

"ONE SIZE DOESN'T FIT ALL."

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

Full Report:
ChicagoAppleseed.org/Problem-Solving-Courts

EXECUTIVE SUMMARY

Diverting individuals to specialty courts, such as “problem-solving courts” (PSCs) 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.

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 out-dated or conflict with public health, mental health, and drug use best practices; and perpetuated practices that are biased, unfair, or interfere with participants’ lives and abilities to receive treatment (if desired).

This report 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. Additionally, we generated insights through court-watching between March 17 to May 27, 2022. Trained court-watchers observed a total of 51 problem-solving court participants and 7 judges across 5 municipal districts.

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. 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.

HISTORY

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. 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 2021—a 68% increase of drug courts in the past 10 years.

“
"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."
”

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. In theory, 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.

Illinois Public Act 102-1041, which took effect in June of 2022, will standardize the treatment court statutes, ensure individuals with similar needs have access to necessary resources, and further promote best practices. In light of the passage of Public Act 102-1041, this report examines the state of Cook County’s problem-solving courts prior to the new law.

COOK COUNTY'S PROBLEM-SOLVING COURTS

Cook County's problem-solving courts are 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. 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. While there were only three post-plea PSCs in 2011, as of February 2023, Cook County has 21 problem-solving courts:

Drug Treatment Courts (DTC)

There are 7 Drug Treatment Courts (DTCs) in Cook County.

Most DTCs are post-plea and two are pre-plea. In the suburbs, DTC programs are simply the “Drug Treatment Courts.” In Chicago, there are typical DTCs - the Rehabilitative Alternative Probation (RAP, for male-identifying and WRAP for female-identifying people) Program - and the ACT Court.

Access to Community Treatment (ACT) Court is a post-plea DTC for “repeat offenders” since 2013. ACT expands eligibility for people with nonviolent charges.

Mental Health Courts (MHC)

There are 8 Mental Health Courts (MHCs) in Cook County.

The MHCs are two-year, post-plea programs for people charged with nonviolent felony offenses. 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. After this, the person is required to plead guilty to the charge(s) and begin the 24-month Mental Health Court Probation Program.

Veterans Treatment Courts (VTC)

There are 6 Cook County Veterans Treatment Courts.

VTCs are specifically designed for people who have served in the U.S. military and have become involved in the criminal legal system. Like other PSCs, the VTC is a collaboration between stakeholders and community-based treatment and support agencies. However, unique to the Veterans Treatment Court is that this problem-solving court treatment team also includes the federal and state Departments of Veterans Affairs (VA).

FINDINGS

The lack of data available and the general tension between drug policy and public health best practices has made it difficult for us to track certain policies and practices in the problem-solving courts. Though anecdotally, court personnel reported many success stories in their court—but taken together, our findings suggest inherent tensions between PSCs and the needs of participants. A high-level summary of our findings is included below:

FINDING 1. Program + Participant Successes and Failures

- **Anywhere from 35% to 61% of participants will “graduate” from a problem-solving court, but there are wide variations in graduation rates between individual courtrooms.** 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. The overall combined completion rate of all problem-solving courts is 55%. Programmatically, only the VTCs have a graduation rate above half (61%); the MHCs have an overall graduation rate of 47%, and the DTCs have a graduation rate of 42%. There are even wider variations in graduation rates when comparing individual courtrooms, with ACT Court's graduation rate at 29%. In general, each courtroom has a different judge. 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.

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

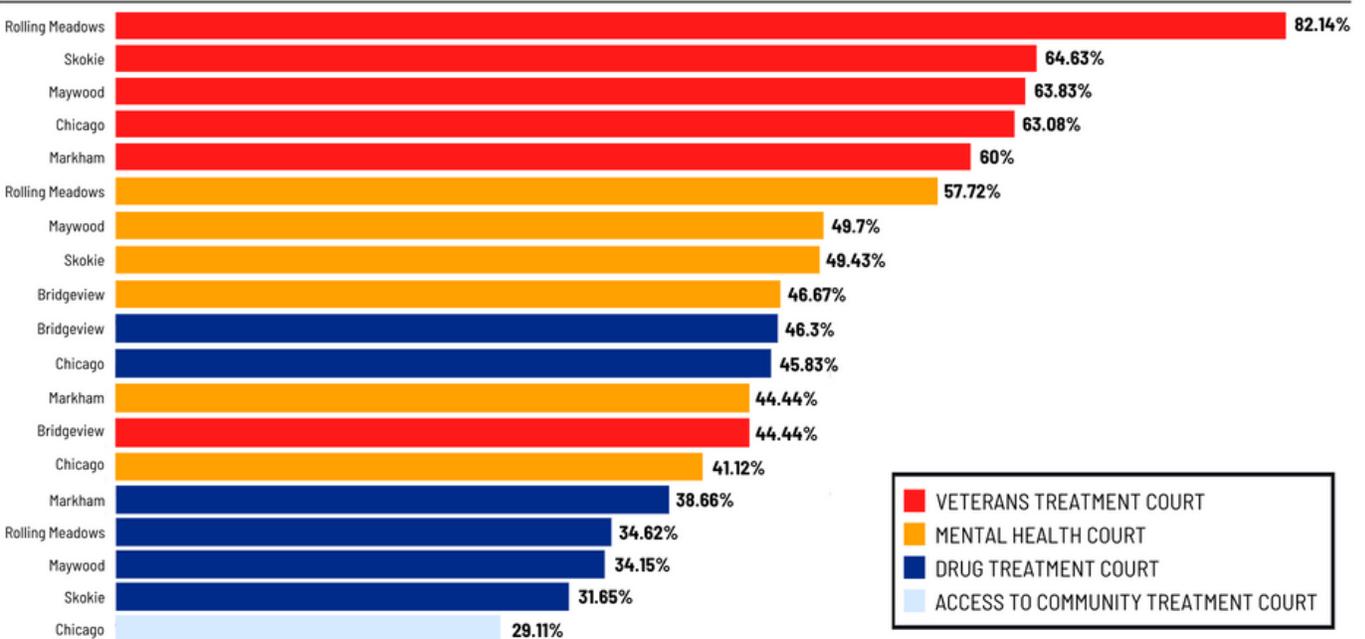


Figure 9 data is from the CCSAO and includes Problem-Solving Court graduation rates from 2011 to 2021. The PSCs at the Leighton Courthouse in Chicago are split up by gender but are combined in this analysis.

FINDING 2. Profiles in Problem-Solving Courts

- **The profiles of people in each specialty court vary, but generally, participants' charges are almost universally nonviolent and related to drugs or property.** PSC participants predominantly have one of three charges: Possession of a Controlled Substance, Retail Theft, or Delivery of a Controlled Substance.

- **In terms of age and gender, all the specialty courts skew at least slightly older and more female than the system as a whole.** 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 post-plea programs are more common after someone has already exhausted other options. Although 13% of people charged with felonies in Cook County are recorded as female, women are 21% to 39% of participants in PSCs with the exception of VTC, where 95% participants are male.
- **White people are about twice as prevalent in the Mental Health, Drug Treatment, and Veterans Treatment Courts as they are in the overall felony courts.** Except for in ACT Court, which has an even more disproportionately Black demographic, the PSCs have a higher proportion of White participants than Cook County's criminal legal system as a whole.

FINDING 3. Quality of Services + Resources

- **Problem-solving courts can help people access resources they may not have had otherwise, but many the parameters present barriers to participants.** A majority of interviewees agreed that the services provided in the PSC help some participants, especially those who did not have access to things like therapy and treatment in their communities. People acknowledge that these resources (i.e., access to shelter, in-patient treatment, etc.) helped participants in crisis, but not all services were long-term or accessible outside of their time in the PSC.
- **Mandating services poses challenges to autonomy, which can ultimately influence people's ability to reach treatment goals.** Many interviewees discussed the challenges that arise when participants do not have the opportunity to self-advocate and attain the resources they know they need—and when they are unsure of why they are receiving some services.
- **The interdisciplinary "team" model in the problem-solving courts can cause confusion related to individual roles in treatment, and poses clear issues for participants' rights to confidentiality.** Because different court actors collaborate on treatment plans for PSC participants, judges and State's Attorneys become aware of participant behaviors that they would not necessarily be privy to in a normal courtroom settings. This "blurring of roles" and the requirements for participants to disclose medical and treatment information to the courts leads to punitive surveillance of participants and more consequences in people's lives that they would not have experienced with traditional court sentencing.

FINDING 4. Requirements + Punishments

- **Demanding requirements based on abstinence-only models create barriers for participants who may not have access to childcare, transportation, or the ability to miss work or school.** To ensure that participants abstain from drugs or alcohol, the courts may require frequent, random drug testing or for all participants to attend group meetings. These difficulties create a barrier to successful program completion and impact individuals' livelihoods.
- **The main driver of a participant's incarceration is as punishment for breaking program rules.** Many of the requirements in problem-solving courts are unrealistic, demanding, and counterproductive because they are designed as abstinence-only models. These demanding rules are not only unrealistic, but often counterproductive, because the main driver for participants' incarceration is as punishment for breaking the rules. In addition to the 180 days of incarceration allowed by statute for sanctions of incarceration, data showed that participants are also spending up to 120 days in jail *pretrial*, before they formally enroll in a problem-solving court.

- **Participants experience a range of criminal legal system sanctions, as well as a range of incentives, depending in which courtroom they end up in.** Our interviews suggest that generally, PSCs overuse sanctions and underuse incentives. There was collective confusion among those we interviewed regarding the range in rewards and sanctions that were administered by individual judges. The imposed consequences varied from additional "homework assignments," to involuntary inpatient or outpatient treatment, to incarceration.

“
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.
 ”

FINDING 5. Overdose + Other Risks for Participants

- **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 or how to mitigate the risk.** Several stakeholders we interviewed shared that their PSC has lost participants to fatal overdoses—especially since the beginning of the COVID-19 pandemic—while others noted a different experience. Mental health court stakeholders shared that they have lost five participants to fatal overdoses and one has died by suicide since the pandemic began in 2020. 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.
- **Court actors' varying perspectives on how to reduce overdose risk do not always align with public health best practices.** When discussing the relationship between PSC programming and participants' overdoses, interviewees attributed different factors (i.e., lowered tolerances, lack of intense surveillance during the COVID-19 pandemic, general abstinence-only models, incarceration) contribute to the rates of fatal overdoses in the court. Medication-assisted treatment (MAT) seems to provide a viable option for mitigating overdose risk; regardless of personal opinion, most interviewees state that judges do not interfere with the medication-assisted treatment of participants in their drug courts.

FINDING 6. Institutional Problems

- **Racism – both explicit or unintentional expressions of biases – permeate the legal system as a whole, including the problem-solving courts.** The institutional racism in the legal system is highlighted in the problem-solving courts because PSCs can scrutinize and punish participants in ways traditional courts cannot. The heightened supervision of the problem-solving courts allows court actors abnormal control and the expanded opportunity to scrutinize, punish, and control aspects of participants' lives.
- **Some judges appear to discourage participants from fully exercising their full legal rights in some cases.** Our court-watchers' observations and interviews with court actors both noted unusual courtroom practices that could potentially limit participants' access to their legal rights. The first practice is called "global offers": When a participant was rearrested for a new felony, "global offers" would end the individual's time in the PSC with a "neutral" discharge, and then enter a prison sentence on the *new* case. This denies the person credit for the time in custody *before* and *during* the problem-solving court period. Court-watchers also observed participants being pressured not to exercise their due process right to have a hearing on violations of probation. For instance, in cases where a participant calls for a hearing to dispute drug test results and is subsequently incarcerated.

RECOMMENDATIONS

Simply put, more research is needed to better understand the effect of diversion and problem-solving courts on participants' lives and legal system outcomes. Though the research remains mixed, generally, our following policy recommendations are based on the premises that:

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.

- (1) Incarceration should not be used for PSC participants.
- (2) 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.
- (3) Community-based resources are essential to successful treatment outcomes.

These recommendations are merely the first, incremental steps we believe our system must take to begin minimizing the harm 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.

SHORT-TERM PRIORITIES.

We believe these short-term recommendations are needed with the implementation of Public Act 102-1041 to limit the immediate harms to participants of problem-solving courts.

Recommendation 1.

- **Help expand accessibility to medication-assisted therapy.** All problem-solving court participants who need and want it should have access to MAT. It is dangerous to keep participants struggling with opioid-use disorders from medication-assisted therapy.

Recommendation 2.

- **Improve data collection and transparency standards as related to specialty courts.** This issue is a symptom of the inadequate open records laws as related to the judiciary, which differ from the majority of other states in that they do not require or permit disclosure of data relating to administrative court functions.

Recommendation 3.

- **End the practice of judges and court-actors designing or changing participants' treatment plans.** Judges should not serve as case-managers to participants in problem-solving courts. 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 only by both participants and their clinicians/treatment providers.

Recommendation 4.

- **Improve protections for participant confidentiality.** PSC participants, like all people seeking healthcare services, are entitled to the utmost confidentiality. The courts should not be able to access confidential information shared between individuals and their treatment providers and/or clinicians. Asking participants to consent to release their information "or else" is blatant coercion and violates best practices of informed consent for treatment programs.

Recommendation 5.

- **Improve the training, education, and monitoring of problem-solving court judges and their courtrooms.** All judges should be evaluated periodically on their performance. In 2015, the Illinois Supreme Court created “uniform standards and a certification and application process for problem-solving courts across the state.” 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).

LONG-TERM GOALS.

While there is not enough evidence to conclusively prove whether PSCs are effective or ineffective, we believe there are some long-term goals that can help to reduce the tie between deep-rooted social issues and the criminal legal system.

Recommendation 6.

- **Abandon punitive, abstinence-only models in favor of evidence-based public health best practices.** Involuntary and immediate cessation of drug use is generally ineffective and potentially dangerous. While abstinence-only models work for some people, it is imperative that abstinence become an option for participants to choose in their recovery.

Recommendation 7.

- **Make pre-plea diversion the rule, not the exception.** Most PSCs in Cook County require a guilty plea for the price of admission, so people who fail in these programs often have a lifelong felony conviction on their record. Several of the concerns we have outlined herein about the terms and punishments of post-plea problem-solving courts could likely be mitigated in a pre-plea setting.

Recommendation 8.

- **Improve attainability of problem-solving court requirements.** 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. The many expectations of PSCs often create barriers to things like stable employment which people need to avoid the legal system altogether.

Recommendation 9.

- **Decriminalize social problems related to substance use, mental illness, and/or poverty.** On the path to decriminalization, Cook County should reinvest money from its criminal legal system into its public health infrastructure to expand access to mental and other health services, which can ultimately help prevent people from re-entering the system.

CONCLUSION

While it is clear that some of Cook County’s problem-solving courts have been able to meaningfully help some participants, *one size doesn’t fit all.*

Amongst the success stories, there are also many instances of participants who were harmed through the inconsistency and demands of programming, sanctions, and punitive approaches. Slightly more than half of all Cook County PSC participants graduate from their programs; while graduate data is not the only indicator of success, this is strong evidence that PSCs are not successful in serving their participants.