

ONE SIZE DOESN'T FIT ALL

A review of Post-Plea Problem-Solving
Courts in Cook County

**CHICAGO APPLESEED CENTER FOR FAIR COURTS
& CHICAGO COUNCIL OF LAWYERS**

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CHICAGO APPLESEED CENTER FOR FAIR COURTS IS A VOLUNTEER-LED, COLLABORATIVE 501(C)(3) NON-PROFIT ORGANIZATION ADVOCATING FOR FAIR, ACCESSIBLE, AND ANTI-RACIST COURTS IN CHICAGO, COOK COUNTY, AND ACROSS THE STATE OF ILLINOIS.



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ABSTRACT

Diverting individuals to specialty courts, such as “problem-solving courts,” has become an increasingly popular tool for lowering the number of people in prisons in the United States. Yet, the program models, processes, functions, and efficacy of these courts remain largely unmonitored and understudied, especially in Cook County, Illinois. In light of the passage of Illinois Public Act 102-1041, which took effect in June of 2022,¹ and its emphasis on the need for flexibility, alternatives to incarceration, and access to resources in Illinois specialty courts, this report examines the state of Cook County’s problem-solving courts prior to the new law. Specifically, this paper examines several of Cook County’s problem-solving court programs by exploring the impact of these courts and the experiences of individuals struggling with their mental health and/or substance use, or facing charges related to substance use, drug possession, and mental health, among others.

Through analyses of participant data, interviews with court stakeholders, and court-watching observations, we have found that the Circuit Court of Cook County’s problem-solving courts have some participants who succeed and thrive in these programs. However, data shows that these courts are experiencing diminishing returns and that there are many participants who are not well served by the system.

Anecdotally, court personnel reported many success stories in their courts. Still, our findings suggest that several of these programs are unlikely to meet all of Public Act 102-1041’s stated goals as alternatives to incarceration that meaningfully address root causes of substance use disorder and mental illness. Data showed that participants are spending anywhere up to 120 days in pretrial incarceration before they formally enroll in the problem-solving courts; statute also allows the court to sanction participants with incarceration for up to 180 days on top of that—an excessive amount of potential incarceration time. Additionally, interviewees reported that overdoses and deaths by suicide are fairly common occurrences amongst problem-solving court participants, but there is no available data to track these occurrences.

This report seeks to demonstrate the various challenges that influence the reality of the Cook County problem-solving courts, faced both by the courts themselves and their participants. Some of these challenges include issues with failing to adhere to stated program models; using program models that are outdated or conflict with public health, mental health, and drug use best practices; and perpetuating practices that are biased, unfair, or interfere with participants’ lives and abilities to receive treatment (if desired). To better serve the people who move through these courts and their communities, it is important that the courts reevaluate policies, practices, and renew their focus on evidence-based treatment models.

¹ Public Act 102-1041 took effect in June of 2022 and works to standardize the treatment court statutes, ensure individuals with similar needs have access to necessary resources, and further promotes best practices. For more information, the full bill text is here: <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-1041&GA=102>

ACRONYMS

AA: Alcoholics Anonymous
ACT: Access to Community Treatment (Court)
APA: American Psychological Association
AOIC: Administrative Office of the Illinois Courts
CCDOC: Cook County Department of Corrections
CCSAO: Cook County State’s Attorney’s Office
CCSO: Cook County Sheriff’s Office
CTA: Chicago Transit Authority
CPD: Chicago Police Department
DHS: Illinois Department of Human Services
DTC: Drug Treatment Court
DTCA: Drug Treatment Court Act
DOJ: (U.S.) Department of Justice
FOIA: Freedom of Information Act
ICIJA: Illinois Criminal Justice Information Authority
IDOC: Illinois Department of Corrections
GAO: (U.S.) Government Accountability Office
MAT: Medication-Assisted Treatment
MHC: Mental Health Court
MHCTA: Mental Health Court Treatment Act
NA: Narcotics Anonymous
NADCP: National Association of Drug Court Professionals
NACDL: National Association of Criminal Defense Lawyers
OAT: Opioid Agonist Treatment
OCJ: Office of the Chief Judge (of the Circuit Court of Cook County)
PSC: Problem-Solving Court
RAP: Rehabilitation Alternative Probation (Court)
ROI: Release of Information
SAMHSA: Substance Abuse Mental Health Services Administration
VTC: Veterans Treatment Court
WRAP: Women’s Rehabilitation Alternative Probation (Court)

KEY TERMINOLOGY

Community Stakeholders | The term “community stakeholder” in this context refers to individuals who are or have been directly and indirectly involved in problem-solving-court-related programs in various roles, including as former participants, researchers, defense/legal aid attorneys, treatment providers, or the like.

Court Actors | We use the term “court actors” to indicate individuals who interact with the problem-solving courts as employees or officials in the court system (e.g., probation officers, judges, prosecutors, social workers), consultants/subcontractors (i.e., treatment providers), or developers (i.e., people who helped develop and implement a problem-solving court program).

Criminalized Substance Use/Mental Illness | The “criminalization” of substance use and mental illness occurs when behaviors related to these issues cause people to interact with the criminal legal system.

Impacted Individual | The term “impacted individual” in this context refers to someone who has been directly affected by the criminal legal system through policing, incarceration, and/or the problem-solving courts.

Health-Centered Practices | Practices informed by the best practices of public health and/or psychology research to support people’s physical and/or mental health.

Participant | A “participant” is a person whose charges are being addressed in a problem-solving court. While this term is prevalent in the literature to suggest people choose to have their charges seen in problem-solving courts, we recognize that people cannot voluntarily “participate” in the criminal legal process or in these programs since the alternative poses significant consequences.

Pre-Plea/Post-Plea Adjudication | “Pre-plea” diversion programs allow participants to complete the program requirements without pleading guilty to their charges. “Post-plea” specialty court programs require that the person plead guilty to allegations but allows them to complete a term of probation instead of imprisonment and allows a judge to vacate the conviction upon successful completion of the supervision term.

Problem-Solving Courts | Also known as “specialty courts” or “diversion courts,” problem-solving courts are designed for people struggling with substance use and/or mental health issues. While these court programs are traditionally designed for people charged with or convicted of a nonviolent crime, some “violent crimes” are accepted in several problem-solving courts.

Recidivism | A term used in measuring rearrest rates.²

Substance Dependency/Use Disorder | “Substance Use Disorder”³ is the clinical term to refer to someone diagnosed with a substance dependency. “Substance dependency”⁴ refers to someone who personally believes drugs adversely affect their day-to-day lives, relationships, and/or health.

² The term “recidivism” will only be used herein when citing sources which directly use the term.

³ The term “substance use disorder” will only be used herein when citing direct quotes and research from clinicians.

⁴ The term “substance dependency” will only be used herein when citing direct quotes and research from individuals who identify as being “dependent” on substances.

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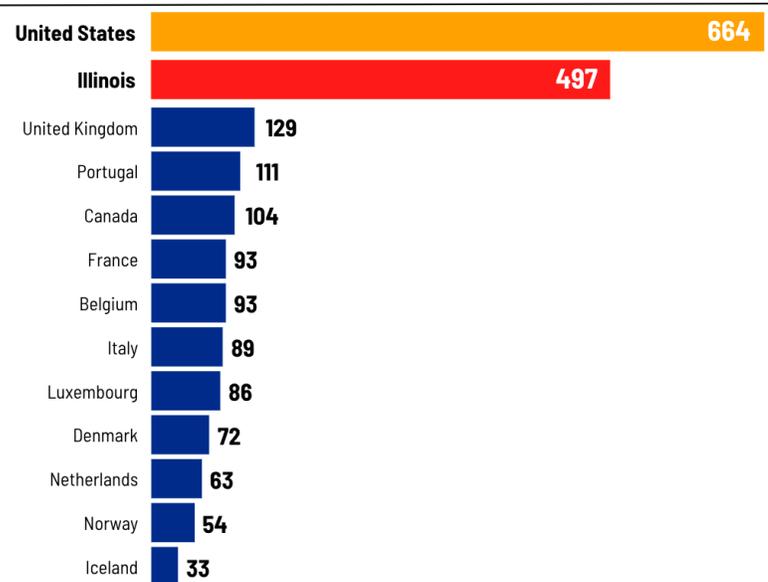
INTRODUCTION

Our nation’s mass incarceration crisis has led to an exorbitant number of people locked up in our country’s jails and prisons: as of 2021, 2.09 million people are incarcerated in the United States.⁵ On average, 443 per 100,000 people were admitted to Cook County Jail per day in 2019;⁶ in 2021, the overall incarceration rate for the state of Illinois was 497 per 100,000 residents.⁷ Both Illinois and Cook County lock up a higher percentage of people than almost any democracy on earth.⁸

As a result of an increased public awareness of the immense scale and general unfairness of the criminal legal system, counties and municipalities are increasingly adopting a range of court programs meant to divert people from incarceration to reduce the number of people formally confined.⁹ In Cook County, these court programs include both pretrial and post-plea diversion programs. Pretrial (“pre-plea”) diversion programs allow participants to complete the program requirements without pleading guilty to the charges. “Post-plea” programs, on the other hand, require that the accused person plead guilty to charges but allows them to complete a term of probation instead of imprisonment and allows a judge to vacate the conviction upon successful completion.¹⁰ One form of pre-plea or post-plea programs are “problem-solving courts” (PSCs). Depending on the jurisdiction, PSCs can either be pre-plea or post-plea court programs,¹¹ with the majority of Cook County’s PSCs being post-plea court programs.

Nationwide, PSCs have grown exponentially in the last decade. For example, the U.S. Department of Justice reported more than 3,500 drug courts across the United States in

**FIGURE 1:
INCARCERATION RATES: ILLINOIS
& FOUNDING NATO COUNTRIES**



INCARCERATION RATES PER 100,000 POPULATION

Figure 1 comes from the Prison Policy Institute (2021) and can be accessed at <http://www.prisonpolicy.org/global/2021.html>.

5 “Criminal Justice Facts” (n.d.) The Sentencing Project. Accessible at <https://www.sentencingproject.org/criminal-justice-facts/>
 6 “Cook County, Illinois, Incarceration Trends” (Updated: December 23, 2022). Vera Institute for Justice. Accessible at https://trends.vera.org/state/IL/county/cook_county
 7 This number includes prisons, jails, immigration detention, and juvenile justice facilities.
 8 “Illinois State Profile” (2021). Prison Policy Initiative. Accessible at <https://www.prisonpolicy.org/profiles/IL.html>
 9 Wang, L., & Rose Quandt, K. (2021). “Building Exits Off the Highway to Mass Incarceration: Diversion Programs Explained” for Prison Policy Initiative. Retrieved August 1, 2021, from <https://www.prisonpolicy.org/reports/diversion.html>
 10 “Decarcerating Cook County: Use of Diversion Programs for Low-Level, “nonviolent” Felonies Increased Substantially Under State’s Attorney Kim Foxx Compared to Anita Alvarez” (2021) for Reclaim Chicago, The People’s Lobby, Chicago Council of Lawyers & Chicago Appleseed Center for Fair Courts. Accessible at <https://www.chicagoappleseed.org/wp-content/uploads/2021/03/22021-03-CCSAO-Diversion-Report-FINAL.pdf>
 11 *Supra* note 9.

2021—a 68% increase of drug courts in the past 10 years.¹² Cook County has seen similarly rapid growth of PSCs: While there were only three post-plea PSCs in 2011, there are now 21.¹³

Despite the popularity and rapid development of these courts, and the passage of Public Act 102-1041,¹⁴ few evaluations have examined the operations or stakeholder perceptions of Cook County’s PSCs. Rigorous, wide-scale evaluations are difficult, given how each PSC varies between jurisdiction, differing in focus, eligibility criteria, policies, and intervention points (i.e., pre- or post-adjudication).

This report seeks to analyze and understand the use of PSCs in Cook County, Illinois prior to the passage of Public Act 102-1041 through an analysis of both quantitative and qualitative data and court-watching reports. We begin by providing an overview of the common types of PSCs in Cook County, outlining the public information that is available related to these programs’ stated goals, procedures, and outcomes, and provide a high-level demographic picture of who are enrolled in each of these PSCs, for how long, and why. We share findings on how court actors, community organizations, and impacted people perceive, among other things, the provision of services and resources; the reward, punishment, and sanction structures; fatal overdose and overdose risk; and the race, class, and power implications of judicial and team decisions. We then discuss the impact of PSCs in Cook County compared best practices, and close with a series of recommendations on how ineffective strategies may be revised and ultimately reconsidered.

BACKGROUND

History of Problem-Solving Courts

“Problem-solving courts” are courts designed to address the charges of people with “substance use disorders” or perceived mental health issues who have also been charged with or convicted of a nonviolent crime.¹⁵ In recent years, some of the Cook County Courts have even expanded their eligibility to certain “violent” allegations, such as aggravated battery of a peace officer. PSCs are alternatives to traditional criminal courts, which are often inflexible to individuals the court has already deemed guilty or in violation of criminal law.¹⁶ PSCs offer “collaborative, multidisciplinary” approaches that are, in theory, meant to address underlying issues often associated with “criminal behavior.”¹⁷ Most notably, PSCs are expected to provide individuals with “non-adversarial proceedings” and provide services to people in need of social and psychological support to reduce the likelihood of someone re-entering the criminal legal system.¹⁸

12 “Drug Courts.” (2021). U.S. Department of Justice, Office of Justice Programs. Accessible at <https://www.ojp.gov/pdffiles1/nij/238527.pdf>

13 This number only encapsulates post-plea problem-solving courts. There are a number of other Cook County programs, including the Drug Deferred Prosecution Program (DDPP) and Restorative Justice (RJ) Community Courts that are pre-plea programs.

14 *Supra* note 1.

15 Hughes, E., & Reichart, J. (2017). “An Overview of Problem-Solving Courts and Implications for Practice” for the Illinois Criminal Justice Information Authority (ICJIA). Accessible at <https://icjia.illinois.gov/researchhub/articles/an-overview-of-problem-solving-courts-and-implications-for-practice>

16 *Id.*

17 *Id.* See also “Cook County Veterans Treatment Court” (n.d.). State of Illinois, Circuit Court of Cook County. Retrieved February 3, 2023, from <https://www.cookcountycourt.org/ABOUT-THE-COURT/Office-of-the-Chief-Judge/Problem-Solving-Courts/Veterans-Treatment-Court>

18 *Supra* note 1.

While PSCs vary from jurisdiction to jurisdiction, the most common forms of PSCs focus on people whose contact with the legal system is somehow related to drugs, intimate-partner violence, diagnosed mental illnesses, or being a Veteran.¹⁹

Drug Treatment Courts

The first drug court in the United States was established in Miami-Dade County in 1989.²⁰ Since then, over 3,500 of these kinds of courts have been established nationwide.²¹ Drug courts are found all over the United States, including urban, suburban, rural, and Tribal areas.²² Many of these courts are guided by the Ten Key Components, a set of guidelines and best practices established by the National Association of Drug Court Professionals.²³

According to the U.S. Department of Justice, drug courts are meant to integrate community-based substance use treatment with assistance meeting educational and vocational goals and support to find housing, medical care, and employment.²⁴ As such, drug court programs combine a wide variety of rehabilitation services with regular drug testing and court dates with the goal of stopping drug use, mitigating the underlying factors contributing to drug use, and reducing “recidivism.”²⁵ Furthermore, some drug courts utilize residential treatment programs for participants who meet certain criteria before transitioning to outpatient care.²⁶

As illustrated above, drug courts follow either a post-plea or pre-plea model. While people who successfully “graduate” from post-plea programs may sometimes withdraw their pleas and have the charges against them dismissed or even expunged, individuals deemed as “unsuccessful participants” are sentenced on their pleas in many PSCs. Other courts do not require defendants to plead guilty before participating in the program. In these pre-plea courts, successful graduates have the charges against them dismissed and “unsuccessful participants” return to the traditional judicial system and then decide how to plead from there.²⁷

Across the country, eligibility for different drug court programs depends not only on the charges against someone, but also on whether they have a record of prior allegations or convictions and the

19 It is important to consider how many social problems that interface with the criminal legal system have designated problem-solving/specialty courts. For example, there are also PSCs for gun-carrying, sex work, truancy, among many other “crimes.” See *Supra* note 9.

20 Lurigio, A. J. (2008). The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact. *Federal Probation*, 72(1). Accessible at https://www.uscourts.gov/sites/default/files/72_1_2_0.pdf

21 *Supra* note 12.

22 “Treatment Court Maps” [Interactive Map] (Updated December 31, 2021). National Drug Court Resource Center. Retrieved on January 26, 2023, from <https://ndcrc.org/maps/interactive-maps/>

23 National Association of Drug Court Professionals (NADCP). (1997). “Defining Drug Courts: The Key Components” for Drug Courts Program Office, U.S. Department of Justice Office of Justice Programs. Accessible at <https://www.ojp.gov/pdffiles1/bja/205621.pdf>

24 *Supra* note 12.

25 *Id.*

26 National Association of Drug Court Professionals (NADCP). (2018). Adult Drug Court Best Practice Standards, Volume I. Accessible at <https://www.nadcp.org/wp-content/uploads/2018/12/Adult-Drug-Court-Best-Practice-Standards-Volume-I-Text-Revision-December-2018-1.pdf>

27 National Association of Criminal Defense Lawyers (NACDL). (2009). “America’s Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform.” Retrieved on February 3, 2023, from <https://www.nacdl.org/Document/AmericasProblem-SolvingCourtsCriminalCostsofTreatme>

nature of their past convictions.²⁸ Individuals charged with a “violent” felony or who have a prior history of “violent” felonies are often excluded from these courts.²⁹

Aftermath of the “War on Drugs”

To understand the history of problem-solving courts, it is important to understand the history of the criminal legal system in general. The “war on drugs,” which began in the early 1970s, has had a devastating impact on communities of color, and certain neighborhoods in Chicago continue to be disproportionately impacted³⁰ by drug arrests and incarceration due to policies and practices from this era. Between 2012 to 2016, “the Chicago community areas with the highest rates of felony drug arrests were overwhelmingly the city’s racially concentrated areas of poverty.”³¹ Between 2005 and 2009, nearly \$300 million was spent to incarcerate residents of the Austin neighborhood – a community where over 90% of residents are Black or Latine³² – for drug convictions; in East and West Garfield Park, nearly \$200 million was spent to incarcerate community-members for drug convictions.³³ These neighborhoods are primarily-Black, low-income communities and undoubtedly the same neighborhoods where many PSC participants reside.

Likewise, the Chicago Police Department’s (CPD) brutality against Black residents of the city is notorious,³⁴ but racist and targeted police practices are also prevalent in Latine communities. CPD’s torturous interrogation techniques are infamous, and corruption at the hands of CPD has continually led to record numbers of exonerations for wrongful convictions from false and coerced confessions.³⁵ In 2017, the U.S. Department of Justice (DOJ) found CPD officers use force almost ten times more often with Black people than with white people;³⁶ in Chicago, Latine people are 6.4 times as likely to be killed by police than White people from 2013 through 2020.³⁷ Moreover, predominantly Latine communities like the Lower West Side (including neighborhoods Pilsen and Little Village) were the sites of the

28 “Cook County Drug Court Treatment Program” (n.d.). State of Illinois, Circuit Court of Cook County. Retrieved February 3, 2023, from <https://www.cookcountycourt.org/ABOUT-THE-COURT/Office-of-the-Chief-Judge/Problem-Solving-Courts/Drug-Court-Treatment-Program>

29 *Supra* notes 9, 26, and 27. See also, “Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use” (2011) for Drug Policy Alliance. 2-35. Accessible at <https://drugpolicy.org/drugcourts>

30 See “Chicago Million Dollar Blocks” at <https://chicagomilliondollarblocks.com/>

31 Bechteler, S. S., & Kane-Willis, K. (2017). “Whitewashed: The African American Opioid Epidemic” for the Chicago Urban League. Accessible at https://chiul.org/wp-content/uploads/2019/01/Whitewashed-AA-Opioid-Crisis-11-15-17_EMBARGOED_-FINAL.pdf

32 From 2015 to 2019, around 78% of Austin residents were Black and 15% of residents were Latine. See <https://www.cmap.illinois.gov/documents/10180/126764/Austin.pdf>

33 From 2015 to 2019, 96% of West Garfield Park residents and 88% of East Garfield Park were Black. Around 3% of both West and East Garfield Park residents are Latine. See <https://www.cmap.illinois.gov/documents/10180/126764/West+Garfield+Park.pdf> & <https://www.cmap.illinois.gov/documents/10180/126764/East+Garfield+Park.pdf>

34 See e.g., Solotaroff, P. (2020). “The Untouchables: An Investigation Into the Violence of the Chicago Police” for *Rolling Stone* at <https://www.rollingstone.com/culture/culture-features/chicago-police-racism-violence-history-1088559/>; Cherone, H. (2022). “Chicago Police More Likely to Use Force Against Black Chicagoans: Watchdog” for *WTTW* at <https://news.wttw.com/2022/03/01/chicago-police-more-likely-use-force-against-black-chicagoans-watchdog>

35 See e.g., Invisible Institute’s “Chicago Police Torture Archive” at chicagopolicetorturearchive.com/; “Annual Report” (2021) of the National Registry on Exonerations for the Newkirk Center for Science & Society at the University of California Irvine, the University of Michigan Law School & Michigan State University College of Law. Accessible at <https://www.law.umich.edu/special/exoneration/Documents/2021AnnualReport.pdf>

36 “Investigation of the Chicago Police Department” (2017) by the U.S. Department of Justice Civil Rights Division & United States Attorney’s Office Northern District of Illinois. Accessible at: <https://www.justice.gov/opa/file/925846/download>

37 For more information regarding the demographics of police violence and killings in Chicago and Illinois, see <https://mapping-policeviolence.org/>

most complaints about excessive force between the years of 2001-08 and 2011-15.³⁸ This context is extremely important to understand just how many PSC participants end up in these courts through racist and targeted police practices at point of arrest.

Problem-solving courts, especially drug courts, play an important role in the aftermath of the “war on drugs.” The majority of PSC participants are Black and Latine residents; the disproportionate number of people of color in Cook County’s problem-solving courts is undoubtedly a reflection of this history. The structural issues and inequities inherent to the legal system continue into these non-traditional settings in many ways; direct and institutional racism informs how participants are introduced to, experience, and leave these specialty court programs.

Mental Health Courts

According to the Illinois Criminal Justice Information Authority (ICJIA), mental health courts (MHCs) are “based on the principle of therapeutic jurisprudence and modeled after Drug Treatment Courts.”³⁹ Like drug courts, MHCs use extended judicial supervision in which participants are required to appear in court on a regular basis for status review hearings.⁴⁰ Through this model, MHCs are meant to provide comprehensive case management strategies, which incorporate partnerships with community-based treatment providers.⁴¹ While the model can vary between jurisdictions and over time, most of these courts employ a team approach to supervision that includes prosecutors, defense attorneys, probation officers, and mental health professionals. These “teams” preside over “specialized caseloads” and create individualized treatment plans.⁴²

Like other problem-solving courts, successful completion of the MHC program is defined by pre-determined criteria with the presumption that clients are motivated to succeed by the threat of sanctions, such as increased court appearances or community service, and the promise of rewards.⁴³ While MHCs define compliance in different ways, compliance is generally understood as following specific court orders (e.g., no drug or alcohol use) and “adhering” to court-ordered treatment (e.g., attending treatment appointments, engaging with providers, taking medications).⁴⁴ Because relapse is so prevalent among people with dual-diagnoses (i.e., people who have received formal diagnoses of both a “mental illness” and “substance use disorder”), MHC teams often allow for “some regression in treatment” by using various sanctions they believe will encourage participants’ compliance.⁴⁵

Documented Impact of Problem-Solving Courts

The Illinois Supreme Court emphasizes the importance of PSCs staying up to date with “evidence-

38 See Invisible Institute’s “Citizen’s Police Data Project” covering Chicago (1988-2018) at <https://cpdp.co/>

39 Hahn, T. (2015). “Mental Health Courts in Illinois” for ICJIA. Accessible at <https://icjia.illinois.gov/researchhub/articles/mental-health-courts-in-illinois>

40 Ray, B., Hood, B. J., & Canada, K. E. (2015). What Happens to Mental Health Court Noncompleters? *Behavioral Sciences & The Law*, 33(6), 801-814. Retrieved on February 3, 2021, from <https://onlinelibrary.wiley.com/doi/10.1002/bsl.2163>

41 *Supra* note 39.

42 *Supra* notes 39 and 40.

43 “Problem-Solving Courts Standards” (Revised: November 2019) for the Illinois Supreme Court, Administrative Office of the Illinois Courts (AOIC). Retrieved on February 3, 2023, from https://www.illinoiscourts.gov/Resources/a4b9d77c-b014-4174-b011-21a4ccd90521/PSC_Standards_2019.pdf

44 *Supra* note 40.

45 *Id.*

based practices.”⁴⁶ However, many scholars have argued that enforcing “evidence-based” practices in PSCs is a difficult pursuit, as the literature on “best practices” are largely mixed.

In the last few years, several studies have found some court programs that appear to be meeting their intended goals of “reducing recidivism.” For example, one study found that people who participated in Baltimore City’s Drug Treatment Court had significantly fewer unique arrests, total charges, and total drug, property, and person charges across the 15-year follow-up period.⁴⁷ A 2021 study found that less than 20% of people participating in a PSC were rearrested, and any increased risk of “recidivism” was associated with younger clients and prior convictions.⁴⁸ The Government Accountability Office analyzed eight program evaluations of drug courts, and found that drug court participants were less likely than comparison group members to use drugs (based on self-tests or self-reported use), although the difference was not always significant.⁴⁹

Studies have shown similar graduation rates of 45.6% on average in MHCs across jurisdictions.⁵⁰ In looking at the characteristics of former participants, research from 2015 shows that those with a greater number of prior arrests, as well as those arrested during their time in a MHC, were more likely to be sentenced to jail—a finding also shown in other MHC research.⁵¹ When controlling for sociodemographic characteristics, criminal history, and length of time spent in MHCs, evidence shows that participants who were incarcerated were more likely to become re-involved in the criminal legal system, while people whose charges were dismissed were less likely to come into contact with the criminal legal system again.⁵²

A 2014 study found that positive outcomes of MHCs may be reliant upon client-caseworker relationships for those involved.⁵³ Their findings show that perceived conflict with caseworkers was higher among participants who were terminated or missing from the program, and participants who perceived less or no conflict with caseworkers utilized more services and spent fewer days in jail. Furthermore, additional treatment outside of problem-solving court programs appears to

46 *Supra* note 43.

47 Kearley, B., & Gottfredson, D. (2020). Long Term Effects of Drug Court Participation: Evidence From a 15-Year Follow-Up of a Randomized Controlled Trial. *Journal of Experimental Criminology*, 16, 27-47. Retrieved on February 3, 2023, from <https://psycnet.apa.org/record/2019-72546-001>

48 Age and prior criminal system contact are often common among characteristics of individuals that are rearrested after completing problem-solving courts. See e.g., Gibbs, B. R., Lytle, R., & Wakefield, W. (2018). Outcome Effects on Recidivism Among Drug Court Participants. *Criminal Justice and Behavior*, 46(1), 115-135. Accessible at <https://journals.sagepub.com/doi/full/10.1177/0093854818800528>; Loong, D., Barnsley, J., Aubry, T., & Dewa, C. S. (2021). Individual Factors Associated with Recidivism Among Mental Health Court Program Clients. *International Journal of Law and Psychiatry*, 74.

49 U.S. Government Accountability Office (GAO). (2011). Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts. [Report to Congressional Committees]. Retrieved on February 3, 2023, from <https://www.gao.gov/products/gao-12-53>

50 *Supra* note 40.

51 *Id.* See also, Case, B., Steadman, J. H., Dupuis, S. A., & Morris, S. L. (2009). Who Succeeds in Jail Diversion Programs for Persons with Mental Illness? A Multi-Site Study. *Behavioral Sciences & the Law*, 27(5), 661-674. Retrieved on February 3, 2023, from <https://pubmed.ncbi.nlm.nih.gov/19557758/>

52 This finding was assessed during six month and one-year follow up periods. There are few longitudinal studies that have been able to more accurately predict whether or not MHCs have significant long-term effects on former participants’ future system involvement. See *Supra* note 40.

53 Epperson, M., Canada, K., Thompson, J., & Lurigio, A. (2014). Walking the Line: Specialized and Standard Probation Officer Perspectives on Supervising Probationers with Serious Mental Illnesses. *International Journal of Law and Psychiatry*, 37(5), 473-483. Retrieved on February 3, 2023, from <https://pubmed.ncbi.nlm.nih.gov/24680641/>

have resulted in an overall improvement in reduction of substance use and adverse mental health symptoms from intake to termination.⁵⁴ These findings also suggest that locating permanent, higher quality treatment predicts positive outcomes for those enrolled in problem-solving court programs.⁵⁵

Other studies highlight that some PSCs fail to meet their goals or have an adverse effect on people’s legal outcomes because of the way that services are delivered and perceived by participants. For example, in a 2014 study, researchers found that probation officers supervising system-involved people with diagnosed mental illnesses face challenges related to burnout, high caseload, and few community/mental health resources to connect individuals with meaningful short- and long-term resources.⁵⁶ Another 2016 study found that participants view service providing agencies as utilizing similar punitive logic and approaches to treatment as traditional courts, compromising the quality of treatment they received and, in turn, acting as barriers for participants to “graduate” from PSCs.⁵⁷

The past few years have also seen several investigations into whether there are inherent tensions between PSCs and the needs of participants. Firstly, the debate around drug use as a “moral failure” compared to a medical condition has been long-standing in the U.S. and is reflected in current national drug policy.⁵⁸ According to the Drug Policy Alliance: “On the one hand, drug misuse is treated as a crime that must be punished. Conversely, it is treated as a chronic relapsing disease or behavioral condition that requires ongoing treatment and support.” Other scholars likewise view these two approaches as wholly contradictory.⁵⁹ The approach of punishing drug use is informed by the idea that punitive sanctions can deter “undesired” behavior. This idea was incredibly popular among early models of PSCs, which suggested that sanctions and treatment complement one another in that people perform better when subjected to both than to one alone.⁶⁰ As such, PSC developers often put pressure on those using drugs to seek and remain in treatment, while also enforcing abstinence-only models in an attempt to deter drug use. However, many public health researchers have maintained that punitive and abstinence-only approaches are often unsuccessful

54 Baughman, M., Tossone, K., Singer, M., & Flannery, D. (2019). Evaluation of Treatment and Evaluation of Treatment and Other Factors That Lead to Drug Court Success, Substance Use Reduction, and Mental Health Symptomatology Reduction Over Time. *International Journal of Offender Therapy and Comparative Criminology*, 63(2), 257-275. Retrieved on February 3, 2023, from <https://pubmed.ncbi.nlm.nih.gov/30058416/>

55 *Ibid.*

56 *Supra* note 53.

57 While these findings suggest there is some evidence that PSC outcomes are reliant upon the quality and capacity of case workers and probation officers who staff these courts, more research needs to be done in order to better understand not only *if* these factors impact participants’ outcomes, but exactly *how*. Anecdotally, and through the researchers’ experiences with the ACT Court, we have observed that the ACT Court was affected in its early years because funding restrictions led the Court to use Cook County probation officers who also had to balance standard probation caseloads. See *e.g.*, Gallagher, R.J., Nordberg, A., & Lefebvre, E. (2016). Improving Graduation Rates in Drug Court: A Qualitative Study of Participants’ Lived Experiences. *Criminology & Criminal Justice*, 17(4), 468-484.

58 “Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use” (2011) for Drug Policy Alliance. 2-35. Accessible at <https://drugpolicy.org/drugcourts>

59 *Supra* notes 47. See also, Flango, V. (2016). Why Problem-Solving Principles Should Not Be Grafted onto Mainstream Courts. *Judicature*, 100(1). Retrieved on February 3, 2023, from <https://judicature.duke.edu/articles/why-problem-solving-principles-should-not-be-grafted-onto-mainstream-courts/>; Collins, E. (2021). The Problem of Problem-Solving Courts. *UC Davis Law Review*, 54, 1574- 1631. Accessible at https://lawreview.law.ucdavis.edu/issues/54/3/articles/files/54-3_Collins.pdf; Volkow, N. (2021). Addiction Should Be Treated, Not Penalized. *Neuropsychopharmacology*, 46(12), 2048-2050.

60 Hora, P. F., & Stalcup, T. (2007). Drug Treatment Courts in the Twenty-First Century: The Evolution of the Revolution in Problem-Solving Courts. *Georgia Law Review*, 42, 717.

and may actually result in more, and even fatal, overdoses.⁶¹

Simply put, more research is needed to better understand the effect of diversion and problem-solving courts on participants’ lives and legal system outcomes. As illustrated above, the research on the efficacy and outcomes of PSCs remains significantly mixed. A majority of the limitations identified throughout our literature review can be attributed to non-standardized data collection before, during, and after a participant enrolls in a PSC. According to the Government Accountability Office’s (GAO) analysis, drug courts’ impacts on drug use are mixed because the research lacks critical insight into what happens to participants once they are expelled or “graduate” and provides limited evidence as to whether drug courts change behavior and reduce instances of rearrest. As stated, non-standardization of data collection is not necessarily a fault of researchers, but rather the effect of how these courts differ from jurisdiction-to-jurisdiction⁶² in data collection procedures, data-sharing between offices, eligibility criteria, demographics, charges, among other factors. Additional contributing factors as to why the literature remains mixed, and areas of concerns when discussing the efficacy of problem-solving courts, may include: Lack of standardized procedures and training of relevant staff across PSCs; weak methodological approaches given varying program designs; overreliance of probation officers as case managers with minimal training; limited community-based services; varying environmental circumstances (e.g., challenges faced by participants are different in cities compared to rural areas); the “cherry-picking”⁶³ of participants; and the fact that incarceration is still being used as a status-quo violation tactic, which may influence later outcomes. As such, it is difficult to make causal, across the board (i.e., national) claims about the impact of problem-solving courts.

METHODOLOGY

Given the tension between the “best practices” literature on mental health, substance use, and public health, the problem-solving court “best practices” literature, the criminal legal responses to mental health and/or substance use, and the currently mixed literature on their efficacy, this report examines the different problem-solving courts in Cook County. Specifically, this report compares the PSCs’ policies and programming to the Illinois Supreme Court’s standards for PSCs⁶⁴ and the broader substance use, public health, mental health, and criminal legal research at large. This analysis includes quantitative data from the Cook County State’s Attorney’s Office (CCSAO) and qualitative data from perspectives of PSC actors, community organizations, and impacted people pertaining to their interactions with and experiences in the PSCs of Cook County.

61 *Supra* note 58. Massachusetts Department of Public Health. (2016). “An Assessment of Opioid-Related Deaths in Massachusetts (2013 - 2016),” 3-96. Accessible at <https://www.mass.gov/doc/legislative-report-chapter-55-opioid-overdose-study-september-2016/download>; Szalavitz, M. (2021). *Undoing Drugs: The Untold Story of Harm Reduction and the Future of Addiction*. First Ed. New York, NY: Hachette Go; Volkow, N. (2021). *Addiction Should Be Treated, Not Penalized*. *Neuropsychopharmacology*, 46(12), 2048-2050.

62 *Supra* note 49.

63 Drug courts may “cherry pick” participants that are more likely to do well in the program because of their backgrounds and the nature of their charges. For instance, in 2011, many people ended up in drug court because of a petty drug law violation, including marijuana. As a result, the Drug Policy Alliance observed that drug courts do not typically divert people from lengthy prison terms. Rather, the widespread use of incarceration was still used by drug courts for reasons like failing a drug test or missing an appointment while enrolled in the program. See *Supra* note 58.

64 *Supra* note 43.

Data Collection

This research utilizes primary and secondary data to inform a holistic picture of the scope and operations of problem-solving courts in Cook County from the perspective of court-involved people, court stakeholders, support organizations, and researchers. Primary data includes 34 semi-structured interviews with court stakeholders, court practitioners, community organizations, former participants, and researchers who are involved with problem-solving courts to varying degrees. The organizations from which individuals were interviewed make up the few in Chicago that interact directly with Cook County’s PSC programs – either by providing services to or assisting with the cases of individuals enrolled in problem-solving programs, having once been enrolled in these court programs themselves, or staffing these programs. To further contextualize Cook County’s PSC programs with national trends, we also interviewed members of a national organization with similar roles and experiences. To compile the initial list, we first relied on Chicago Appleseed Center for Fair Courts’ institutional knowledge of the significant community organizations in the area. To ensure we captured all of the relevant community partners, we utilized snowball sampling – a process through which we asked each respondent who else they would consider knowledgeable or able to speak to the county’s problem-solving and diversion court programs. We then reached out to every organization referred to us).⁶⁵ We interviewed these connections until we reached data saturation and were no longer being referred to new organizations.⁶⁶ In total, we contacted 28 organizations; 2 organizations declined interviews because they felt staff were not able to speak about the programs and 4 organizations did not respond after repeated contact attempts. In total, we interviewed 36 individuals from 18 Cook County government or judicial offices, community organizations, and research institutions who had interacted with PSCs in some way and had enough interaction to speak about the programs in detail. The organizations interviewed provide the following services: legal assistance and advocacy, law enforcement, service referrals, case management, drug and alcohol counseling, mental health counseling, PSC administration, research, and policy advocacy.

Each interview was approximately one hour long and touched on various aspects of interviewee’s direct experience with problem-solving courts. We conducted interviews over Zoom (teleconferencing) and the phone; some interviews were audio-recorded and later transcribed so that interviewers could focus on interpersonal rapport with participants without the distraction of note-taking. Some people we interviewed asked that interviews not be recorded, so one interviewer took notes while another person facilitated the interview. After each interview, researchers met and reflected on the interview, sharing initial thoughts and reactions.

The interviews were intentionally semi-structured to allow for a comparison between interviews, yet flexible enough to allow for new ideas and themes to emerge based on the individuals’ unique experiences. Interview questions were developed after a careful consideration of the existing academic literature on problem-solving court programs and the County’s program information. We asked interviewees directly what their relationships to problem-solving courts were; what they thought of problem-solving court policies and efforts by judges and other court actors to address substance

65 Small, L.M. (2009). ‘How Many Cases Do I Need?’ On Science and the Logic of Case Selection in Field-Based Research. *Ethnography*, 10(1), 5-38.

66 O’Reilly, M., & Parker, N. (2012). ‘Unsatisfactory Saturation’: A Critical Exploration of the Notion of Saturated Sample Sizes in Qualitative Research. *Qualitative Research*, 13(2), 190-197; Thorogood, N., & Green, J. (2013). Qualitative Methods for Health research. *Qualitative Methods for Health Research*, 1-360.

use and any mental health challenges faced by participants; as well as their suggestions regarding how these policies and practices could be improved. We also asked about their perceptions of what generally led participants to Cook County’s problem-solving courts and why standard court processing may or may not have been tenable for participants and their cases. Given that the current literature documenting the efficacy of problem-solving courts is both limited and mixed, we encouraged interviewees to touch on a wide variety of experiences related to problem-solving courts, drug use, and mental health with the recognition that these accounts can also serve as a significant contribution to this area of research.

Additionally, we generated insights through court-watching drug courts and mental health courts in the Chicago, Skokie, Maywood, Rolling Meadows, and Bridgeview branches of the Cook County Circuit Court between March 17 to May 27, 2022. Data from these cases was collected by five Chicago Appleseed Center for Fair Courts trained volunteer court-watchers⁶⁷ over 7 one-hour shifts in 7 courtrooms.⁶⁸ All observations referenced in this report were collected by volunteers who completed a one-hour training with Chicago Appleseed staff. Court-watchers observed courtrooms both in-person and virtually (through Zoom) in order to better understand the day-to-day operations of problem-solving courts in Cook County. Court-watchers observed a total of 51 problem-solving court participants and 7 problem-solving court judges across 5 municipal districts: 58% percent of observations come from the George N. Leighton Criminal Court Building (Chicago) and 42% of participants observed were in the suburban Drug Treatment and Mental Health Courts, with 25% of observations in specializes DTCs such as the Access to Community Treatment (ACT) Court, Women’s Rehabilitative Alternative Probation (WRAP) Court, and Rehabilitative Alternative Probation (RAP) Court.

Using a standardized survey form, volunteer court-watchers collected data on judicial behavior and culture, case outcomes, administration of treatment, and general court functioning as it relates to the Illinois Standards for Problem-Solving Courts. After attending a court call, court-watchers filled out an online survey based on their observations. Our court-watching data captures information about how the court responded to drug use and/or mental health challenges, as well as the administration of sanctions/violations, incarceration, treatment adjustments, drug testing, and incentives.

Secondary data was collected from the public data portal maintained by the Cook County State’s Attorney’s Office.⁶⁹ These data show demographic information, referral information, and outcomes for each person referred to a PSC for a felony case between 2012 and the present. We were specifically interested in court records comprising generalized information about PSC program participants from 2012 to the present, the demographics of people enrolled in problem-solving/diversion court programs, the criminal charges or circumstances for each problem-solving/diversion court participant, records indicating problem-solving/diversion court program violations, and program-length and “graduation” rates of problem-solving/diversion court participants.

⁶⁷ See e.g., <https://www.chicagoappleseed.org/court-watching/>

⁶⁸ A copy of the court-watching data collection form for this project is available upon request to the authors.

⁶⁹ See Cook County Government’s “Open Data” (2021) at <https://datacatalog.cookcountyil.gov/browse?category=Courts>

Data Analysis

To analyze interview data, we conducted two rounds of coding using the flexible coding method,⁷⁰ a method of analysis well-suited to a study in which we entered with questions informed by the existing literature and our prior knowledge about problem-solving courts, the Circuit Court of Cook County at-large, substance use, and mental health. Our first round of coding established a series of index codes, drawing on the interview protocol to divide the interviews into easily manageable sections and allow for a first reading of the transcripts. The purpose of index coding is to use broad codes that establish an “anchor” to the interview protocol and to provide an opportunity to explore initial themes and findings.⁷¹ During this phase, researchers did not code transcripts of interviews which they themselves had conducted or participated in, allowing for a fresh perspective on each set of responses. We then collectively generated a series of analytic codes, identifying emergent findings and themes well suited for further analysis. The purpose of this phase is to identify specific themes or concepts that offer responses to the stated research questions. Within each index code, we reviewed interviewee responses through the specific lens of the research question, asking ourselves whether the interviewee was describing a factor benefitting or challenging to problem-solving court programming, then re-categorizing these notes into a series of analytic codes (for instance, “participant challenges” to describe participants’ challenges related to maintaining stable employment because of frequent court dates was subsumed into “employment”). Throughout the interview process, we maintained observational and impressionistic notes to contribute to an audit trail and returned to these documents during the analytic phase to assess the validity of our codes. Through this second round of coding and discussion of these themes, we identified the findings that follow.

Survey data from court-watching was reviewed and compiled for analysis to discern trends among survey entries. Quantitative data analysis of the State’s Attorney’s records involved a series of programming scripts to link the “diversion” datasets to the “disposition” and “sentencing” sets to allow an analysis of participant outcomes.

Ethical Considerations and Limitations

This research was carried out according to social science research principles, as guided by the Chicago Appleseed Center for Fair Courts research standards.⁷² Across all research projects, our methodological approach is rooted in the protection of human subjects, mitigation of risk, and reduction of any forms of harm the study may cause participants during or following the research process. Consent was given by all community organizations and individuals to utilize interview data in the development for this report and the option for anonymity was given to each participant. Due to the relatively small number of organizations working in or with the problem-solving courts in Cook County, we have anonymized organizational names and individual participants’ names and identity markers, such as gender and specific court location.

For this report, we have limited our analysis to Cook County’s problem-solving courts and not other

70 Deterding, N. & Waters, M. (2021). Flexible Coding of In-depth Interviews: A Twenty-first-century Approach. *Sociological Methods & Research*, 50(2), 708-739.

71 *Ibid.*

72 Chicago Appleseed Center for Fair Courts’ “Research Standards Framework” (Updated October 2021), retrieved on February 3, 2023, at www.chicagoappleseed.org/wp-content/uploads/2021/10/2021-Research-Standards-Framework-2.pdf

deferral programs. Therefore, we reviewed the ACT and (W)RAP Drug Treatment Courts as opposed to other programs, such as the Cook County State’s Attorney’s Office Deferred Prosecution Program, because they are court-centered programs. It should also be noted that Chicago Appleseed was instrumental in advocating for the creation and monitoring the implementation of the ACT Court. Our past affiliation⁷³ with this PSC may pose a possible bias in this report.

Due to pandemic restrictions, all interviews were conducted virtually on a videoconference call or over the phone. This may have caused limitations in our ability to communicate clearly with participants and gather nonverbal cues; however, we mitigated this concern by asking follow-up questions where miscommunications could have occurred and by having multiple team members check the clarity and quality of each transcript. Multiple staff members from Chicago Appleseed attended these interviews in an effort to ensure we captured respondents’ experiences as clearly and accurately as possible. Specific outreach was done to the Office of the Chief Judge (OCJ) and the Cook County State’s Attorney’s Office to solicit judges’ and prosecutors’ perspectives for this report, but we received no responses to our requests for individual interviews with these offices. Additionally, while Chicago Appleseed attempted to contact former PSC participants, we were unable to interview said individuals (with the exception of one former participant), and thus those perspectives are largely missing from this report. These are key limitations of this report.

Court-watching data is based on volunteers’ individual and subjective perceptions. While we recognize that subjectivity may influence the data collected from court-watching, this information is relevant in that (a) it helps contextualize interview and quantitative data and (b) these observations help approximate how outside observers (i.e., “the public”) perceive court actors (i.e., prosecutors, judges, probation officers), as well as the kinds of requests and decisions they make. It is also important to note that because proceedings are still held mostly over videoconference, court-watchers identify themselves as “Chicago Appleseed Volunteer” or “Member of the Public,” so courtroom actors are aware they are being observed. We recognize that this may cause court actors to shift their behavior and decisions in our presence, and as such, is a limitation of this report.

OVERVIEW OF COOK COUNTY’S PROBLEM-SOLVING COURTS

As of February 2023, Cook County has 21 problem-solving courts: 7 Mental Health Courts (MHCs), 8 Drug Treatment Courts (DTCs), and 6 Veterans Treatment Courts (VTCs). Prior to the passage of Public Act 102-1041, the stated purposes of these courts were to prevent individuals from becoming repeat offenders” through treatment and intense supervision.⁷⁴ While each PSC varies in its target

73 Chicago Appleseed & Chicago Council of Lawyers. (2013). Access to Community-Based Treatment (ACT) Court: Preliminary Research on Target Population. Accessible at <http://www.chicagoappleseed.org/wp-content/uploads/2019/09/ACT-Court-June-13-Report.pdf>

74 The handbooks for Mental Health Treatment Court, Veterans Treatment Court, the suburban Drug Treatment Courts (updated in March 2022) and for the (W)RAP Drug Treatment Court programs (updated in April 2022) are available on the Circuit Court of Cook County’s website at <https://www.cookcountycourt.org/ABOUT-THE-COURT/Problem-Solving-Courts/Program-Materials>. For the Access to Community Treatment (ACT) Court handbook, which is not available online, please see the Appendix. Much of this report was researched and written before these handbooks were updated, so for access to the prior version of these handbooks, please contact the authors.

populations, all of Cook County’s PSCs seek to address the issues that contributed to how someone was introduced to the judicial system while also addressing public safety.⁷⁵ In this vein, Cook County’s PSCs are only available to people who have committed nonviolent felony crimes, with some programs in suburban Cook County also accepting people charged with misdemeanor cases.

The Laws Behind Problem-Solving Courts

The Illinois Supreme Court offers guidelines for PSCs in the state.⁷⁶ Like other states’ Supreme Courts’ guidelines, these components offer overarching principles about how the courts should function. They identify broad mandates about what the courts should do (i.e., integrate drug treatment services, identify eligible participants early, provide access to a continuum of services and coordinate strategies, monitor abstinence through drug testing) and how the institutional actors should behave (i.e., the parties should use a non-adversarial approach, judges should interact with defendants, the court should monitor and evaluate program goals and forge partnerships with community organizations, all staff should continue education).⁷⁷ Specifically, some of the Illinois Supreme Court’s guidelines include:

1. *Sanctions, including incarceration, may be administered when it is determined that a participant has failed to abide by or comply with the terms of the program.*
2. *Identifying “what works” and applying the evidence-based knowledge to program development is critically important to assure the use of practices in the delivery of behavioral health services.*
3. *[Judges being] mindful of research which relates sanction and incentive magnitude to the specific diagnosis of the participant as well as to the participant’s program phase status...for example, a participant who is in an early program phase and diagnosed as addicted should be viewed differently than a similarly diagnosed participant who is in a late phase when it comes to determining the magnitude of a sanction. The early phase participant might well be sanctioned to jail for missing a treatment session, which is a behavior relatively within his control, but not sanctioned for testing positive for drugs, which is a behavior not so easily within his control. As an alternative to a sanction for the participant who is in the early phase, the court, relying on a clinician’s recommendation, may find it more appropriate to order a therapeutic adjustment.*

Public Act 102-1041: Changes to Drug, Mental Health, & Veterans Court Acts

Although the bulk of this study took place prior to the passage and implementation efforts of Public Act 102-1041, we have included background information about it here. Signed by Governor J.B. Pritzker in June 2022, Public Act 102-1041 works to standardize the treatment court statutes, ensure individuals with similar needs have access to necessary resources, and further promote best practices.⁷⁸

⁷⁵ *Supra* note 28.

⁷⁶ *Supra* note 43.

⁷⁷ Collins, E. (2021). The Problem of Problem-Solving Courts. *UC Davis Law Review*, 54, 1574- 1631. Accessible at https://lawreview.law.ucdavis.edu/issues/54/3/articles/files/54-3_Collins.pdf

⁷⁸ *Supra* note 1.

Changes to the Purpose Sections of the Acts

The Illinois Drug Treatment Court Act (DTCA),⁷⁹ Mental Health Court Treatment Act (MHCTA),⁸⁰ and Veterans and Servicemembers Court Treatment Act (VSCA)⁸¹ have a “purpose” statement in each statute. Public Act 102-1041 makes slight changes to the purpose sections of each Act. The new language makes clear that the purpose of problem-solving courts is to provide access to treatment and provide alternatives to incarceration, rather than to reduce the incidence of drug use/mental illness and prevent recidivism. Moreover, language was added around co-occurring mental health and substance use issues to the DTCA statute, and all three statutes now have language which emphasizes the importance of courts being certified and using evidence-based approaches. While these changes have little legally binding power, they represent a shift away from pathologizing language and towards a more modern understanding of substance use and mental health.

These “definitions” of Drug Courts, Mental Health Courts, and Veterans Courts are changed in ways that have implications for its use of “evidence-based” practices and professionalization. For instance, in the old definitions, the main features of the PSCs were that they were “structured” (or in the case of the Drug Court Act, “immediate and highly structured”) and included judicial intervention through “intensive judicial monitoring.” In the new definitions, key phrases include that PSCs “facilitate intensive treatment to monitor and assist” participants, defines the programs as “non-adversarial,” and provides a list of “common features” of PSCs without requiring that courts include all of those characteristics.

Local and National Standards and Evidence-Based Practice Requirements

The biggest category of changes in the new law are aimed at making sure PSCs follow local and national standards, use evidence-based practices, and employ trained clinicians and substance use professionals. Specifically, the bill requires that participants be assessed with a “clinical needs assessment” and provided with a “clinical treatment plan.” The bill then defines “clinical treatment plan” as a description of the scope of treatment that is to be provided by a PSC treatment provider, and requires that they be evidence-based, individualized, and developed by a qualified professional certified by the Illinois Department of Human Services (DHS).

The new law explicitly requires that PSCs must follow the Illinois Supreme Court Problem Solving Court Standards,⁸² the NADCP’s “Ten Key Components” of Drug Courts (for DTCs),⁸³ the Bureau of Justice guidelines for Mental Health Courts (for MHCs),⁸⁴ and the “Ten Key Components” of Veterans Courts (for VTCs).⁸⁵

79 Drug Treatment Court Act (730 ILCS 166/). (n.d.). Illinois General Assembly. Accessible at: <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2014&ChapterID=55>

80 Mental Health Court Treatment Act (730 ILCS 168/). (n.d.). Illinois General Assembly. Accessible at: <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2947&ChapterID=55>

81 Veterans and Servicemembers Court Treatment Act (730 ILCS 167/). (n.d.) Accessible at: <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3231&ChapterID=55>

82 *Supra* note 43.

83 *Supra* note 23.

84 Council of State Governments. (2005). “A Guide to Mental Health Court Design and Implementation” for the Bureau of Justice Assistance. Accessible at <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Programs/Guide-MHC-Design.pdf>

85 Justice for Vets. (2017). “Ten Key Components” for Veterans Treatment Courts. Accessible at <https://justiceforvets.org/resource/ten-key-components-of-veterans-treatment-courts/>

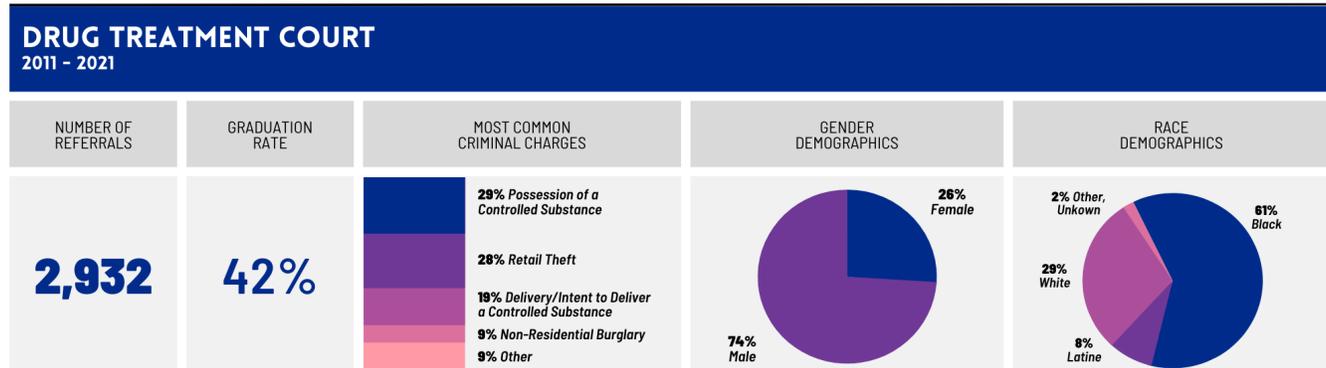
Improved Procedural Protections

Public Act 102-1041 explicitly allows withdrawal from the program and sets up requirements of how warnings and admonishments are disseminated. It requires written information about the reasons for dismissals and provides that participants have a right to a hearing on the dismissal. Moreover, Public Act 102-1041 allows a “neutral discharge” from the program for people who have not violated conditions in such a way as to warrant dismissal, but who are unable to complete program requirements to qualify for successful completion. Public Act 102-1041 removes the ability for judges to violate participants based on subjective criteria like “the defendant is not benefitting from education, treatment, or rehabilitation” or “not performing satisfactorily,” and requires that violations occur only if “the defendant is not complying with the requirements of the treatment program.” Moreover, Public Act 102-1041 requires that judges consider alternatives when a person is dismissed from or has violated the conditions of a treatment program.

It is difficult to determine how much of an impact these procedural protections will have, since little information is available on the reasons that people are dismissed from problem-solving court programs. However, these language changes represent a movement towards more concrete, measurable metrics to gauge participants’ progress and away from the use of subjective and vague metrics.

Drug Treatment Courts of Cook County

FIGURE 2



Cook County’s first drug courts were established in 1998 pursuant to the Illinois Drug Court Treatment Act, which governs eligibility for Illinois drug courts and establishes guidelines and procedures for their operation.⁸⁶ Cook County implemented a wide variety of Drug Treatment Courts in the past decade; there are currently 7 Drug Treatment Courts.

All of Cook County’s Drug Treatment Court programs are similar in that they:

1. Focus on and include substance use treatment;
2. Require drug testing, court appearances before the PSC judge, regular reports to the participants’ probation officers, and mandatory support group attendance;
3. Dismiss charges upon successful completion;

86 *Supra* note 23.

4. Enter a conviction and sentence individuals who do not complete the program; and
5. In theory, replace incarceration with about two years of probation focused on substance use treatment, housing, education, and employment.⁸⁷

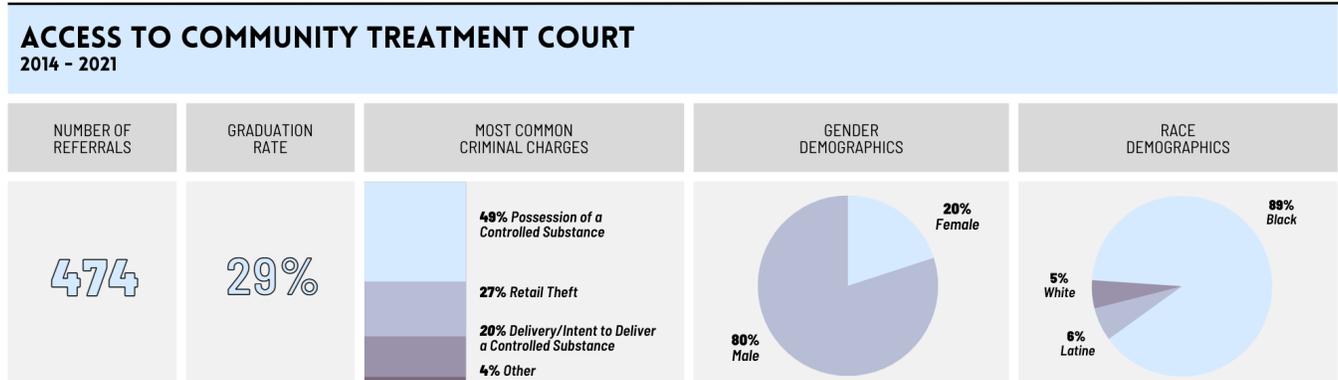
According to the Office of the Chief Judge:

*The goal of this program is to assist individuals in their recovery from drugs and/or alcohol addiction. This program offers support, services, and accountability to help participants readjust to the community as a sober and changed person.*⁸⁸

There are drug court programs in each of the suburban courthouses; these are referred to simply as Drug Treatment Courts. At the Leighton Criminal Courthouse in Chicago, there are three Drug Treatment Courts with specific names and focuses: The Rehabilitative Alternative Probation (RAP) program (for male-identifying individuals) and the Women’s Rehabilitative Alternative Probation (WRAP) programs, which are analogous⁸⁹ to the programs in the suburban courthouses, and the Access to Community Treatment (ACT). (W)RAP has published some information about its outcomes. According to the Circuit Court of Cook County, over 85% of participants “found acceptable for (W)RAP have entered treatment” and about 49% of admitted participants have successfully completed the (W)RAP program.⁹⁰ According to a study of “graduates” from 2014 through 2021, only 3.8% were charged with new felonies within one year of graduating; within three years, 9.6% were charged with new felonies and within 5 years, 10.4% of graduates were charged with new felony convictions.⁹¹

Access to Community Treatment (ACT) Court

FIGURE 3



The third DTC in Chicago is the Access to Community Treatment Court,⁹² a post-plea program serving

87 “Circuit Court of Cook County Drug Court Treatment Program - (W.)R.A.P.” (n.d.). State of Illinois, Circuit Court of Cook County. Retrieved February 3, 2023, from <https://www.cookcountycourt.org/ABOUT-THE-COURT/Problem-Solving-Courts/Drug-Court-Treatment-Program>

88 *Id.*

89 *Supra* note 28.

90 *Supra* note 87.

91 *Id.*

92 This information was taken from the Circuit Court of Cook County’s Access to Treatment (ACT) Participant Handbook administered by the Office of the Chief Judge (last updated 2018). See Appendix.

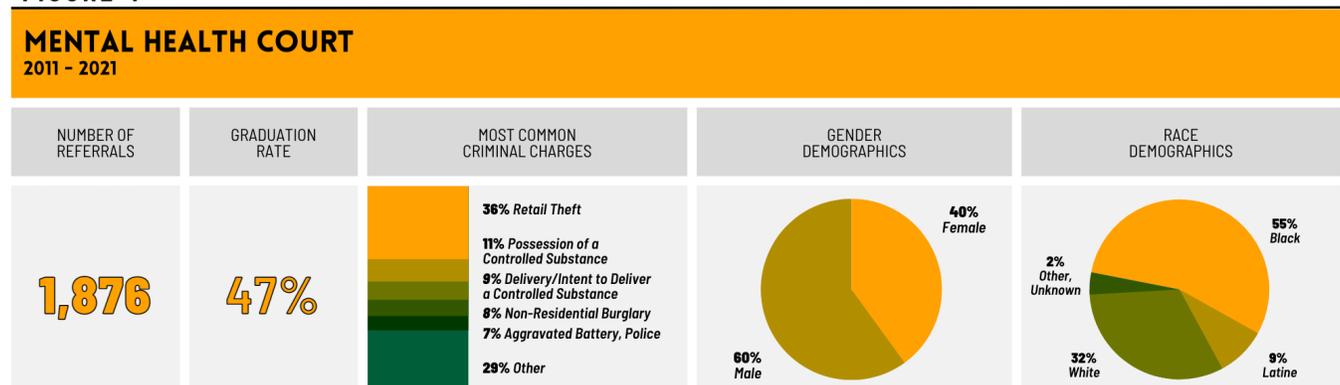
“repeat offenders,” established in 2013.⁹³ The typical duration in the program is twelve to eighteen months. The ACT Court expands eligibility criteria by allowing individuals who would otherwise be excluded from other drug-related programs, including people with:

1. One felony conviction and one prior period of incarceration by the Illinois Department of Corrections (IDOC),
2. Three felony convictions in the prior ten years and no prior periods of incarceration by IDOC, or
3. Two felony convictions in the prior five years and no prior IDOC incarcerations.

Individuals who failed the Drug Deferred Prosecution Program (a pre-plea program in Cook County) are also eligible for the ACT Court. However, like the other drug court programs in Cook County, the ACT Court is not available to individuals charged with a “violent” crime in the prior ten years.⁹⁴

Mental Health Courts of Cook County

FIGURE 4



The 7 Mental Health Courts (MHCs) of Cook County are two-year, post-plea programs for people charged with nonviolent felony offenses (“many of which are felonies as a result of repetitive criminal activity”).⁹⁵ According to the Office of the Chief Judge, the purpose of the MHC program is to “[assist] individuals arrested for nonviolent, nonsexual felonies who have some level of mental health issues and problems with alcohol or other drugs.”⁹⁶

MHCs in Cook County are divided into four phases: acceptance, stabilization, maintenance, and transition into life after the court.⁹⁷ During these phases, individuals receive specified treatment plans, which include mandatory residential or outpatient treatment, and must appear for frequent meetings

93 Chicago Appleseed was instrumental in planning, implementing, and managing the ACT Court between 2013 and 2015. For more information, see: <https://www.chicagoappleseed.org/criminal-justice/#diversion>

94 *Supra* note 74.

95 *Id.* In some cases, with the agreement of the prosecutor, participants with no prior criminal record may be admitted to MHC with a pre-plea or deferred prosecution status without entering a guilty plea. In this case, participants’ pending cases would be dismissed once they successfully complete the program.

96 “Mental Health Court Program” (n.d.). State of Illinois, Circuit Court of Cook County. Retrieved February 3, 2023, from <https://www.cookcountycourt.org/ABOUT-THE-COURT/Problem-Solving-Courts/Mental-Health-Court-Program>

97 See “Program Phases” (8-9) of the Circuit Court of Cook County’s *Mental Health Treatment Court Participant Handbook* (2022). Retrieved on January 23, 2023, from https://www.cookcountycourt.org/Portals/0/Chief%20Judge/Problem%20Solving%20Courts/Handbooks/MHC%20Handbook%20Web%20Version%202022_03_09.pdf?ver=4QsjHhpx8Van_hoZQ-EwOA%3d%3d

with probation officers and for court appearances. If someone meets all criteria for eligibility and is willing to participate, an individualized treatment plan is developed and put into place by prosecutors, defense attorneys, probation officers, and mental health professionals.⁹⁸

After this, the person is required to plead guilty to the charge(s) and begin the 24-month Mental Health Court Probation Program. Generally, within a 24-hour period, the newly admitted participant is released from jail (if incarcerated) and is transported by a case manager to the next level of care specified in the treatment plan.

Veterans Treatment Courts of Cook County

FIGURE 5



The 6 Cook County Veterans Treatment Courts (VTC) are specifically designed for individuals who have served in the United States military and have become involved in the criminal legal system. According to the Circuit Court of Cook County:

The Reserve and National Guard service members have provided or are currently providing an invaluable service to our country. In doing so, some may suffer from the effects of, including but not limited to, post-traumatic stress disorder, traumatic brain injury, depression and may also suffer from drug and alcohol addiction and co-occurring mental illness and substance abuse problems.⁹⁹

Because of this, the Circuit Court of Cook County has observed that “some veterans or active duty service members come into contact with the criminal legal system¹⁰⁰ and are charged with felony or misdemeanor offenses.”¹⁰¹ As such, the Veterans Treatment Court was established to “identify and segregate United States veterans...charged with nonviolent felony and misdemeanor offenses to facilitate their access to comprehensive medical, substance abuse, mental health treatment and social services, in an environment that will assist them to overcome issues of drug dependence, mental illness, homelessness, and unemployment.”¹⁰²

98 *Supra* note 39.

99 “Cook County Veterans Treatment Court” (n.d.). State of Illinois, Circuit Court of Cook County. Retrieved February 3, 2023, from <https://www.cookcountycourt.org/ABOUT-THE-COURT/Problem-Solving-Courts/Veterans-Treatment-Court>

100 In some cases, with the agreement of the prosecutor, participants with no prior criminal record may be admitted to VTC with a pre-plea or deferred prosecution status without entering a guilty plea. In this case, participants’ pending cases would be dismissed once they successfully complete the program.

101 *Supra* note 99.

102 *Supra* note 74.

Those who agree to the program are reviewed for eligibility by the Cook County State’s Attorney’s Office in order to ensure that their criminal background meets eligibility requirements. Like other PSCs, the Veterans Treatment Court is a collaboration between the Circuit Court of Cook County, the Cook County State’s Attorney’s Office, the Law Office of the Cook County Public Defender, and community-based treatment and support agencies. However, unique to the Veterans Treatment Court is that it also includes the United States Department of Veterans Affairs (VA) and the Illinois Department of Veterans Affairs.¹⁰³

FINDINGS

We have highlighted several findings based on our analyses of data, interview materials, and best practices literature on the efficacy of problem-solving courts. Finding #1 and Finding #2 below are based solely on analyses of open data and focuses on the profiles of participants in PSCs, while Findings #3-5 focus on court actors’, participants’, and community organizations’ perceptions of PSCs’ structures and goals and are thus based primarily on interview data. These findings relate broadly to the topics of service and resource provision; sanctions and punishments; overdose risk and public health; and race, class, and power implications of judicial and team decisions.

Finding 1.

Profiles of people in each specialty court vary, but generally, participants’ charges are almost universally nonviolent and related to drugs or property, and demographics skew slightly older, more female, and more White than people involved in the legal system generally.

The following demographic profile of people in Cook County’s problem-solving courts is based on demographic data about the race, age, gender, and charges, outcomes, and amount of time spent in a PSC for general participants. The information comes from the Cook County State’s Attorney’s Office and covers cases from 2011 to 2021; at a high-level, each PSC program is characterized along categories of data such as charge, race, gender, and age.

Charges

While there is some variation in what charges each diversion program accepts, overall, the majority of charges in Cook County’s PSCs are either drug charges or property charges and are almost all nonviolent.

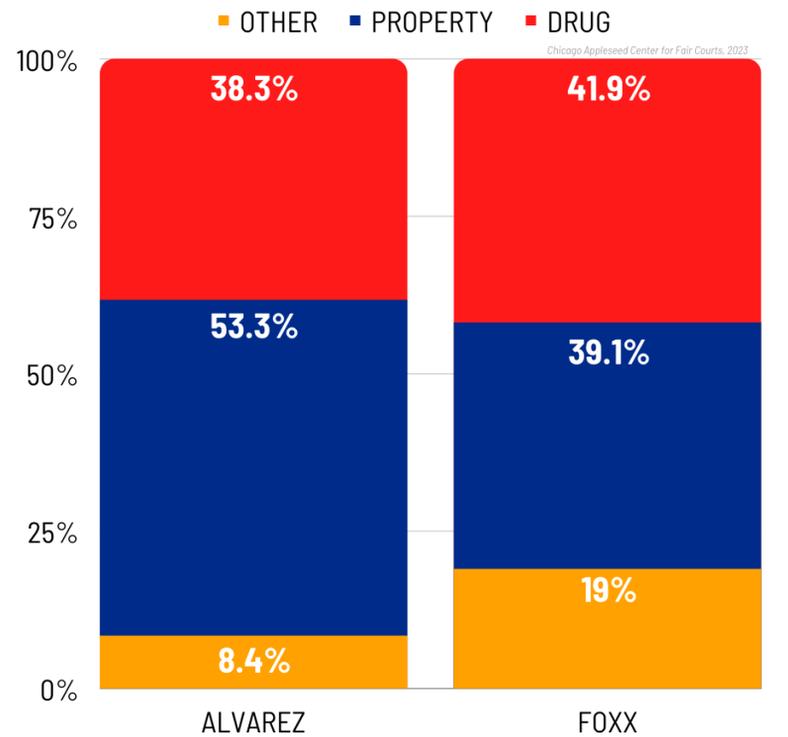
Across Cook County’s VTC, DTCs, and MHCs, participants predominantly have one of three types of charges: Possession of a Controlled Substance, Retail Theft, or Delivery of a Controlled Substance. All of the PSCs except for the ACT Court also have a small number of people with nonresidential burglary charges. Charges are almost universally nonviolent, with the only exception being that a small number

¹⁰³ *Supra* note 99.

of participants in MHCs are charged with Aggravated Battery of a Police Officer.¹⁰⁴

The quantitative data analyzed for this report is from the Cook County State’s Attorney, covering years 2011 through the end of 2021. Notably, two different elected State’s Attorneys managed the CCSAO during this period of time.¹⁰⁵ Anita Alvarez served as the State’s Attorney from 2008 to 2016; the current State’s Attorney, Kim Foxx, was elected in November of 2016 and re-elected in 2020. The data reflects different approaches to post-plea diversion taken by each administration. Under Cook County State’s Attorney Kim Foxx’s administration (reflected in data from 2017 through 2021), diversion has been used more frequently than during her predecessor’s administration. Moreover, the percentage of property and drug cases in PSCs have shrunk accordingly when comparing the two administrations: Foxx’s administration generally declines felony prosecution on more retail theft cases than Alvarez’s administration did; Foxx’s administration also sends more people with drug cases to pre-plea diversion programs than her predecessor.

FIGURE 6:
BREAKDOWN OF CHARGES IN PSCS



Data in Figure 6 comes from CCSAO and includes a breakdown of the types of charges of participants in problem-solving courts during State’s Attorney Kim Foxx’s tenure (2017-2021) and her predecessor, Anita Alvarez (2008-2016).

Race, Gender, and Age

In terms of age and gender, all the specialty courts skew at least slightly older and more female than the system as a whole. Except for in ACT Court, PSCs have a higher proportion of White participants than the demographics of people involved in Cook County’s criminal legal system generally.

Black people are overrepresented throughout the criminal legal system in Cook County. While 42% of the Cook County population is White, only 14% of the people charged with felony cases in Cook County between 2011 and 2021 were White; in contrast, about 24% of Cook County’s population is Black, but 66% of people charged with felonies were Black. Today, 74.8% of people incarcerated in Cook County Jail are

¹⁰⁴ The word “aggravated” in this charge title refers only to the fact that a police officer was the victim; it does not mean that a heightened level of violence was present. Aggravated Battery of a Police Officer cases often involve struggles during arrests, when arrestees hit or injure police officers during their apprehension.

¹⁰⁵ For more information about prosecution in Cook County, see <https://www.chicagoappleseed.org/criminal-justice/#CJAC-prosecutors>

Black and 7.4% are White.¹⁰⁶

The PSCs show different demographic patterns, with the ACT Court being the only PSC that has approximately the same racial demographics as the felony system as a whole. In fact, ACT court is even more disproportionately Black than Cook County’s criminal legal system as a whole. On the other hand, White people are about twice as prevalent as they are in the overall felony courts in the Mental Health, Drug Treatment, and Veterans Treatment Courts. Latine people are also under-represented in all of the specialty courts; they are about half as prevalent in the specialty courts as they are in the felony court system as a whole. However, Black people still make up a significant majority of PSC participants.

The demographic differences between PSCs and the general felony courts are also apparent when looking at gender. Although 13% of people charged with felonies in Cook County are recorded as female, women are more prevalent in ACT Court, mental health court, and drug court than the felony population, with 21% to 39% of participants being female. In contrast, Veterans Treatment Court is more heavily male, with 95% of VTC participants listed as men.

In terms of age, all the specialty courts skew at least slightly older than the system as a whole, with the ACT and Veterans Treatment Courts skewing heavily towards older populations. This may be because the ACT Court focuses on people with long criminal histories, and Veterans, particularly those who are criminalized, often skew older as well.¹⁰⁷ It also may be true that younger people with shorter records are given access to less intensive diversion programs, so that post-plea programs are more common after

106 This data is according to the Cook County Sheriff’s Office as of January 23, 2023. See https://www.cookcountysheriff.org/wp-content/uploads/2023/01/CCSO_BIU_CommunicationsCCDOC_v1_2023_01_23.pdf

107 Richman, M. (2018). “Veterans and the Criminal Justice System” for the Office of Research & Development, U.S. Department of Veterans Affairs. Accessible at <https://www.research.va.gov/currents/0918-VA-researcher-examines-Vets-who-collide-with-criminal-justice-system.cfm>

FIGURE 7:
RACIAL DEMOGRAPHICS OF PROBLEM-SOLVING COURTS & ALL FELONY CASES (2011-2021)

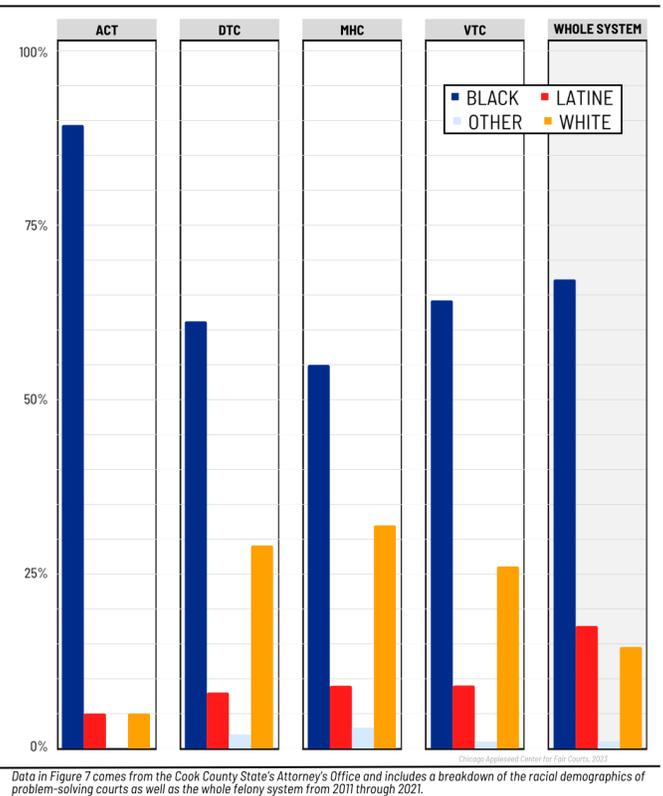
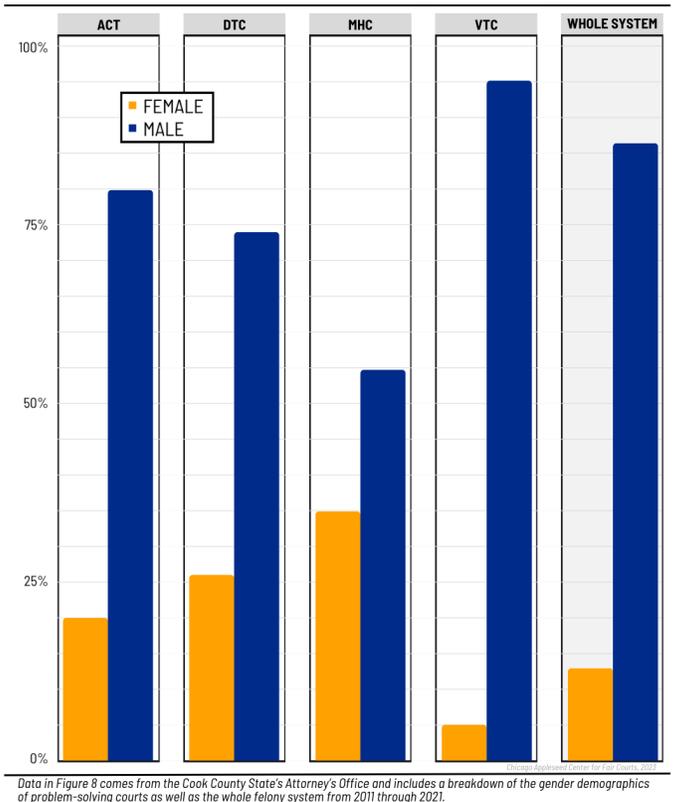


FIGURE 8:
GENDER DEMOGRAPHICS OF PROBLEM-SOLVING COURTS & ALL FELONY CASES (2011-2021)



someone has already exhausted other options; about 18% of specialty court participants are listed as having already failed another diversion program on the same case before beginning the PSC, and presumably many more have participated in other diversion programs on prior cases.

Finding 2.

Anywhere from 29% to % of participants will “graduate,” but there are wide variations in graduation rates between individual problem-solving courtrooms, which suggests that judges’ behaviors may significantly influence participants’ rates of success.

The following information about average participant outcomes and time spent in problem-solving courts is also gathered from the CCSAO’s open data archives covering cases from 2011 to 2021. This information helps provide context for the use of these court programs and gives some insight into who may be most positively or adversely affected after “graduating” from or “failing” these programs.

Outcomes and Time Spent in Problem-Solving Courts

On average, 55% of problem-solving court participants will “graduate” from their supervision, according to court data, but there are wide variations in graduation rates between individual courtrooms, which suggests that judges’ behavior may significantly influence program graduation rates.

In general, the data shows that, depending on the PSC, between 29.11% and 82.14% of participants for whom outcomes are recorded are marked as having graduated,¹⁰⁸ with the Veterans Treatment Courts having the highest graduation rate and the ACT Court having the lowest. Importantly, only the Veterans Treatment Court has a graduation rate above 50% (62%); the Mental Health Courts have an overall graduation rate of 47%, and the Drug Treatment Courts (overall) have a graduation rate of 42%, with ACT Court having a graduation rate of 29%. The overall combined completion rate of all programs is 55%.

There are even wider variations in graduation rates when comparing individual *courtrooms*.¹⁰⁹ In general, each courtroom has a different judge. Because the profiles of PSC participants are unlikely to change much between programs with the same focus and procedures, the wide variation in graduation rates may suggest that judges have different practices for how people are terminated from PSC programs and for what reasons. The result is that it can be an accident of geography whether someone is in a program that has a higher graduation rate or a lower one. For example, someone who qualifies for MHC in Cook County’s Rolling Meadows branch court enters a program where 58% of participants succeed, whereas a person who qualifies at Chicago’s felony courthouse enters a program where only 41% succeed.

¹⁰⁸ This analysis includes data for approximately 66% of all problem-solving court participants. Only about 49% of the data on all the problem-solving court cases have an outcome explicitly recorded; for an additional 17% of cases, outcomes can be inferred either because they are marked as ‘dismissed’ after referral to the specialty court (interpreted here as a “graduation”) or are marked ‘sentenced to incarceration’ after referral to the specialty court (interpreted here as a “failure”). Because we cannot determine if the cases marked as ending in ‘additional probation’ were sentences *after* a “failure” of the PSC program or were based on the *original* referral to specialty court probation, those records – along with the records for cases where there is no indication of the outcome – are excluded from this analysis.

¹⁰⁹ In this context, “courtrooms” are defined as unique courthouse and program combinations.

FIGURE 9: GRADUATION RATES IN SPECIALTY COURTROOMS (2011-2021)

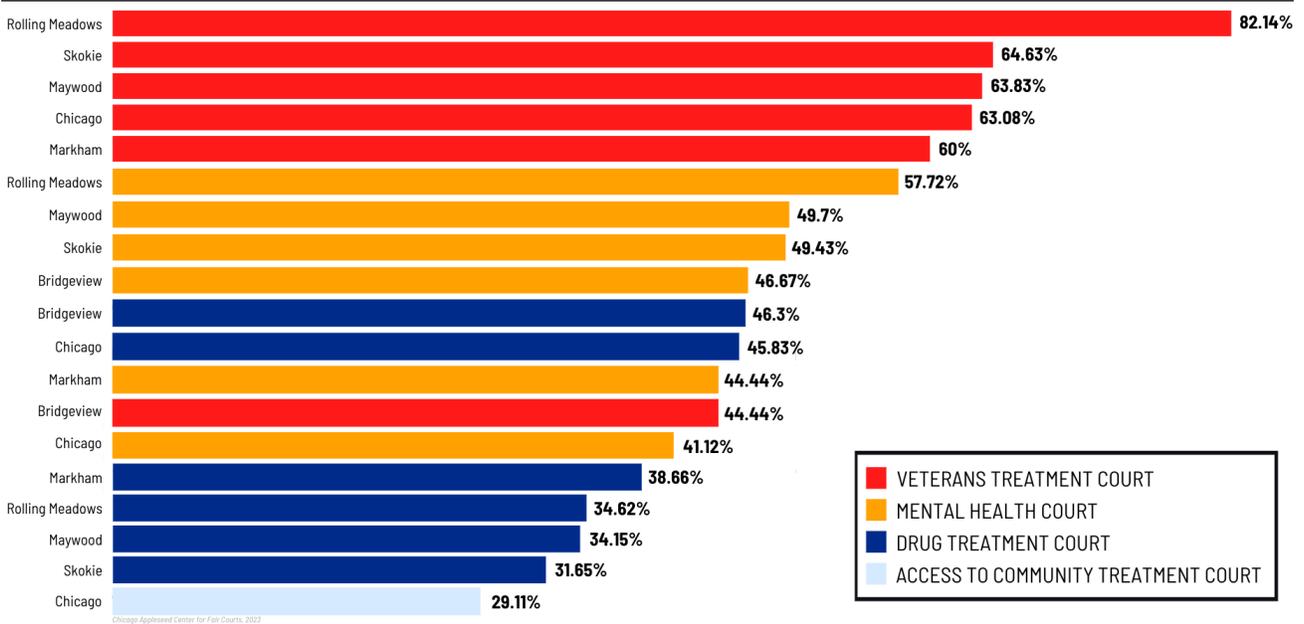


Figure 9 data is from the CCSAO and includes Problem-Solving Court graduation rates from 2011 to 2021. The PSCs at the Leighton Courthouse in Chicago are split up by gender but are combined in this analysis.

According to our analyses, PSC participants are slightly more likely to finish probation on-time or early when compared to those on regular probation for similar charges. According to a 2021 study by the Center for Criminal Justice Research, Policy, and Practice at Loyola University at Chicago, 24% of people ultimately discharged from probation had been kept on probation past their scheduled end date.¹¹⁰ In the PSCs (where all the programs are two years in length), 20% of graduates and 12% of people who fail diversion programs spend more than 2 years on probation.

Finding 3.

Problem-solving courts can provide people resources they may not have had access to otherwise, but some of the parameters — including mandated treatment and consent to disciplinary case management — present barriers to participants.

All interviewed stakeholders reported that a component of the PSC they are involved in, or were once involved in, offered participants access to resources and services that they would not have likely had access to otherwise. While many people we interviewed reported that the resources and services provided to participants were largely helpful, they spoke often about how mandated services pose challenges to participants’ autonomy and how some of the parameters in which services are provided present challenges to participants.

110 Bocanegra, K., Boulger, J., Foust, K., Olson, D., Palazeti, V., Pankratz, A., Stemen, D., & Ward, A. (2021). “Reducing Revocations Challenge: The Cook County (Chicago) Adult Probation Department and Loyola University Chicago Action Research Team Final Report” for the Center for Criminal Justice Research, Policy, and Practice at Loyola University Chicago. Retrieved on February 6, 2023, from <https://www.luc.edu/media/lucedu/ccj/pdfs/cookcountyreducingrevocationchallengeFinalReport.pdf>

Service Providers and Resources

While many stakeholders reported that the resources and services provided to participants were largely helpful, several people shared concerns that the parameters in which services are provided present challenges to participants.

As discussed in the Background section of the report, the programming and services offered in each problem-solving court differ in their intent and delivery. However, qualitative interviews with various stakeholders reveal that all PSCs share similar priorities across programming. A majority of the PSCs' programming and services are oriented around goals to "implement individualized treatment plans for participants, which include linkage to community-based services that offer intensive treatment, interventions, and supervision."¹¹¹ Interviewees not only agreed that these priorities inform programming and services, but described notable differences and similarities in programming and service provision.

Service Provision

All interviewed stakeholders reported that a component of the PSC they are involved in, or were once involved in, offered participants access to resources and services that they may not have had access to otherwise. Problem-solving court staff provided insight into the range of services provided by PSCs, including mental health services, in-patient treatment, out-patient treatment, temporary housing, job training, case management, among other resources. While there are some similarities across PSCs, service provision varies from court-to-court. For example, both MHC and ACT Court have a dedicated resource/treatment coordinator who can connect participants with any services outlined in their treatment plan or as "needs come up." In Veterans Treatment Court, veterans receive their services through Veterans Affairs (VA) and if they are not eligible for VA benefits, they receive their services from a contracted social service provider.¹¹²

A majority of interviewees agreed that these services helped some participants, especially those who did not have access to things like therapy and treatment prior. Several people we interviewed noted that the services offered through problem-solving court participation can be helpful since these services provided participants access to resources they did not have in their communities. One former participant noted that access to services such as short-term housing and a money-match program was "helpful" amidst all the other stressors going on in their life.

A researcher who studied the MHCs shared: "some folks with a history of incarceration and instability are satisfied and grateful for the experience [of the PSC and its services]." One individual who works within the court system was "impressed" with some of the services that partnered with the PSC and "wished" that all PSCs had contracts with independent, funded services. According to the individual, the reason why it is important that PSCs have good-quality resources are because:

There aren't enough resources for participants to receive the help they need [in their communities]. Mental health and drug treatment options have been shut down in their

¹¹¹ See "Problem Solving Courts" at <https://www.cookcountycourt.org/ABOUT-THE-COURT/Problem-Solving-Courts>

¹¹² *Id.*

neighborhoods, so the court has saved a lot of lives in how they send resources to people they wouldn't have otherwise had at no cost.

While many of those interviewed also acknowledged that many of these resources especially helped participants in crisis and during their enrollment in the PSC (i.e., access to shelters, in-patient treatment, etc.), not all of the resources were long-term or accessible to the participant outside of their time in the PSC process. Some interviewees reported their perception that, while “folks that work in problem-solving courts really have a passion for it, so they’re always wanting to take information [on substance use and addiction] in,” few case managers staffed in these courts were instructed to transition participants into needed long-term services such as safe and stable housing, permanent mental health care, or employment. This is likely due to how many of the resources allocated to participants were provided through either pretrial or probation contracts, which only designate funding for those actively enrolled in the PSC or under pretrial/probation supervision.

Resource Quality and Continuation

Resource and service quality and continuation was a topic of concern raised by those interviewed. Some interviewees were less impressed than others with the quality of services previously contracted with their PSCs. For example, one individual who works within the court system noted:

I have nothing good to say about [treatment provider agency]. I've never dealt with an organization who did less to help people. And it wasn't always that way. They used to be really, really great. But staffing or burnout, whatever their [reasons] were. They weren't doing what they needed to do.

“So, that [is] bothersome to me...the politics behind it make it difficult for us to do our jobs.”

Another parameter that poses challenges to participants are the limited contracts and services utilized by PSCs. For instance, a treatment provider mentioned a treatment provider/agency when discussing the shortcomings and disservice PSC’s limited contracts can have on participants:

[The treatment provider/agency] as the provider only uses [their] services as part of their health care network. I wonder if that's pretty limiting, even just location wise...if you are constantly using the same providers [for all participants]. One size doesn't fit all. . .For example...I refer clients to different places based on what's going on with them, their background information, their characteristics...[so I'm going to refer them to] whoever I think is going to be most successful. . .I don't see there being the same level of [tailoring to] client need [in problem-solving courts].

These parameters are often different from the way that services would have been provided if accessed directly in the community, rather than through the courts. One such parameter is, for instance, unavoidable changes in service providers. One individual who works within the court system observed:

Since I've been [with the problem-solving court], we've had probably a minimum of three different [service provider] agencies. And you're dealing with [people with mental health challenges] that need continuity of care. And then when you disrupt [their treatment and care], they don't know who to call, who to talk to, who to report to, and [when new service providers] reach out to them [the participants are] like, 'who are you?' So, that [is] bothersome to me...the politics behind it make it difficult for us to do our jobs.

Issues of Autonomy

People we interviewed spoke often about how mandated services pose challenges to participants' autonomy for a myriad of reasons, which can ultimately influence people's ability to develop and reach treatment goals.

"[Treatment] would [have been more] helpful if they asked questions outside of [my] drug usage because nine out of ten times, people like me have a host of other problems going on like being homeless, abused, stuff like that."

First, because services are chosen by court actors and not the participants themselves, many participants may receive services that they do not personally believe they need. Some PSC actors interviewed for this report recalled this as being a "waste of resources." Moreover, many interviewees specifically discussed the challenges that arise when participants do not have the opportunity to self-advocate and attain the resources they

"People felt incarcerated because they had a lack of voice or choice. They did not have a choice in their treatment and where they got it."

know they need—and when they are unsure of why they are receiving some services. For instance, one former PSC participant spoke to how the case managers they interacted with in drug court sometimes did not know "what kind of treatment" was needed or necessary for participants given the "limited kinds of

questions" they would ask during assessments. After continuing to struggle with substance use after multiple prison sentences, the former participant recalled that the treatment provider (contracted through the problem-solving court) only assessed needs directly associated with substance use and treatment:

[Treatment] would [have been more] helpful if they asked questions outside of [my] drug usage because nine out of ten times, people like me have a host of other problems going on like being homeless, abused, stuff like that.

Mandating services challenges people's autonomy over their own lives. Speaking to this lack of agency, a researcher who spent years interviewing and observing MHC participants found that, overwhelmingly, participants felt that they were still incarcerated while enrolled in MHC:

People felt incarcerated because they had a lack of voice or choice. They did not have a choice in their treatment and where they got it. There was no dialogue...and the biggest complaint against that was not having the choice they wanted. Mental health court is supposed to be voluntary, but some people thought they weren't supposed to be there.

Blurred Boundaries

The interdisciplinary team model for problem-solving court participants can cause confusion related to stakeholder roles in treatment and poses issues for individuals’ confidentiality. As illustrated above, PSCs differ from traditional criminal courts in that they are supposed to work in collaborative, multidisciplinary teams to address the underlying issues associated with why someone entered the criminal legal system.¹¹³ People we interviewed generally agreed that interdisciplinary case management and mandated participant “consent” to share privileged health information in the problem-solving courts “blurred” stakeholder roles in order for the court to closely monitor participants.

“Team” Approach

Many interviewees working in specialty courts, which require more “flexibility” than traditional court processing of cases, felt like the PSCs were “upending” typical court programming. According to some people we interviewed, and as demonstrated in many materials from the county, the purpose of “upending” typical court programming was meant to “diminish the appearance of hierarchy” in the court model and “humanize” court actors to the participants. According to interviewees, some judges were able to do this by dressing more casually, not wearing robes, and having all court stakeholders sit together with the participants. Some interviewees discussed how similar approaches to PSC programming were meant to complement the courts’ principles of fostering a feeling of “collaboration” between participants, legal stakeholders, and social workers in the court.

Collaboration often facilitates more complete and comprehensive monitoring of program participants than would happen in a traditional courtroom. Because different court actors collaborate on treatment plans, judges and State’s Attorneys become aware of participant behaviors that they would not necessarily be privy to in a normal courtroom setting. This “blurring of roles,” then, is often done in service of increased surveillance of participants. Sometimes, this role-blurring had positive consequences; in one instance, an individual who works in a PSC recalled a judge using their own personal connections to connect participants with employment. However, because judges are aware of behavior they would not be aware of in a normal courtroom, their power is extended, allowing them to impose consequences for that behavior.

According to people we interviewed, the “team approach” is integral to how resources and services are delegated for participants. An individual who works within the court system described their drug court’s approach to service and resource provision outside of probation as every team member’s (i.e., public defender, judge, State’s Attorney, probation officer) ability to be “creative” with state funding while also “calling around to help [participants] navigate any systems” needed at any given time:

It’s really just kind of our team cobbling together [resources] depending on what [a participant] needs...it’s just us making it up as we go. . . For the most part, there are certain groups that for things like treatment, we have county contracts for. So, there’s some sort of...hierarchy...where we have to use...grant money first, then we can use probation money, then a State’s Attorney grant, and then the Chief Judge’s grant. At one point, we had a [participant] that I was trying

113 *Supra* note 15.

to get into a recovery home who didn't have any money, and I was able to access [the] State's Attorney grant funds to pay for [the participant] to stay there for two months until [they] could get on [their] feet. So, [service provision] is kind of us just being creative, and trying to figure out a way to get people funding for whatever they might need.

One court actor was able to provide an example of how these creative, team approaches appear to help some participants in PSCs:

[One participant was] locked up for two weeks and [the participant] came back sober...we helped [the participant] get housing...found the money to pay for [the participant's] housing. After [getting housing], [the participant] could, for example, go to a treatment center, but [the participant] was only allowed to stay there for three months unless [they] had insurance or the money, and [the PSC team] would find the money. [The participant] did not go home for two years. We always found a way to keep [the participant] housed somewhere. [The participant] made all [their] meetings...[the participant] never violated in two years...[they] remained sober. [The participant] was hardcore...we created a success story...that [participant] lived in the criminal justice system...came to us high and...left a wonderful citizen. They have their [child] back. We helped [the participant] get [their] license and [they] bought a [car]. I don't think [the participant] will ever go back to jail.

The individual added how this kind of “team approach” is a major benefit of being enrolled in drug court:

Unfortunately, the criminal justice system steers closer to the prosecution side than the defense side. It's pretty much guilty until proven innocent...In problem-solving court, everyone is on the same team, which is keeping our clients alive and healthy.

Another individual who works in the court system added that having a “team” helps participants navigate largely bureaucratic and inaccessible systems in and outside of the legal system:

There's just help navigating all these systems...even as a relatively well-off [court-actor] in the world, I get frustrated when I have to call some of [these systems] to figure out things like why they're kicking [a participant] out after only 28 days [of residential treatment].

They continued:

So, I think, the clients feel seen and heard for the first time in a really long time. And...it takes clients a really long time before they believe that we're actually trying to help them because they're just so used to no one ever trying to help them. . . For example, we had a client that was in drug court and...was doing well [in the program]...[then] an older case from when [they] were active in [their] addiction ended up coming into the system in the middle of [their] [drug court probation], and [the participant] got picked up from work. We were able to step in...and were able to explain to the judge, “look...this case predates [them] getting clean.” And we were able to get that case basically taken care of, and [the participant] still calls me and thanks me for it. Because [they're] like, “I can't believe it, I've never had people look out for me and say ‘hey, you have a warrant out for this, let's go in and take care of it. We'll figure it out together.’”

While judges are able to use their connections to provide needed resources to participants, many people we interviewed described that this pseudo-case management was often selective. Subjective factors appeared to inform whether or not a judge would use their personal connections to assist an individual—this “privilege” was not an option made accessible to all participants. Several interviewees observed that referrals to these connections often were dependent on the participant’s performance and whether or not the judge simply “liked” and “trusted” them. However, the people we interviewed often noted that the basis for such admiration and trust was unclear.

It is clear from these interviews that many PSC actors, like these judges, are selectively participating in case management. On one hand, several individuals who work in and outside of the court system see how these kinds of “blurred roles” lead to participants appreciating the “personal relationships and attention” developed between court actors and participants. On the other hand, several individuals interviewed for this report observed that the expansion of court actors’ roles meant that they have access to more information than they would have otherwise in a traditional court setting, such as access to medical treatment records and progress or week-by-week updates on participants’ jobs and home life.

Confidentiality

Another notable parameter to receiving services while enrolled in PSC is that confidentiality between service providers and participants is limited, given the fact that services have contracts with the county’s Probation Department. As illustrated by the participant handbooks,¹¹⁴ all contracts with service providers require practitioners (like therapists) to sign a Release of Information (ROI) to share what was discussed, or a participant’s progress, with the PSC team. While the participant handbooks suggest that participants have to sign and acknowledge compromised confidentiality when they enroll in the PSC, a treatment provider problematized the notion of “informed consent” in these contexts:

I know [participants] sign a contract to the specialty courts...I just really question how it is explained to clients, and if they really have informed consent. . . [These parameters are] portrayed as, “you’re about to get saved...you’re gonna have so many resources,” and it’s like, okay, but also...[if] you [test positive for drugs], you’re gonna be locked up for 30 more days... I just wonder how much choice is given to a person: You either do this specialty court, or you go downstate for a year...what choice [do] people really have... and [do they] really understand the consequences that they’ll face by having so many court requirements, follow ups, and court dates...people all up in their lives for two, three years?

“It was easier for [participants] to get in trouble because they were supposed to share everything about their lives, and they risked harsher penalties if they weren’t being as transparent to the judges as the judges wanted them [to be].”

As illustrated above, the stated purposes of this expanded “data-sharing” among court actors is meant to initially inform the court of participants’ eligibility for treatment, and later on is used to measure participants’ compliance and progress “pursuant to the conditions of

114 All handbooks can be found on the Circuit Court of Cook County’s website at <https://www.cookcountycourt.org/ABOUT-THE-COURT/Problem-Solving-Courts/Program-Materials> (last accessed on January 23, 2023). For the ACT Court handbook, which is not available online, please see the Appendix.

participants’ court ordered participation in treatment.”¹¹⁵ However, more requirements for participants to disclose information while they are enrolled in the PSC often leads to increased surveillance, less privacy, and more consequences in people’s lives that they would not have otherwise experienced had they gone through traditional court sentencing. For example, one interviewee shared that:

It was easier for [participants] to get in trouble because they were supposed to share everything about their lives, and they risked harsher penalties if they weren’t being as transparent to the judges as the judges wanted them [to be].

Another treatment provider similarly discussed how the blurred boundaries between PSC teams and contracted treatment providers could be a disservice to participants:

[A service provider] once [notified the judge] of a false dirty drop.¹¹⁶ And so, [the service provider] is directly calling the judge and speaking to [them]...because they work together so often. I think that [those kinds of] close relationships can be a detriment to our clients.

Finding 4.

Many of the requirements in problem-solving courts are unrealistic, demanding, and counterproductive because the main driver for participants’ incarceration are punishments for breaking program rules.

People we interviewed repeatedly explained that the demanding rules of the PSCs and the overarching abstinence-only ideology were not only unrealistic, but often counterproductive, as breaking the rules were main driving factors for participants being sanctioned—including through incarceration.

Mandatory Drug-Testing

Frequent, random mandatory drug testing acts as a barrier for participants who may not have access to childcare, transportation, or the ability to take time off of work or school and can exacerbate participants’ mental health issues such as anxiety and depression.

All participants in problem-solving courts are required to submit to frequent and random drug testing for the entirety of their PSC sentence. Drug tests are a way for the court to monitor participants’ abstinence from drugs and sanction drug use, as drug use is a violation of the rules in all problem-solving courts. According to several people we interviewed, the random drug testing process in itself presents challenges to some participants. The court’s drug testing process involves being “assigned a color” every week and calling a “drug testing hotline” every day to see if their “color was called” for that day. If a participant’s color was drawn on a given day, participants are expected to travel outside of their communities to a testing center during business hours to submit to a drug test. This causes issues for many participants who live in neighborhoods on the South and West Sides of Chicago, which historically have limited access to reliable public transportation. Several interviewees noted that while the Probation Department would offer and provide participants with Chicago Transit Authority (CTA)

¹¹⁵ *Id.*

¹¹⁶ A “dirty drop” refers to a urinalysis drug screen that comes back as positive for detecting drugs.

fare cards, probation officers would sometimes get increasingly frustrated with “how often” participants would request fare cards and/or because it was not in the budget to meet such high demand.

An individual who works in the court system described how administering additional drug tests were sometimes utilized by the judge in their PSC to exercise some control in adjusting participants’ treatment plans:

There have been disagreements [among the team regarding treatment] and sometimes, you know, the state or the probation might say, “judge, I don’t think this is enough for the person” and [the treatment provider/agency] will say, “this is what the person needs.” [The judge] may defer to [the treatment provider/agency] in that situation if it involves treatment. If [the judge] grits [their] teeth and says, “I’m not so sure about [treatment provider/agency’s decision regarding treatment],” [and is] concerned that the [participant] needs more treatment, [the judge will] ask probation to [drug test] [that participant] more.

Alongside drug testing, individuals who works within the court system observed that judges sometimes mandate participants to attend twelve-step programs like Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) when someone tests positive for drug use:

A lot of the [first] sanctions involve [having participants] go to a [NA/AA] meeting every day...we find that the people who are violating have been slow to get sponsors or [who] aren’t compliant [in going to the meetings], so a more heavy dose of meetings is one way [the judge] sanctions [in response to that behavior].

Many participants already struggle to afford things like childcare or the cost of bus or train fare in their day-to-day lives. Given how a trip to and from their neighborhoods to an AA/NA meeting or drug testing center would likely include multiple transfers on short notice, these requirements impose additional barriers on participants. One researcher explained that these kinds of additional and intensive components are especially challenging for individuals struggling with depression, anxiety, and other mental illnesses, because they “frankly didn’t have capacity to meet all the expectations of the court.”

“The first time [the participant tests positive for drugs], it’s “go to treatment” and then it’s “go to jail,” and if that doesn’t work, more and more jail, lots and lots of jail.”

Abstinence-Only Programming

Although there is variation in the kinds of “problems” each PSC hopes to address, and regardless of whether or not the reason someone was in a PSC was related to drug use, all interviewees spoke to how most of the PSCs are designed as abstinence-only models.

In interviews, some people discussed how they perceived the abstinence-only model as unfitting for a majority of participants, regardless of whether or not they struggled with substance use. People we interviewed mostly agreed that expecting participants – even those identifying as having a substance

use disorder – to refrain from using all substances was “unrealistic”¹¹⁷ for the program’s duration of two years and is not based on any public health, drug, or harm reduction best practices.

Interviewees repeatedly explained that the overarching abstinence-only ideology of the problem-solving courts was not only unrealistic, but often counterproductive, as it was a main driving factor for participants being incarcerated. Despite many public-facing and internal PSC documents stating that incarceration is to be only used as a “last resort,” several people we interviewed observed that participants’ inability to refrain from using drugs, and thus move through the phases of the PSC programs, led some judges to depend on jail sanctions. Most stakeholders believe the main benefit of PSCs is its use as an alternative to incarceration, but many interviewees reported that problem-solving courts frequently utilize incarceration-based sanctions in response to violations like drug use:

I try to tell participants [this] isn’t the kind of place you can ‘drop dirty’ and it’ll be okay. The first time [the participant tests positive for drugs], it’s “go to treatment” and then it’s “go to jail,” and if that doesn’t work, more and more jail, lots and lots of jail. It’s like, “you didn’t do the [sit-ups] the right way, do 20 push-ups.”

Rewards and Punishments

PSC participants can experience a range of criminal legal system sanctions, as well as a range of incentives as they move through the programs. Our interviews suggest that these sanctions may be overused, and incentives underused.

Our court-watchers observed participants being sanctioned in twice as many cases as they observed participants receiving incentives or rewards. According to the Office of the Chief Judge, sanctions may be used for any described violation of any rule listed in the handbook, as well as “any behavior that impacts...progress, such as being late,” and incentives can be given whenever a participant “is successful.”¹¹⁸ Speaking programmatically, there was collective confusion among those we interviewed regarding the design of the program and how rewards and sanctions were administered to participants. According to our interviews, how often and what kind of sanctions were administered greatly varies across PSCs in Cook County. Consequences varied from homework assignments (e.g., writing reflections and submitting them to the court) and more frequent drug tests, to involuntary inpatient or outpatient programs and sending the participant to spend a weekend or week incarcerated in the jail.

In the ACT Court specifically, one individual observed that there is no “standardized” way to administer sanctions, including the sanction of incarceration. Specifically, the individual described how drug use often leads to varying kinds of sanctions such as increased drug testing, changing the participant’s

¹¹⁷ There is evidence that a “one-size-fits-all” approach to substance use is misguided because not all treatment methods work for everyone and can be harmful and potentially fatal. See e.g., American Public Health Association. (2013). “Defining and Implementing a Public Health Response to Drug Use and Misuse,” retrieved on February 6, 2023, from <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/08/04/defining-and-implementing-a-public-health-response-to-drug-use-and-misuse>; Massachusetts Department of Public Health. (2016). “An Assessment of Opioid-Related Deaths in Massachusetts (2013 - 2016),” 3-96. Accessible at <https://www.mass.gov/doc/legislative-report-chapter-55-opioid-overdose-study-september-2016/download>

¹¹⁸ *Supra* note 114.

treatment plan (i.e., sending an individual to detox, into involuntary/residential treatment, or into the Cook County Department of Corrections (CCDOC) inside treatment program), or being sent to jail. Another individual noted that these kinds of sanctions and violations are administered “ad hoc”:

First time [you test positive for drugs], “shame on you, what happened? Let’s talk about it,” you know, which is okay. [If the participant gets a] new case violation, [and they’re] probably in custody for a little bit too, [so] we can find out what’s going on, [it’s], “Did you relapse? Are you being honest about it? What happened?” [If the participant says], “Oh, this is complete BS, I had nothing to do with it,” [the participant] might be sitting [in jail] a little bit longer.

“One of the issues with the way we think about treating addiction or adjusting addiction through courts is that we forget that [some people] do not want contact with emergency services in fear of law enforcement.”

One individual shared the story of their family member who faced multiple challenges posed by the courts and ultimately died of an overdose while enrolled in a Cook County DTC. The interviewee explained that their family member was so scared of being sanctioned

that when they overdosed, they did not feel like they could call medical services out of fear of being further criminalized. The interviewee explained:

[They] entered the drug court and [were] sentenced to a few years of probation. That was, for [them], an alternative to prison. [They] were doing okay for a little while. [They] kept falling off, which was pretty typical for addiction...at the end, [they were in treatment] and [they] left to use heroin again. [Their] tolerance was extremely low, and that is when [they] overdosed. When [they] died, [they were] hiding [from police] and there was no motive to get medical help. I mention that because one of the issues with the way we think about treating addiction or adjusting addiction through courts is that we forget that [some people] do not want contact with emergency services in fear of law enforcement. [They] died of an overdose while...in drug court. [They] tried really hard not to use drugs. Every day, I think: If we lived in a place that had a heroin maintenance program, [they] wouldn’t be dead.

Incarceration

While many of our interviews suggested an overuse of incarceration, some interviews suggest that there is some variation in how frequently incarceration is used across different PSCs. For example, one individual who works within the court system believed that incarceration in MHCs is used as a “last resort” sanction:

We don’t send them [to jail] over one violation or two, three, or four. I mean, they have to mess up a lot [before they’re sent to jail].

When asked about how frequently incarceration is used generally, one individual noted:

I don’t want to say it’s arbitrary, but it kind of is. If you’re picked up on a new case, you’re going into custody, because you have to go through the process. If you come in and you have relapsed, this is where it’s tricky, “How many times did you relapse? What are you saying? How are you saying it? Did you self-disclose your relapse? Are you trying to make an excuse? Why?” [If the

participant says], “I don’t know, I borrowed a cigarette from somebody,” you know, we weren’t born yesterday. “You shouldn’t be bumping a cigarette off anybody. Don’t be an idiot.” You know? So, you have those types of situations. First time [violating], [participants are] probably not going in [to custody].

Another interviewee shared that the judge of their drug court has “gotten better” over time about sending people into custody as a sanction:

[The judge is] trying more now. In the beginning, when I joined [a few years ago], jail was [used] more [as] a sanction than it is now. Each year, as [the judge’s] knowledge has increased, [using] jail as a sanction has been less used. It used to be automatic—the first violation [resulted in participants] going to jail for one day.

In addition to incarceration being used as a sanction, a discovery made clear throughout our qualitative interviews is that participants are often incarcerated while they are being screened for PSC eligibility. This means that PSC participants are incarcerated before they formally enroll in PSCs. According to one court official:

From identification at bond court...reassignment to a problem-solving court call... an [evaluation of] eligibility...staffing [then] acceptance [to the problem-solving court], [participants are incarcerated from] probably anywhere from 90 days [to] four months, I would say. . . We have a higher percentage of folks that are coming into the [problem-solving court] process through custody, and very few that are...bonded out and then come to the court date.

Treatment Changes

Court-watchers also observed changes to treatment plans being used as sanctions for unsatisfactory behavior in the program. Our court-watchers noted a number of instances where increased intensive outpatient sessions were ordered by a judge as a sanction for problem behavior. These sanctions were also sometimes delivered without regard to other factors in a participant’s life that might have bearing on their ability to be successful in increased treatment. One court-watcher described a judge implementing such a sanction:

The participant had concerns around child-care as she attended an increased number of [intensive outpatient program] sessions. The judge cut her off and told her that there was “no excuse” and that she would/should be able to find childcare. Judge did not go into any detail as to how participants would be able to find childcare resources. She did not refer [the] participant to anyone or anything.

The National Drug Court Institute and National Association of Drug Court Professionals have published a list of acceptable incentives and sanctions that is included as an Appendix to the Illinois Supreme Court Standards for Problem Solving Courts. The preface to this list states: “Treatment adjustments should be based on participants’ clinical needs as determined by qualified treatment professionals and should not be used to reward desired behaviors or punish undesired behaviors.”¹¹⁹

119 *Supra* note 43.

Finding 5.

Although data shows that overdose deaths have increased in recent years, there seems to be a lack of consensus amongst court actors in terms of cause and how to mitigate the risk.

Unfortunately, several people we interviewed shared that several participants associated with their problem-solving court fatally overdosed while enrolled in the courts. While many of them agreed that the number of fatal overdoses has increased since the onset of the COVID-19 pandemic, people we interviewed shared various factors as to why they believe participants fatally overdose while in problem-solving court.

Impact of the COVID-19 Pandemic

When discussing the relationship between PSC programming and participants' overdoses, interviewees attributed different factors — such as lowered tolerances from abstaining from drugs while enrolled in the program and a lack of intense surveillance during the COVID-19 pandemic — to why participants have fatally overdosed in recent years.

We are unaware of any central data-keeping around the prevalence of participant overdoses, including fatal, and deaths by suicide in the Cook County problem-solving courts. While several stakeholders we interviewed shared that their PSC has lost participants to fatal overdoses—especially since the beginning of the COVID-19 pandemic—others noted a different experience. One interviewee said their PSC team has “never had a suicide” and has “only had one person OD.”

Mental health court stakeholders shared that they lost five participants to fatal overdoses, and one died by suicide since the pandemic began in 2020. The individual discussed the circumstances around one of their PSC participant's overdoses and how court actors perceived the death to be because they didn't incarcerate the participant in time:

I argued to keep a young man out [of prison]. And he died on me. He was 19...the judges [were like], “I should have taken him in [to custody],” [but]...the placement that we could get them wasn't open yet. So [they] had time to kill. Literally.

The individual continued:

I had [another] client who went through the [Mental Health Court] and did great. And [on] the evening of graduation, after [they] graduated, [they] [overdosed]. So, just because you go through the program doesn't necessarily equal success.

Some court actors believed that a lack of intense supervision is why participants fatally overdose while involved in PSCs. One individual attributed COVID-19 and the lack of contact the court had with participants to why seven participants in their drug court have fatally overdosed since 2020:

During the COVID pandemic, I think [our problem-solving court] lost seven people [to overdoses]. [The problem-solving court] thought we were doing well, it was pretty [surprising]. Recently, we

lost a couple [of participants] because they were in a facility [that] had [a] COVID issue. So, they were given an option of going to a hospital [or a]...recovery home...then [while quarantining] at home, [they] overdosed. So, a couple of times that happened...the other instances when we had them last year, we were only Zooming in and we didn't have contact [with them].

This individual also acknowledged that fatal overdoses occurred in their PSC before the pandemic:

But usually [even] when court [is] open and everybody's coming in, it does happen...we've [also] lost a couple of graduates [to] overdoses.

Another individual who works in the court system shared that supervision by their PSC was more intensive throughout the COVID-19 pandemic, and provided an example of how they believe this approach benefitted a participant who was at-risk of fatally overdosing:

We had more meetings, we had more staffing, [the] judge was still sending gift cards, food cards. [This was] coming out [of the judge's] pocket...if [they] couldn't get it from the county quick enough. [One participant] in our program had a friend...that overdosed. So...we kept monitoring [them] so that [they wouldn't] fall into a valley of depression...[they] ended up graduating.

We also heard perspectives from court actors that another factor that could have affected the number of fatal overdoses was due to both the prevalence of fentanyl in the illegal drug supply and participants' lowered tolerance:

[Something that] has nothing to do with the pandemic is the amount of...fentanyl out there...the fentanyl...is making [substance use] extremely dangerous. Very dangerous...we get surprised because the person is doing well and they overdose. I guess the less surprising aspect of that is because they haven't used [substances] in a long time. When they use [substances], they don't have the tolerance that they had before. So, the consequences could be deadly.

Overdose deaths from opioids have been steadily increasing all over the country in the past few years. In Cook County, there were around 2,000 overdose deaths in 2021, compared to 647 in 2015.¹²⁰ When asked if the court system has changed anything in their trainings and/or practices in response to the increasing rates of fatal overdoses, a court official responded:

No is the short answer from our [office's] perspective, but I know within the particular teams in the specific courtrooms...they have had very transparent and open conversations amongst themselves. There wasn't any additional training or anything that the department mandated...I would venture to guess that my chain of command doesn't even know that we lost anybody through an overdose. If anything, it might have just been mentioned as an aside by somebody, but they pretty much keep that 'close to the vest' in the courtroom within the stakeholder teams and just kind of work it through with each other.

120 NBC Chicago (2022) "As Opioid Overdose Deaths Hit New Record, Pressure Grows for Safe Places to Inject Drugs in Chicago," accessible at <https://www.nbcchicago.com/news/local/as-opioid-overdose-deaths-hit-new-record-pressure-grows-for-safe-places-to-inject-drugs-in-chicago>

Attempts to Limit the Risk of Overdose

There are a wide variety of perspectives between problem-solving court actors in terms of the best approaches to limit the risk of overdose risk. These perspectives do not always align with public health best practices.

Several people we interviewed discussed the benefits of medication-assisted treatment compared to abstinence-only models and gave examples of judges' using incarceration to limit the risk of overdose death. In contrast to the court officials who believe that the fatal overdoses were the result of COVID-19 and the inability to provide status-quo, intensive supervision, several people we interviewed discussed components of PSC programs that may increase people's risk of fatally overdosing.

Intensive Supervision and Incarceration

One component that contributes to the risk of overdose, as discussed above, is the general abstinence-only program model. Treatment providers explained that the abstinence-only models of PSCs, as well as incarceration, contribute to the rates of fatal overdoses in the court:

Abstinence-only education does not work. Using a harm reduction approach, and educating [people about] 'start low and slow' [in recovery] and naloxone access, all of that stuff is really important. . . So, I think our clients are expected to just like, get out and stop using when maybe they're not actually ready to stop. . . Nothing else has changed in [participants'] environments. They're [sometimes] still homeless, no wonder overdoses are occurring. People aren't getting support around [things like that].

A treatment provider who works in the court system explained: “[Fatal overdoses are] a really super common thing when somebody gets out of custody.” Another individual explained:

We've had a lot of clients overdose...there was a spike at the beginning of COVID. And most of it is like, you know, just like fentanyl ending up in drugs. But it's scary, because it's really dangerous—they've been sitting in the jail, and then they get out of there clean. That's like the highest likelihood of overdosing.

Incarceration as it relates to the occurrence of overdoses was also touched upon in some of our interviews. Several interviewees reported that judges will incarcerate participants they fear will overdose in the community: “[The judge] will take you in [jail] if [the judge] thinks that you're a threat to yourself, like if you're gonna [overdose].” Others described judges keeping participants incarcerated for longer under the impression that this can prevent participants from fatally overdosing: “[The judge] might want to keep them in a little longer than that just because [the judge] doesn't want [participants] to overdose.”

Our interviews demonstrate the reverberating traumatic affects participant deaths have on all people impacted by PSCs: the participants who tragically lost their lives, their loved ones and community-members, treatment providers, and even some of the court actors, like attorneys. Someone who works in a PSC discussed the dangers of abstinence-only approaches and how the attempt to mitigate the risk of overdosing while someone is enrolled in drug court:

I had a client that called me once...[when they] had gotten kicked out of the rehab facility... and [the treatment provider] said, “you have to go to the detox facility downtown,” [but they only] dropped [the participant] off at the train. I called [the participant] an Uber because I know that that is so dangerous. If they haven’t been using [drugs], it’s just so dangerous. And it scares me enough that I’m like, “Look, I’ll get you from point A to point B, just because I don’t want you to die.”

One interviewee discussed the impact fatal overdoses has even had on some Probation Officers who have requested moving to other units or leaving the department all together:

We have had some [probation officers] that become very emotionally invested in clients. . . . There were quite a few [participants] lost to [overdoses since COVID-19], and we had [probation officers] say, “I can’t take it...I got to transfer out, I can’t do this anymore.”

Medication-Assisted Treatment

In contrast to abstinence-only models, medication-assisted treatment (MAT) seems to provide a viable option for mitigating overdose risk.¹²¹ Medication-assisted treatment, including opioid agonist treatment (OAT) with methadone and buprenorphine, is the use of FDA-approved medications for the treatment of substance use disorders. Although methadone and buprenorphine work in slightly different ways,¹²² both are widely recognized as gold standard treatments for opioid use and withdrawal.¹²³ As such, there are parameters in legal statute and in the Illinois Standards for Problem-Solving Courts that ensure that PSC actors are unable to bar participants from using medication-assisted treatment.

There was variation amongst the perceptions of people we interviewed in terms of whether the expectation of abstinence affected if the judge personally approves of MAT. Despite public health and psychology best practices that explain the benefits, court stakeholders’ personal views on medication-assisted treatment can deviate from evidence-based harm reduction models. For example, one individual who works within the court system shared:

We have some people on methadone. I personally hate it. I think it’s a horrible crutch. The judge feels the same way. I don’t know how many people are on methadone. I would say it’s relatively low.

Regardless of personal opinion, most interviewees claimed that the judges do not interfere with the medication-assisted treatment of participants in their drug court:

It’s very common [for participants to receive medication-assisted therapy]. There’s a lot of people on Suboxone¹²⁴ and methadone. There’s fewer on Vivitrol.¹²⁵ [The judge makes

121 “Medication-Assisted Treatment” (n.d.) for Drug Policy Alliance. Accessible at <https://drugpolicy.org/issues/MAT>

122 Suboxone (i.e., buprenorphine) is a partial-agonist opioid and methadone is a full-agonist opioid, both used to reduce cravings and withdrawal symptoms for people detoxing from opioids. See e.g., Nazeer, A. (2022). “What’s the Difference Between Methadone and Suboxone?” for Symetria Recovery. Retrieved on February 6, 2023, from <https://www.symetriarecovery.com/blog/whats-the-difference-between-methadone-and-suboxone/>

123 *Id.*

124 *Supra* note 122. Suboxone is the brand name of a medication containing a combination of buprenorphine, a partial-agonist opioid used to reduce cravings and withdrawal, and naloxone, which is an opioid blocker used to discourage abuse.

125 Vivitrol is a medication used to help treat alcohol use disorder and opioid use disorder by blocking the intoxication and the euphoria/pain relief felt from using alcohol and opioids, respectively.

comparisons to] the blood pressure medicine [they're] on...So, [the judge's] thought is, "I need that because it's something that will help me with my issue," and [the judge]...doesn't interfere with that. We've had [participants] say, "I'm trying to get off a methadone," and [the judge will] say, "be careful with that. Talk to your doctor. I'm not a doctor, I'm a judge."

Many court-watchers observed people who either referenced their current use of methadone or who were being referred to treatment programs that would give them methadone and did not witness any direct discouragement of MAT in the court calls they observed.

Nonetheless, the PSC handbooks¹²⁶ paint a picture of a court that discourages and polices medication-assisted treatment. MAT is the only kind of treatment specifically separated out in the handbook as having different rules and regulations. It notes that MAT is allowed only as “an approved part of your treatment plan” and requires that participants have their doctors submit written information to the court regarding the MAT and provide quarterly reports to the treatment team. This would seem to place a specific burden on treatment providers for MAT that is not placed on other drug treatment providers involved in the courts.

More concerningly, the handbooks note that being on MAT will mean participants may be “monitored more closely” when taking MAT, including being drug tested more frequently, being asked to take their medication in front of a team member, and having a team member count their pills. There is also a note that a person may be required to come to court weekly again if they stop MAT (weekly court attendance is more frequent than even first-stage participants are asked to come to court).

Finding 6.

The issues created by institutional racism in the legal system as a whole are highlighted in problem-solving courts because court actors can control, scrutinize, and punish aspects of participants' lives in ways traditional courts cannot.

Overwhelmingly, people we interviewed observed that the PSCs they were formerly or currently involved in predominantly consisted of Black and Latine participants, which makes sense considering the overall makeup of the Cook County criminal legal system. In Cook County Jail, most people – 91.7% – are Black (74.8%) or Latine (16.9%).¹²⁷ As such, it is important to note how the themes of incarceration, fatal overdose, and the myriad of challenges described herein disproportionately affect Black participants and participants of color in both explicit and implicit ways.

Racism in Problem-Solving Courts

Racism – both explicit and through microaggressions or unintentional expressions of biases – permeate the legal system as a whole, including the problem-solving courts.

¹²⁶ *Supra* note 114.

¹²⁷ *Supra* note 99.

One interviewee who works in the court system explained:

No matter how you cut it, everything comes back to some type of racial issue, whether bias or flat out racism, it's not necessarily the [court actors], it's [systemic]. . . [When you're within the system]...there is a horrible, horrible stigma...and a lot of it is based on the color of [a participant's] skin.

When probed to discuss whether or not the interviewee was speaking about racism in the PSCs or as a systemic issue generally, they continued that racism is present through problem-solving court's "mere existence," stating:

Because [racism is] in society, it's definitely in our program. I think we [try] to deal with it to the best we can. I think sometimes it has been dealt with. I think other times, it's not addressed because [court actors] don't even realize [they're being biased or prejudiced].

The interviewee continued, discussing how the internalized biases of treatment providers and problem-solving court staff can interfere with effective service provision:

[If the participant] stole \$3,000 worth of cologne—okay, why? Is [the participant] doing it to survive? You know? And I think a lot of times, people of color, there's a stigma that they're thieves, that they lie...[with Middle Eastern people], the first reaction to them is that [they] have to be militant...people look at them like they want to blow up the world...you have mental health [challenges] that stem from [what they've been through] [and participants] are reluctant to talk about their plight because it's based on a racial platform, you know...and I don't think [their unique mental health challenges] are always addressed appropriately.

Another treatment provider explained how preconceived notions of race, addiction, mental illness, and criminality interfere with the work of sometimes well-intentioned PSC actors:

A lot of people, even well intentioned, come into this line of work with biases and stereotypes and preconceived notions about [participants]. So, I think, regardless of whether or not people are treatment providers...if they come in with these biases in place already, they interact with [participants] differently. So, whether it's mental health court...or drug court...the people who are interacting with [participants], even the judges who [have] these savior complexes, they don't have a really balanced, healthy, or neutral view of [the participant]. I think it's a blind spot for them where they...[don't]have [the] fundamental understanding of mental illness or substance use to be able to intervene with them appropriately.

The treatment provider echoed sentiments about the pervasiveness of institutional racism, continuing:

In short, [to the court], [problem-solving court participants are] still criminals, they're still Black people, they're still whatever else you want to label them, and they're going to be punished or treated as less than.

Power and Control

People we interviewed continually expressed that the heightened supervision of the problem-solving courts allows court actors to control, scrutinize, and punish aspects of participants' lives in ways that traditional courts do not.

As discussed, PSCs provide an opportunity for court actors to more intensely supervise and monitor participants. This means that PSC judges often end up playing a much more vigorous role in the lives of PSC participants; over the course of many court appearances, judges in PSCs often find themselves learning about participants' home lives, health, children, and other personal issues that are normally outside the authority of a conventional judge.

“There’s a reality of [the criminal legal system] that [it is] certainly adversarial, it is very punitive.”

The notion that court actors activate this increased authority as part of a “savior complex” mentality was mentioned by another person working in the problem-solving courts:

We have pity for people and we have [a] feeling like we’re gonna save somebody, [but] it’s not for us to save them...[problem-solving courts have] that savior complex. I don’t think I’m somebody who can save anybody. It’s not fair for me to be that person.

According to several of our interviews, the expanded purview of PSC teams has given some judges and other team members opportunities to scrutinize, punish, and control aspects of participants' lives that standard judges would not have. For this reason, it appears that the PSCs may actually be more punitive in some ways than the traditional criminal court system. While the problem-solving courts are intended to provide better options to people with drug and/or mental health issues than the traditional system, as one treatment provider put it: “There’s a reality of [the criminal legal system] that [it is] certainly adversarial, it is very punitive.”

Similarly, one treatment provider discussed how PSC’s intensive supervision and surveillance led to court actors to believe they have a say in participants’ personal lives:

When I first interacted with [the problem-solving] courts...they really dove way too deep into people’s lives. I had a really difficult time being in staffing, because they would just be like, “well, they’re not allowed to be in a relationship,” but it’s like, “who are you to tell someone that because they’re in [a problem-solving] court, they can’t have a significant other?”

Specialty courts, while different in modality, are still a part of the criminal legal system and so are, by nature, punitive. The notion that PSCs facilitate healing or successful treatment is true only to a limited extent in light of the data showing that the majority of participants fail in these programs. As discussed in Finding 1 above, the wide variation in graduation rates between each problem-solving courtroom suggests that judges’ behaviors may significantly influence program graduation rates: Only the VTCs in Rolling Meadows, Skokie, Maywood, Chicago, and Markham, and the MHC in Rolling Meadows, have a graduation rate of above 50% (see Figure 9).

One person who works in the court system discussed how the kinds of information that is up for

discussion or debate by the PSC team often differs depending on the individuals involved:

I've recently seen [this phenomena] play out a couple times where, if a [participant] has a closer relationship with someone else on the team, some of the more immature members of the team seem to kind of pay more attention to them [than] other people. I find myself in staffings [having to say], "what are we even talking about?" This [participant] has been sober the entire time. [They're] still sober, we're in drug court. I don't care if [they] went [out of town] with [their partner]," [but court actors] saw it on Facebook. Who even has time to be doing something [about it]?

The most obvious way that PSC teams exercise punishment and control in ways that differ from standard judges is their ability to interfere with substance use and mental health treatment. Because problem-solving court actors are involved in overseeing treatment planning, participants are more often punished for things that one treatment provider described as symptoms of "structural issues," rather than individual behavior issues. To describe this phenomena, the treatment provider provided the following example of when they were asked by the PSC team to formally diagnose a participant:

The reason why [the problem-solving court actors] even started pushing for [a diagnosis] was because [the participant] wasn't showing up to [their] appointments that [they were] mandated to [attend] because [the appointments] were so far from [their] house. So, you have somebody

who suffers from mental illness that has some impairments...and I can certainly see how it would affect [their] ability to navigate the world. But it's seen [by the court] as a disorder...rather than [a lack of] the resources [needed] to be able to get to...treatment...these are obviously structural issues, but a lot of [these structural issues]...have been blamed on the client, when they're actually symptomatic of a much larger, deeper, and older problem.

"But it's seen [by the court] as a disorder...rather than [a lack of] the resources [needed] to be able to get to...treatment...these are obviously structural issues, but a lot of [these structural issues]...have been blamed on the client, when they're actually symptomatic of a much larger, deeper, and older problem."

These "larger, deeper, and older" problems are reflected by the fact that when participants get new charges, they are almost always related to drug use or possession. As explained by another individual who works in the court system, it was "not hard" for participants to "go into drug dealing" as a means to access income or, for those who struggle with addiction, to access drugs and be punished for their drug use:

It's hard to get a job, [participants of the PSC court] are in their 30s and 40s. Sometimes, they will get recruited by gang members who don't want to get arrested and so, they'll recruit people to sell drugs in [exchange for] more drugs. But it's [viewed] like [participants] are doing something really horribly wrong and they need to pay for that.

The criminalization of survival was also mentioned by an interviewee whose family member died of an overdose while enrolled in a Cook County problem-solving court:

A lot of people that are in these programs are forced into these situations. . . I would love to see a society that prioritizes people’s survival. . . I do not think we can do that through the courts. There are many other resources that can do that, and even the best courts would not have the capability of doing so.

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In another incident recorded by a court-watcher, a participant with medical issues was treated with clear disrespect. Instead of empathetically providing services to the participant, the judge essentially demanded that the participant prove their loyalty to the program.

The call started out with the participant explaining [their] illness. . . Judge did not seem particularly empathetic or understanding; if anything, he was a little dismissive. . . constantly stating that he did not understand what she had. The judge asked the participant, “what’s your commitment to this program?” This seemed callous as the participant had just explained the state of her physical health and. . . the participant said, “I’m ready to change. . . to live without being high.” Instead of being pleased with this answer or supportive, the judge seemed skeptical and dismissive: “Why should I believe you should be back on treatment?”

Zero-tolerance policies themselves create a certain power dynamic. They do not allow participants to explain themselves, but rather, put absolute power in the “objective” measurements such as maintaining sobriety or meeting other criteria, allowing the judge to make decisions without participant input. For example, one court-watcher noted a court appearance wherein:

[The judge] told the participant that there were “no excuses” and that the participant should consider how [their] sobriety affects [their] children and family. The judge kept reprimanding [the participant], and eventually, the participant stopped speaking.

It is important to note that not all judges displayed this kind of extreme power dynamic; some made explicit efforts to relate to participants, flatten power dynamics, or present themselves as impartial. While judges seem to create different types of power dynamics and lines of communication, one thing is certain: As long as judges are in a position of power over participants’ lives, the power dynamic will persist.

Courtroom Demeanor

There was wide variation in demeanor of judges in the different PSC courtrooms observed. Although court-watching data showed significant variation in how judges run their courtrooms, power dynamics also appeared in the way that judges treat court participants and how participants respond. Several court-watchers described situations where judges did not believe what court participants said. When judges felt that court participants were not telling the truth, our court-watchers noted that they were “aggressive,” “condescending,” or “scolding” to the participants. For example, in one case where a judge doubted a participant’s version of events, the court-watcher recorded the judge saying: “But

that’s not true, is it?” The judge then promptly indicated her disbelief and asked the participant a series of leading questions, like, “So, you lied, correct?”

In the example below, a court-watcher recorded an incident of a judge infantilizing a court participant:

After [the judge] concluded her questioning, she asked, “So, what have we learned from this?” The tone was patronizing. Her stance was authoritative. She was like a scolding, strict parent. “No excuses,” is what she said a few times to the participant, stopping [them] from continuing further with [their] explanations/speech. She also talked at length about “personal responsibility” and how “taking personal responsibility” would be the only way to succeed in [that drug court].

Even when the participant “expressed a sincere desire for sobriety,” the court-watcher continued, the judge was more dismissive than understanding (i.e., “alright then”).

A review of court-watching data displayed the impact of a judge’s own judicial “style” and discretion on litigants and their experience in court. Although, as one court-watcher stated, judges generally have a “pull yourself up by your bootstraps” mentality, it was impossible to paint all PSC judges with a broad brush. Our research finds that this variation not only exists because of judge discretion, but also because PSCs operate in a judicial “gray area.” While PSCs do not call for judges to act as counselors, they do require that judges take on some case-management responsibilities, yet must still maintain judicial impartiality. For example, a court-watcher described one judge as “aggressive, condescending, and militant in terms of courtroom management style and toward participants,” stating:

The courtroom environment was stern and tightly managed. To [the judge’s] credit, she allowed the participant to speak and provide feedback about his case. But her response was, again, condescending and aggressive.

In contrast, another court-watcher described a different judge as being very friendly and encouraging towards participants:

[The judge] was excited to see this participant. He started out by responding to [a] participant’s question, “how are you today judge?” by saying “I am doing alright. You, however, are doing great! Look at you, underselling how well you’ve done in this program.” Judge [name redacted] seemed genuinely excited and proud of the participant’s success. He told him they were all very proud of the work he had put in and that he should be proud of himself, and to make sure to invite his friends and family to the graduation because “he earned it.”

Yet another judge was described as “positive” and “encouraging,” and being fair and impartial overall:

I found the judge to be impartial overall, and very positive and encouraging. She seemed like she really had the best interest of the participants in mind and wanted to help them in any way she could. The judge did communicate ideas clearly, as whenever she would ask the participant to do something like meet sooner than expected, she explained it was because of upcoming holidays, etc.

These three examples of PSC judges exemplify that judges took very different approaches to their courts and as a result, court participants had very different experiences. Even when comparing the categories of PSC (i.e., drug courts) to one another, there was variation in how participants were treated, which likely influenced outcomes.

Legal Harms

People we interviewed noted a few practices that were concerning in that they seemed to impinge on individuals' legal rights or discourage them from fully exercising them. The first concerning practice was avoiding marking individuals who were rearrested during their time in problem-solving courts as "failures" by making what were called "global offers." When an individual was rearrested for a new felony case, these global offers would close out the individual's time in the PSC court as a "neutral" discharge (which meant that they did not have the opportunity to have their underlying charges dismissed) and then enter a prison sentence on the new case.

This is a particularly concerning practice because it denies the person the credit for the time in custody that they had spent before entering the problem-solving court and during problem-solving court – since that time was not spent in custody on the new case, they cannot receive credit against their new sentence. Because a person is usually held with no bond on a violation of probation during this plea negotiation process, they are often under immense pressure to plead guilty, and not in the best position to assist with their own defense on the new case. As a result, people were being pressured into lengthier prison sentences. At the same time, this process obfuscates the number of people who are truly "failing" in this PSC, corrupting the data; because the "global offer" marks the case as terming out without a prison sentence, the person may not be correctly reported as having failed.

The second use of legal coercion reported by interviewees was the pressure placed on participants not to exercise their due process right to have a hearing on violations of probation. An individual who works in one of the drug courts reported that the judge will incarcerate participants who call for hearings to dispute their drug test results. According to the interviewee, when a participant calls for a hearing, the judge will then mandate the participant to more drug testing because the judge assumes the participant is being dishonest about their drug use:

If the person [tests positive for drugs] and they still want a hearing, [the judge] feels like [the participant must have] been dishonest [about their drug use] the whole time, [so] the sanction is going to increase...instead of [mandating] maybe 30 [AA/NA] meetings [over] 30 days, [when the participants] want a hearing and [the judge believes the participants] weren't honest, then [the participants] might do two or three days in jail instead of one day. Because they were [supposedly] dishonest and they wanted a hearing.

This practice punishes participants for exercising their legal rights, and treats due process as a character flaw or per se proof of dishonesty.

DISCUSSION OF FINDINGS

Most individuals interviewed for this project who worked in the court system believed that participants' lives were genuinely being improved by Cook County's problem-solving courts. One court actor explained: "We have a great success rate [with] over 50% [of] people [who] graduate, not recidivate. I mean, that's a really successful program." Another person working in the court system noted:

[Problem-solving courts are] the absolute best thing that the criminal justice system has going right now. We are saving lives. We are saving people. We're putting families back together. We're helping people get their lives back...That's what a problem-solving court is. I don't see it as a court. I see it as counseling.

We talked to many court stakeholders who shared countless "success stories" and examples of participants who were able to complete their programs. As demonstrated in our interviews, court actors often attributed these stories to PSC team members who were invested in the people they supervised and surveilled, so they would connect participants with needed services and treatment, which allowed participants to abstain from using drugs and secure employment. Alongside the positive narratives, however, stakeholders also readily shared concerns about discrepancies between the goals of the individual problem-solving courts and the experiences of participants generally. Interviewees noted several aspects of the PSCs that conflicted with some of the Illinois Standards for Problem-Solving Courts and best practices in the domains of mental health, substance use, and public health research. These specific conflicts include requirements for standardized data collection; that PSCs respond to evidence-based research; that modifications to a participant's treatment plan shall not be utilized as an incentive or a sanction; and that proper assessment of treatment needs shall be completed only by qualified clinicians using validated screening and assessment tools.

While Public Act 102-1041 attempts to remedy the discrepancies described above by shifting PSCs' goals from "abstinence" to accessing resources, being flexible, and providing alternatives to incarceration in legal statute, our findings outline areas that deserve further consideration when implementing components of Public Act 102-1041: race, the criminalization of poverty, treatment barriers, the lack of autonomy given to communities of color, public health best practices related to drug use, and the dynamics of power and punishment.

"We're helping people get their lives back...That's what a problem-solving court is. I don't see it as a court. I see it as counseling."

Our qualitative, quantitative, and court-watching analyses demonstrate how, despite the fact that individual PSCs significantly vary in things like graduation rates, the provision and quality of services and staffing, and the use of sanctions and methods of punishment, several general themes are clear:

1. Regardless of the overall low rates of graduation (except for in Veterans Court),¹²⁸ It is clear that problem-solving court team members believe the programs offer some benefits to

¹²⁸ Veterans Treatment Court had a graduation rate of 61%. See Figure 9 for the full breakdown of PSC graduation rates.

participants that are not available in the traditional criminal legal system.

2. There is a discrepancy between these court actors and other stakeholders (including defense attorneys, court administrators, researchers, personally-impacted people, and outside treatment providers) who believe that PSCs are not standardized and struggle to meet their own intended goals.
3. Some aspects of problem-solving courts programming may harm individuals who are unable to meet the many rules and expectations — especially the participants who cannot easily access mental health treatment or for whom abstinence-only treatment models are ineffective.
4. Problem-solving courts replicate the structural racism inherent to the criminal legal system by creating more opportunities for the surveillance, criminalization, and punishment of participants, especially Black and Latine participants, experiencing substance use, mental health issues, and/or poverty. Our analyses warrant further discussion around this topic.

The varied provision of services, program models, sanctions, and overdose risk, as well as PSCs’ effects on the lives of participants and the roles of staff, has resulted in differences between some court stakeholders’ views of the efficacy of the courts. Some stakeholders believe that participants are able to receive the support they need to successfully complete the program, while others shared how their PSCs interfere with participants’ autonomy, treatment, and overuse punishment and incarceration. These significant variations in the programming and impact of each problem-solving court may create a barrier to the successful implementation of Public Act 102-1041, which is designed to standardize court practices. It is also important to note that there do not appear to be any long-term measures in place for the court to track data about whether participants continue to abstain from drugs, maintain secure employment, and “not recidivate” past graduation from the PSC program. While this data is available to the courts, we are unaware of any public body tracking it for current and former participants of PSCs.

Criminalization of Poverty and Treatment Barriers

The combination of involuntary but inaccessible treatment for certain underfunded communities leaves people in these areas at an unfair disadvantage as they try to navigate the requirements of the problem-solving courts.

As explained above, lower-income, primarily Black and Latine communities in Chicago and Cook County are disproportionately impacted by the harms of the criminal legal system. Once enrolled in PSCs, socioeconomic disadvantages affect an individual’s ability to meet the courts’ many expectations—especially for the PSC’s Black and Latine populations. According to our interviews, the majority of PSC participants live in some of the most policed neighborhoods of Cook County (which are both predominantly Black and Latine communities) that are also critically underfunded.

Former Chicago Mayor Rahm Emmanuel closed half of the city’s public mental health clinics in 2016 – most of which were on the primarily-Black and Latine South Side of Chicago.¹²⁹ As a result of “limited

129 Moreno, N. (2021). Closing The Gap: How The 2012 Mental Health Clinic Closures Hurt Chicagoans. *WBEZ Chicago*. Retrieved on February 8, 2023, from <https://www.wbez.org/stories/closing-the-gap-how-the-2012-mental-health-clinic-closures-hurt-chicagoans/0c4bc618-2470-41a6-8c1d-d74f7bbe26c9>

funding,” the City did not efficiently monitor the transfer of patients to other public mental health options to account for people who lost care due to these closures.¹³⁰ As demonstrated by a 2018 report by the Collaborative for Community Wellness, these closures left thousands of at-risk people without stable mental health care: Half of respondents to the groups’ survey reported experiencing depression symptoms, 36% showed symptoms of anxiety, and nearly the same amount reported being impacted by trauma.¹³¹ While 80% of respondents to the Collaborative for Community Wellness survey said they were interested in some form of counseling, there were only 63 mental health clinicians on the entire Southwest Side of Chicago (equivalent to 0.17 therapists per 1,000 residents), compared to the 381 mental health care providers in the affluent Near North Side neighborhood, Gold Coast (equivalent to 4.45 therapists per 1,000 residents).¹³²

The issue of public treatment systems not expanding proportionately to meet the growth of the criminal legal system’s referrals to treatment is not just a phenomenon unique to Cook County and Chicago: In 2007, 38% of participants in publicly-funded treatment programs nationally were referred by the criminal legal system.¹³³ As a result of the many spots reserved for criminal legal system referrals in these programs, access to treatment for people voluntarily, outside of the criminal system, has diminished across the country.

The Cook County Jail, which is located in the South Side Chicago neighborhood of South Lawndale, is what is often referred to as the largest mental health treatment center in the nation—with over 60% of the jail population experiencing mental illness.¹³⁴ More importantly than the false narrative framing Cook County Jail as a “mental health care provider” (instead of a carceral institution) is the fact over half of the people inside have been criminalized and likely did not receive adequate mental health care prior to their incarceration.

As illustrated throughout this report, Cook County’s mental health courts are based on the premise that participants’ underlying mental health conditions cause “criminal behavior” and that treating these underlying conditions will prevent future criminality. These assumptions are widespread and shared by some advocates for people who live with mental illness; however, these assumptions are not supported by contemporary social science research.¹³⁵ More clearly, research demonstrates that the minority of individuals are involved in PSCs from behavior that stems from mental illness and is then subsequently criminalized.¹³⁶ Similarly, our quantitative findings demonstrate that many people in mental health court are not referred to the court for charges that have an obvious mental health

130 Coen, J. (2019) Rahm Emanuel Closed Half of Chicago’s Mental Health Clinics. What Was the Impact — And will Lightfoot Re-open Them? *Chicago Tribune*. Accessible at <https://www.chicagotribune.com/politics/ct-met-lori-lightfoot-chicago-mental-health-clinics-20190524-story.html>

131 Collaborative for Community Wellness. (2018). Uplifting Voices to Create New Alternatives: Documenting the Mental Health Crisis for Adults on Chicago’s Southwest Side. Accessible at https://www.collaborativeforcommunitywellness.org/_files/ugd/c29cfd_542f04d11bf744c3a338ef3be8dbf6f6.pdf

132 Quinn, M. (2018). This Is What Happens When a City Shuts Down Mental Health Clinics. *Governing*. Accessible at <https://www.governing.com/archive/gov-chicago-mental-health.html>

133 *Supra* note 58.

134 *Supra* note 131.

135 *Supra* note 77. See also, Johnston, L. (2012). Theorizing Mental Health Courts. *Washington University Law Review*, 519, 521-522; Boldt, R., & Jana, S. (2006). Juristocracy in the Trenches: Problem-Solving Judges and Therapeutic Jurisprudence in Drug Treatment Courts and Unified Family Courts. *Maryland Law Review*, 65.

136 *Id.* See also, Skeem, J., Manchak, S., & Peterson, J. (2011). Correctional Policy for Offenders with Mental Illness: Creating a New Paradigm for Recidivism Reduction. *Law and Human Behavior*, 35.

component - for example, many people are referred to mental health court for drug possession charges.

While Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers do not have access to first-hand data about rearrests of drug court participants,¹³⁷ nationally, Black participants are at least 30% more likely than White participants to fare worse in PSCs, face violations, and be expelled from drug court.¹³⁸ Given this disparity, it is important to consider how consequences of PSC enrollment disproportionately affect Black and Latine participants and may negatively influence PSC completion rates. Our qualitative findings echo other research showing that, due to the limited capacity and resources, some PSCs inadequately assess people’s holistic needs and have sometimes placed people in inappropriate treatment and/or services.¹³⁹ We found that referrals to services are sometimes made not after considering what will best serve a participant, but because an approved treatment provider has an opening or is in-network. This may be driven by a lack of resources in our city and county, adversely affecting PSCs’ ability to connect participants with long-term resources.

Need for Autonomy

Problem-solving courts are involuntary treatment programs because the alternative to participation may be incarceration. National best practices research backs many interviewees’ views that involuntary treatment is ineffective at best and fatal at worst.

Our interview data leaves no question that PSCs have provided resources to some participants who would not have otherwise had access to them. This ranges from access to a therapist, short-term housing, job training, treatment, expedited expungement, among many other services. Interviewees, however, also discussed how these services were too often short-term and mandated, which can adversely affect participation and completion rates. The National Institute of Justice has found that some drug court treatment session attendance problems may not be caused by “intractable participants,” but rather by the placement of participants in inappropriate or low-quality programs.¹⁴⁰

Many people we interviewed discussed involuntary treatment as a facet of PSC programming, as PSC teams are largely in charge of designing participants’ treatment plans, and failure to comply with those treatment plans results in punishment. However, research demonstrates that punishing people with involuntary treatment is ineffective at best and fatal at worst. One study found that people who received involuntary treatment were 2.2 times more likely to die of opioid-related overdoses than those who enrolled in voluntary treatment;¹⁴¹ in contrast, voluntary community-based treatment has

137 In Illinois, the judiciary is exempt from the Freedom of Information Act (FOIA), which means that quantitative data about the legal system is not publicly-accessible unless given directly from the Circuit Court or individual judges’ records. See e.g., <https://www.chicagoappleseed.org/2021/08/27/public-inaccess-to-judicial-branch-data-in-illinois/>

138 Belenko, S. (2001). *Research on Drug Courts: A Critical Review (2001 Update)*. National Center on Addiction and Substance Abuse. *Columbia University Law Review* 55 (2008).

139 *Supra* note 58. See also, Anspach, D. & Ferguson, A. (2003). *Assessing the Efficacy of Treatment Modalities in the Context of Adult Drug Courts*, Final Report. National Institute of Justice. Retrieved on February 8, 2023, from <https://nij.ojp.gov/library/publications/assessing-efficacy-treatment-modalities-context-adult-drug-courts-final-report>; Lutze, F. & Van Wormer, J. (2007). *The Nexus Between Drug and Alcohol Treatment Program Integrity and Drug Court Effectiveness: Policy Recommendations for Pursuing Success*. *Criminal Justice Policy Review*, 18(3), 226-245.

140 *Id.*

141 Massachusetts Department of Public Health. (2016). “An Assessment of Opioid-Related Deaths in Massachusetts (2013 - 2016),” 3-96. Accessible at <https://www.mass.gov/doc/legislative-report-chapter-55-opioid-overdose-study-september-2016/download>

been found to be dramatically more effective in meaningfully addressing substance use disorders.¹⁴² People who are harmed more than helped by a treatment program — or treated in a manner insensitive to their race, socioeconomic status, ability, gender, sexuality or, ironically, the severity of their drug problem — are left without recourse and ultimately punished by a system that short-changes them. In the end, struggling PSC participants are often blamed for the inadequacies of the treatment system.

Our interviews show that many court stakeholders believed involuntary treatment to be necessary in the sense that it provided participants access to treatment and an opportunity to address their substance use. However, interviewees shared that prior to PSC enrollment, participants were unable to enroll in treatment for various reasons, including cost, lack of access, and facing other pressing needs including employment. While PSCs can offer individuals meaningful mental-health and/or substance use-related resources, it is important to emphasize the need for self-efficacy and consider the importance of having PSC participants vocalize what resources they need rather than mandating services they do not need. According to the American Psychological Association (APA):

*[Self-efficacy] reflects confidence in the ability to exert control over one’s own motivation, behavior, and social environment...influence[ing] all manner of human experience, including the goals for which people strive, the amount of energy expended toward goal achievement, and likelihood of attaining particular levels of behavioral performance.*¹⁴³

Ensuring that problem-solving court participants have self-efficacy, self-determination, and autonomy when engaged in therapeutic interventions is a key component of the APA’s ethical principles.¹⁴⁴ However, many interviewees suggested that treatment decisions were predominantly made by judges and court teams in conjunction with treatment providers—limiting the ability of participants to advocate for the services they need. This not only violates many of the ethical principles guaranteed to anyone outside of the court system receiving mental health and/or substance use disorder services, but also leads PSCs to provide mental health and drug abstinence resources when a person’s “crimes” may actually be associated with external factors such as poverty - which PSCs do not directly address.

Evidence also suggests that involuntary treatment may be ineffective in reducing the rate of rearrest. Data from the Substance Abuse Mental Health Services Administration (SAMHSA) shows little difference in success rates for people who are referred to treatment by criminal legal agencies versus those treated through other sources.¹⁴⁵ Further, many scholars believe that legal requirements perceived as coercion can have negative effects on people’s treatment outcomes.¹⁴⁶ Research suggests that involuntary treatment can damage the relationship between treatment provider and recipient and

142 McVay, D., Schiraldi, V., & Ziedenberg, J. (2004). “Treatment or Incarceration? National and State Findings on the Efficacy and Cost Savings of Drug Treatment Versus Imprisonment” for Justice Policy Institute. Accessible at https://justicepolicy.org/wp-content/uploads/2022/02/04-01_rep_mdtreatmentorincarceration_ac-dp.pdf

143 “Teaching Tip Sheet: Self-Efficacy.” (n.d.). American Psychological Association. Accessible at <https://www.apa.org/pi/aids/resources/education/self-efficacy>

144 *Id.*

145 Substance Abuse and Mental Health Services Administration (SAMHSA). (2017). Treatment Episode Data Set (TEDS). Retrieved on November 16, 2021, from <https://www.samhsa.gov/data/data-we-collect/teds-treatment-episode-data-set>

146 Gregoire, T., & Burke, A. (2004). The Relationship of Legal Coercion to Readiness to Change Among Adults with Alcohol and Other Drug Problems. *Journal of Substance Abuse Treatment*, 26(1), 35-41; Klag, S., O’Callaghan, F., & Creed, P. (2005). The Use of Legal Coercion in the Treatment of Substance Abusers: An Overview and Critical Analysis of Thirty Years of Research. *Substance Use & Misuse*, 40, 1777-1795.

further traumatize individuals who have already experienced significant hardships in their lives, diminishing the likelihood of successful treatment outcomes as well as engagement in future health services.¹⁴⁷ Participants and treatment providers working with the Cook County problem-solving courts are required to sign releases of information and share privileged health information with court actors, which may compromise people’s treatment outcomes. Our interviews suggest that many PSC participants fear disclosing information in mental/healthcare settings that could adversely affect their ultimate success in the program because judges and PSC team members have the power to usurp information about what a participant says in treatment provided by the court, even though treatment would typically provide confidentiality.

Public Health Best Practices

Health-centered approaches to substance use affirm that abstinence is not always effective – and is often dangerous – as an approach to treating substance use disorder.

As documented, PSCs universally require abstinence from illegal drugs, despite the ineffectiveness and danger associated with abstinence models. Drug policy and public health advocates assert that punishing people for deviations from treatment plans, falling short of treatment goals, or relapsing is contrary to core health principles.¹⁴⁸ While abstinence-only approaches may work for some people, mandating abstinence as a “one size fits all” approach to substance use can be dangerous and may lead to increases in Cook County PSC participants’ already substantial rate of fatal overdoses. As such, problem-solving courts should offer participants access to the full range of treatment services that are available in the community and avoid criminalizing and punishing relapses.

Our interviews showed that Cook County PSC participants are often punished for recurring relapses through an abstinence-only model. This practice runs counter to the Illinois Supreme Court’s mandates that relapses should be understood, the flexibility Public 102-1041 encourages around substance use, and the fact that the ACT Court was initially designed to allow for multiple relapses.¹⁴⁹ A public health-centered response to drug use assesses improvement by many measures – not simply by people’s ability to abstain from drug use, but also by their personal health, employment status, social relationships, and general wellbeing over a period of time.¹⁵⁰ In contrast, “success” in some PSCs heavily relies upon abstinence because drug use is deemed illegal behavior.

One way to explain the dangers associated with abstinence when relapses occur is a phenomenon observed by drug policy experts called the “abstinence violation effect.”¹⁵¹ The abstinence violation effect refers to the idea that once someone has relapsed while abstinent, an individual “may continue [using] since [they’ve] already blown it.”¹⁵² Research shows that this belief – especially if an individual perceives themselves to be “powerless” once they engage in the behavior they are meant to abstain

147 *Ibid.*

148 *Supra* note 58.

149 “Public Health Approach to Drug Crime Creates Fairer Courtrooms, Safer Communities” (2015) for Chicago Community Trust. Accessible at <https://www.cct.org/stories/public-health-approach-to-drug-crime-creates-fairer-courtrooms-safer-communities/>

150 *Supra* note 58.

151 Szalavitz, M. (2021). *Undoing Drugs: The Untold Story of Harm Reduction and the Future of Addiction*. First Ed. New York, NY: Hachette Go

152 *Id.*

from – leads to more severe relapses.¹⁵³ Furthermore, if an individual uses after a period of abstinence, their tolerance for the drug is lowered and they are more susceptible to accidental fatal overdoses.¹⁵⁴

Importantly over the course of our interviews, we found that the majority of Cook County PSCs do not interfere with participants’ access to medication-assisted treatment, which is appropriate and compliant with the Illinois Supreme Court’s guidelines and public health best practices. While PSCs must comply with the Illinois Supreme Court Guidelines for Problem-Solving Courts (2018) and the law and not interfere with medication-assisted treatment to anyone who needs and wants it, public health research suggests that Cook County PSCs should be actively promoting the use of medication-assisted treatment given that it is considered the most effective way for many people to treat opioid use disorders.

Still, several of the people we interviewed shared that some judges hesitated or made it known that they view medication-assisted treatment as “trading one addiction for another.” Judges’ inability or unwillingness to connect participants with resources to prescribe MAT or OAT may be contingent on (a) compliance with the abstinence-only model, rather than what is considered “health-centered” and “evidence-based,” and/or (b) an inability to provide access to such treatment provisions.¹⁵⁵ According to Bechteler & Kane-Willis (2017), “Chicago has the lowest treatment capacity for medication-assisted treatment (buprenorphine) in the Midwest and is third lowest among large cities nationally.”¹⁵⁶ The City of Chicago’s funding that has historically existed for mental health services has predominantly been spent on private and non-profit options instead of investments in public services.¹⁵⁷ Regardless of the reason, limiting or barring access to gold standard treatments such as methadone and buprenorphine for those involved in PSCs makes it likely that most people with opioid use disorders will be unable to graduate from PSCs.¹⁵⁸

Power and Punishment in Problem-Solving Courts

Because of judicial discretion and differing attitudes around problem-solving court standards, types of sanctions, and grounds for failure, there are discrepancies around punishment – including incarceration – and reward structures across courtrooms.

As discussed, there are a variety of long-term consequences associated with criminal convictions and incarceration. This relates to the pre- and post-conviction models of specialty courts in two important ways: (1) many people are incarcerated for long periods of time pretrial before they are released under the supervision of a problem-solving court and (2) criminal convictions and incarceration are often used as punishment for not complying with PSC requirements. Both of these aspects can increase overdose risk for those using drugs, contribute to detrimental mental health affects/traumatization, and result in long-term consequences and collateral consequences.

¹⁵³ *Id.*

¹⁵⁴ Schenwar, M., & Law, V. (2020). *Prison by Any Other Name: The Harmful Consequences of Popular Reforms*. Chico, CA: AK Press; Strang, J., McCambridge, J., Best, D., Bestwick, T., Bearn, J., Rees, S., & Gossop, M. (2003). Loss of Tolerance and Overdose Mortality After Inpatient Opiate Detoxification: Follow Up Study. *British Medical Journal (BMJ)*, 326(7396), 959-960.

¹⁵⁵ *Supra* note 31.

¹⁵⁶ *Id.*

¹⁵⁷ *Supra* note 132.

¹⁵⁸ *Supra* note 58.

Pretrial Incarceration and Associated Risks

One major finding of this report is that problem-solving court participants are incarcerated pretrial anywhere between 90 days and 4 months before they are enrolled in the PSC. The amount of time people spend incarcerated before their enrollment is of extreme concern. Extensive research demonstrates that people with substance use disorders are more vulnerable to the psychological impact of imprisonment, as they are more likely to have histories of trauma in and outside of their communities.¹⁵⁹ Being incarcerated is, in itself, a traumatic experience which may exacerbate the mental health needs of participants already struggling.¹⁶⁰

Moreover, people returning home from incarceration are 8-to-18 times more likely than non-imprisoned people to commit suicide,¹⁶¹ with substance use exacerbating that risk factor of suicide and about a quarter of suicides occurring within one month of release.¹⁶² In the immediate two weeks after someone is released from custody, individuals re-entering the community from correctional settings are almost 130 times more likely to die of an overdose than the general population.¹⁶³

While many court stakeholders we interviewed attributed the significant number of participants' overdoses to a lack of supervision, many treatment providers believed that the abstinence-only program model of PSCs, paired with the use of incarceration and prevalence of fentanyl in the illegal drug supply, may be more likely the reason as to why participants have died by suicide and overdoses since 2020. This overdose risk may be attributed to many things—resuming drug use after a period of abstinence (with a lowered tolerance), using drugs from unfamiliar sources and of unknown strength, experiencing trauma brought on by imprisonment, suffering from the inability to obtain certain needs-based social benefits after incarceration, and experiencing the stress generated by employment and housing restrictions and stigma.¹⁶⁴

It is clear that the people dying from overdoses are the same demographic of people who live in Chicago's unfunded neighborhoods, which, as explained, lack access to mental health and substance use treatment. Voluntary treatment often prevents death, but Black residents who use opioids are likely “to be in the lowest income group with less access to medical care overall, let alone addiction treatment services,” which indicates that “this lack of access could be a significant factor in the observed death rates for this group.”¹⁶⁵ Of course, it is important to note that not all people who

159 Felitti, V., Anda, R., Nordenberg, D., Williamson, D., Spitz, A., Edwards, V., & Marks, J. (1998). Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study. *American Journal of Preventive Medicine*, 14(4), 245-258.

160 DeVeaux, M. (2013). The Trauma of the Incarceration Experience. *Harvard Civil Rights-Civil Liberties Law Review*, 48(1), 257-277. Accessible at https://harvardcrcl.org/wp-content/uploads/sites/10/2013/04/DeVeaux_257-277.pdf

161 Haglund, A., Tidemalm, D., Jokinen, J., Långström, N., Lichtenstein, P., Fazel, S., & Runeson, B. (2014). Suicide After Release from Prison: A Population-Based Cohort Study from Sweden. *The Journal of Clinical Psychiatry*, 75(10), 1047-1053

162 *Ibid.*

163 Binswanger, I., Stern, M., Deyo, R., Heagerty, P., Cheadle, A., Elmore, J., & Koepsell, T. (2007). Release From Prison—A High Risk of Death for Former Inmates. *New England Journal of Medicine*, 356(2), 157-165; Joudrey, P., Khan, M., & Wang, E., Scheidell, J., Edelman, E., McInnes, D., & Fox, A. (2019). A Conceptual Model for Understanding Post-Release Opioid-Related Overdose Risk. *Addiction Science & Clinical Practice*, 14. Accessible at <https://ascjournal.biomedcentral.com/articles/10.1186/s13722-019-0145-5#citeas>

164 *Supra* note 160. See also, Binswanger, I., Stern, M., Deyo, R., Heagerty, P., Cheadle, A., Elmore, J., & Koepsell, T. (2007). Release From Prison—A High Risk of Death for Former Inmates. *New England Journal of Medicine*, 356(2), 157-165

165 *Supra* note 31.

use drugs suffer from substance use disorder, and some people who take PSC plea deals may enroll in these programs solely because they view it as an alternative to potential jail time given the criminalization of drug use. However, we must ask ourselves what PSCs do and can mean for people who are actually suffering from substance use disorder and are at risk of overdosing—and this is an urgent question given the sheer amount of fatal overdoses court stakeholders expressed were occurring across many of Cook County’s PSCs.

Judicial Discretion

Judges have reflected how mandatory sentencing ascribed to the “war on drugs” era left them feeling essentially like “rubber-stamp bureaucrats” or “judicial accountants.”¹⁶⁶ Around the same time as the PSC model was emerging throughout the country, judicial authority over sentencing – the core power allotted to judges in the plea-dominated system – was diminishing. Problem-solving courts have given judges renewed purpose and role in the criminal legal system,¹⁶⁷ but these individuals are not immune to the problems associated with the legacy of the “war on drugs” and how it manifests today.

Regardless of most judges’ good intentions to help people address the substance use and/or mental health concerns that led them to criminal legal system involvement, the data analyzed for this report shows that many judges in Cook County still implement various harmful status-quo approaches in PSCs that adversely affect Black participants and punish participants of color. Judges hold an unusual amount of discretion in problem-solving courtrooms around rewards, sanctions, and punishments based on treatment goals. Our findings suggest that PSCs have expanded judicial power by allowing judges to make decisions around participants’ personal lives and medical treatment plans, which can intensify the harms perpetuated by racist policies and practices of the “war on drugs.” People that do not “graduate” from drug courts or mental health courts are more likely to be Black and low-income—the very same people that need the most relief from the “war on drugs.”

While Public Act 102-1041 makes explicit the legal requirement that treatment plans should only be developed by clinicians and treatment providers, our findings demonstrate that prior to the passage of Public Act 102-1041, judges have found ways of modifying participants’ treatment plans by ordering more drug tests or mandating “30 [AA/NA] meetings in 30 days,” among other tactics. These findings are of obvious concern, as judges are not trained mental or physical health practitioners. Every misguided treatment plan a judge may choose to implement wastes our county’s resources, takes resources away from someone in the community who may need it, and puts participants’ health and wellbeing at risk.

Sanctions and Failure

It is important also to consider the short- and long-term implications for participants who do not successfully complete PSCs. As discussed prior, inherent harm is caused by the time that people spend engaged in the criminal legal system, and drug use in Cook County’s PSCs is often met with sanctions, with the majority of participants facing some incarceration time as punishment.

¹⁶⁶ *Supra* note 77.

¹⁶⁷ This idea was shared by several of our interviewees and has also been discussed in the literature around the role of judges in PSCs. See *e.g.*, *Supra* note 77.

Additionally, although there is ample evidence challenging the assumption, many judges believe that incarcerating participants can be an effective preventative approach to fatal overdoses. Judicial discretion is the main driver in terms of if or how people will experience sanctions and punishments, including incarceration, for violations in problem-solving courts. According to researchers and drug policy advocates, incarcerating people for a positive drug test can interrupt the treatment process and disrupt a person’s attempts to establish needed resources for recovery,¹⁶⁸ such as maintaining employment and establishing social and community support—all of which are important goals PSC team members set for participants. The use of incarceration as a punishment for breaking the rules or as a protective measure is a prominent example of how PSCs may implement practices that are not health-centered (i.e., practices that are not based in public health, drug use, and psychology best-practices).

When thinking about the harm caused by incarceration and system involvement generally for “unsuccessful participants” of PSCs, it is clear that people who leave the system will quickly encounter obstacles to successful community reintegration through restrictive public policies and few resources from which to draw on to build a new life.¹⁶⁹ While not all criminal convictions are met with incarceration, the consequences of a conviction in the U.S., particularly for a drug law violation, are severe and life-long. Although people who graduate from PSCs usually have their convictions vacated and expunged, many people who enter PSCs do not graduate, leaving them with a felony conviction. In Illinois, there are 1,449 statutes which constrain the rights, entitlements, and opportunities of individuals with past felony convictions.¹⁷⁰ According to the Illinois Criminal Justice Information Authority (ICJIA), 77% of these constraints impose restrictions on people with past felony convictions’ employment, occupational licensing, and business activities.¹⁷¹ There are over 900 different barriers to licensure and employment,¹⁷² and 50% of these are lifelong bans.¹⁷² The majority of those restrictions are mandatory, automatic, and permanent.

Barriers to employment are one of the many collateral consequences of PSC enrollment and failure. People convicted of a felony, whether or not they are ever incarcerated, face significantly fewer employment opportunities and much lower lifetime earnings.¹⁷³ Employment is often identified as an important goal of PSCs, which is logical: employment is found to prevent negative health effects and lower rates of drug use and substance use disorder.¹⁷⁴ Employment has also been found to decrease the likelihood that someone re-enters the legal system.¹⁷⁵ However, during the time that participants are in

168 *Supra* note 58. See also, Comfort, M. (2016). “A Twenty-Hour-a-Day-Job”: The Impact of Frequent Low-Level Criminal Justice Involvement on Family Life. *The Annals of the American Academy of Political and Social Science*, 665(1), 63-79. Accessible at <https://journals.sagepub.com/doi/10.1177/0002716215625038>

169 Barrenger, S., Draine, J., Angell, B., & Herman, D. (2017). Reincarceration Risk Among Men with Mental Illnesses Leaving Prison: A Risk Environment Analysis. *Community Mental Health*, 53(1), 883-892. Accessible at <https://pubmed.ncbi.nlm.nih.gov/28204909/>

170 Mock, L. (2016). “The Impact of Employment Restriction Laws on Illinois Convicted Felons” for ICJIA. Accessible at <http://www.icjia.state.il.us/articles/the-impact-of-employment-restriction-laws-on-illinoisconvicted-felons>

171 *Id.*

172 *Id.*

173 *Supra* note 58. See also, Solomon, A. (2012). “In Search of a Job: Criminal Records as Barriers to Employment” for the National Institute of Justice. Accessible at <https://nij.ojp.gov/topics/articles/search-job-criminal-records-barriers-employment>

174 “Report: The War on Drugs Meets Employment” (2021) for Drug Policy Alliance. Accessible at https://uprootingthedrugwar.org/wp-content/uploads/2021/02/uprooting_report_PDF_employment_02.04.21-1.pdf

175 Li, M. (2018). “From Prisons to Communities: Confronting Re-Entry Challenges and Social Inequality” for the American Psychological Association. *The SES Indicator 11*(1). Accessible at <https://www.apa.org/pi/ses/resources/indicator/2018/03/prisons-to-communities>

PSCs, they have a felony conviction - convictions are not vacated until graduation – which hampers the ability of participants to obtain employment during their time in PSCs. For those who fail the program and do not have their records expunged, these effects can be lifelong.

PSC participants with drug convictions are also deprived of access to higher education through the denial of public funding and requirements of college admissions offices that applicants disclose past convictions. The barriers to higher education spurred by a felony conviction are not only a senseless waste of human potential, but are detrimental to individual and community wellbeing, given evidence showing that postsecondary education significantly lowers a person’s likelihood of returning to prison or jail.¹⁷⁶ Given the fact that Black people and other people of color disproportionately represent the people in the majority PSCs, it is important to note that these policies have a harmful effect on people’s recoveries and rearrest rates, which are further compounded by additional institutionally racist barriers to communal upward mobility.

Likewise, it is important to consider the many other ways incarceration is detrimental to an individual’s physical health. People have a 13-fold increase in risk of death from cardiovascular disease, homicide, and suicide in the first two weeks after prison release as compared to a similar demographic sample.¹⁷⁷ PSC participants with convictions on their record are prohibited from other forms of public assistance.¹⁷⁸ While the implementation of the Affordable Care Act helped individuals receive Medicaid even with prior drug convictions and subsequently improved access to mental health and substance abuse treatment,¹⁷⁹ our findings demonstrate that people leaving the criminal legal system are often left to locate long-term, health-related services and resources on their own. Yet, as explained above, many resources, like access to affordable therapy and treatment, are inaccessible to people with felony backgrounds who may also live in areas with concentrated poverty.¹⁸⁰

These findings echo prior research that those who PSC treatments fail still experience some time incarcerated and serve longer terms of probation than they would have if they had not tried to seek help.¹⁸¹ For over a decade, the Drug Policy Alliance has observed widespread use of incarceration because participants failed a drug test or missed an appointment while enrolled in the drug court programs; as such, some drug court participants may be incarcerated for more time than if they had

176 *Supra* note 58. See also, Miller, R. & Alexander, A. (2016). The Price of Carceral Citizenship: Punishment, Surveillance, and Social Welfare Policy in an Age of Carceral Expansion. *Michigan Journal of Race & Law*, 21(2), 219-314. Accessible at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1059&context=mjrl>; Miller, R. (2014). Devolving the Carceral State: Race, Prisoner Reentry, and the Micro-Politics of Urban Poverty Management. *Punishment & Society*, 16(3), 305-335. Accessible at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1025.8035&rep=rep1&type=pdf>; Pager, D., Western, B., & Sugie, N. (2009). Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records. *Annals of the American Academy of Political and Social Sciences*, 623, 195-213. Accessible at <https://scholar.harvard.edu/pager/publications/sequencing-disadvantage-barriers-employment-facing-young-black-and-white-men>; Holzer, H., Raphael, S., & Stoll, M. (2003). “Employment Barriers Facing Ex-Offenders” for the Urban Institute Reentry Roundtable. Accessible at <https://www.urban.org/sites/default/files/publication/59416/410855-Employment-Barriers-Facing-Ex-Offenders.PDF>

177 Binswanger, I., Stern, M., Deyo, R., Heagerty, P., Cheadle, A., Elmore, J., & Koepsell, T. (2007). Release From Prison—A High Risk of Death for Former Inmates. *New England Journal of Medicine*, 356(2), 157-165

178 Buitrago, K., & Escobar-Schulz, S. (2020). “Never Fully Free: The Scale and Impact of Permanent Punishments on People with Criminal Records in Illinois” for Heartland Alliance. Accessible at <http://www.heartlandalliance.org/neverfullyfree>

179 Cockburn, C., Heller, D., sayegh, g. (2013). “Healthcare Not Handcuffs: Putting the Affordable Care Act to Work for Criminal Justice and Drug Policy Reform” for the American Civil Liberties Union & Drug Policy Alliance. Accessible at: https://drugpolicy.org/sites/default/files/Healthcare_Not_Handcuffs_12.17.pdf

180 *Supra* note 169.

181 *Supra* note 58.

been conventionally sentenced in the first place. Essentially, the participants deemed “failures” by the court may have actually faced longer sentences than those who did not enter drug court in the first place.¹⁸² Concerningly, records of when participants are sent into custody throughout their time in Cook County PSCs are not available to the public, making it difficult for researchers and advocates to understand the impact that these sanctions have on participants. Legal statute caps incarceration time at 180 days, but with information about data collection, it is unclear how the courts track participants’ incarceration time.

When someone is incarcerated and/or involved in the criminal legal system, the individual is not the only one who suffers from the system’s consequences. There is a growing inquiry around the association between family member incarceration and poor outcomes in health and wellbeing.¹⁸³ There is also a growing epidemiological literature which documents that having a family member who is incarcerated or was recently released from jail or prison is associated with negative health outcomes among women, such as hypertension, diabetes, and depression.¹⁸⁴ Research confirms the effect of chronic environmental stress on negative health outcomes,¹⁸⁵ and caregiving for family members who are involved with the criminal legal system may also be a major factor shaping women’s health.¹⁸⁶ Thus, the harm the criminal legal system may cause for “unsuccessful participants” go beyond the PSC and those who may or may not receive a felony or misdemeanor conviction: Given the ways PSCs operate and provide short-term and involuntary services to participants, our research (alongside many emerging inquiries) suggest that simply being involved in the criminal legal system – including PSCs – has consequences for both the health of involved individuals, their families, and communities.

POLICY RECOMMENDATIONS

While it is clear that some of Cook County’s PSCs are able to meaningfully help some participants, there are also many participants who are harmed through the inconsistency of programming and sanctions, as well as status-quo and punitive approaches to substance use in PSCs. This is evidenced by the fact that the majority of participants do not graduate from PSCs. In addition to low graduation rates, we have concerns around the ability of legal stakeholders to interfere with treatment in a variety of ways; given that many participants spend a longer period of time involved in the criminal legal system, and that many participants have fatally overdosed while enrolled in PSCs. Moreover, while

182 *Supra* notes 27 and 58. See also, Schenwar, M., & Law, V. (2020). *Prison by Any Other Name: The Harmful Consequences of Popular Reforms*. Chico, CA: AK Press

183 Comfort, M. (2016). “A Twenty-Hour-a-Day-Job”: The Impact of Frequent Low-Level Criminal Justice Involvement on Family Life. *The Annals of the American Academy of Political and Social Science*, 665(1), 63-79. Accessible at <https://journals.sagepub.com/doi/10.1177/0002716215625038>

184 *Ibid.* See also, Green, K., Ensminger, M., Robertson, J., & Juon, H. (2006). Impact of Adult Sons’ Incarceration on African American Mothers’ Psychological Distress. *Journal of Marriage and Family*, 68(2), 430-441.

185 Geronimus, A., Hicken, M., Pearson, J., Seashols, S., Brown, K., & Cruz, T. (2010). Do Us Black Women Experience Stress-Related Accelerated Biological Aging? A Novel Theory and First Population-Based Test of Black-White Differences in Telomere Length. *Human Nature*, 21, 19-38; Geronimus, A., Pearson, J., Linnenbringer, E., Schulz, A., Reyes, A., Epel, E., & Blackburn, E. (2015). Race-Ethnicity, Poverty, Urban Stressors, and Telomere Length in a Detroit Community-Based Sample. *Journal of Health and Social Behavior*, 56(2), 199-224.

186 “Caregiving for Family and Friends — A Public Health Issue” [Brief]. (2018). National Association of Chronic Disease Directors & Centers for Disease Control and Prevention. Retrieved on February 6, 2023, from <https://www.cdc.gov/aging/agingdata/docs/caregiver-brief-508.pdf>

these courts appear to offer the potential for better outcomes than the typical criminal legal process, they do not address the systemic issues that lead people to be arrested and incarcerated in the first place. The criminalization of poverty, addiction, and mental illness; racist implications of policing and the criminal legal system process; and lack of available social services, jobs, and high-quality public education in our communities make it extremely difficult for people to access treatment resources outside of the criminal legal system and succeed in PSCs (although community-based treatment would likely be more effective than the court-mandated processes described herein).

As such, Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers support community-based, non-punitive public health strategies and best practices that prioritize the self-determination of people to access the resources they believe they need before they even enter the criminal legal system.

The criminal legal system has co-opted treatment dollars that should be used to fund community-based investment needed in our communities, especially on Chicago’s South and West Sides. As policymakers and advocates work to divert people with mental illnesses, substance use disorders, and those who simply use drugs from the criminal legal system altogether, there are things PSCs can and should do to reduce harm to participants. Our following policy recommendations are based on the premises that:

- Incarceration should not be used for PSC participants. For those struggling with substance use disorders, especially, the health-related risks are immense. The more time someone spends incarcerated, the more likely they are to fatally overdose, die by suicide, experience trauma, and re-enter the legal system. The rates in which PSC participants are sentenced to more incarceration are of extreme concern given the fact that many people charged with Class 4 felonies face only 6 months in prison after conviction, but drug court participants can spend up to 300 days incarcerated, and the fact that incarcerating people with substance use disorders increases the likelihood that they will fatally overdose.
- System-involved people deserve autonomy and should have the right to determine their goals for and methods of treatment—whether that be for their mental health or substance use. Aligned with the reforms outlined by Public Act 102-1041, this should be in consultation with their chosen treatment provider, not individuals who work in the court system like judges and prosecutors. As such, PSC participants should have access, and the option to access, the full range of treatment services that are available in the community, including medication-assisted treatment, 12-step programs, and harm reduction services.
- Community-based resources are essential to successful treatment outcomes. PSC participants should be connected with treatment and other long-term resources of their choosing in their communities to ensure a seamless transition to care once they end community supervision in and outside of their PSC enrollment.

Short-Term Priorities

While the provisions of Public Act 102-1041 will not solve all of the issues discussed herein, we believe some of the following short-term recommendations can assist with the implementation of the Act

while also preventing the risk of participants’ fatally overdosing while in PSCs.

Recommendation 1.

Help expand accessibility to provide medication-assisted therapy to all problem-solving court participants who need and want it.

It is dangerous and illegal for PSC judges to keep participants struggling with opioid-use disorders from medication-assisted therapy. Because many PSCs operate under abstinence-only program models, our findings show that many judges equate medically-assisted treatments, such as buprenorphine and methadone, with drug use.¹⁸⁷ This conception is counter to best practices for both specialty courts and for public health generally.

Medication-assisted treatments are the world’s most effective responses to opioid-dependency, with the Illinois Supreme Court’s Problem Solving Court Guidelines and the Drug Court Treatment Act (730 ILCS 166) even mandating that Illinois PSCs “shall support and encourage the utilization FDA-approved Medication Assisted Treatment (MAT) resources” for PSC participants. Despite these recommendations, qualitative interviews and the stringent rules around MAT show that judges and other stakeholders in Cook County’s problem-solving courts still resist medication-assisted treatment and seem to see it as a form of drug dependency that should be discouraged, rather than promoted.

PSCs should encourage medication-assisted therapy because it has also been found to reduce criminal legal system involvement and health costs and is extremely cost effective, returning \$12 for each dollar invested.¹⁸⁸ Regardless of its cost-effectiveness, access to medication-assisted therapies should not be merely an “option” for judges to consider. It is simply not acceptable to consider this issue a difference of opinion. For many who may overdose as a result of lowered tolerance after prolonged abstinence, access to medication-assisted therapy is a matter of life or death.

Recommendation 2.

Dramatically improve data collection and transparency.

The Circuit Court of Cook County must dramatically improve their data collection and transparency standards as related to specialty courts. While the Illinois Supreme Court’s Problem Solving Court Guidelines (2019) mandates that “each PSC shall establish a formal plan for data collection and program evaluation as required by the AOIC,” many PSC actors explained that there is almost no data keeping and monitoring of their respective courts, especially as it pertains to the total time someone spends in custody or the number of fatal overdoses while enrolled in PSCs. Moreover, what data is kept is often not standardized in a way that allows for evaluation. For example, as noted by Collins (2021):

Some states have adopted legislation that requires the collection and reporting of certain information about specialty court performance, including the number of court participants, participant “outcomes,” and recommendations for the future. But even those states that

¹⁸⁷ Schenwar, M., & Law, V. (2020). *Prison by Any Other Name: The Harmful Consequences of Popular Reforms*. Chico, CA: AK Press

¹⁸⁸ *Supra* note 31.

*legislatively require such reporting often vest reporting responsibility in the judicial branch itself and do not identify what “outcomes” should be measured, let alone how they should be defined. Nor do they require that the courts achieve certain metrics.*¹⁸⁹

This issue is a symptom of Illinois’s open records laws, which differ from the majority of other states in that they do not require or permit disclosure of data relating to administrative court functions, neither through Freedom of Information Act (FOIA) requests nor judiciary-specific statutes or rules.¹⁹⁰ Yet, at least 44 other states’ probation, pretrial programs, and financial information are subject to open records laws.¹⁹¹ The lack of data transparency from the judicial branch has tangible consequences: for one, PSCs continue to develop rapidly across our state without a concrete ability for researchers to evaluate the programs’ efficacy. Because it is difficult to access aggregate information, it is difficult to holistically identify how these courts are functioning and subsequently hold PSCs accountable for any inefficiencies and concrete harms being caused by these courts (e.g., withholding access to medication-assisted therapies, making “global offers,” etc.).

We believe it is important that each problem-solving courtroom in in the Cook County Circuit Court be required to issue a publicly-available annual report, which will include all relevant quantitative data (demographic, charging, case, sentencing, graduation, and other information), as well as a narrative report, with input from participants and court actors, on the progress that the PSC has made toward meeting its goals.

Recommendation 3.

End the practice of judges and court-actors designing, changing, and enforcing participants’ treatment plans.

Judges are not case managers or (typically) licensed clinical social workers, and therefore should not serve as case-managers to participants in problem-solving courts. Judges and court actors should follow the direction of Public Act 102-1041: They cannot and should not play a role in designing and enforcing participant’s treatment plans. Rather, treatment and case management plans should be designed by both, and only, participants and their clinicians/treatment providers. Prior to the passage of Public Act 102-1041, our qualitative interviews conveyed that judges and other court actors found ways to interfere with and even craft participants’ treatment plans. At this time, judges are not obligated by state statutes (730 ILCS 166, 167 and 168) to receive training in case-management, mental health, and/or substance use. As such, judges are currently ill-equipped to provide case-management and treatment recommendations on their own.

Even if judges were to receive this kind of training, merely being trained in these issues does not make a judge equipped to design case management and treatment plans for individuals who use substances or have divergent mental health needs. The only people that can design effective case management and treatment plans are the participants themselves with the help of their treatment provider and/or clinicians. For one, only participants know what services they need and want to utilize, and clinicians

¹⁸⁹ *Supra* note 77.
¹⁹⁰ *Supra* note 137.
¹⁹¹ *Id.*

and case managers are best equipped to support participants in their pursuit of the services and resources they need to thrive.

Yet, the deep judicial investment in PSCs that lead judges to utilize their power in prescribing case management and treatment plans perpetuates the notion that criminalization and enforcing compliance are the best mechanisms for responding to complicated social and structural issues.¹⁹² While advocates work towards a future where community-centered policy reforms are utilized to prevent overdose death, reduce the harms associated with substance use, access to treatment is improved, and public health rather than criminal justice approaches are utilized, legal actors must follow Public Act 102-1041's provisions that in the criminal legal system must delegate any and all treatment and/or case management planning to relevant mental health/public health personnel.

Recommendation 4.

Improve protections for participant confidentiality.

PSC participants, like all people seeking health services, are entitled to the utmost confidentiality. Court actors should not be able to access confidential information shared between participants and their treatment providers and/or clinicians. Simply put, confidentiality is a respected part of lawyers', doctors', social workers', and psychologists' codes of ethics. Clinicians understand that for people to feel comfortable talking about private and revealing information, they need a safe place to talk about anything they'd like without fear of that information leaving the room. However, according to our qualitative findings, the ability for clinicians to share some information if they receive a court order has been widely taken advantage of in PSCs¹⁹³ in ways that jeopardize participants' rights under the American Psychological Association's and National Association for Social Workers' (NASW) code of ethics. As stated by the NASW:

*When a court of law or other legally authorized body orders social workers to disclose confidential or privileged information without a client's consent and such disclosure could cause harm to the client, social workers should request that the court withdraw the order or limit the order as narrowly as possible or maintain the records under seal, unavailable for public inspection.*¹⁹⁴

The contract signed by PSC participants states that they understand that a refusal to consent to disclosure of medical records or attempt to revoke their consent "is grounds for immediate termination from the Cook County Problem-Solving Court in which [the participant is] enrolled."¹⁹⁵

It is clear that participants face significant consequences if they do not consent for their information

¹⁹² *Supra* note 77.

¹⁹³ Specifically, the American Psychological Association allows psychologists to release information if they receive a court order. That might happen if a person's mental health came into question during legal proceedings. See e.g., <https://www.apa.org/topics/ethics/confidentiality>

¹⁹⁴ The National Association of Social Workers (NASW). (n.d.) The NASW Code of Ethics. Accessible at: <https://www.nasw.org/ethics/ethics/confidentiality>

¹⁹⁵ "Problem Solving Court Participant Consent for Release/Disclosure of Confidential Information" [Form CCCR 0108 A] for the Circuit Court of Cook County, Illinois. (Updated 2021). Retrieved on February 8, 2023, from https://services.cookcountyclerkofcourt.org/Forms/Forms/pdf_files/CCCR0108.pdf

to be shared among court and treatment actors. Asking participants to consent to release their information “or else” is blatant coercion and violates best practices of informed consent for treatment programs.¹⁹⁶ Not only this, but compromising confidentiality also harms participants because it prevents them from comfortably engaging in the mental health services many participants believe they need in order to heal. For example, if a participant is triggered enough to relapse, they may feel discouraged to share that with their therapist in fear that the PSC will find out and sanction them. Because interviewees noted that PSCs are where participants are connected to mental healthcare for the first time, introducing PSC participants to surveilled and compromised mental health care is likely to discourage participants from trusting clinicians in the future and, understandably, may impact their willingness to seek further treatment.

As discussed above, there are few mental health services in many of the communities where PSC participants live, with public options being even more scarce. Although we cannot and should not wait for people to be criminalized to then rely upon our criminal legal system for mental healthcare, we believe that the people currently enrolled in PSCs should be guaranteed the same rights as all people who receive mental health services.

Recommendation 5.

Improve the training, education, and monitoring of problem-solving court judges and their courtrooms.

PSC judges should be evaluated periodically on their performance by The Cook County Court of the Chief Judge or the Administrative Office of the Illinois Courts (AOIC) to ensure that court participants receive the best quality services. In 2015, the Illinois Supreme Court created “uniform standards and a certification and application process for problem-solving courts across the state.”¹⁹⁷ The standards, certification, and application processes were developed by the AOIC and the Special Supreme Court Advisory Committee for Justice and Mental Health Planning.¹⁹⁸ According to the AOIC’s website, problem-solving courts go through a recertification process,¹⁹⁹ which includes a lengthy self-assessment, but it is unclear how often or through what additional measures the AOIC evaluates PSCs, and if that certification includes analysis of graduation rates or other outcome markers (such as employment or education attainment).²⁰⁰

Judges should receive training on how to keep to these standards of their certification and health-centered best practices, which include deferring to health care professionals, eliminating punitive sanctions, and treating participants in line with certain principles. Many of these evaluation criteria are backed by more substantial evidence elsewhere in this report. Of note, judges should be accountable for:

196 See e.g., “Substance Abuse Confidentiality Regulations” (2022) for SAMHSA: <https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs>; Shah, P., Thornton, I., Turrin, D., & Hipskind, E. (2022). *Informed Consent. Stat-Pearls* [Internet] via National Institute of Health, National Library of Medicine: <https://www.ncbi.nlm.nih.gov/books/NBK430827/>

197 “Problem-Solving Courts” from Probation Services Division of the Administrative Office of the Illinois Courts (AOIC) at <https://www.probation.illinoiscourts.gov/psc>

198 *Id.*

199 See “PSC Application for Re-Certification” from Probation Services Division of the AOIC at <https://www.probation.illinoiscourts.gov/psc/re-certification>

200 See AOIC’s “Problem-Solving Court Self Evaluation” [Google Form]. (n.d.). Retrieved on February 9, 2023, from <https://docs.google.com/forms/d/e/1FAIpQLSeFpUmzHqvx9B9681Xcg4hLxMZyXavAHT0HzLRZTvr4WRI3PA/viewform>

- (a) Deferring to mental health and substance abuse professionals for treatment plans.²⁰¹ When required to adjudicate beyond or without additional health care guidance, judges should employ an evidence-based approach – including using technologies like MAT, demonstrating an understanding of drug treatment as an evolving field with changing best practices, and accepting support from professionals with expertise to assess and identify the right package of interventions to support people.²⁰²
- (b) Applying accountability measures that directly support people in reorganizing and redressing the harms they have perpetuated both to themselves and others. This means resisting punitive decisions, such as expelling someone out of a program for a violation or taking away certain liberties as punishment. Judges should continuously evaluate the sanctioning methodology utilized in their court, with modifications to a participant’s treatment plan never utilized as an incentive or sanction.²⁰³ Sanctions should be used across PSC judges with consistency and uniform standards.²⁰⁴ Sanctions imposed should be tracked by the Circuit Court of Cook County as well as the by the AOIC and reviewed periodically for accountability and data collection. Evaluations will provide a source of extrinsic accountability for judges that, according to our court-watching findings, have a high level of discretion in how they conduct their court-proceedings and treat litigants.
- (c) Displaying empathy, humility, patience, and respect for participant’s autonomy.²⁰⁵

Likewise, each problem-solving courtroom should maintain an advisory group, which meets monthly with every PSC judge to discuss the status of the court, as well as evaluate its policies and procedures on an ongoing basis. This advisory group should include treatment providers, representatives from the community, former problem-solving court participants, as well as court personnel. These advisory members could be equally appointed by members of the program team (court actors and treatment providers) and the public defender.

Long-Term Goals

There are myriad strategies that the City of Chicago, Cook County, and the state of Illinois could employ to expand access to public health services, treatment, and opportunities for upward mobility, which together, would ultimately help reduce the risk of people entering the system. To reach this goal, we have provided a list of longer-term strategies for the system to consider below.

Recommendation 6.

End punitive, abstinence-only specialty court models.

Punitive, abstinence-only models for problem-solving courts should be abandoned in favor of evidence-based public health best practices. Involuntary and immediate cessation of drug use is

²⁰¹ *Supra* note 43. See also, Center for Justice Innovation. (2019). Problem-Solving Courts: An Evidence Review. Accessible at <https://justiceinnovation.org/sites/default/files/media/documents/2019-03/problem-solving-courts-an-evidence-review.pdf>

²⁰² *Id.*

²⁰³ *Supra* note 43.

²⁰⁴ *Id.*

²⁰⁵ *Supra* note 201.

generally ineffective and potentially dangerous.²⁰⁶ As illustrated above, abstinence is particularly dangerous for people with opiate and opioid dependencies, as tolerance is significantly lowered after a period of abstinence. Because of this, people who use certain drugs upon leaving abstinence-only treatment have a higher probability of overdose.²⁰⁷ While PSC actors, especially judges, may have good intentions in ordering these kinds of treatment, abstinence-only practices can be a detriment to many people’s wellbeing and lives. As such, PSCs should meet participants with drug dependencies where they are. Rather than, say, sanctioning or expelling a participant for using marijuana while abstaining from heroin, PSC actors should see marijuana use as an incremental step in one’s recovery from a heroin dependency. While abstinence-only models work for some people, it is imperative that abstinence become an option for participants to choose from in their recovery, rather than enforced for all participants.

Recommendation 7.

Make pre-plea diversion the rule, not the exception.

The Circuit Court of Cook County, the Cook County State’s Attorney, and members of local law enforcement should work together to make pre-plea diversion the rule instead of the exception.

As stated in this report, most PSCs in Cook County require a guilty plea for the price of admission. This means that individuals will have a conviction during their time in PSCs, and people who fail in the programs may have a lifelong felony conviction. The pre-plea diversion programs in Cook County whose program models are not bound to legal statute have far fewer requirements and higher rates of graduation. Moreover, in pre-plea programs, participants are able to have their plea withdrawn and the charge dismissed.²⁰⁸ While procedures vary, post-plea diversion programs simply lead to fewer dismissals than pre-plea programs do. Moreover, pre-plea diversion helps preserve people’s due process rights by allowing the full range of legal options - including pretrial motions and trial - for people who leave PSCs either voluntarily or through failure. Convictions impede PSC participants’ ability to obtain employment and engage in other pro-social activities to better their lives, while serving no practical benefit. Cook County should, as much as possible, transition to a PSC system where participants remain pretrial, rather than post-plea.

Several of the concerns we have outlined herein about the terms and punishments of post-plea problem-solving courts could be mitigated in a pre-plea setting. It is our belief that the development of more post-plea problem-solving courts in the Circuit Court of Cook County must be paused, and any future investments should be dedicated to pre-plea diversion and specialty court programs. To be clear, we do not advocate for pausing the development of any pre-plea programs or other innovative court programs or ending ongoing post-plea programs. We believe that there are many changes and innovations (especially pre-plea innovations) that can be adopted to improve court participant’s experiences and outcomes. However, given the PSC data reviewed in this report - particularly the low rates of graduation - we do not believe that any additional PSCs should be created until graduation rates and data transparency are improved.

²⁰⁶ *Supra* notes 141 and 182.

²⁰⁷ *Id.*

²⁰⁸ *Supra* note 27.

Recommendation 8.

Make problem-solving court requirements less burdensome and more attainable.

The requirements of problem-solving courts are burdensome and can be harmful. Existing problem-solving courts must become less-intensive and restrictive, as they are currently operating in ways that set participants up for failure. Time and time again, research has shown that people are worse off the more they come into contact with the criminal legal system. Given the significant contact PSC participants make with the legal system while enrolled in PSCs—from frequent court visits in the middle of workdays to the multiple check-ins with various stakeholders—problem-solving courts are operating in ways that have been proven to be ineffective in ensuring people do not reenter the criminal legal system.²⁰⁹ For example, many interviewees shared that the intense nature of PSC requirements interfere with participant’s ability to secure stable employment. While PSCs believe that participants must prioritize their “recovery” before employment, this is a privileged and inaccessible expectation to hold for participants, many of whom live in predominantly low-income and working class areas and need stable employment to provide for themselves and their families. As such, the many expectations of PSCs often create barriers to things like stable, secure employment which people need in order to avoid the criminal legal system altogether.

Our state’s statutes which govern the development and implementation of Drug, Mental Health, and Veterans Courts do not require PSCs to have a specific number of program requirements. Rather, 730 ILCS 167, 168, and 169 only require that PSCs have some requirements that are “included, but not limited to” the suggestions outlined in the statutes, such as “fines, fees, restitution, incarceration up to 180 days, therapy, drug analysis testing, etc.”²¹⁰ As such, Cook County’s PSCs are not bound by law to have as many requirements they currently do. As such, PSCs can and should revise program models to reduce the number of requirements participants must abide by. As they stand now, they are simply unrealistic for participants struggling with drug dependencies or serious mental illnesses to keep track of and balance with their other responsibilities.

Recommendation 9.

Decriminalize mental health issues, drug use, and poverty and divest from the carceral system.

Social problems related to substance use, mental illness, and/or poverty should be decriminalized. On the path to decriminalization, Cook County should reinvest money from its criminal legal system into its public health infrastructure. Instead of dedicating resources to create new courts to respond to various social problems, Cook County could focus on providing supportive services that preclude criminal legal system involvement altogether. Indeed, there is research which demonstrates that the “ultimate intercept” for avoiding the criminalization of mental illness are accessible and robust mental health systems that provide communities with services, housing, and treatment, as well as operate independently of the criminal legal system.²¹¹ Ultimately, if our county

209 *Supra* note 175.

210 *Supra* note 81.

211 Munetz, R. & Griffin, A. (2006). Use of the Sequential Intercept Model as an Approach to Decriminalization of People with Serious Mental Illness. *Psychiatric Services*, 57(4), 544-549. Accessible at <https://pubmed.ncbi.nlm.nih.gov/16603751/>

was interested in reducing the prevalence of substance dependencies and fatal overdoses, we would not be investing as much as we do into our criminal legal system.

Unfortunately, many people we interviewed observed that participants who receive services often receive them for the first time while enrolled in PSCs. This demonstrates the ultimate failure of Cook County infrastructure to provide accessible mental health and healthcare to our communities. Ultimately, people who need services like treatment, therapy, and housing should not be criminalized before they are able to access them. It is well-documented that stable social and financial circumstances help prevent relapse both during and after treatment, regardless of whether a person is mandated to treatment by the courts.²¹² Efforts to aid people with drug problems might therefore involve addressing other needs entirely, such as access to physical and mental health services, housing, employment, or education. Cook County should do more to expand access to public mental health and health services which ultimately prevent people from entering the criminal legal system altogether.

Programs designed for people who are routinely unable to access mainstream health care systems are also needed. For example, syringe exchange programs and safe injection facilities – which focus on empowering individuals to make healthier choices – have proven to be safe, effective opportunities for more marginalized people to engage help and services.²¹³ According to Drug Policy Alliance (2011):

Just as public health principles support the use of condoms, contraceptives, cigarette filters, and seat belts to reduce health risks, drug policies must seek to reduce the harms and risks associated with drug use...Programs that focus on reducing drug-related harms and risks result in better individual and public health than criminal justice interventions – including drug courts.²¹⁴

Failing to invest in programs like needle-exchanges, safe-consumption sites, etc., that are focused on making sure people are safe, have been found to substantially reduce the rate of disease transmission and fatal overdose.²¹⁵ In sum, many people who use drugs and/or struggle with substance dependencies would benefit from a variety of support services before or in lieu of formal treatment services enforced by the criminal legal system.

Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers believe that these steps are not the “end all be all” of necessary reforms to these courts. Rather, we believe these recommendations are merely some of the first, incremental steps our system must take to begin minimizing the role and presence of the criminal legal system in people’s lives while advocates work towards a world where problem-solving courts cease to exist and drug use, mental illness, and poverty are decriminalized.

Suggestions for Further Research

Based on the findings, discussion, and policy recommendations in this report, we believe there are two key areas that require further research in terms of improving program functioning and service provision. First, given the impact that PSCs have on individual wellbeing and health, it is critical

²¹² *Supra* note 58.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Supra* notes 29 and 151.

that problem-solving courts be monitored according to social service monitoring and evaluation standards.²¹⁶ PSCs play an important role in the Circuit Court of Cook County, it is critical that they are monitored and benefit from further research and evaluation. Likewise, outcomes for participants will undoubtedly improve with ongoing monitoring and evaluation. We recommend that each PSC be given a professionally-conducted, through evaluation by a neutral third party unrelated to the court system. This evaluation would provide PSCs with information on what they do well and ways that they improve. These court evaluations should occur periodically to ensure that they are meeting AOIC standards.

Additionally, problem-solving court actors may consider reorienting certain policies and practices to fit health-centered best practices. Our interviews show that many court stakeholders believe involuntary treatment to be necessary in the sense that it provides participants access and an opportunity to address their substance use. However, abstinence-only and nonautonomous treatment models are not wholly backed by public health research. While PSCs can offer individuals meaningful mental-health and/or substance use-related resources, it is important to emphasize the need for self-efficacy and consider the ongoing best practices for treatment of mental health and drug use issues.

CONCLUSION

PSCs are being developed and implemented at great speed in Cook County and throughout the country. While these courts can be interpreted as the County’s genuine efforts and commitment to decarcerating Cook County Jail and Illinois prisons, Cook County’s problem-solving courts have been significantly understudied and have gone publicly unmonitored.

On average, less than half of all Cook County PSC participants graduate from their program. This statistic alone is strong evidence that PSCs are not successful in serving their participants.

While there is some qualitative evidence that PSCs provide some participants with needed and meaningful resources (i.e., housing, counseling, treatment), a review of data – including data around rates of graduation – has shown that many participants are not well-served by these courts. Low graduation rates can, in part be explained, by our finding that PSCs are out of step with public health best practices, which risks avoidable harm to participants. Furthermore, graduation rates do not tell the full story: Even for people who graduate from these programs, little is understood about what, if any, long-term impact problem-solving court participation has on people’s outcomes—both in terms of recovery from substance dependencies as well as if they ever re-enter the criminal legal system.

The single-most commonly-held belief about the benefits of problem-solving courts identified by interviewees is that they keep people from being incarcerated. However, our report finds that people enrolled in PSC programs often spend a significant time incarcerated pretrial and during their enrollment in PSCs—rates of which have only increased given the COVID-19 pandemic. Moreover, participants spend almost as much time on probation as they would have spent if they faced traditional sentencing. Given how people are more likely to re-enter the system the longer

²¹⁶ See e.g., Markiewicz, A. & Patrick, I. (2016). *Developing Monitoring and Evaluation Frameworks*. Los Angeles, CA: Sage Publications

they are incarcerated and involved in the criminal legal system, more research is needed to assess if Cook County’s PSCs are actually operating in ways that are meeting their stated goals of reducing “recidivism” and diverting people from incarceration.

While this report faces limitations given the lack of quantitative data transparency around these courts, qualitative interviews, public health/harm reduction literature, and available court data together suggest that some of these courts struggle to meet some of the standards for PSCs put forth by the Illinois Supreme Court (2018). This presents concerns regarding how PSCs will implement many of the provisions outlined by Public Act 102-1041.

Cook County’s problem-solving courts help many people but harm others. PSCs are, in essence, criminal legal system responses to inadequate social safety nets to address public health issues (especially for returning veterans). Rather than “reforming” how Cook County responds to institutional problems, the problem-solving courts ultimately strengthen the tie between people experiencing these social issues and the criminal legal system. Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers believe that there are ways for these specialty courts to improve the programming they provide to help many more people in the future. Achieving positive outcomes on a micro-level will require less punitive and more restorative, treatment-oriented approaches. We offer these findings and recommendations to bring the PSCs in line with best practices research.

In recent years, many organizations have called the utility and efficacy of PSCs into question.²¹⁷ In 2013, for example, the American Public Health Association wrote:

*Some policymakers, academics, and commentators have suggested that, rather than removing or reducing criminal penalties or investing in harm reduction services, U.S. drug policies should focus on delivering drug treatment through the criminal justice system, mainly in the form of an ever-growing number of drug court programs. . . However, available evidence shows that coerced treatment programs, such as drug courts, are costly, are no more effective than voluntary treatment, serve very few people, and often deny proven [medication assisted] treatment modalities. . . Such criminal justice programs, moreover, have absorbed scarce resources that could have been better spent on bolstering demonstrated, health-centered approaches such as community-based treatment.*²¹⁸

They continue: “Coerced treatment is ethically unjustifiable, especially when voluntary treatment can yield equal or more positive outcomes.”²¹⁹ Likewise, the National Association of Criminal Defense Lawyers’ fundamental position on drug courts states:

Drug abuse and addiction are health problems. They are not criminal problems. Drug abusers are someone’s sons and daughters, brothers and sisters, colleagues, and neighbors. They are

217 Justice Policy Institute. (2011). Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities [Fact Sheet]. Accessible at https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/jpi_addicted_to_courts_factsheet_final.pdf; Volkow, N. (2021). Addiction Should Be Treated, Not Penalized. *Neuropsychopharmacology*, 46(12), 2048-2050.

218 American Public Health Association. (2013). “Defining and Implementing a Public Health Response to Drug Use and Misuse” [Policy Statement Number: 201312]. Retrieved on February 9, 2023, from <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/08/04/defining-and-implementing-a-public-health-response-to-drug-use-and-misuse>

219 *Id.*

*not inherently bad or evil. They are not criminals, and they should not be treated as such. A serious national conversation about the merits of decriminalization is long overdue.*²²⁰

Given the data on low graduation rates and reports of numerous participants overdosing while enrolled in problem-solving courts, justice advocates and court staff have an obligation to pause the future development of more problem-solving courts and call on the Circuit Court of Cook County and AOIC for public data transparency and better collection procedures to prepare for the implementation of Public Act 102-1041. We also call on our county to reinvest funds from the court system into strengthening our county’s public health infrastructure. We agree with Collins (2021) in that, as they currently exist, many:

*Problem-solving courts are out of step with these popular calls to rethink and transform the system. Indeed, at their core, problem-solving courts hold fast to the message that “justice” means continuing to enforce the criminal laws as usual and threatening (if not imposing) incarceration. Problem-solving courts are not, as judges often assure skeptics, “get out of jail free” programs. The courts, rather, are just a different delivery system for this message about the primacy of carceral punishment. Indeed, prevailing problem-solving court models require the existence of a sentence of incarceration as a backdrop to their operation, as an ever-looming threat that judges can strategically invoke to encourage compliance with court programs.*²²¹

Simply put, there is not enough evidence – in and outside of this report – that PSCs are the best and most appropriate response to complicated social and structural issues. As evidenced above, Cook County’s PSCs do not keep consistent, long-term data in order to convincingly prove to the public whether the courts are effective or ineffective in meeting its goals. Significant methodological shortcomings, such as lack of standardized procedures and training of relevant staff across PSCs; weak methodological approaches given varying program designs; minimal longitudinal research evaluating the long-term outcomes of court participants; limited community-based services; and incarceration still being used as a status-quo violation tactic all may affect later outcomes and may call the Circuit Court of Cook County’s purported “positive” claims around PSC efficacy into question.

PSCs in Cook County have helped a limited number of people, but at times, they have precipitated harm for their participants and are not always following the latest best practice research. However, as laid out in this report, there are ways that these problem-solving courts can improve their outcomes while we plan for future programs that do not require a guilty plea. The recommendations we have outlined are designed to allow problem-solving courts to help more people and reduce more harm while more pre-plea programs are implemented. There are means to get people the help they need without requiring them to be in the criminal legal system. If Cook County’s PSCs are to go unmonitored and unchecked – even after the passage of Public Act 102-1041 – problem-solving courts will remain a systemic reform that does not actually reform the system and will continue to leave some participants worse off.

²²⁰ *Supra* note 27.

²²¹ *Supra* note 77.

APPENDIX

The Access to Community Treatment (ACT) Court handbook is not available on the website for the court so Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers have provided this information as a resource to the public. This information was provided by the Office of the Chief Judge was last updated in 2018 but is believed to be current.

Participant Handbook:

Access to Community Treatment (ACT) Court

Eligibility and Assessment

The ACT court expands eligibility criteria utilized by other PSCs by allowing individuals who would otherwise be excluded from other drug-related programs. This includes people with: (1) one felony conviction and one prior Illinois Department of Corrections (IDOC) stay, (2) three felony convictions in the prior ten years and no prior IDOC stays, or (3) two felony convictions in the prior five years and no prior IDOC stays. Individuals who failed the Drug Deferred Prosecution Program are also eligible for the ACT Court. However, like the other drug court programs in Cook County, the ACT Court is not available to individuals charged with a “violent” crime in the prior ten years.

Enrollment

Once participants have discussed the ACT court with their attorneys, participants must agree to submit to a risk and needs assessment that is used to determine information about substance abuse, “risk to reoffend,” and social needs. If the participant is interested in being admitted to the ACT court, participants must then enter a guilty plea and are sentenced by the judge to eighteen months of ACT Court probation. ACT Probation Officers then make a case management plan individualized for the participants’ perceived needs and connect participants to different kinds of treatment determined by treatment center staff. Treatment plans may include going to a treatment program every day or several times a week; living at a treatment program or sober living place for a period of time; receiving mental health services; and/or participating in a custody-based treatment program.

Violations and Sanctions

Violations and sanctions for the ACT court are the same as the violations and sanctions of Cook County’s Drug Treatment Court Programs. However, it is important to note that the ACT court explicitly addresses relapse within the participant guide. Explicitly, the ACT Court writes:

Your probation officer is here to help you if you think you need additional treatment, more support, or you have relapsed. It is important to let your probation officer know when you need help so they can help you make a new plan. Recovery is an ongoing process. There is truly no start or end. Relapse doesn't mean you've failed. Being able to ask for help when you need it is an important part of recovery. We want to help you find success.

However, the handbook also notes that if participants’ test positive for drugs, they should “be honest...and accept the consequences. Your probation officer will help make changes to your treatment plan.”

APPENDIX

Services

Aside from treatment, the ACT court is able to help participants apply for medical insurance, Medicaid, or Medicare, provide CTA passes for some court appointments, and help participants find a place to live, a job, or how to enroll in school.

Role of ACT Court Team Members

Many of the responsibilities of ACT Court team members are similar to DTC team members. However, the ACT court designates broad roles and responsibilities to ACT Court team members. Like the DTC, judges of the ACT court act as the “head” of the team and decide when and if participants are ready for the next phase after consulting with the rest of the team. Moreover, the handbook adds that the judge is the person who makes the “big decisions about [participants’ cases].” Probation officers, on the other hand, help participants make case management plans, help participants “plan for their future,” ensure participants are following the rules of the program, meet with participants regularly, and administer drug tests. Defense attorneys represent participants in court and help participants understand their “choices.” Unique to the ACT court is a resource and treatment coordinator, who help participants develop treatment plans, “plan for the future” and “make sure [participants] are full.” . Like the DTC, Assistant State’s Attorneys are present to make sure the law is followed and works with the rest of the team to “help [participants] be successful and avoid prison.” Lastly, the project manager’s role is to ensure that the program “runs well.”

Program Phases and Participant Requirements

There are four phases of ACT Court:

Phase 1 (Titled “Choice”), lasts 2 months or longer

- Participants choose to enter a guilty plea and begin working on their recovery
- Attend court calls 2-3 times per month
- Have 14 days sober in a row in order to go to the next phase
- Participate actively in treatment
- Comply with probation

Phase 2 (Titled “Challenge”), lasts 4 months or longer

- Attend court calls 1-2 times per month
- Have at least 45 days sober in a row to go to the next phase
- Complete a relapse prevention plan
- Get a sponsor
- Participate actively in treatment
- Comply with probation

Phase 3 (Titled “Change”), lasts 4 months or longer

- Attend court calls 1 or more times per month
- Have at least 65 days sober in a row to go to the next phase
- Complete a financial plan
- Be active in a sober community
- Participate actively in treatment

APPENDIX

- Comply with probation

Phase 4 (Titled “Community”), lasts 2 months or longer

- Attend court calls 1 or more times per month
- Have at least 90 days sober in a row to go to the next phase
- Participate actively in treatment
- Comply with probation

In order for participants to graduate, participants must:

- Complete all the phases
- Be sober for at least 90 days in a row
- Finish any paperwork with their probation officer
- Work with their probation officer
- Work with their probation officer to identify how they will stay sober
- Work with their probation officer to make sure participants have a job or other income so that they can “be stable”

Program Outcomes

Once participants have graduated, the Judge can remove the current case conviction(s) and dismiss the case. If all phases are complete in under 18 months, participants may be able to end the program and their probation as “early as 12 months.” If participants don’t finish in time (i.e. complete phase 4 by 18 months of probation), the team may extend participants’ probation. If probation is extended, participants have the chance to complete Phase 4, graduate, and have their conviction vacated and case dismissed. However, only one extension can be granted per participant.

Other ways participants can leave the program are if they have health issues that interfere with their ability to complete program requirements and the team might approve this type of discharge for a serious medical condition or disability (like the DTC). Bolded in the participant handbook, however, is the warning that “since [participants] won’t have completed [their] probation, [they] will be resentenced, and [they] will likely go to prison if they choose to end their participation in the ACT court...[participants] don’t have the right to leave the program and stay on probation.” Lastly, if participants aren’t able to “follow the rules,” participants “might not be allowed to stay in the ACT program.”



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