link mentally ill defendants with supportive services and treatment to address each individual’s unique needs.⁴³

MHCs have various methods depending on whether the mentally ill defendant faces a misdemeanor or felony charge, but courts recognize that regardless of the charge, similar issues face all mentally ill defendants.⁴⁴ Judges in MHCs have the flexibility to craft a unique treatment plan for each offender and to address the offender’s sensitive and individual struggles, but they must look to the American Bar Association’s Model Code of Judicial Conduct for guidance as they discern the boundaries of their new role as involved adjudicators.⁴⁵

The role of a judge in MHCs differs from the role of a judge in a typical state or federal court. For example, given its therapeutic focus, problem-solving courts allow judges to act—while in an appropriate and ethical manner—more informally by hugging or applauding the defendant, whereas such behavior is impermissible in the traditional court environment.⁴⁶ Those who appear before judges in problem-solving courts are called “clients” instead of “defendants” and can speak to judges

UNIV., RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE 1, 31–32 (June 2001), <http://www.drugpolicy.org/docUploads/2001drugcourts.pdf>.

38. *Smart Justice*, *supra* note 13.

39. *Id.*

40. DeMatteo et al., *supra* note 1, at 65; Harrington, *supra* note 17, at 322.

41. DeMatteo et al., *supra* note 1, at 67.

42. *Id.*; Dale E. McNeil et al., *Incarceration Associated with Homelessness, Mental Disorder, and Co-Occurring Substance Abuse*, 56 PSYCHIATRIC SERVS. 840, 845 (2005).

43. Harrington, *supra* note 17, at 322.

44. DeMatteo et al., *supra* note 1, at 67; Allison D. Redlich et al., *Patterns of Practice in Mental Health Courts: A National Survey*, 30 L. & HUM. BEHAV. 347, 358 (2006).

45. Maria N. Greenstein, *Creative Judging: Ethics Issues in Problem-Solving Courts*, 51 JUDGES’ J. 40, 40 (2012).

46. *Id.*

directly instead of through lawyers.⁴⁷ Additionally, problem-solving courts allow judges to be involved in *ex parte* meetings with teams where the defendant is not present, affording judges the ability to work comprehensively with social workers, treatment providers, probation officers, and other involved parties.⁴⁸ Judges in therapeutic courts often maintain close relationships with local nonprofit organizations who assist the rehabilitation process for those in the problem-solving court system.⁴⁹ The judge maintains this relationship through a coordinator who can request specific items or services from the nonprofit organization and assist with its fundraising needs (the coordination is needed because the judicial code prohibits judges from directly soliciting funds for individuals or organizations).⁵⁰

Though judges face unique challenges in adjusting to the problem-solving court system, the potential for lasting change necessitates the existence of these courts.⁵¹ The unique and flexible solutions available in the problem-solving justice system encourage judges to utilize their creativity, yet preserve the integrity of the traditional court system while simultaneously applauding the success of defendants whom the court system aims to serve.⁵² Just as judges learn the boundaries of the traditional judicial role, they can also adapt to the needs of problem-solving courts.⁵³ Financial concerns rank high when making decisions for most areas of government, and it is no different for the court system. The system values cost reduction and improvement to methods which implement justice. The potential cost savings can be put toward other areas of the government, in need of financial assistance.

But not everyone finds the additional attention and hands-on approach that judges afford offenders in MHCs attractive. Judges are taught the confines between adjudicating and advocating and find comfort in fulfilling the aspects of their specific judicial role.⁵⁴ Problem-solving courts, however, require judges to expand the boundaries of that job to include the role of an involved adjudicator and to adjust pursuant to the needs of the problem-solving court.⁵⁵ Critics argue that therapeutic

47. Eaton & Kaufman, *supra* note 2.

48. MODEL CODE OF JUDICIAL CONDUCT r. 2.9 (AM. BAR ASS'N 2007).

49. Greenstein, *supra* note 46, at 40.

50. *Id.*

51. *Id.*

52. Marlee E. Moore & Virginia Aldige Hiday, *Mental Health Court Outcomes: A Comparison of Re-Arrest And Re-Arrest Severity Between Mental Health Court and Traditional Court Participants*, LAW & HUM. BEHAV. 659, 662–63 (2006).

53. Greenstein, *supra* note 46, at 40.

54. *Id.*

55. *Id.*

jurisprudence does not align with the traditional values of justice and impedes the execution of traditional justice.⁵⁶ Some legal scholars question whether judges who share similar middle class and politically connected backgrounds may detrimentally impose their personal values on the often dissimilarly situated defendants.⁵⁷ Furthermore, critics assert that the personal investment judges and attorneys make in defendants affects their ability to remain impartial and extends outside the realm of their role.⁵⁸ Moreover, the implementation of this program focuses on the underlying reasons a person is in the criminal justice system and often requires a greater amount of resources. Many argue those funds should be used for law-abiding citizens rather than allocated for those who break the law.⁵⁹ Additionally, critics raise concerns that MHCs coerce defendants into treatment, as opposed to defendants entering willingly.⁶⁰

Additionally, defendants in MHCs sometimes lack understanding as to the conditions of their participation.⁶¹ Therefore, it is crucial for judges, mental health professionals, and legal counsel in MHCs to determine defendants' competency early and monitor any change in competency.⁶²

Though the collaborative nature of MHCs is an essential element, due process concerns surround the adequacy of representation and the sensitive nature of the issues as well.⁶³ A MHC-participant's defense counsel must align their efforts between serving as a member of a cooperative unit comprised of other professionals and serving as a zealous advocate for the defendant.⁶⁴ Therefore, the defense counsel has to pay careful attention to the participant's sensitive wishes and refrain from straying from those requests to appeal to their own judgment as defense counsel.⁶⁵

Also, some critics believe that drug-court programs pose more burdens on defendants in contrast to regular probation due to extra demands, like drug testing and more court appearances for weekly conferences.⁶⁶ Some feel that treatment programs from drug courts may be disproportionate because the participation length varies as it is tailored to each individual's

56. Harrington, *supra* note 17, at 328.

57. Eaton & Kaufman, *supra* note 2.

58. *Id.*

59. Harrington, *supra* note 17, at 329.

60. *Id.*

61. DeMatteo et al., *supra* note 1, at 68.

62. KIM ET AL., *supra* note 27, at 15.

63. DeMatteo et al., *supra* note 1, at 68.

64. *Id.*

65. *Id.*

66. Harrington, *supra* note 17, at 335.

needs.⁶⁷ Therefore, drug courts require many defendants to sign waivers to give up their right to a speedy trial, resulting in a loss of certain constitutional rights that cannot be recovered if they fail their program.⁶⁸

For drug courts specifically, the treatment programs' varied length is justified given the fact that drug addiction is a disease necessitating concentrated court supervision.⁶⁹ This supervision helps defendants keep up with the program and contributes to their recovery, serving not as a punishment, but instead as a way to ameliorate their lifestyle.⁷⁰ As to the concern of courts forcing participants to take medication or give up certain rights, MHCs are voluntary courts, so defendants choose to forgo their rights to receive treatment under the MHC.⁷¹

But despite the critiques, MHCs appear to achieve their goals. MHCs provide mentally ill defendants with the vital help they need instead of cycling them through jails or prisons where they would not typically receive treatment, padding the recidivism rates.⁷² Results from several studies show a decrease in subsequent arrests for participants in MHCs when compared to their prior arrest record.⁷³ The participants in MHCs reap benefits from the mental health resources that MHCs utilize, which reduces their mental health struggles and ultimately improves their quality of life.⁷⁴

Paton Bough—who has served multiple jail terms in South Carolina due to his bipolar disorder—remarked: “Can you imagine if we had two million people locked up for having a heart condition?”⁷⁵ After one of his arrests, a judge sent Bough to a MHC, which provided him with a treatment program that led to mental stability for six years and a job as an advocate for jail diversion programs.⁷⁶ The fact that an individual is mentally ill should not relegate that individual to a system that is ill-equipped to provide treatment.⁷⁷ Justice for mentally ill individuals in the criminal justice system should include interdisciplinary approaches to

67. *Id.*

68. *Id.* at 335–36.

69. *Id.* at 335.

70. *Id.* at 336.

71. *Id.*

72. WOLF, *supra* note 2, at 17.

73. Brian Case et al., *Who Succeeds in Jail Diversion Programs for Persons with Mental Illness? A Multi-Site Study*, 27 BEHAV. SCI. & L. 661, 664 (2009); DeMatteo et al., *supra* note 1, at 67–68.

74. Case et al., *supra* note 73, at 671; DeMatteo et al., *supra* note 1, at 68; Virginia A. Hiday & Bradley Ray, *Arrests Two Years After Exiting a Well-Established Mental Health Court*, 61 PSYCHIATRIC SERVS., 463, 467 (2010); Moore & Hiday, *supra* note 34, at 670.

75. Ollove, *supra* note 4.

76. *Id.*

77. *Id.*

help them improve, rather than an additional punishment which may exacerbate the individual's mental illness.⁷⁸ This does not negate the aspect of illegal conduct; however, problem-solving courts can reduce recidivism for offenders with drug-abuse problems and mental illness, while improving the offenders' future livelihood, and ensuring the safety of their communities.⁷⁹

Studies found that the costs of community-based alternatives for offenders with mental illness are far less when compared to the costs of incarceration.⁸⁰ Specifically, one study conducted in California in 1998 showed that the nine drug courts that were surveyed saved the state approximately \$9 million in reduced criminal-justice costs.⁸¹ Conversely, research conducted by the Government Accountability Office showed that the net cost benefit for each drug court's clients ranged from savings of up to \$47,852 or increased costs up to \$7,108, suggesting some cost ineffectiveness.⁸² This can be attributed to offenders' dropout rates or to the difficulties that some problem-solving courts face as they develop in new areas.

Overall, the public health system and citizens alike stand to gain from improved health treatment for inmates given the strong correlation between mental health and criminal behavior, specifically through a decrease in the costs that accompany high rates of recidivism.⁸³ Problem-solving courts can provide inmates with better mental health treatment in addition to investigating the intersection of social, individual, and legal problems and boosting public confidence in the justice system.⁸⁴ The more that citizens trust the system, the more cooperative they will be when serving as jury members and witnesses.⁸⁵ This trust also encourages law-abiding behavior and increases the perceived level of public safety.⁸⁶

78. Harrington, *supra* note 17, at 334.

79. *Id.*

80. DeMatteo et al., *supra* note 1, at 65.

81. WOLF, *supra* note 2, at 3; Judge Annette A. Eckert, *Problem-Solving Courts: Benefits of Thinking Outside of the Box (Part 2 of a 2-Part Series)*, OJP DIAGNOSTIC CTR. (Dec. 22, 2015), <https://www.ojpdagnosticcenter.org/blog/problem%E2%80%9393solving-courts-benefits-thinking-outside-box-part-2-2-part-series-0> (highlighting that drug courts have shown to produce \$2.21 in benefits to the criminal justice system for every \$1.00 invested with a larger rate of return of \$3.36 when targeting higher-risk offenders).

82. DeMatteo et al., *supra* note 1, at 65.

83. Gonzalez, *supra* note 21.

84. WOLF, *supra* note 2, at 17.

85. ROBERT V. WOLF, CTR. FOR COURT INNOVATION, *PRINCIPLES OF PROBLEM-SOLVING JUSTICE* 1, 5 (2007) ("Finding roles for the public also helps keep the community engaged. Even better, it can help expand resources, allowing the criminal justice system to do more with less.").

86. *Id.*

IV. ILLINOIS' RESPONSE TO ADDRESS THE CRIMINAL JUSTICE SYSTEM'S DEFICIENCIES

Given that a significant portion of Illinois' criminal defendants have a mental illness that affects the criminal justice system, in June 2008, the Illinois Mental Health Court Treatment Act authorized the formation of courts that could identify mentally ill criminal defendants.⁸⁷ Given the inherent intersection between substance-use disorders and mental health, drug courts and MHCs often share personnel who can address the unique aspects of both conditions. Therefore, intersectional communication between these professionals can create collaborative and unique approaches to the criminogenic needs of those with mental health issues and drug abuse.⁸⁸

Cognizant of these facts, Illinois created both drug and MHC courts throughout Illinois in response to drug overdose deaths, DUI offenders, and offenders with mental health issues.⁸⁹ Specifically, Illinois defines a problem-solving court as “[a] specially designated court, court calendar or docket facilitating intensive therapeutic treatment to monitor and assist participants in making positive lifestyle changes and reducing the rate of recidivism.”⁹⁰

To implement evidence-based practices “correlated with positive, cost-effective outcomes, and enhanced public safety” across Illinois problem-solving courts, the Illinois Supreme Court adopted standards and a certification and application process in 2015.⁹¹ The newly created process requires all adult problem-solving courts offering a therapeutically rooted judicial approach to apply for certification by demonstrating compliance with the standards and submitting an application for certification.⁹² The Kendall County Drug Court, the Peoria DUI Court, and the Tazewell County Mental Health Court are the first three courts to go through the certification process.⁹³ The Kendall

87. 730 ILL. COMP. STAT. 168/5 (2010); Harrington, *supra* note 17, at 340.

88. DeMatteo et al., *supra* note 1, at 68.

89. Yingst, *supra* note 12.

90. MICHAEL J. TARDY, ADMINISTRATIVE OFFICE OF THE ILL. COURTS, PROBLEM-SOLVING COURTS CERTIFICATION PROCESS AND APPLICATION 16 (Nov. 2015), http://www.illinoiscourts.gov/Probation/Problem-Solving_Courts/P-SC_Certification_2015.pdf.

91. MICHAEL J. TARDY, ADMINISTRATIVE OFFICE OF THE ILL. COURTS, PROBLEM-SOLVING COURTS STANDARDS § 1.2 (Nov. 2015), http://www.illinoiscourts.gov/Probation/Problem-Solving_Courts/P-SC_Standards_2015.pdf.

92. TARDY, *supra* note 90, at 16.

93. Yingst, *supra* note 12.

County Drug Court targets drug abuse; the Tazewell County Mental Health Court addresses problems through medication and counseling,⁹⁴ and the Peoria County DUI Court provides restorative care, legal accountability, and treatment to sixty participants that have three or more offenses and a high risk of reoffending.⁹⁵ Together, these courts seek to decrease the prison population.⁹⁶

In Cook County, Illinois, a combination of supportive housing and Assertive Community Treatment teams have reduced arrests of people with mental illness by 89 percent, jail time by 86 percent, and hospitalizations for program participants by 76 percent.⁹⁷ These programs interweave rent subsidies, mental health treatment services, and treatment by mental health specialists to provide treatment, employment, and housing support for the individual.⁹⁸

CONCLUSION

Jails and prisons are not the proper environment for those recovering from mental illness.⁹⁹ As problem-solving courts demonstrate, an amalgamation of law and social science creates a foundation for these courts in the United States as a new and more effective way to handle drug crimes and crimes committed by individuals with mental illness. To create lasting improvement for criminal defendants with mental illness, a comprehensive team approach is necessary to break the cycle of crime and addiction. Both mental health courts and drug courts have an unparalleled ability to stimulate growth through an interconnected network of medical, legal, social work, and mental health professionals. This collaborative approach provides criminal defendants with the invaluable tools they need to overcome their issues, which is paramount given the lack of resources available outside of the criminal justice system.

Disregarding why individuals offend is a disservice to the well-being of the individual and the public as a whole. Problem-solving courts implement an innovative fusion of justice and therapy, which provides a humane, cost-effective alternative to incarceration for offenders with

94. Mike Smothers, *Mental Health Court Opens in Tazewell County*, J. STAR (Dec. 8, 2016), <http://www.pjstar.com/news/20161208/mental-health-court-opens-in-tazewell-county>.

95. Yingst, *supra* note 12.

96. Tony Scott, *Kendall County Drug Court Set to Begin Taking Cases Now That It's State Certified*, KENDALL COUNTY NOW (Jan. 5, 2017), <http://www.kendallcountynow.com/2016/12/05/kendall-county-drug-court-set-to-begin-taking-cases-now-that-its-state-certified/aozkwfd/>.

97. Ollove, *supra* note 4.

98. *Id.*

99. *Id.*

mental illness or a history of drug abuse. Additionally, these courts reduce not only the load of criminal court dockets, but also recidivism as a way to keep both costs and incarcerated populations low. Problem-solving courts act as an effective and financially responsible doorstopper in the revolving door of the criminal justice system. When implemented effectively, they promise to end the circuitous path mentally ill and drug abusing offenders endure, while improving public safety and better allocating taxpayer dollars to treat these individuals.