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# Appendix A:
# Focus Group Protocol

## I. Welcome and Introductions

- Introduction of the research team;
- Explanation of the purpose of the research;
- Focus group logistics, guidelines, and norms; and
- Participant introductions.

## II. Practices and Principles of Collaborative Justice Courts

1 What are the key practices and principles of collaborative justice courts that differ from traditional courts? (Write responses on the board and categorize.)

## III. Transferability To General Court Calendars

*We would like to discuss opportunities and barriers to applying these practices and principles to the court system more broadly.*

2 Which practices and principles are more easily transferable to general court calendars?

3 Which practices and principles are less easily transferable to general court calendars?

Possible Probes:

- Have you applied (or attempted to apply) these practices on general calendars? If yes, describe your experiences doing so. If no, why not?
- What barriers exist to applying these principles on general calendars? How might those barriers be overcome?
- What types of cases or calendars are more well-suited to these practices? Less well-suited? Why?

## IV. Spreading Collaborative Justice

*We would like your thoughts on how collaborative justice can be practiced more broadly throughout the court system.*

4 What strategies are available to spread collaborative justice among your colleagues on general calendars throughout the court system?

Possible Probes:

- Rotation: To what extent can the rotation of judges into and out of collaborative justice courts achieve a lasting impact?
- Education and training: To what extent can education and training be effective? Should it be mandatory?

## V. Personal Impact Of Collaborative Justice Assignment

*We would like to briefly discuss the impact your collaborative justice assignment has had on you.*

5 As a result of sitting on a collaborative justice court, did you obtain new skills or a new view about the role of the courts (or your role as a judge)?

Possible Probe:

- To what extent did you come to the collaborative justice court assignment with those views, and to what extent did you gain those views as a result of the assignment?

6 What impact has serving on a collaborative justice court had on your professional job satisfaction?

## VI. Concluding Remarks

- Ask participants individually for any concluding remarks—issues not raised that should have been, issues that should be underscored, etc.
- Thank groups for their participation.

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**Research Report**

# Collaborative Justice in Conventional Courts

## Stakeholder Perspectives in California

A Report Submitted to the California Administrative Office of the Courts

Donald J. Farole Jr., Nora K. Puffett and Michael Rempel
Center for Court Innovation

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This report has been submitted to the Judicial Council of California •Administrative Office of the Courts by Donald J. Farole, Jr., Nora Puffett, and Michael Rempel of the Center for Court Innovation.

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This report is also available on the California Courts Web site: www.courtinfo.ca.gov/programs/collaborative, and at the Center for Court Innovation Web site: www.courtinnovation.org.

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This report completes the second phase of research conducted as part of a unique collaboration between the California Administrative Office of the Courts (AOC) and the Center for Court Innovation (CCI). Project goals, objectives, and methodology arose out of a series of conference calls between research and planning staff from both organizations. The research team would like to extend its very deepest appreciation to all of our AOC colleagues, including Dianne Bolotte, Yueh-Wen Chang, June Clark, Patrick Danna, Yolanda Leung, Leah Rose-Goodwin, and Nancy Taylor. We especially thank Nancy Taylor for providing the initial vision for this phase of the research and Yueh-Wen Chang for assisting in all of the focus group sessions. From the Center, we are also grateful to Julius Lang for his help in planning the project and to Greg Berman for his valuable comments on an earlier version of the report.

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- *From the focus group held with representatives of statewide organizations in Sacramento, California:* Maureen Bauman, Richard Bull, Elizabeth Howard, Norma Suzuki, and Gary Windom.

- *From interviews held with court administrators (via conference call):* Michael Planet, Sandra Silva, and Alan Slater.

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# Executive Summary

## Introduction

In recent years, courts and court systems across the country have begun to redefine their role in the administration of justice, moving beyond the neutral arbitration of legal disputes to intervention in the individual and social problems that underlie them. They have done so primarily through the vehicle of specialized courts dedicated to discrete problems such as addiction, domestic violence, and mental illness—issues that, if addressed by traditional methods of adjudication, are likely to return litigants to court time and again.

There is now a growing body of research to indicate that drug courts and other "collaborative justice," or "problem-solving," courts are indeed successful in improving outcomes for defendants and communities.[1] Yet for a variety of reasons they currently reach only a small percentage of the defendants and litigants who might benefit from them. Thus, innovators in the field have begun to explore how to expand collaborative justice innovations—whether through the proliferation of specialized courts, the application of their core principles and practices throughout conventional court settings, or some combination of these strategies.

In 2003, the California Administrative Office of the Courts and Center for Court Innovation initiated a research partnership to address the nature and feasibility of expanding the practice of collaborative justice beyond the specialized court setting. In the first phase of research, we conducted focus groups and interviews with collaborative justice court judges in California and New York. This report presents the results from a second phase, consisting of four focus groups held in January 2005 among representatives of other stakeholder groups: attorneys (prosecutors, public defenders, and the private defense bar), probation, treatment and service providers, and statewide organizations.

## Emergent Themes and Findings

To stimulate discussion, focus group participants were asked to respond to a written, hypothetical description that envisioned the practices and principles of collaborative justice courts applied broadly to general calendars throughout the court system. Three key themes emerged, echoing those from the Phase One focus groups with judges:

1. **General Support:** ***Most stakeholders favored the broader application of collaborative justice practices in conventional courts, at least under certain circumstances.*** Most focus group participants were, at least in principle, supportive of selectively applying collaborative justice practices outside of specialized court settings, although this support was not universal. Collaborative justice methods were perceived as more appropriate than traditional adjudication in many contexts, because they address litigants' underlying problems and are therefore more likely to produce positive outcomes. Some participants argued that since collaborative justice courts have proven themselves effective, the integration of their methods into other court settings should be regarded simply as the dissemination of best practices.

[1] In California, these projects are referred to as "collaborative justice courts" while in other states they are referred to as "problem-solving courts."

Participants also noted that many practices associated with collaborative justice courts, such as treatment mandates, already occur in general calendar settings, albeit informally and unsystematically. These informal approaches were believed to occur more often in smaller jurisdictions, facilitated by personal relationships among smaller numbers of stakeholders.

*Cases and Calendars Appropriate for Collaborative Justice*
As had the judges in the Phase One research, participants in this phase agreed that, in criminal cases, collaborative justice is only appropriate when defendants have underlying problems that contribute to the criminal behavior and can be addressed by court intervention. Most focus group participants, although not all, agreed that some cases, particularly those involving violence, "will never be appropriate" for collaborative solutions. Participants identified stages of the criminal justice process—bail, plea bargaining, and sentencing—as particularly opportune for collaborative approaches. They also saw many opportunities in civil law contexts, particularly in juvenile and family cases.

2. **Barriers:** ***This support was tempered by a number of concerns, principally about the feasibility of the broad application of collaborative justice approaches and about the appropriateness of such approaches in certain settings.***
Support for collaborative approaches in general calendars was tempered by a number of concerns. Foremost among these were limitations on time and resources and the need to preserve the adversarial process in criminal settings. Additionally, concern was expressed about the receptivity, experience, and motivation of many stakeholders to participate.

*Limitations on Time and Resources*
Focus group participants spoke at great length about the heavy caseloads in conventional courts and the limited time and resources available to apply collaborative approaches more broadly. They also worried about the capacity and quality of existing community services and about courts' capacity to identify and develop relationships with service providers. Finally, participants in all focus groups acknowledged that overloaded probation departments are unlikely to be able to provide additional monitoring and service coordination.

*Need to Preserve the Adversarial Process*
All participants, but especially attorneys, spoke about the need to retain the adversarial process, particularly in criminal court settings. For example, defense counsel noted that their responsibility to zealously defend clients and protect due process rights will sometimes preclude them from allowing a client to speak to the judge in open court. They also worried that, in a less adversarial environment, judges might become "advocates." Prosecutors spoke about the value of an adversarial and even punitive criminal justice system in enhancing public safety.

*Stakeholder Opposition*
Focus group participants were concerned about the willingness and ability of many judges and attorneys to adopt collaborative approaches outside of a specialized court setting. They felt that many would oppose the concept outright, while even those who were amenable to it might be dissuaded by perceived institutional disinterest and a lack of relevant knowledge and skills. This latter challenge, some suggested, would be overcome only through system-

wide education and training. Participants also believed judges and attorneys currently have little professional incentive to introduce collaborative justice practice.

3. **Next Steps:** ***Stakeholders identified a number of steps that could be taken to facilitate the broader application of collaborative justice, but emphasized proceeding with caution.*** An overarching theme was that change should be introduced incrementally. Specific suggestions included establishing pilot projects in a small number of counties and restricting initial efforts to particular calendars and cases, such as those in which defendants have substance abuse or mental health problems, or probation cases. A number of other suggestions were made as well:

   *Laying the Groundwork*
   Participants in all focus groups believed that judges, attorneys, and other stakeholders require extensive training to introduce them to core collaborative justice concepts, change oppositional attitudes, and provide necessary skills. Such training could be integrated into both orientation and continuing education forums for judges, attorneys, and other professionals. In addition, echoing a central theme from the Phase One focus groups with judges, participants believed that judicial leadership was a necessary precondition for any substantial expansion in the reach of collaborative justice; some added that it would also require leadership from various county-level leaders, such as county administrators or district attorneys, and suggested that the support of these leaders might be elicited by grass-roots community engagement.

   *Operational Changes*
   Participants were asked about what operational changes, at the courthouse level, would be needed for collaborative justice approaches to operate effectively. Some changes were consistently identified as critical:

   Early Screening and Assessment While differing on how this might be conducted, participants agreed that it should occur as early as possible, ideally pre-arraignment. Public defenders were often identified as ideal candidates to conduct initial screening, but caveats were raised regarding their lack of clinical expertise and potential conflicts of interest.

   New Roles for Justice System Stakeholders There was consensus that all stakeholders would need to become more proactive and collaborative. Attorneys would have to embrace the extra-legal roles of identifying problems and treatment needs, and proposing treatment or service plans. They would also have to share information with their adversaries, ideally with guarantees that clinical information would not be used against a litigant in subsequent legal proceedings. Judges would have to make similar adaptations.

   Continued Specialization Some participants felt that it might be necessary to maintain a degree of specialization within the courts, perhaps by the introduction of a "collaborative justice" track encompassing a limited number of judges and attorneys within a particular courthouse. Cases might be funneled to either the collaborative justice or the traditional track at or soon after arraignment.

Revised Protocols for Judicial Supervision Many participants were skeptical that ongoing judicial supervision could routinely occur in courtrooms handling general calendars, especially in high-volume jurisdictions. A proposed alternative was for probation to perform an expanded monitoring role, although questions were raised about probation's capacity to do so and about the efficacy of non-judicial supervision.

Courthouse-Based Case Management Resources Several participants felt strongly that having case management and treatment resources available in the courthouse would be invaluable. Caseworkers (whether employees of the court or of community agencies) might be available to judges throughout a courthouse or county. A defense attorney suggested that public defense agencies might also expand their own social work resources.

# I. Introduction

In recent years, individual courts in jurisdictions across the country have begun to redefine their role in the administration of justice, moving beyond the neutral arbitration of legal disputes to intervention in the individual and social problems that underlie them. They have done so primarily through the vehicle of specialized courts dedicated to discrete problems such as addiction, domestic violence, and mental illness—issues that, unresolved by traditional adjudication and punishment, will return litigants to court time and again. While widely known for their "problem-solving" focus, these specialized courts share a number of other unique elements, including the integration of treatment and social services into the court process, judicial supervision of the treatment process, a collaborative approach to decision-making, interaction between litigants and the judge, and community outreach.

There is a growing body of research to indicate that these collaborative justice, or problem-solving, courts have been remarkably successful in addressing such issues and improving outcomes for defendants and communities. In particular, adult drug courts have been demonstrated to significantly reduce recidivism among substance-abusing defendants.[2] Yet the limited jurisdiction and eligibility restrictions of these courts prevent them from reaching more than a small percentage of the defendants and litigants who might benefit from them. Thus innovators in the field have begun to explore how to institutionalize and expand collaborative justice innovations to reach a greater number and variety of defendants, litigants, and cases—whether through the proliferation of specialized courts or through the application of their core principles and practices in other court settings.

A 2000 resolution of the Conference of Chief Justices and Conference of State Court Administrators would seem to endorse the latter approach. The resolution advocated for "Encourag[ing], where appropriate, the broad integration over the next decade of the principles and methods of problem solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, and meeting the needs and expectations of litigants, victims, and the community."

In the wake of this resolution, which the Conferences reaffirmed in 2004, the national commitment to collaborative justice has increased. Laying the groundwork for system-wide integration, the National Judicial College in 2005 hosted a working summit to discuss how collaborative justice court practices might be more broadly applied; and two states, California and New York, implemented pilot judicial trainings designed to impart collaborative justice techniques to bench judges not serving in specialized collaborative justice courts.

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[2] See recent reviews of the drug court literature in Government Accountability Office, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, United States Government Accountability Office, Report to Congressional Committees (February 2005); Cissner, A., and Rempel, M., "The State of Drug Court Research: Moving Beyond 'Do They Work'?" New York: Center for Court Innovation; Roman, J., and DeStefano, C., "Drug Court Effects and the Quality of Existing Evidence," in Juvenile Drug Courts and Teen Substance Abuse, eds. Butts, J., and Roman, J., Washington, DC: Urban Institute Press (2004); and Wilson, D. B., Mitchell, O., and MacKenzie, D. L., "A Systematic Review of Drug Court Effects on Recidivism," Draft M.S. (2002).

Yet fundamental questions remain regarding the appropriateness and feasibility of utilizing collaborative justice methods outside of specialized courtrooms. In 2003, the California Administrative Office of the Courts and Center for Court Innovation initiated a research partnership to address these questions. In this study, an array of justice system stakeholders explored the opportunities and barriers to applying collaborative justice outside of specialized courts. This report presents results from the second phase of research, which consists of focus groups conducted among representatives of key justice system, service provider, and state policy stakeholders. The report is structured as follows: It begins with an overview of the project—its origins, the two phases of research, and the key questions to be addressed in the current study. The research methodology is then described, after which the key themes and findings from the focus group sessions are presented. The report concludes with discussion of the implications of the findings and suggestions for next steps.

# II. Project Overview

This project grew out of two strategic planning meetings held by the California Collaborative Justice Courts Advisory Committee in the spring and fall of 2001. These meetings sought to establish an agenda for the committee in support of the goals of the California Judicial Council—particularly the goal of enhancing the quality of justice and service to the public (Judicial Council Strategic Planning Goal number 4). This agenda was also informed by the August 2000 resolution of the Conference of Chief Justices and the Conference of State Court Administrators, mentioned earlier.

The Advisory Committee's planning meetings concluded with the decision to explore the integration of collaborative justice principles with more traditional court models. The committee initially articulated this objective in its first annual report to the Judicial Council (November 2001).

In spring 2002, William C. Vickrey, California's Administrative Director of the Courts, participated in a discussion organized by the U.S. Department of Justice and the Center for Court Innovation regarding the potential for taking collaborative justice courts to scale. A key theme of that discussion, and one that motivated the current study, was the possibility that "going to scale" might mean not merely increasing the number of specialized courts in existence, but rather encouraging the spread of collaborative justice court principles into conventional courts system-wide.[3]

The present research also has origins in the Advisory Committee's ongoing efforts to assess promising practices in collaborative justice courts, efforts that have been summarized in the 2001 and 2003 *Judicial Council Reports*. The Committee's endeavors have included developing a template of implementation and outcome measures by which to assess practices, and identifying drug court practices that are particularly cost-effective, the latter as part of a broader cost study of California's drug courts. The present study represents the further development of this interest in defining and assessing collaborative justice court programs and practices by the Advisory Committee and the Collaborative Justice Courts Project staff.

For this project, the Collaborative Justice Courts Unit partnered with the Center for Court Innovation to investigate going to scale with collaborative justice. This partnership recognizes that both organizations, in their study of collaborative justice courts, have come to the point of asking similar questions regarding transferability of practices outside of the specialized court context. The partnership also provides research access to two of the largest state court systems in the nation, with large, well-developed systems of specialized collaborative justice/problem-solving courts.

***Phase One Research***

The Administrative Office of the Courts/Center for Court Innovation research partnership has, to date, proceeded in two phases. The first phase consisted of focus groups and interviews

[3] See Fox, A., and Berman, G., "Going to Scale: A Conversation about the Future of Drug Courts," *Court Review* 4 (Fall 2002) for an edited transcript of the meeting's proceedings.

conducted in August and September 2003 with 35 collaborative justice court judges in California and New York. These discussions explored the questions of which collaborative justice principles and practices are most easily applied in conventional courts, what barriers to the more widespread adoption of such practices exist, and how those barriers might be overcome. Participating judges were cautiously optimistic about the opportunities to practice collaborative justice, at least on a limited basis, in general courts. Practices such as adopting a problem-solving orientation, engaging in interaction with defendants and other litigants, and conducting ongoing supervision of treatment cases were deemed feasible and appropriate in many general court contexts. However, participants noted numerous barriers as well. Chief among those were the limited time and resources in general courts and philosophical opposition or lack of education among colleagues on the bench and in judicial leadership positions. Opposition from attorneys, probation officers, and others was also cited as a possible barrier.[4]

In light of the positive opportunities identified, and because the education and training of general bench judges was viewed as a critical next step, the New York State and California court systems developed separate pilot trainings in 2005, designed to impart collaborative justice techniques to judges not currently assigned to a specialized collaborative justice court. The California training will be followed by development of a judicial curriculum that could be made available to court systems and judges nationwide. Over the same period, the National Judicial College held a working summit to discuss the broader applications of collaborative justice and will likely issue a bench book or training manual in the near future.

***Phase Two Research***

This report presents the results of the second phase of research, in which focus groups were conducted with representatives of other stakeholder groups: attorneys (prosecutors, public defenders, and the private defense bar), probation officers, treatment and service providers, and statewide organizations. Motivating the research was the recognition—confirmed by judges in Phase One—that collaborative justice courts are created through the cooperative efforts of multiple agencies; hence, taking collaborative practices to scale would inevitably require the support and commitment of justice system and social service partners.

In January 2005, researchers from the Center for Court Innovation and the California Administrative Office of the Courts conducted four stakeholder focus groups: two with attorneys (one each in Burbank and Sacramento), one with probation and treatment/service providers (Burbank), and one with representatives of statewide organizations (Sacramento). All focus group participants had worked with collaborative justice courts and addressed three key questions:

[4] Farole, D., Puffett, N., Rempel, M., and Byrne, F., *Collaborative Justice in Conventional Courts: Opportunities and Barriers*, Report Submitted to the California Administrative Office of the Courts (2004) ("Phase One" report). Available at www.courtinfo.ca.gov/programs/collab/documents/TranferabilityStudyFullReport.pdf or http://www.courtinnovation.org/pdf/collaborative_justice.pdf. The report also included a review of the previous literature about applying collaborative justice approaches to general calendar settings, including a discussion of the only other empirical study on the subject, Casey, P. and Rottman, D. B., "Problem-Solving Courts: Models, Commonalities, and Trends: The View from the United States," Prepared for Problem-Solving Courts: An International Perspective, Psychology and Law International, Interdisciplinary Conference, Pre-Conference Workshop, Edinburgh, Scotland (2003).

1. Do stakeholders favor the broader application of collaborative justice principles and practices in conventional courts and, if so, under what circumstances?
2. What are the barriers to practicing collaborative justice outside of the specialized court?
3. What recommendations do stakeholders have to facilitate the broader practice of collaborative justice in conventional court settings?

# III. Research Methodology

As in Phase One, the exploratory nature of this study made focus groups a more appropriate research methodology than surveys. While focus groups may draw on participants who are not representative of the general population of stakeholders, thereby limiting the ability to generalize from the findings, they can yield a wealth of information on attitudes, opinions, and suggestions on topics about which little is known.

Three stakeholder groups were represented in the Phase Two research: (1) attorneys, (2) treatment/service providers and probation, and (3) statewide organizations. Two focus groups were conducted with attorneys, one in northern California (Sacramento) and one in southern California (Burbank). A third session was conducted with probation and treatment representatives in southern California (Burbank); and a final session was held with representatives of statewide organizations in the state capitol of Sacramento.

The California Administrative Office of the Courts (AOC) identified and invited all focus group participants. Attempts were made to recruit participants who were familiar with the issues of interest and represented a mix of urban, suburban, and rural jurisdictions. All participants had current or past direct involvement with one or more specialized collaborative justice courts. For the attorney sessions, prosecutors, defenders, and civil attorneys representing a mix of line, supervisory, and managerial staff participated. For the treatment/service providers and probation session, a mix of line, supervisory, and managerial staff from probation, and representatives from a number of different treatment and social service providers participated. For the statewide organizations session, representatives from various statewide professional associations representing relevant stakeholders (i.e., associations representing public defenders, district attorneys, treatment providers, probation, police, and the California State Association of Counties) participated.

The focus groups were conducted at the AOC regional offices in Sacramento and Burbank in January 2005. Each session averaged two hours in length and was moderated by a team of three researchers from the Center for Court Innovation, with one researcher leading the sessions and the others asking follow-up questions. An additional researcher from the AOC was also present at the sessions. Participants were not paid but were provided snacks and travel reimbursement. All focus groups were audio recorded and transcribed for later evaluation by the research team; participants were assured that no comments included in the final report would be personally attributed to them.

There were a total of 24 participants in the four focus groups:

- Seven in the Burbank attorney session (3 public defenders, 2 prosecutors, 1 civil law attorney, 1 community court coordinator);
- Four in the Sacramento attorney session (2 prosecutors, 2 public defenders);
- Eight in the treatment, service provider, and probation session (4 probation and 4 treatment or service provider representatives); and
- Five in the statewide organizations session (including 1 representative each from statewide associations representing public defenders, probation officers, treatment professionals, police chiefs, and the California State Association of Counties).

Apart from their different organizational affiliations, the 24 participants also represented a range of experience with collaborative justice courts; in fact, many had planned or served in more than one collaborative justice court model. Approximately half had some experience with adult or juvenile drug courts, one-third with mental health courts, and one-fifth with domestic violence courts. Other models with which participants had experience included youth courts, community courts, homeless courts, elder abuse courts, and driving under the influence (DUI) courts.

To prepare for the focus groups, the research team conducted interviews with eleven representatives of equivalent New York stakeholder organizations in the summer of 2004, gathering background information that would help shape the focus group protocols. Finally, in spring 2005, the research team conducted telephone interviews with three court administrators from different counties in California. The purpose of these interviews was to explore in further depth the administrative implications of applying collaborative justice practices throughout the courthouse. Individual interviews averaged one hour in length.

While the discussion protocols varied slightly with the composition of the focus group, all addressed three primary questions:

1. Do stakeholders favor the broader application of collaborative justice principles and practices in conventional courts and, if so, under what circumstances?
2. What are the barriers to practicing collaborative justice outside of the specialized court setting?
3. What recommendations do stakeholders have to facilitate the broader practice of collaborative justice in conventional court settings?

The complete focus group protocols are presented in Appendix A.

Each focus group opened with a warm-up exercise in which attendees identified what they perceived to be the critical differences between collaborative justice courts and conventional courts. Participants were then asked to read a brief outline of a hypothetical model in which general courts would implement many of the practices and techniques associated with specialized collaborative justice courts (see Appendix B for the full statement), specifically:

- Problem-solving focus;
- Proactive role of the judge;
- Non-adversarial team approach to decision-making;
- Integration of treatment and social services into the court process;
- Ongoing judicial supervision of the treatment process;
- Direct interaction between litigants and the judge; and
- Community outreach.

This hypothetical scenario was not intended as a desired, realistic, or complete model for the administration of justice.[5] Rather, it was designed to stimulate discussion and to tap focus group

[5] Nor does the hypothetical model necessarily represent the mission or goals of the California Administrative Office of the Courts or the Center for Court Innovation.

participants' immediate reactions to the prospect of applying collaborative justice outside of the specialized court setting. The concept statement was written in the most general of terms, containing only as many details as necessary to stimulate subsequent discussion. The statement did not include specific information about how the justice system would operate under this model or about how the model might be achieved (topics that were raised later in the focus group sessions and are discussed below).

# IV. Emergent Themes and Findings

Stakeholders' initial reactions to the concept of applying collaborative justice principles more broadly were mixed. Some participants immediately expressed their support, while many were initially skeptical, due to concerns that such an endeavor might be not only infeasible but also inappropriate. As they engaged in further discussion, however, most of these participants expressed some degree of support for the idea, identifying circumstances and cases in which they favored using collaborative approaches on general court calendars.

Discussion in all focus groups was often theoretical and speculative, as is expected of reactions to a hypothetical construct. Participants often spoke about "collaborative justice" in the abstract, and resisted the moderators' efforts to focus on specific practices and operational issues. Thus the groups yielded more discussion of stakeholders' perceptions and attitudes regarding the broader application of collaborative justice rather than how it might be practically achieved.

Across the groups, three themes emerged:

1. Most stakeholders favored the broader application of collaborative justice practices in conventional courts, at least under certain circumstances.
2. This general support was tempered by a number of concerns, principally about the feasibility of the broad application of collaborative justice approaches and about the appropriateness of such approaches in certain settings.
3. Stakeholders identified a number of steps that could be taken to facilitate the broader application of collaborative justice, but emphasized proceeding with caution.

These themes are explored at length below.

**1. General Support:** ***Most stakeholders favored the broader application of collaborative justice practices in conventional courts, at least under certain circumstances.***

Most focus group participants were, at least in principle, supportive of selectively applying collaborative justice practices in traditional courts; one attorney commented that this "would be a great direction to move in." Participants noted that collaborative practices would allow the justice system to address defendants' underlying problems, which is "not only more appropriate, but … [more likely to evince] a long-term solution." Another attorney believed that such an "outcomes-orientation" could help to generate support for change among key players in the justice system. This attorney argued that, for example, if collaborative approaches can be shown to reduce criminal recidivism, prosecutors might be more likely to support them. And indeed, some participants argued that the efficacy of collaborative justice has been established, and thus its integration into the broader system should be regarded simply as the dissemination of best practices. At least one prosecutor, however, felt that it was important to more narrowly define and assess those practices, warning against the dangers of "biting off too much."

Very few stakeholders argued that collaborative justice should *never* be applied outside the specialized court. One who did was a prosecutor who asserted that such practice would be not

only an inefficient use of resources (for reasons discussed below) but also a fundamental contradiction of California's current emphasis on punishment rather than rehabilitation, as evidenced by the change from indeterminate to determinate sentencing. He argued that a universal application of the collaborative approach would be a return to "a philosophy that we had 20 or 30 years ago, which we found didn't work." This, however, was a minority view.

There was more widespread agreement among stakeholders that some cases "will never be appropriate … [for] this model." Attorneys were somewhat more skeptical than other stakeholders, primarily due to concerns that collaborative approaches within criminal courts might infringe upon due process.

**Specific Cases and Calendars**

In considering which types of cases and court calendars might be more or less appropriate for collaborative justice, the discussion mirrored that of judges in the previous study.[6] Participants identified as a deciding factor the presence of an underlying problem that contributes to a defendant's criminal behavior and can be addressed by court intervention. For example, one attorney spoke about collaborative interventions for the "basic three [problems]: drug addiction, mental illness and domestic violence." Another attorney suggested that prostitution cases can also be appropriate for treatment and service interventions, and others added DUI cases to the list.

One prosecutor, while agreeing with these positions, stressed that courts must distinguish cases in which addiction, mental illness, or other problems motivate the criminal behavior from cases in which the defendant "is a criminal who also happens to be an addict" (i.e., underlying problems are not criminogenic factors). This participant felt that defendants in the latter category should *not* be considered for a collaborative approach.

Most focus group participants seemed to agree that collaborative justice solutions are unlikely to be, and should not be, applied to violent crimes (with the possible exception of domestic violence cases). One attorney commented that it "will be way down the road before [collaborative justice] works for arsonists or violent offenders." Another explicitly distinguished violent crimes from other felonies:

> In any given traditional felony court, we have property crimes, we have drug possession crimes. Those all can go this way [collaborative justice solution…But] there are violent felonies that, not in my lifetime, are ever going to be part of this model.

One participant believed that, the question of violence aside, felony cases may be more appropriate than misdemeanors for collaborative justice solutions that are likely to involve lengthy treatment mandates. This was attributed not only to the fact that felony defendants have a greater legal incentive to comply with the mandate than misdemeanants (i.e., they face a more significant penalty for failure), but also to the perception that there are greater resources available to probation for monitoring of felony cases.

[6] Farole, D., et al., *Collaborative Justice in Conventional Courts*, *supra* note 4.

Participants also identified particular stages of the criminal justice process—most often bail, plea bargaining, and sentencing—at which problem solving might be appropriate. By contrast, criminal trials were deemed inappropriate for collaborative solutions, because

> …when you are deciding guilt or innocence, it is a whole different deal and there are all sorts of constitutional safeguards that have to take place…there needs to be a clash.

Most of these restrictions, of course, apply only to criminal cases. Juvenile court, family law, small claims court, and other civil courts were also mentioned by some as quite appropriate for collaborative justice practices. Again, however, some caveats were made, with several participants identifying business litigation in particular as unlikely to be resolved through collaborative approaches because "a lot of money is at stake."

**Current Practice**

An additional theme that emerged in all focus groups, but received most extensive discussion among attorneys, was that approaches identified with collaborative justice courts, particularly treatment mandates, are in fact already applied on general court calendars, albeit informally and unsystematically:

> The judges are doing this [collaborative justice], but they don't have uniformity, they don't have resource organization … So the courts are doing this in a patchwork way.

> Some courts simply make … treatment plans[s] informally, make treatment plans part of the conditions of probation, and schedule regular court reviews so that they're overseeing it… The treatment process is very informal. It's not a collaborative court. There aren't partners sitting at the table … It's just the judges' way of doing business. … I think that in mainstream courts informally much of this is going on.

One attorney cautioned, however, that there are limitations to what such practice can accomplish, noting in particular that resources are "a little hit and miss when you have an informal process."

Informal collaborative approaches were believed to occur more often in smaller jurisdictions, with one participant declaring that "attorneys have been doing this is my small community for almost twenty years…[In a] small town, it begins more as a problem-solving approach to criminal justice" because "everybody knows everybody." Smaller jurisdictions also have fewer relevant players (judges, attorneys, probation officers, etc.) and less frequent changes of assignment, which facilitates the development of the working relationships necessary for a collaborative approach, relationships that may be harder to forge in larger jurisdictions.

When asked for examples of the informal practice of collaborative justice in general courts, an attorney who works extensively with a specialized mental health court reported "try[ing] to do a little mental health court in every courtroom." On an informal, case-by-case basis, this attorney attempts to educate general calendar judges about clients that require judicial monitoring. And, although "it is not the same warm atmosphere as there would be in a mental health court," these defendants do report back to court for progress reports. The attorney also arranges, again informally, for many higher-risk offenders who are technically ineligible for mental health court

(due to past history of violence, sex offender status, etc.) to remain under court monitoring during the probation period by reporting to the Master Calendar judge.

Another participant from a larger jurisdiction believed that many judges there were quite often imposing treatment mandates in lieu of jail and having certain defendants report back to court for monitoring. However, this participant cautioned that the practice varies widely throughout the courthouse, depending on the philosophy of each individual judge and the availability of resources like probation or case management staff.

Participants cited several other examples of collaborative approaches in general calendar settings. Plea bargaining in criminal cases was frequently mentioned. A prosecutor noted that, while it is not always appropriate, "there are times that I have worked very closely with defense in coming up with programs" to facilitate "creative sentencing"—for instance, requiring the defendant to attend a program or see a doctor every week in exchange for a reduction in charges. Participants also cited the use of mediation in family law and other civil settings, with one attorney commenting that:

> I've seen it in small claims courts, family courts and in lesser civil litigation matters, where the judges can start pointing at the people and start acting either as an arbitrator, or more as a mediator, depending on the situation and get the people more involved in trying to resolve the problems themselves.

Finally, another attorney cited a local program for removal of gang tattoos as an example of how individual judges already collaborate with community partners to address the issues underlying defendants' criminal behavior.

**2. Barriers:** ***This support was tempered by a number of concerns, principally about the feasibility of the broad application of collaborative justice approaches and about the appropriateness of such approaches in certain settings.***

While many participants were, in principle, supportive of the application of collaborative justice practices in conventional courts, support was tempered by a number of concerns. Two primary concerns that were discussed extensively by all stakeholders in all sessions were limitations on time and resources, and the need to preserve the adversarial process in general calendar settings. A third group of concerns was related to the receptivity, experience, and motivation of justice system stakeholders, particularly judges and attorneys. Several other concerns were raised as well.

**Limitations on Time and Resources**

Focus group participants spoke at great length about the heavy caseloads in conventional courts and the limited time and resources available to apply collaborative approaches more broadly. For some, this issue seemed insurmountable:

> There is just not enough time on a court date to accommodate this, unless you create the increased court staff and the number of judges.

> It'll never happen—putting billions of dollars, and that's what we're talking about here, billions of dollars, into rehabilitation and [reducing] recidivism.
>
> Who's going to pay for it? … That's the gorilla in the room.

Court Capacity A number of capacity-related concerns were mentioned. Focus group participants cited the limited time available for assessment and individualized attention to cases, particularly in larger, urban jurisdictions and in high-volume courts:

> …Misdemeanor arraignment [is] so busy. There's not enough time for defendants to actually engage with the judge and converse about what the issues are and have the judge provide feedback.
>
> What we can't forget is the caseloads that we are facing. We are constantly going through cases … We have to be practical about it. Because in an ideal world, it would be great to sit down and get to know [every] person and figure out how we can help … maybe ultimately that will decrease the amount of cases and that'll be a really good thing. But we also have to look at the time that we're given.

In the treatment and probation session, participants also noted the lack of case management and assessment staff available in general courts.

Community Service Capacity In addition to the court's capacity to administer collaborative justice, focus group participants spoke extensively about the community's capacity to provide necessary treatment and other services, worrying that "If the courts open their doors to anyone who needs a certain kind of treatment … the resources aren't out there."

Many noted that residential treatment is especially problematic; as the most costly form of treatment, its availability is limited, and waiting lists are long. The availability of treatment for juveniles, mental health and dual diagnosis services, and job training in many communities was also questioned. Some treatment and service providers also worried that, even in communities with the necessary services, most courts lack the staffing and resources to identify and develop relationships with service providers.

A related barrier regarded the quality of available services. Participants in all focus groups cited an insufficient number of certified treatment programs adhering to best practice guidelines:

> Our biggest concern is making sure treatment providers are certified and offer the treatment that is necessary.
>
> [Treatment providers] need to be held accountable for using professional level services and evidence-based practices. And they need to be able to document fidelity to those evidence-based practices.

Probation Capacity Finally, participants in all focus groups acknowledged that probation is "overloaded and undermanned and under-budgeted." They noted that many probation departments are struggling to maintain even minimal levels of supervision, and doubted that they could provide the additional monitoring and service coordination that might be required in the

absence of additional staff. One probation officer speculated that this could create a "conflict between reality and expectations," as probation would be unable to meet the court's requirements. In fact, this happens even under the existing system, according to the officer:

> We have roughly 1,200 domestic violence offenders. We traditionally supervise the felons but now … the court want[s] us to provide supervision services or report writing on all the misdemeanors. We simply don't have the resources—the money or the personnel—to do that. So you run the risk of some judge saying, 'Well, now that there's a domestic violence unit, a domestic violence court, you are going to do all the misdemeanors.' Or if you've got a mental health court, you're going to have judges that want regular progress reports, and that can be very taxing to a probation department.

**The Need to Preserve the Adversarial Process**

Participants in all focus groups spoke about the need to retain the adversarial process, particularly in criminal court settings, and cautioned against over-extending collaborative approaches. The topic was discussed extensively among attorneys, many of whom considered it just as critical a barrier as limited resources, if not more so:

> In the end there needs to be a model where people really go at it.

> There are some cases where … the crime is the thing, [cases] that simply are not [appropriate] for this process.

> The courts tend to be, and really should be, adversarial environments.

This desire to retain the adversarial process is consistent with the view, discussed earlier, that collaborative approaches are *least* appropriate in considering questions of guilt and innocence in a criminal context.

This concern for the protection of the adversarial process was expressed by both prosecutors and defense counsel. The latter noted that it is their responsibility to zealously defend clients and protect their due process rights, and that in some cases this precludes a collaborative approach. One voiced concern that in less adversarial court settings, judges "become advocates and not the arbiters that they ought to be." Judges attempting to take on such a "nontraditional" role might, therefore, expect resistance from the defense bar. One defense attorney, for example, noted that at present, if general calendar judges "even veer towards talking [with the client in open court] about anything regarding the case, I stop them." Collaborative justice might require more open communications among the parties, but "I don't see that as translating into a regular courtroom."

Prosecutors, for their part, also spoke about the value of an adversarial criminal justice system in enhancing public safety:

> A prosecutor's job has more to do with the security and the safety of society … [than] the well-being of the client … when we're looking at a problem, we're not looking at 'Hey, what's good for this guy?' We're looking at, 'Hey, what's good for the safety of the community?'

One prosecutor worried that collaborative approaches could make criminal justice practice "too defense-oriented." Another noted that prosecutors also need to consider the desires of crime victims, who may not be supportive of such approaches:

> We can't forget about the victim either. We have to take into account their feelings on a particular case . . . We are for the people and [therefore] we don't necessarily do what our victims tell us to do, [but] we do have to make sure that they feel that there is a certain amount of justice done.

**Stakeholder Opposition or Hesitancy**

Participants in all groups identified multiple concerns related to the ability and willingness of stakeholders, particularly judges and attorneys, to adopt collaborative justice methods outside of a specialized environment. They argued that many stakeholders would oppose the concept outright, while even those who were amenable to it might be dissuaded by perceived institutional disinterest and a lack of relevant knowledge and skills. This latter challenge, some suggested, would be overcome only through education of stakeholders system-wide, and would require significant revision of current training and continuing education programs.

<u>Opposition from the Bench and Bar</u>

Most participants' concerns were related to the potential for opposition from judges and attorneys. In particular, stakeholders worried that judges, prosecutors, defense counsel, and others would be reluctant to embrace an approach that is so contrary to the traditional adversarial model of litigation.

> A lot of people will have problems with that. There are judges, there are prosecutors and probably even defenders who think that [collaborative justice] has no place [in the system…That attitude is] especially obvious when you get into more serious crimes and felonies.

> People who participate in collaborative justice believe in it. And there are many people, most people, in the criminal justice system who are not of that mind.

Attorneys indicated that many of their colleagues would not endorse the broader application of collaborative justice. Explained one defense attorney:

> This is not what [defense attorneys] got into it for. They are there to protect the client's rights. They run the motions and try cases. The head of my office is very supportive of collaborative courts, but in their place. The rest of the office … [believes in] fighting the fight.

A district attorney agreed that, among prosecutors too, "it's a pretty hard sell." Assigning a prosecutor to a collaborative justice court "is like sending them to Siberia." He went on to distinguish among different types of collaborative justice courts, arguing that domestic violence court is a "much easier sell" than drug court to most prosecutors, presumably because domestic violence courts place less emphasis on defendant rehabilitation and more on victim safety.

Professional Incentives

Several focus group participants were skeptical that judges and attorneys, particularly prosecutors, would practice collaborative justice given the current incentives for advancement and promotion:

> It's unrealistic in terms of the incentives that exist … judges are not promoted by virtue of supporting collaborative courts … there would need to be a reappraisal of incentives for some of the heavy hitters in the criminal courts, the judges and the DAs.

Various participants mentioned that judges are evaluated and promoted based on such measures as effective docket management and publications; prosecutors on conviction rates. Neither, therefore, has strong professional motivation to support collaborative justice. Participants also suggested that those district attorneys and judges who are elected may have an additional incentive to avoid collaborative approaches:

> Elected judges have political considerations—they would not want to be looked [at] as soft on crime, you're letting all the criminals loose, etc.

> District attorney[s] in California are political and see very little value in constructing a non-adversarial kind of approach to a criminal offender.

However, at least one participant in the treatment stakeholder group suggested that electoral considerations could induce judges and prosecutors to *support* rather than oppose collaborative justice if the community demanded it.

**Other Concerns**

Efficacy: "Diluting the Model"

Some focus group participants felt that collaborative justice courts work precisely because they take "very small bites of the apple" and worried that larger endeavors might lose their efficacy:

> The collaborative justice system works … because we … focus the attention of all parties … on a particular problem, train them and try to get the resources together. You lose that efficacy once you start trying to make it into a general proposition. And therefore, I believe the more practical [approach] is to continue to do these small boutique courts … We can focus our attention on some of the solvable problems.

> It's a great concept, it's a great idea, but we don't want to become ineffective because we're expanding.

These discussions seemed to reflect a belief held by most stakeholders—not only attorneys—that it may be preferable to allocate limited resources to more intensive interventions in fewer cases, as is currently done in specialized collaborative justice courts. Attempting to apply collaborative solutions to larger numbers of cases on general calendars, some participants feared, could spread resources too thinly. While these themes were raised by only two or three participants in each focus group, they were not disputed by others in the session.

Participants raised related concerns about how effective collaborative practices would be in general courts, particularly if the practices are applied piecemeal rather than as an integrated whole, the "full model." They noted that general courts lack the reduced caseloads, additional staff, established ties to community-based service providers, and other resources available to specialized collaborative justice courts, and worried this would make the interventions less effective. Several stakeholders across focus groups also questioned whether and how the team-based, non-adversarial model, which is "relationship-driven" and requires "trust" among relevant personnel, could be taken to scale:

> [In specialized courts,] whether you communicate with a judge or a PO for treatment or a coordinator, you … have some sort of relationship with them. If we were to take this to scale and you lost that kind of relationship, what would you be losing and what would you need in order to be able to continue functioning? … How would you interact with a whole courthouse instead of just a courtroom?

Several participants were especially concerned about working relationships in larger jurisdictions. By contrast, these relationships might be easier to build and maintain in smaller jurisdictions, which have less frequent rotation of judges and other personnel:

> It's hard for me to envision [collaborative justice in regular courts] happening in a larger jurisdiction simply because of the change in assignments with the judges … changes in probation, defense. I think everybody is moving around because they have so many courts to cover.

<u>Potential for Backlash</u>

Several focus group participants worried about potential political backlash if "one of these guys goes out and commits a nasty, nasty crime." They also cautioned against expanding problem-solving practices too quickly and promising more than can realistically be expected from these efforts:

> If [going to scale] is not managed correctly . . . and is not balanced with public safety and becomes literally a hug-a-thug, then what happened in the 1970s to defund probation and treatment will happen again in the next 10 years . . . [and that would] be a disservice to hundreds of thousands of people.

> There is a long-term value in [going to scale] slowly and appropriately, because we need to avoid a backlash.

These concerns are indicative of the mood of cautious support pervading all focus group sessions.

**3. Next Steps:** ***Stakeholders identified a number of steps that could be taken to facilitate the broader application of collaborative justice, but emphasized proceeding with caution.***

According to one focus group participant:

> The demand is there, I think from all the key players. Participants, defendants, prosecution, defense, courts, in-service providers alike, they need a venue in which to solve the problems they're facing. And whether it's through the specialty courts we have or expanding it one county at a time, there have to be some mechanisms established to open that door a little bit further.

Having identified a host of potential barriers to the broader application of collaborative justice practices throughout the courts, focus group participants then suggested several steps that could be taken to overcome them. An overarching theme was that change should be introduced cautiously and incrementally. For instance, it was proposed that a pilot project be introduced in a small number of counties: "I think you'd have to start like you did with drug court: Do it in some courts; try it out. Figure out what works and what doesn't." One participant recommended selecting one trial county in Northern California and one in Southern California.

Alternatively, initial efforts might be restricted to particular types of cases and calendars. In considering this possibility, participants generally recommended cases for which there are already specialized courts, particularly those involving domestic violence, juvenile delinquency, or a need for substance abuse or mental health treatment. Several participants noted that the existing collaborative justice courts do not reach all potential cases, so there would certainly be room for expansion. Probation cases also emerged as a fruitful area to explore in light of probation's historic mission to engage in similar kinds of supervision and service provision that the collaborative justice approach recommends:

> They [probation] are an arm of the court, they are the people who are supposed to be facilitating and doing this in court. They could carry much of this, both in juvenile and in the adult platform.

Although most collaborative justice courts deal with criminal matters, the discussion of appropriate courts and calendars often emphasized the family and dependency arena (juvenile delinquency, abuse and neglect, and matrimonial matters). One reason for this is that the adversarial process is less of a barrier on such calendars: "It's generally a less adversarial court than a criminal court, which is the fundamental key." The Phase One judicial research evidenced a similar trend, suggesting consensus among stakeholders on this subject.[7]

An important qualification regarding these and other points discussed below is that they tended to reflect the "top of mind" reactions of a small number of focus group participants. While participants rarely objected to their colleagues' comments, they often moved to other topics without responding or elaborating, making it difficult to assess the degree of consensus.

[7] Farole, D., et al., *Collaborative Justice in Conventional Courts*, *supra* note 4.

The one point that enjoyed nearly universal assent was that, however it is accomplished, the broader application of collaborative justice practices in general courts should proceed incrementally. Discussed below are participants' suggestions for how this might be accomplished, suggestions that addressed the importance of both laying the groundwork outside the courthouse and changing everyday practice inside the courthouse.

**Laying the Groundwork**

Focus group participants identified two necessary preconditions to broader use of collaborative justice: (1) training and education of all relevant stakeholders and (2) judicial and community leadership.

Training and Education

Participants in all focus groups believed that, before collaborative justice can be practiced on a wide scale, judges, attorneys, probation officers, and other justice system players require extensive training and education. Many of these professionals were perceived by participants as unfamiliar with, or opposed to, collaborative justice. Training could introduce them to core collaborative justice concepts, change oppositional attitudes, and provide the skills necessary for effective collaborative justice practice. One prosecutor explained:

> I do think that you could implement some of these things by correctly training people… The way I view a criminal justice file now is completely different than the way I did as a narcotics deputy… A D.A. should be able to ascertain pretty quickly whether I have got a criminal who uses drugs or an addict who occasionally does crimes, because they are very different people. And that should chart the way the D.A. runs it through the criminal justice system.

Besides helping justice system actors to identify potentially eligible cases, training could make them more aware of what services are available in the community. In the words of one participant, "Everybody needs to get in a room and make sure that we know what's available for mental health and substance abuse and legal services."

Participants suggested that judges could easily be trained during new judge orientation and in other forums attended by more experienced judges. Similar opportunities exist for other justice system personnel:

> There's a core training for probation officers that's mandated by law. [Collaborative justice] could be part of a day in court training for probation. District Attorneys, public defenders have ongoing training.

One attorney argued that collaborative justice needs to be taught even earlier, in law school, if only because "judges have to go to law school." Others recognized that education takes time:

> It's a generational thing; we're not going to see it in your lifetime. Not in my lifetime either, none of our lifetimes. But if slowly we start introducing the concept to people who are coming up through the system maybe that's a way to build.

Judicial and Community Leadership

Echoing a central theme from the Phase One judicial focus groups,[8] participants in the present study believed that judicial leadership was a necessary precondition for any substantial expansion in the reach of collaborative justice. One participant illustrated the importance of judicial leadership in describing how a local collaborative justice court was started:

> There was a homeless court that a judge expressed interest in getting together. Started the preliminary work and then came [up] against some obstacles. Finally, got a call from the Presiding Judge: "Make it happen." And that provided the impetus within the court to help open that door and establish their homeless court.

Several of the representatives of statewide organizations added that initiating any expansion of collaborative justice outside of a specialized court would require the support of the heads of county agencies:

> This would have to be blessed by the county administrative office. And supported from the county administrative office and the board of supervisors down to the district attorney, who is a political figure, as the courts are … [S]o you're taking all those political environments in hand. You'd have to really get the blessing of the entire county.

Participants in several groups suggested that community pressure could influence county leaders. This in turn suggests a need to disseminate information about the collaborative justice approach to the public in order to raise awareness and support. One participant illustrated the point with reference to Proposition 36, a ballot initiative approved by California voters to expand treatment opportunities for substance-addicted criminal defendants:

> To build any type of investment in this model … one possible way that could occur, your last point being your community outreach. Judges and DAs are elected officials and if the community has an interest in these kinds of innovative programs, backed up by outcome research, as we all saw with Prop. 36, the DAs and many judges were shocked that the public would support that kind of innovative approach to drug abusers.

Other Steps

Although the subject did not receive a great deal of attention, a need to increase statewide treatment capacity particularly for residential substance abuse and mental health treatment was suggested by some participants: "Treatment facilities are one of the big problems. All of my experience as a prosecutor, particularly with drug cases, is that beds aren't available." Indeed, a study of the implementation of Proposition 36 in California found that the capacity for residential substance abuse treatment is in many counties far less than that for outpatient treatment; and for this reason, the overwhelming majority of treatment mandates under Proposition 36 have been to outpatient services.[9] One of the statewide organization representatives explained: "Residential is full; we don't have the money for it."

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[8] Farole, D., et al., *Collaborative Justice in Conventional Courts*, *supra* note 4.

[9] Longshore, D., Evans, E., Urada, D., Teruya, C., Hardy, M., Hser, Y., Prendergast, M., and Ettner, S., *Evaluation of the Substance Abuse and Crime Prevention Act of 2002 Report: Implementation July 1, 2001 to June 30, 2002.* UCLA: Report prepared for the Department of Alcohol and Drug Programs California Health and Human Services Agency (2003).

In addition, several participants expressed concern that justice system stakeholders are often unaware of what services and facilities *are* available. One participant illustrated this point with reference to the local community court:

> When we started up the community court program, one of the first things I did was research all the service provider programs in the downtown area, make a list, so that way when we come across clients that may have a need for something, we can refer them. And also to develop relationships with those service providers as well … Sometimes they'll find a way to find a bed or find somewhere for them to go. Developing the relationship [between the court and providers] is really big.

Finally, participants in two focus groups suggested that new policies might need to be implemented to enable clients to identify their personal problems or service needs without facing adverse legal consequences. Otherwise, it would be difficult for the defense attorney to have a frank discussion with the prosecutor and judge about a criminal defendant's need for treatment. As one participant explained, "[A defense attorney's] concern is, you get into a room and he says, 'Yes, my client did X, Y, and Z, and this is how he did it, and here's what's behind it.' And then if … it goes back to criminal court he's afraid that there may be testimony that his client did X, Y, and Z." In a specialized collaborative justice court setting, the key players have typically built up a level of trust leading everyone to believe that needs assessment-related information will not be used against a client's legal interests: "It has to be a trust issue. And it has to be built over time." However, some participants felt that more formal legislative protections might be necessary if collaborative justice was expanded to involve greater numbers of judges, prosecutors, and defense attorneys.

In light of this last consideration, some participants felt that the broader practice of collaborative justice would have greater potential in a smaller county, where existing personal and professional relationships might make judges and attorneys more likely to trust each other with sensitive information, even without the protection of formal agreements:

> Do they share information [in small courts]? Yes, they do, because … it's relationship-driven. They have the trust and the relationship to say, 'Let's talk about this, we're going to share information. With one goal: what's the best thing for this person. If we decide that we can't make it work and they're going off down this criminal path there's an understanding that we're not going to use this.' … Informally, this is happening.

**Operational Changes**

The final portion of the focus group protocols in both the justice and treatment/probation sessions was dedicated to questions about operational change at the courthouse level: For those elements of the collaborative justice approach that could and should be more broadly applied, how might implementation proceed? This part of the protocol was the most challenging to participants, since it asked them to give close consideration to the implementation of what was only a loosely defined hypothetical model of the administration of justice. Yet, the ensuing discussion did identify a few subjects as critical, regardless of whether collaborative justice was envisioned more as an informal courtroom practice or formal program:

- Early screening and assessment;
- New roles for prosecutors, defense attorneys, and probation;
- Some level of staff specialization;
- Revised protocols for judicial supervision; and
- Courthouse-based case management resources.

Early Screening and Assessment

While differing on how screening and assessment might be conducted, and by whom, participants agreed that it should occur as early as possible, ideally pre-arraignment. Several participants suggested that the assessment might begin even before a criminal case has reached the court, if police officers were trained to identify defendants with obvious treatment needs.

A number of participants believed that the public defender had a critical role in screening the case:

> I would assume [assessment would begin with] the public defender's contact with the client … the public defender would probably need to be aware of certain questions they need to ask. Maybe have an intake tool. And that way, they can assess whether or not this individual needs to take advantage of this treatment team, or mental health service providers.

While no participant disagreed that the public defender was in a unique position to recommend a client for a collaborative justice approach, two important caveats were raised. First, this approach would require public defenders to make clinical assessments for which they are not qualified. Moreover, the resulting recommendations might be viewed with skepticism by the prosecution. One prosecutor felt that the use of some kind of standardized instrument would help to increase a prosecutor's level of trust in what the public defender claimed to have discovered:

> … [The use of] an intake interview, a psychometric [instrument] … [would] go on a long way in being able to trust the outcomes and the solutions of the issues. Currently, if somebody [a defense attorney] comes up to me and says, 'Hey, look, this guy's crazy' or 'He's got a drug problem' … [what evidence do I have of] the validity of that issue?

Second, as previously discussed, for public defenders to share their information freely with the prosecutor and the judge, agreements might need to be forged to protect that information from being subsequently used against the client. As one defense attorney noted, "This would all require a safe environment for the client so that there were policies amongst the D.A. and the public defender and the courts that anything the client said would never be used if their case stays on the trial track."

New Roles for Justice System Stakeholders

The common thread running through discussions of individual stakeholders' roles was that they would all have to become more proactive and collaborative. Public defenders and, to a lesser extent, prosecutors would have to embrace the extra-legal roles of identifying problems and treatment needs, and proposing treatment or social service plans. Explained one prosecutor: "We have to start working together right from the get-go," while also expanding the range of activity

included in case preparation: "As a prosecutor, you find out things by talking to your victim, by talking to witnesses, by talking to your police officer."

Attorneys would have to become not only more proactive but also more collaborative, sharing information with their adversaries—which would require trust. Judges would similarly have to adapt. A proactive judge could promote a collaborative justice resolution when the attorneys could not agree to one; or could help to finalize an agreement reached through initial discussions held among the attorneys. According to one participant in the statewide organizations session:

> I would see the D.A. and the public defender … [discussing] this before it gets to the judge, so that there's consensus hopefully when it gets to the judge. And then the judge can ask some questions and say, 'Yes, this can go to this thing [a treatment track], set up a meeting for it,' or 'Heck no, nobody agrees and we go after criminals.'

Another participant stressed, however, that while the defense attorney might be necessary to relay the defendant's possible interest in a program, a truly proactive judge could take the lead in moving the parties forward to a final resolution. Commenting on the practice of some judges in this participant's court:

> Often, the judge is making offers or discussing it, and defense counsel will make a pitch, and the judge will make a decision … on a felony arraignment calendar [the judge might propose] 'You're here for arraignment, here are the charges, if you're going to plead guilty, here's what I'll offer, your attorney said you'd be amenable to a program, so here are the terms and conditions, and what's your decision?'

<u>Continued Specialization</u>

Although the concept of applying collaborative justice more broadly connotes doing so outside the confines of specialized courts, opinion nonetheless seemed to converge around the necessity of preserving some degree of specialization. This was attributed in part to the improbability of the majority of judges and attorneys in any given courthouse embracing collaborative justice practices in the near future; therefore, it would make sense for those who are interested and willing to *specialize* in collaborative justice. It was also argued that some level of specialization and centralization may be more efficient for stakeholder agencies. As one defense attorney reflected:

> I think the collaborative courts work better when the prosecutor, the defense attorney, probation, whoever's involved are especially assigned … rather than asking your line attorneys to spend 10% or 20% of their time being collaborative courts attorneys. Or probation officers being collaborative probation officers … These cases, the collaborative cases, are different, and they really work well only when the people working in those courts can devote pretty much all of their time to that particular assignment.

How might some degree of continued specialization be achieved? Participants in three of the focus groups sessions all suggested variations on the idea of a "collaborative justice" track encompassing a limited number of courtrooms, judges, and attorneys within a particular courthouse, with "a clear-cut delineation" between the two tracks, "because this will never overtake the criminal justice system adversarial process, nor should it."

> …the cases in theory can come through any arraignment courts or any criminal court in the system. But once they were identified as a drug treatment [case] or a case with mental health issues, an efficient way to do it would be to funnel that to a particular judge and to a particular group of attorneys and probation officers who deal with those cases. So they might come in from a variety of locations, but be funneled into a court or a series of courts dealing with those particular issues.

Consistent with this, many participants agreed that the decision of whether cases would be funneled to the proposed "collaborative justice" track or continued on a more conventional "guilt or innocence" track would need to be made early—by arraignment or, at the latest, after arraignment but prior to an adjournment to a trial calendar. Two participants in the statewide organizations group both advocated this approach, commenting:

> I can see a collaborative approach up to that point. From the time it gets to the system until the time it is determined whether this thing is going to go to trial or not.

> If you come in at that stage, between arraignment and the matter of being signed off for trial …. we can take it out of the [conventional] track for a moment, put it over here and say let's bring in the social worker, let's bring in probation, let's bring in treatment and see whether or not this guy's amenable to some, some type of [treatment] thing.

<u>Revised Protocols for Judicial Supervision</u>

Although focus group participants observed during the warm-up exercise that judicial supervision was an important component of collaborative justice courts, many were skeptical that it could be implemented with the same frequency and intensity on general court calendars. This concern applied especially to high-volume courts in large urban areas:

> The practicality of translating this check-in every week to a felony judge who is doing preliminary hearings in a lower court: impossible, because they don't want to. Their calendars are too heavy … They want to get everything done, they want as little as possible on their calendar and they are not going to let someone just come in to say 'Hello' every week, which is what they need.

One suggested alternative was for probation to perform more of the monitoring typically conducted by the dedicated judge in collaborative justice courts: "I think they [probation] have to take on more of an active role in the collaborative justice program to stay in contact. Because it is too much to ask of the courts and the prosecutors and the defense to keep having these people come back every three months." However, a probation representative worried about placing more reporting pressures on probation officers and treatment and social service providers:

> One of the things which would be nice is to have standardized ways of what we're going to report to the judge and also all the elements that will go into that report … from a [probation] agency viewpoint, if we were doing this for a multitude, it's going to take a little more staff time in terms of gathering the information, in terms of making sure it's accurate, because … sometimes all the information doesn't get in the file and the person who's doing the report, they have an element that goes to the court that's not correct and it could be adversarial or to the benefit of the participant, depending on how you want to look at it. So it's going to take a little more time. It's going to have to take some coordination as to what type of message we're going to communicate to the court.

Several participants were also concerned that monitoring might lose its impact if not conducted in court by a judge, which research has shown to be critical to program success. As one attorney opined, "The amount of attention, the checking-in with the judge: that is what is central to the operation of the court and to the success of the participants in the court that I work in, no question about it."

Courthouse-Based Case Management Resources

Several participants felt strongly that having case management and treatment resources available in the courthouse would be invaluable. Such resources could aid judges and attorneys in assessing litigants' problems and in finding appropriate treatment or social services; and, being located in the courthouse, would also increase the likelihood that defendants actually reach those services. Observed one attorney, "The resources almost have to be in court because the clients get lost if they're told, 'Show up in probation a week from now and treatment center two weeks from now.' They go out into society and disappear."

While no consensus was reached on how to implement on-site case management, several suggestions were advanced. One was to hire a small number of case managers or counselors who could be available to judges throughout a particular courthouse or perhaps even throughout all courthouses from a particular county. One participant illustrated this idea with reference to an Elder Abuse Case Manager in this participant's court: "She works throughout [the] county with other courts where there is perhaps a more traditional approach, where there's not a separate [collaborative justice] calendar. But she is available because in this instance, these courts are held on separate days. She is available to all the judges and she brings those resources literally to them. That's where I'd put money."

Another participant suggested that on-site case management be provided not by the court itself but by dedicated staff from community agencies.

> If you could possibly create a treatment team, where you would have different agencies represented, mental health, employment agencies… housing, just have a variety of service providers present as a treatment team, possibly available to the court. So that way defendants can be identified as eligible to go to this treatment team and … be assessed as to what resources could be made available to him or her to help them better themselves.

Finally, a defense attorney suggested that public defense agencies might expand their own social work resources:

> Because we find in our county [that] the courts don't have time to do that [make treatment/service referrals] and probation is overloaded and undermanned and under-budgeted. And so we [public defenders] have to go out there and find these services to give alternative views of sentencing to the judges. Otherwise all they think about is jail. And we say 'no, here's another alternative for you.'

In considering how collaborative justice might be implemented with only the limited resources now available, participants suggested that courts might need to select only the neediest cases for service mandates or ongoing monitoring. They also thought that, in the absence of a specialized

court's dedicated case management staff, defense attorneys and prosecutors might take a more active role in the identification of appropriate cases, as discussed earlier.

# V. Conclusions and Next Steps

The California Administrative Office of the Courts/Center for Court Innovation partnership has produced two phases of research exploring the opportunities and barriers to applying collaborative justice principles and practices outside of the specialized collaborative justice court setting. Numerous stakeholders—judges, attorneys, court administrators, probation officers, treatment and service providers, representatives of statewide organizations—offered their perspectives, insights, and experiences about an issue receiving increased attention among justice system representatives in recent years, motivated in part by the Conference of Chief Justices and Conference of State Court Administrators' resolutions encouraging such efforts. We conclude by discussing common themes and lessons from the two phases of research now completed, and potential next steps for research.

**Common Themes and Lessons**

***1. Opportunities currently exist to apply collaborative justice more broadly.***
Participants in all focus groups recognized the potential, and the need, to integrate principles and methods from collaborative justice courts into general calendar settings. Participants recognized that specialized collaborative justice courts currently handle only a small fraction of the criminal cases in which defendants' underlying problems (addiction, mental health issues, etc.) contribute to their criminal behavior; therefore, it would be especially productive to expand collaborative solutions for these types of cases, so that more of those in need can actually be served. Other types of cases (e.g., juvenile delinquency, civil cases that can be resolved through alternative dispute resolution) and calendars (e.g., family law) are also ripe for broader applications of collaborative justice. For these reasons, participants urged the courts to continue to explore how collaborative justice principles and methods might be productively integrated into general court settings.

***2. Courts should move forward cautiously and incrementally.***
Participants supported integrating collaborative methods into the administration of justice but, particularly in the current study (Phase Two), urged court systems to proceed cautiously. A common theme was that not all cases are appropriate for, or would benefit from, collaborative approaches. While there was no consensus, frequently mentioned as inappropriate were cases involving serious violence, criminal trials, or cases lacking an identifiable underlying problem. In the current study, participants expressed wide support for an incremental process that might begin with only a few trial counties, or might initially restrict the range of cases and calendars to be included.

Participants also urged that careful consideration be given to which practices can and should be integrated into general court practice, given limited resources, the demands of the adversarial process, and existing knowledge of best practices. Finally, participants cautioned against setting unrealistic expectations for what collaborative justice can accomplish.

***3. Courts should expect to face obstacles.***
All focus groups identified numerous barriers to integrating collaborative approaches into the administration of justice. Across the two phases of research, two were most prominent:

- *Limited time and resources.* Collaborative approaches require a substantial investment of time and resources, both of which are in short supply in the justice system and may be expected to limit the scope of integration. Particular deficits cited by participants included limited court time for individualized attention and ongoing judicial supervision, a lack of case management and treatment resources, and chronic underfunding of probation.
- *Philosophical opposition.* Focus group participants felt that many judges, prosecutors, and defense attorneys would oppose the practice of collaborative justice in general courts, particularly to the extent that it contradicts the traditional models of adversarial litigation and judicial demeanor.

In addition, the attorneys included in the current study (more so than the judges included in Phase One) placed significant emphasis on the need to preserve certain elements of the traditional adversarial process, particularly in criminal courts.

***4. Court systems can take steps to facilitate the broader practice of collaborative justice.*** Across the two phases of research, a few concrete steps were commonly suggested:

I. *Education and training*. Recognizing that many stakeholders are unfamiliar with or opposed to collaborative methods and principles, all participants cited the need for extensive education and training among judges, attorneys, probation officers, and others. Education should begin as early as law school and continue at professional orientations and trainings.
II. *Leadership*. Focus group participants felt that the judicial and political leadership can promote collaborative justice practices by sending the message that these practices are not only permissible but encouraged. They pointed to the critical role that strong local leadership played in the development of many specialized collaborative justice courts, and argued that taking these practices to scale would similarly require support from the top. The judges included in the Phase One research placed the greatest emphasis upon judicial leadership, while the stakeholders included in the current study also discussed the role of leadership emanating from prosecutor offices, public defenders, other county agencies, and the public.
III. *Addressing resource constraints*. While acknowledging the enormous challenge posed by any attempted expansion of resources, participants urged the court system to explore possibilities in this area, including the potential for making more efficient use of the resources now available. Specific suggestions in this regard included centralization of service coordination and compliance monitoring within courthouses, development of jurisdiction-wide lists of community service providers, and greater funding of treatment.

The Phase Two sessions were intended to explore implementation issues in somewhat greater detail than had been done with judges in Phase One. A few of the more notable recommendations were for public defenders to play an expanded role in identifying potentially eligible cases for a collaborative approach; and for some level of specialization to be maintained in the courthouse, whereby certain court partners, judges, and attorneys might dedicate at least a portion of their time to a "collaborative justice track," while others would not have to be

involved. This type of system would require screening litigants at the earliest possible time, so that they could be routed to the appropriate track near the outset of case processing.

**Future Research**

This research project was conducted among multiple justice system and treatment/service provider stakeholders with experience in and familiarity with collaborative justice courts. A common message from these stakeholders was that promoting collaborative justice throughout court systems will depend on the receptivity and participation of judges, attorneys, and others who may not have any collaborative justice court experience. Therefore, it is recommended, as a first step for future research, that systematic surveys be conducted among general calendar judges and attorneys to aid court systems by providing a fuller understanding of the judicial landscape. Survey topics might include knowledge, attitudes, and current practices relating to collaborative justice; as well as receptivity to collaborative justice training and to changing judging and litigating practices in the future. Subsequent research might conduct similar surveys among other justice system partners or might test the effects of any pilot experiments implemented in California or elsewhere.

# Appendix A. Focus Group Protocols

## A1) Focus Group Protocol for Justice System Stakeholders

### I. WELCOME AND INTRODUCTIONS

- Introduction to the project (Nancy Taylor);
- Introduction of the research team;
- Brief explanation of the purpose of the research and goals of the focus group;
- Focus group logistics, guidelines, and norms;
- Participant introductions.

### II. WARM-UP

- To begin, I'd like you all to discuss how collaborative justice courts differ from conventional courts.

    - Write responses on the board and categorize.
    - Draw out differences in courtroom practices, not just treatment mandates.
    - Promote discussion of treatment mandate options other than drug treatment.

### III. PRESENTING THE CONCEPT OF COLLABORATIVE JUSTICE IN CONVENTIONAL COURTS

*Hand out concept statement to all participants (see Appendix B).*

### IV. REACTIONS TO THE MODEL

- Do you have any reactions or feedback to this concept? (Just say anything that comes to mind.) Why do you say that?
- Would you support doing this?
    - PROBE: Which aspects would you support and not support?
    - PROBE: Is any of this currently being done in general courts? Tell me about it … (*probe on which current practices work and do not work, and why*)
- What do you consider the biggest strength of this idea?
- What concerns do you have? (*probe on how important these concerns are)*
- What barriers or concerns, if any, would you anticipate coming up (e.g., staffing, court time and resources, appropriate treatment options in the community, willingness of judges, willingness and training of colleagues or other stakeholders)?
- How would your colleagues react to this? (*probe on how informed/educated they think their colleagues are about collaborative justice*)

## V. OPERATIONAL ISSUES AND CHANGES

**The next series of questions deals with what collaborative justice in conventional courts might look like …**

- I'd like you to discuss how the collaborative justice model might work in the courtroom.
  - PROBE: Would a team approach be feasible or not?
  - PROBE: Would attorney, judge, clerical, or other roles have to change? How so?
  - How, specifically, would this change your role as an attorney?
  - PROBE: What role would [name of different players: justice, law enforcement, probation, treatment/service system, etc.] play?

- What are the key barriers to applying collaborative justice in conventional courts?
  - PROBE: Would there be sufficient time, staffing, other resources?

- What recommendations do you have for overcoming these barriers and practicing collaborative justice in the general courtroom?
  - PROBE: Would changing the organization of court parts facilitate collaborative justice in general courts? If so, what changes would you recommend?
  - PROBE: Could collaborative justice be applied in all courtrooms? On what court calendars would it be easier to apply? Harder?
  - PROBE: What other policy issues would have to be addressed (e.g., relationships between the court and treatment providers; court staff union issues, etc.)?

## VI. SPREADING COLLABORATIVE JUSTICE

- What strategies are available to disseminate information about collaborative justice among colleagues who currently work in conventional court settings?

## VII. CONCLUDING REMARKS

- Review of the purpose of the focus group and of what had been covered
- Participants asked individually for any concluding remarks—issues not raised that should have been, issues that should be underscored, etc.
- Thank for participation.

# A2) Focus Group Protocol for Probation and Treatment System Stakeholders

## I. WELCOME AND INTRODUCTIONS

- Introduction to the project (Nancy Taylor);
- Introduction of the research team;
- Brief explanation of the purpose of the research (and the goal of this focus group);
- Focus group logistics, guidelines, and norms;
- Participant introductions.

## II. CURRENT EXPERIENCE WORKING WITH COURTS

- I'd like you all to discuss how you personally and your agency interact with courts? *Write responses on the board and categorize.*
    - PROBE: What has worked well in your interactions with courts?
    - PROBE: What are your greatest challenges or problems in working with courts? (communication, standards/expectations, underlying philosophy, appearances, and court interactions)
    - PROBE: Describe the differences between working with collaborative justice courts and with conventional courts. Do collaborative justice courts have greater expectations, and is the workload greater in working with them?
    - PROBE: Have you worked with probation? Could you describe your relationship with probation, and how you work together?
      (And for probation, what are the challenges of coordinating between courts and treatment?)

## III. PRESENTING THE CONCEPT OF COLLABORATIVE JUSTICE IN CONVENTIONAL COURTS

*Hand out concept statement to all participants (see Appendix B).*

## IV. REACTIONS TO THE MODEL

- Do you have any reactions or feedback to this concept? (Just say anything that comes to mind.) Why do you say that?
- Would you support doing this?
    - PROBE: Which aspects would you support and not support?
    - PROBE: Is any of this currently being done in general courts? Tell me about it … *(probe on which current practices work and do not work, and why)*
- What do you consider the biggest strength of this idea?
- What concerns do you have?

- What barriers or concerns, if any, would you anticipate coming up (e.g., staffing, court time and resources, appropriate treatment options in the community, willingness of judges, willingness and training of colleagues or other stakeholders)?
- Are there concerns you might have had when you knew less about collaborative justice courts but which you do not have, as a result of your experiences ?
- How would your colleagues react to this?

## V. OPERATIONAL ISSUES AND CHANGES

**The next series of questions deals with what practicing collaborative justice in conventional courts might mean for your agency …**

- Discuss how this new model might affect your agency or agencies like yours.
    - PROBE: Would your agency have the staff and resource capacity to handle a significantly greater volume of court-referred clients? Overall, could agencies that provide services like yours throughout the county or state handle greater capacity? Are certain treatment modalities particularly likely to be pressed for capacity?
- If the new model resulted in larger numbers of clients and cases, how might your agency respond or have to change? *[For all barriers, challenges cited, probe on how those barriers might be overcome]*
    - PROBE: New staff roles and responsibilities (to coordinate with the courts, probation)? Increased client caseload for staff?
    - PROBE: Would the responsibilities of probation change? How so?
    - PROBE: Court-reporting protocols (standardization across counties, type of courts)?
    - PROBE: How would your agency feel about power-sharing issues—e.g., with courts potentially referring more clients and in turn having specific requirements for probation and service providers? Have you had to confront these kinds of issues in working with courts in the past, and how has that been?
    - PROBE: Would your agency be willing to develop new programs and services requested by courts to meet special needs among court-mandated clients?
- In sum, what would be the most important operational challenge to address (either mentioned or unmentioned in earlier discussions)?

## VI. CONCLUDING REMARKS

- Review of the purpose of the focus group and of what had been covered
- Participants asked individually for any concluding remarks—issues not raised that should have been, issues that should be underscored, etc.
- Thank for participation.

# A3) Focus Group Protocol for Representatives of Statewide Organizations

## I. WELCOME AND INTRODUCTIONS

- Introduction to the project (Nancy Taylor);
- Introduction of the research team;
- Brief explanation of the purpose of the research and the goal of this focus group;
- Focus group logistics, guidelines, and norms;
- Participant introductions.

*Note*: In the introduction, mention that participants have been invited because, as representatives of their various agencies, they can bring a statewide perspective to the table, and that they are encouraged to do so as much as possible during the discussion.

## II. WARM-UP

- To begin, I'd like you all to discuss how collaborative justice court practices differ from those in conventional courts.

    - Write responses on the board and categorize
    - Draw out differences in courtroom practices, not just treatment mandates
    - Draw out the degree to which collaborative justice court practices are already used within conventional court settings
    - Promote discussion of treatment mandate options other than drug treatment

## III. PRESENTING THE CONCEPT

*Hand out concept statement to all participants (see Appendix B).*

## IV. REACTIONS TO THE CONCEPT

$ Initial Reactions: What are your reactions to this idea? (Just say anything that comes to mind.)

    - PROBE: What are its strengths?
    - PROBE: What concerns do you have?
    - PROBE: What things about collaborative justice courts can and should be brought into wider use in conventional courts? What should not be brought into wider use?
    - PROBE: Are there unique issues or challenges that would be involved in implementing this idea statewide as opposed to judges and/or attorneys deciding to use certain elements within individual jurisdictions or court parts?

$ Current Examples: What has been the experience to date (including strengths, challenges, or other lessons learned) in applying models of collaborative justice to certain whole categories of cases (e.g., handling large numbers of drug cases within Proposition 36 courts)?

- PROBE: Besides Proposition 36, are there other examples in California in which the courts attempted to handle large numbers of cases with a model incorporating some or all elements of collaborative justice?

- Readiness/Capacity: Is the state ready for this? How would this affect your agency/those whom you represent?

    - PROBE: Impact on resources, workload.

- Model of Expansion: How would you envision the concepts and techniques of collaborative justice courts being integrated into mainstream courts? What steps need to be taken for this to happen throughout the state?

    - PROBE ON FUNDING ISSUES: Would additional funding be necessary? What would need funding? What else? What are the funding priorities?
    - PROBE ON LEGISLATIVE CHANGE: In addition to funding issues, would other legislative policy changes be necessary?
    - PROBE ON POLICY CHANGE: In addition to funding issues, would other statewide or countywide court policies be necessary (e.g., that could be implemented by the judiciary as opposed to requiring legislation)?
    - PROBE ON EDUCATION/TRAINING: What are the education, training needs?

  Note*: For all ideas discussed (funding, training, etc.), probe on whether these changes are* necessary *(or just would be beneficial) for this to happen.*

**V. CONCLUDING REMARKS**

- Review of the purpose of the focus group and of what had been covered
- Participants asked individually for any concluding remarks—issues not raised that should have been, issues that should be underscored, etc.
- Thank for participation.

# Appendix B. Concept Presentation

### Hypothetical Model of the Administration of Justice

This model of the administration of justice envisions the practices and techniques of collaborative justice courts, such as drug courts, mental health courts and domestic violence courts, applied broadly in mainstream courts throughout the court system. The approach could be applied in all courts—not just specialized courts—with the goal of enhancing courts' ability to address the underlying problems of litigants, victims, and communities.

Under this model, court operations could be characterized by elements such as:

- Problem-solving focus;
- Proactive role for the judge;
- Non-adversarial team approach to decision-making;
- Integration of treatment and social services into the court process;
- Ongoing judicial supervision of the treatment process;
- Direct interaction between litigants and the judge; and
- Community outreach.

# CALIFORNIA'S COLLABORATIVE JUSTICE COURTS

## Building a Problem-Solving Judiciary

CENTER FOR COURT INNOVATION

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

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This report is also available on the California Courts Web site: www.courtinfo.ca.gov/programs/collaborative, and at the Center for Court Innovation Web site: www.courtinnovation.org.

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# CALIFORNIA'S COLLABORATIVE JUSTICE COURTS:
## Building a Problem-Solving Judiciary

## FOREWORD

We are pleased to present this report on the development of collaborative justice in the California court system. This project is the product of a unique collaboration between the California Administrative Office of the Courts and the Center for Court Innovation in New York. While highlighting the efforts of local courts and judicial leaders, this report also chronicles the efforts of our court system to respond, in part, to the joint resolutions of 2000 and 2004 by the Conference of Chief Justices and the Conference of State Court Administrators regarding problem-solving courts. The study reflects the commitment by courts in California and across the country to institutionalize problem-solving, or collaborative justice, courts.

RONALD M. GEORGE
Chief Justice of California and
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director
of the Courts

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COURT
INNOVATION

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

# INTRODUCTION: INNOVATION IN CALIFORNIA

Judiciaries around the country are embracing a new way of business, one that emphasizes partnerships with stakeholders in and outside the courts, improved community access to the justice system, greater accountability for offenders and better community outcomes, such as increased safety and improved public confidence. This new way of doing business goes by various names. In many jurisdictions, it's called "problem solving." In California it goes by the name "collaborative justice."

Problem-solving courts (or collaborative justice courts) include specialized drug courts, domestic violence courts, community courts, family treatment courts, DUI courts, mental health courts, peer/youth courts and homeless courts. Their aim is to address challenging problems—like drug addiction, domestic violence and juvenile delinquency—that society brings to courthouses across the country every day. While each of these courts targets a different problem, they all seek to use the authority of courts to improve outcomes for victims, communities and defendants. These court programs strive to achieve tangible results like safer streets and stronger families; at the same time, they seek to maintain the fairness and legitimacy of the court process.

Judge Wendy Lindley, Superior Court of Orange County, congratulates participants in dual-diagnosis court serving non-violent drug offenders with mental health issues.

In California, collaborative justice is increasingly being viewed as a set of principles and practices that can be used in many types of cases both in and outside specialized, intensive court calendars. Collaborative justice also seeks to incorporate other innovative justice approaches, such as balanced and restorative justice, procedural fairness efforts, therapeutic jurisprudence and alternative dispute resolution.

This report attempts to capture the history of the California judiciary's involvement in collaborative justice courts, from their beginnings as isolated experiments to current efforts at statewide coordination. In recounting this story, the goal is to offer lessons to other states that are grappling with similar challenges.

California is a national leader in the field of problem solving or collaborative justice. *The New York Times* recently described California, along with New York, as "at the forefront" of this movement.[1] With over 265 collaborative justice courts by mid-2005, California has developed new models (for example, the nation's first homeless court and first dating violence court) and explored new ways to export the best practices of collaborative justice courts to traditional courtrooms.[2] Today, California has 158 drug treatment courts, 15 mental health courts, 17 peer courts, six homeless courts and four community courts, as well as other types of collaborative justice courts.[3]

*Early experiments include domestic violence court and peer court*

But it's not just the size of the effort that is impressive. It's also the impact. One study, begun in 1998 and still ongoing, found that the nine drug courts that participated in this study so far have saved the state approximately $9 million in avoided criminal justice costs for every year a new set of participants enters these programs.[4] With 90 adult drug courts operating statewide, and drug court caseloads conservatively estimated at 100 participants per year, the annual statewide cost savings for adult drug courts suggested by the study was $90 million a year.

Even more important is the impact on the lives of participants and society at large. One study of drug courts in California found that arrest rates for drug court participants—many of whom are chronic offenders—declined by 85 percent in the first two years after admission to drug court compared to the two years prior to entry. The same study also found that 70 percent of participants were employed upon completion of drug court compared to an employment rate of only 38 percent at entry.[5]

California's early collaborative justice courts arose independently, shaped by local needs. But the courts' growth and potential impact were so vast that the Judicial Council of California gradually assumed greater and greater statewide leadership in this area. In 1996, Chief Justice Ronald M. George appointed a Drug Court Task Force to facilitate the establishment and funding of drug courts. In January 2000, the Judicial Council established the Collaborative Justice Courts Advisory Committee to assess the effectiveness of problem-solving courts and nurture best practices, secure funding and promote ongoing innovation.

Today, court planners are addressing a new challenge: how to institutionalize the lessons learned from problem solving. This effort is reflected in efforts to modify collaborative justice models in order to serve large caseloads, such as all non-violent drug offenders, as well as efforts to export successful collaborative justice practices to conventional courtrooms.

## ORIGINS: WHERE DID COLLABORATIVE JUSTICE COME FROM?

What gave rise to collaborative justice? As with any complex innovation, a number of factors came into play, and these factors have varied from court type to court type and jurisdiction to jurisdiction. Among the most important influences were: the deinstitutionalization of the mentally ill in the 1970s and 1980s that helped generate an increase in the number of mentally ill offenders in the criminal justice system; the crack-cocaine epidemic and rise in drug-related crime; California's burgeoning population; changes in the criminal justice system's response to domestic violence; new theories about crime and law enforcement (such as the "broken windows" theory[6]); and growth in the number of homeless people.

In Placer County, for example, a "peer" court—in which teenagers themselves adjudicate cases involving other teens—was developed in 1991 as an alternative to the traditional approach to juvenile delinquency: incarcerating youth in juvenile hall. Judge J. Richard Couzens, along with the chief probation officer and a group of attorneys, felt that as one of the fastest growing communities in California, Placer County needed a more flexible strategy, one that emphasized both rehabilitation and prevention. "They asked themselves whether they wanted to continue to go the way of juvenile hall or was a more rehabilitative philosophy the way they wanted to go?" said Karen H. Green, the peer court coordinator.

Homeless court also represented a break with the past. Rather than wait for homeless individuals with outstanding cases to re-enter the justice system randomly—and then either impose fines they couldn't pay or send them to jail—homeless court (first created in San Diego in 1989) actively reached out to the homeless, linked them to services, and, in exchange for meeting goals set by a social service agency, helped them clean up their criminal records.

As the homeless court example makes clear, collaborative justice courts require cooperation and collaboration among a diverse array of partners. Judges in collaborative justice courts work closely with prosecutors, defense attorneys, probation officers, treatment providers and other stakeholders—all the while striving to maintain judicial impartiality and independence. Except in domestic violence courts, the environment in a collaborative justice court tends to be less adversarial than in a traditional court. The key, practitioners say, is that all stakeholders must preserve and respect appropriate roles while, at the same time, sharing a common goal, such as the successful treatment of a drug-abusing offender. Participants must also work together to address ethical issues (such as confidentiality within a context of open court proceedings) in order to build a program that incorporates rigorous monitoring of participants, information sharing and better coordination among partners.

*First homeless court established (San Diego)*

*In the nation: Dade County, Florida, becomes the site of the country's first drug court*

For some California communities, the collaboration among a team of disparate partners required by collaborative court models was a natural fit. In Butte County, for example, the court and the community in 1992 developed a coordinated response to graffiti that required the cooperation of the judiciary, the sheriff's office, police, city government and the downtown merchants association. Everyone had a role to play: the court sentenced a graffiti offender to a cleanup crew; a sheriff's team of retired senior citizens supervised the crews; the city provided a place to store a van and paint; the business association provided funding; and the police provided a dedicated phone number that the public could call to report the location of graffiti. "The goal was to eradicate the graffiti within 24 hours of cropping up," said Judge Darrell Stevens, who helped launch the initiative. In the years that followed, this early cooperative effort would serve as a foundation for collaborative justice courts in Butte County.

Interestingly, however, not all collaborative justice courts emphasize the same level of cooperation. For instance, domestic violence courts maintain the tradition of the adversarial process between prosecutor and defender. And yet domestic violence courts also recognize the importance of a coordinated community response to family violence and therefore seek to involve

community partners—like victim services agencies and batterers programs—in the development of meaningful responses to the problem.

The bottom line is that different types of collaborative justice courts emphasize different principles and practices. For instance, drug courts and mental health courts emphasize therapeutic jurisprudence by promoting treatment and rehabilitation. Community courts and peer courts may emphasize balanced and restorative justice. Criminal domestic violence courts emphasize victim safety and court monitoring of offender compliance.

What follows is a closer look at specific types of collaborative justice courts.

## HOMELESS COURT

The nation's first homeless court started in San Diego in 1989, born out of a frustration with the way traditional courts process homeless defendants. According to Deputy Public Defender Steve Binder, who helped launch and still coordinates the San Diego court after 16 years, judges in traditional court either issue a fine—which homeless individuals normally can't pay—or place offenders in custody, but do little to help them find a permanent home or link them to services that might help them improve their lives. Meanwhile, homeless offenders accrue criminal records and warrants that make it difficult for them to make a fresh start down the road.

Binder was inspired by the veterans' stand-down movement, which started in 1988 in San Diego and brought services and support to homeless veterans in the parks and public areas where they lived. A stand-down event typically lasted several days and offered veterans everything from dental care and donated clothes to counseling and help with benefits. What the event didn't offer, however, was a chance to resolve outstanding criminal cases. Binder proposed establishing a temporary court complete with judge at these events to offer those veterans who actively participated in services a chance to clear their records.

The social service programs, rather than the court, set requirements for graduation and monitor clients' progress. In addition, clients appear in court only at the end of the process rather than throughout. Still, homeless courts, like drug courts, require a high degree of collaboration among multiple partners. They also seek outcomes beyond a simple determination of guilt or innocence; rather, by seeking to improve participants' lives, they are looking for solutions that are good for both defendants and the larger community.

Approximately 80 to 90 percent of cases before the court result in dismissal of charges.[7] Of those remaining, most involve a case that has already been adjudicated (and therefore cannot be dismissed); in the vast majority of these situations, however, the participant is able to satisfy the sentence by meeting the social service provider's goals.

In 2004, the San Diego Homeless Court was honored by Harvard University and the Council for Excellence in Government, which named the court a finalist in its annual Innovations in American Government competition.

## PEER COURT

Among the earliest of the state's collaborative justice courts are peer courts, in which students determine the consequences to be imposed on other young people for low-level criminal conduct. Peer courts emerged in Odessa, Texas, in the early 1980s and eventually migrated to California's Humboldt and Contra Costa Counties in the mid- to late-1980s.

*First drug court in state established (Oakland)*

Like drug courts, peer courts offer an alternative to business as usual. Rather than send low-level cases involving first-time offenders through the traditional juvenile court, offenders go before a true jury of their peers—other juveniles who have been trained to assume various roles, including those of attorneys, court staff, judges and, most important of all, jurors who determine what should happen to a peer who has violated the law.

Placer County Peer Court, which started in 1991, handles about 550 cases a year, or about 40 percent of the county's juvenile cases. "It frees up juvenile probation officers to better manage those cases that need more of their time," said coordinator Karen Green. "We're saving the county about $500,000 a year. Despite the fact that we're the fastest-growing county in California, juvenile crime is down."

The Placer County Peer Court hears cases as serious as burglaries and assaults—"basically anything is eligible except murder and molest cases," Green said. About 60 attorneys and judges volunteer to train and mentor youth participants. While an adult serves as a judge, the teenage jury members have the final say in sentencing. "There are no adults in the jury room," Green said. "In 3,000 cases, we've never changed a jury sentence." Sentences always involve community service, and often also include repaying a victim, suspension of driving privileges and anger-management classes. Defendants are also required to participate in future peer court juries.

Peer courts not only educate participants about the law, but also combat juvenile delinquency at its earliest stages. "Taking a first offense seriously hopefully prevents crime down the line," Green said. Peer courts also exploit the power of peer pressure to get young peoples' lives back on track.

***Placer County Peer Court... "frees up juvenile probation officers to better manage those cases that need more of their time."***

***— Peer Court Coordinator Karen Green***

Like other collaborative justice courts, peer courts rely on partnerships. In Placer County, the probation department, court system, local schools, faith community and attorneys all work together to support the peer court. And while the peer court doesn't monitor defendants by bringing them back to court on a frequent basis (defendants appear before the judge only once), peer court staff (many of whom are high school and college students) try to call each defendant at least once a week for the minimum of six months that cases are open.

The Peer Court adds another ingredient to the collaborative justice philosophy as well: prevention. In Placer County, all high school freshmen are required to participate in a two-week curriculum that educates students about the juvenile justice system and about tools they need to avoid unlawful behavior. "We feel it's critical to have that education piece in place," Green said.

## DRUG COURT

The most often-cited reason behind the development of drug courts is the so-called revolving door, whereby the same drug-addicted offenders cycle in and out of the criminal justice system on a regular basis.

"I started seeing people that I had sent to prison back again, charged with the same offense, and then I started seeing children of the people I have seen in the criminal justice system or the dependency system back again, and I reached a conclusion that the system wasn't working. I decided we needed to change things," said Judge Stephen Manley, a supervising judge of the Superior Court of Santa Clara County and founder of that county's first adult drug court.

## DRUG COURTS: NATIONAL PERSPECTIVE

- *The first drug court was founded in Miami in 1989*
- *More than 70,000 drug court clients are being served at any given time throughout the United States and its territories*
- *There were 1,624 drug courts in the U.S. by Dec. 2004*
- *8 percent of drug courts are located in California*

**Source: Bureau of Justice Assistance, May 2005** [8]

*National conference on domestic violence held in San Francisco, sponsored by National Council of Juvenile and Family Court Judges*

*In the nation: Midtown Manhattan becomes the site of the country's first community court*

Manley, and a number of other judges around the state, were also influenced by the example of the Miami-Dade Drug Court, the first court experiment of its kind to link defendants to drug treatment and use strict judicial supervision to monitor compliance. Judge Stephen A. Marcus of the Superior Court of Los Angeles County visited the Miami-Dade experiment in 1992 after learning about it at a conference in Oakland. "They didn't have to do a big sell on the fact that we were not succeeding with our drug cases. We had plenty of stats that showed we would see the same defendants again and again," Marcus said.

Another early proponent of drug courts, Superior Court Judge Patrick J. Morris of San Bernardino, traveled to Miami with a group of judges and representatives of other branches of the criminal justice system. The group was so impressed, Morris said, that they made a pact: "All of us agreed that this was an idea whose time had come and that we'd all return to our respective jurisdictions and advocate for this modality of drug court."

The state's earliest drug courts reflected an eclectic array of thinking and resources. Most were, initially at least, pre-plea (allowing offenders to enter the court without a plea) but at least some were post-plea (requiring participants to plead guilty to a charge that, upon successful completion of the program, was dismissed or reduced). Some used pre-existing drug treatment facilities and others created their own programs. In Los Angeles, for example, Judge Marcus lobbied fellow judges, court administrators, legislators and treatment providers, who cooperated in the establishment of a drug treatment center in an empty court building about four blocks from the

courthouse. After 18 months of planning—including a five-month delay precipitated by the Northridge earthquake—the Los Angeles County Municipal Drug Court opened in January 1994.

But it wasn't always an easy sell. Judge Jean Pfeiffer Leonard recalled that her initial pitch to launch a drug court in Riverside County ten years ago was not well received, but once the successes were documented, drug courts were initiated throughout the county.

***"All of us agreed that this was an idea whose time had come and that we'd all return to our respective jurisdictions and advocate for this modality of drug court."***

***— Judge Patrick J. Morris***

One of the biggest achievements of these early courts was the bridge built between the judiciary and treatment providers. "The treatment providers and court system historically had never worked together at all," Morris said. "In fact, the idea that you couldn't force an addict into treatment still prevailed. We had to convince them that we could do this, that we could force behavioral modification and use the power of the court to effect change."

In addition, treatment providers expressed concerns about confidentiality and the court's ability to determine the appropriate level of care, said Del Sayles-Owen, deputy director in the statewide Department of Alcohol and Drug Programs, which regulates treatment facilities. "The treatment providers have assessment tools that they use to determine the appropriate level of care, but the judges have a lot of discretion. There's tension sometimes if a judge disagrees [with the treatment provider] and decides to do something different," she said. Overall, the treatment community has been an enthusiastic partner. "We definitely believe drug courts are positive steps. The Department of Alcohol and Drug Programs has done what it can to support the Administrative Office of the Courts and the development of drug courts and smooth out the working relationships between treatment providers and the judiciary," Sayles-Owen said.

It didn't take long for the drug court idea to draw the interest of Chief Justice Ronald M. George and Administrative Director of the Courts William C. Vickrey. Two California judges—Patrick Morris of San Bernardino and Jeffrey Tauber of Oakland—were among the small group who founded the

National Association of Drug Court Professionals (NADCP) in 1994. Chief Justice Ronald George welcomed participants to the NADCP's third annual drug court conference when it drew more than 3,300 attendees to San Francisco in 1996. That same year, Judge Morris was named president of the NADCP board.

By the mid- and late 1990s, California judges were exploring new forms of drug court. In 1995, Tulare County opened the state's first juvenile drug courts and in 1998 San Diego launched one of the state's first dependency drug courts, which link drug-abusing parents in the child welfare system to treatment. Judge James Milliken started the San Diego program after learning that about 80 percent of parents in dependency court had a substance-abuse problem and yet many never sought treatment, even when a judge ordered them to do so. In the San Diego court, the judge rigorously monitors treatment and punishes non-compliance with sanctions, including jail. From April 1998 to June 2003, more than 4,000 parents participated in the San Diego court, and 55 percent of participants were reunited with their children.[9] Also, the time for processing cases was cut from an average of about 38 months to 19 months, meaning that children were spending less time in foster care.[10] One study looking at a sample of 50 cases from before the court opened and 50 cases from after found that the county saved about $1.5 million in foster care costs.[11]

*Two California judges—Patrick Morris of San Bernardino and Jeffrey Tauber of Oakland—are among a small group who found the National Association of Drug Court Professionals*

*California Administrative Office of the Courts sponsors statewide conference on domestic violence*

*In the nation: Federal anti-crime bill includes money for drug courts*

Riverside County established a variation on the dependency drug court: a family law or domestic relations substance abuse court. The court, founded by Judge Elisabeth Sichel (a commissioner at the time) and Judge Jean Leonard, applied the techniques of drug court to participants in divorce proceedings. "We run it like a regular drug court but the carrot is that if you go through drug court, it will result in a favorable recommendation regarding custody and visitation. Because they're not sober, most of these people aren't seeing their kids," Leonard said.

The state's first DUI court—launched in 1996 in Butte County by Judge Darrell Stevens—brought some new partners to the table, including a drug company, which donated a medication to block cravings for alcohol, and a local hospital, which distributed the medication to court participants. "The local hospital really jumped on to it," Stevens said. "Their staff would observe the person ingesting the medication. Later, we were able to enlist the aid of every pharmacy in the county. They also agreed to supervise the ingestion of the medication."

By the mid-1990s, California was considered a leader in the creation of drug courts. Its courts began to serve as national models and, through the NADCP, many of its practitioners assumed prominent roles in the rapidly growing movement. California judges, for example, were among those who successfully lobbied Congress for the inclusion of drug court money in the 1994 Anti-Crime Bill. That eventually resulted in tens of millions of dollars distributed to drug courts around the country, including about $3.5 million through the Edward Byrne Memorial State and Local Law Enforcement Formula Assistance Program to 25 California drug courts from 1996 to 2000.

Around the same time, Chief Justice George appointed the California Drug Court Task Force, chaired by Judge Morris, that was charged with facilitating the establishment and funding of drug courts and educating state leaders about their function. All members of the drug court team were represented on the task force, including judges, prosecutors, defense attorneys, probation staff and treatment providers.

## DRUG COURT OVERSIGHT COMMITTEE

The task force eventually morphed into something called the Drug Court Oversight Committee. The Oversight Committee made recommendations regarding funding through grants (usually between $20,000 and $30,000 a year) to help drug courts around the state pay for things like case coordination and services. In 1998, the Legislature passed and the Governor signed the Drug Court Partnership Act, which provided $7.6 million annually and continues to this day, under its third Governor, with competitive funding for

***Nine drug courts have saved $9 million in avoided criminal justice costs every year. With 90 adult drug courts operating statewide, and drug court caseloads conservatively estimated at 100 participants per year, the annual statewide cost savings for adult drug courts suggested by the study was $90 million a year.***

about 34 adult, post-plea drug courts. The act's emphasis on post-plea courts led many drug courts to shift from a pre- to post-plea structure. The act also reinforced the collaborative nature of the enterprise by requiring the Judicial Council and the state Department of Alcohol and Drug Programs to establish

a joint steering committee to distribute the funds. Around the same time, the Legislature provided $1 million to fund California Drug Court Projects in five designated drug courts; in 2000, the Legislature amended the law, allowing the Administrative Office of the Courts to distribute the money to drug court projects statewide.

In 1999, the Legislature and Governor went even further, enacting the Comprehensive Drug Court Implementation Act, which provided funding to a much broader array of drug courts than the Partnership Act. The approximately $10 million a year available through the Comprehensive Drug Court Implementation Act offered money to counties through a population-based formula for both pre- and post-plea models as well as almost any variation on the drug-court model a county might invent, including dependency drug courts, juvenile drug courts and courts for offenders charged with driving under the influence.

"The Comprehensive Drug Court Implementation Act was written in response to the idea that you should encourage innovation and spread this concept way beyond [the adult, criminal, post-plea model]," Judge Manley said. "The fact was that drug courts [under the Partnership Act] addressed only one population, and yet California is known for innovation, and the executive steering committee was seeing a growing frustration with federal guidelines that placed limits on past criminal behavior and a movement toward taking on new populations."

*First juvenile drug court established (Tulare County)*

With the financial backing of both federal grants and the state Legislature, California by 2000 had 153 drug courts, more than any state in the nation.

Drug courts are the most common problem-solving court model and their effectiveness has been documented by a substantial and growing body of research. Through a federally endorsed list of ten "key components," drug courts have come in many ways to define the parameters of collaborative justice courts. The ten components include the integration of drug treatment with case processing, a non-adversarial approach, rapid placement of defendants into treatment, frequent testing to monitor abstinence, ongoing judicial interaction with each participant, and the development of partnerships among the court and other agencies to generate local support and enhance drug court effectiveness. In 2001, the Judicial Council's Collaborative Justice Courts Advisory Committee adopted an 11th "essential component" of collaborative justice courts in California: emphasizing team and individual commitment to cultural competency. For a list of California's key components, see *Figure 1*.

## Figure 1: GUIDING PRINCIPLES OF COLLABORATIVE JUSTICE COURTS

**The Collaborative Justice Courts Advisory Committee identified 11 components, recognizing that they apply differently in different types of courts. For instance, non-adversarial approaches will not be appropriate in some case types, such as domestic violence.**

1. **Integrate services with justice system processing;**
2. **Achieve the desired goals without the use of the traditional adversarial process;**
3. **Intervene early, and promptly place participants in the collaborative justice court program;**
4. **Provide access to a continuum of services, including treatment and rehabilitation services;**
5. **Use a coordinated strategy that governs the court's responses to participants' compliance, using a system of sanctions and incentives to foster compliance;**
6. **Use ongoing judicial interaction with each collaborative justice court participant;**
7. **Use monitoring and evaluation to measure the achievement of program goals and gauge effectiveness;**
8. **Ensure continuing interdisciplinary education;**
9. **Forge partnerships among collaborative justice courts, public agencies and community-based organizations to increase the availability of services;**
10. **Enhance the program's effectiveness and generate local support; and**
11. **Emphasize team and individual commitments to cultural competency.**

## DOMESTIC VIOLENCE COURT

The first domestic violence court was launched in Quincy, Massachusetts, in 1987. Eighteen years later, more than 300 such courts are estimated to exist nationally. However, different states and jurisdictions emphasize different models.[12] In California, many specialized procedures have been developed in both criminal and civil courts in response to domestic violence, and the Judicial Council is working to create model guidelines for domestic violence courts and specialty calendars.

Court-community collaboration in response to domestic violence became nationally recognized when the National Council of Juvenile and Family Court Judges sponsored a national conference in San Francisco in 1993 that was attended by teams from each state. At the conference, the team from California adopted as a goal the development of domestic violence councils in each county. The following year, the Administrative Office of the Courts held a statewide conference at which local jurisdictions identified the value of domestic violence coordinating councils as a central goal. Around the same time, the Judicial Council's Advisory Committee on Gender Bias and the Courts also recommended creation of domestic violence councils in each county. Those councils brought together major stakeholders at the local level to brainstorm a more coordinated response to family violence. Some of these responses included specialized court calendars and procedures.

*Chief Justice Ronald M. George appoints Drug Court Task Force*

*NADCP holds its third annual drug court conference in San Francisco. More than 3,300 attend. Chief Justice George is keynote speaker.*

*First DUI court established (Butte County)*

Domestic violence courts in criminal cases are guided by twin goals: improving victim safety and holding batterers accountable for their actions. In family law courts, the focus continues to be on victim safety, but is also on child custody and visitation or financial issues. Juvenile courts and "integrated" courts offer yet another model. "This is an emerging field that has yet to yield one particular best-practices model and instead encompasses… myriad processes and procedures employed by the courts to respond to the fundamental concerns of safety and accountability," according to a report by the Judicial Council of California.[13] In California, 25 projects now identify themselves as domestic violence courts.

One important distinction that has been noted between domestic violence courts and drug treatment courts is that domestic violence courts address violent criminal activity. Moreover, domestic violence cases involve a targeted victim. Many criminal domestic violence courts focus on regular monitoring of defendants to ensure that they comply with court orders, including the requirement that they complete a batterer intervention program. In civil

domestic violence courts, courts are often involved with linking restraining order petitioners to services appropriate to their situation, such as victim-advocacy programs or assistance with finding safe housing.

Numerous varieties have emerged in recent years, including courts that combine civil and criminal cases, as well as calendars with a narrow focus, such as child custody or juvenile dating violence. For instance, the Juvenile Domestic and Family Violence Court was started in 1999 in Santa Clara, California, and operates much like an adult criminal domestic violence court. The project includes a 26-week batterers program, with access to substance abuse programs, mental health services and other counseling as needed.

New directions in all types of domestic violence cases include consideration of co-occurring problems, such as substance abuse, homelessness or mental illness. For instance, an exploratory study on domestic violence and substance abuse developed by staff in the Administrative Office of the Courts' Collaborative Justice Unit and the Center for Families, Children & the Courts' featured roundtable discussions by judges from drug courts and domestic violence courts about addressing domestic violence cases involving substance abuse.[14]

## MENTAL HEALTH COURT

Like other collaborative justice courts in California, mental health courts emerged in response to a problem—specifically, the high percentage of offenders who were mentally ill.

***"What a mental health court does is actually decriminalize the mentally ill by setting up probation terms and mental health treatment, including medication compliance, that will help them succeed in being on probation and not picking up a new criminal offense and then getting out of the system."***

***—Judge Becky L. Dugan***

A 1999 Department of Justice survey found that 16 percent of the inmates in United States prisons and jails reported having a mental condition or mental health hospitalization. That translated to about a quarter-of-a-million inmates with mental illness.[15]

Unfortunately, jails and prisons were not only unable to provide adequate treatment, they also proved costly. In 1998, for example, the San Bernardino County jail's medication budget for mentally ill inmates came close to $1 million, according to Superior Court of San Bernardino County's Judge Patrick J. Morris, who has presided over mental health court since 1999.

Mental health courts provide an alternative approach. By steering offenders from jail into judicially supervised treatment, they reduce both jail overcrowding and hopefully, by getting mentally ill defendants the help they need, recidivism.

"Before the advent of mental health courts, that group would have simply gone to jail or state prison, and then come back again because we furnished them no treatment or chance of success," said Judge Becky L. Dugan of the Riverside Mental Health Court, established in 2001. "What a mental health court does is actually decriminalize the mentally ill by setting up probation terms and mental health treatment, including medication compliance, that will help them succeed in being on probation and not picking up a new criminal offense and then getting out of the system."

*The Legislature passes the Lockyer-Isenberg Trial Court Funding Act, which provides for trial court funding at state rather than county level.*

From the outset, the Riverside Court accepted a broad range of participants. "We took everybody, even people that were initially screened as just drug addicts, because sometimes once you get past the drug addiction, you see the mental illness," Dugan said.

Other courts, like the adult mental health court in Los Angeles, accept only misdemeanors, including quality-of-life crimes such as possessing a shopping cart. In the Los Angeles court, compliance is monitored by the provider rather than through regular court appearances. If all goes well, the only time the participant shows up in court is when, after a year of being compliant and not committing a new offense, his or her case is dismissed. If the provider reports that a participant is non-compliant, however, the judge may order the defendant incarcerated.

Los Angeles County also has a mental health court for juveniles. The court addresses the alarmingly high rate of mental illness among juvenile offenders—as high as 40 percent, according to the county Probation Department.[16] "It is one thing to talk about guilt or innocence," said Deputy Public Defender Nancy Ramseyer. "In the Juvenile Mental Health Court we are looking at why a kid got involved in the system and how we can prevent it from happening again."

Although similar in many ways to drug courts, mental health courts tend to emphasize rewards rather than sanctions. "The need to use sanctions is rare," said Judge Manley, who presides over the Santa Clara County Mental Health Court, which opened in 1999. Manley said participants do not respond as well to sanctions as they do to positive reinforcement. "We continue to encourage them to participate, keep trying to win them over. This is a very different concept from trying to punish them for refusing treatment."

## COMMUNITY COURT

Community courts, which have been established in downtown San Diego and the Van Nuys section of Los Angeles, focus on problems that traditional courts have been too overwhelmed to address effectively, specifically low-level crime, such as prostitution, shoplifting, vandalism and graffiti.

The courts, which serve neighborhoods disproportionately affected by low-level crime, incorporate many of the principles of other collaborative justice courts. They link offenders to treatment and other social services, such as job training programs and GED classes. And they depend on partnerships among multiple stakeholders, including prosecutors, defense attorneys, police, probation departments and community-based groups.

But community courts don't just offer help; they also seek to hold offenders accountable by requiring participants to perform community service. The idea is to repay the neighborhood for the damage caused by their offending. Offenders sentenced by the Downtown San Diego Community Court, for instance, have performed over 1,400 hours of community service in the downtown area since the court opened in October 2002, according to Stewart Payne, executive director of the Downtown Property and Business Improvement District. Community service activities include picking up trash, cleaning parks and painting over graffiti.

Community courts also focus on citizens as important partners. The Van Nuys Community Court, for example, has an advisory panel that includes members of the public who meet regularly with the judge to discuss community conditions and sentencing options. And the planning process for a new community court in Santa Ana, in central Orange County, included interviews with nearly 100 stakeholders, including community residents.

The Santa Ana Community Court will be housed in a former department store and bring together several of the county's collaborative justice courts,

including a drug court, mental health court and homeless court, in a single location. "The great advantage of the new community court will be having all the social services under one roof and available interactively with the court," said Alan Slater, executive officer of the Orange County Superior Court. "Right now, services are scattered all over." Judge Wendy Lindley will preside over the new court, Slater said. She has been a drug court judge for ten years and currently presides over a homeless court and circuit court for at-risk Hispanic youth.

## JUVENILE JUSTICE COLLABORATIVE COURTS

In addition to peer courts, California has courts for youth that focus on drug abuse, mental health and dating violence. Approximately 70 of the state's estimated 265 collaborative justice courts serve youthful offenders.

*First juvenile dependency (family) drug courts established (San Diego and Santa Clara)*

*California enacts the Drug Court Partnership Act, which provides $7.6 million to fund 34 drug courts*

*California voters approve Proposition 220, which allows judges in each county the option of unifying their municipal and superior courts into a single trial level.*

One of the most numerous types of juvenile collaborative justice courts are juvenile drug courts. Juvenile drug courts are not mirror images of their adult counterparts. "In the juvenile arena, the adult model doesn't work. These kids don't respond to it," said Judge Jean Pfeiffer Leonard, Chair of the Judicial Council's Collaborative Justice Courts Advisory Committee. Thomas Alexander, manager of juvenile substance abuse programs for the County of San Diego Probation Department, also noted, "We don't have issues of kids hitting bottom," referring to the concept applied to adults whose lives have been so destroyed by drug abuse that they have nowhere else to go but up.

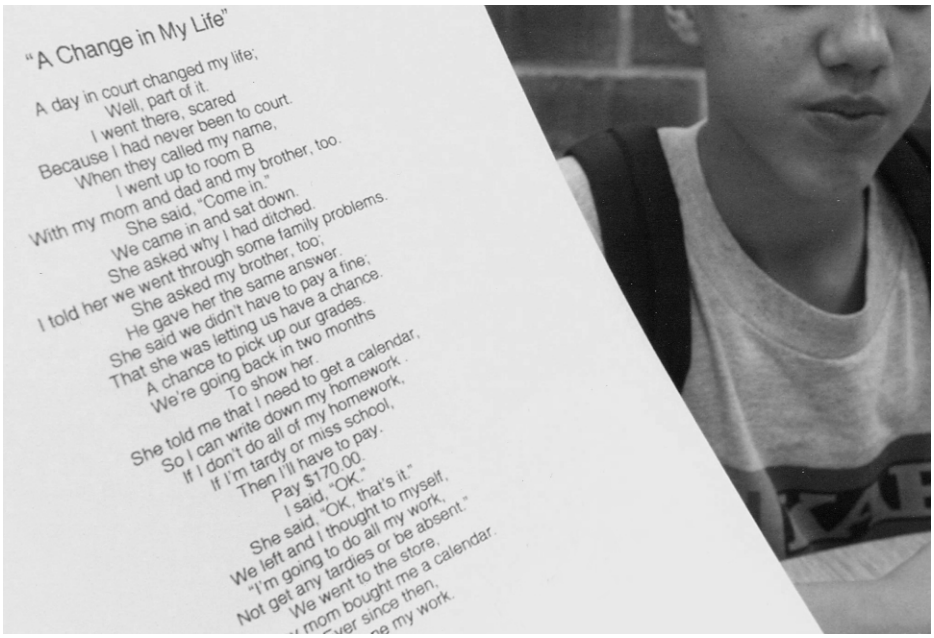
Recognizing the special needs of young people, juvenile courts have developed new approaches. For instance, courts in Los Angeles and San Francisco worked closely with school districts to establish school programs as part of the juvenile drug court.

One of California's most replicated models is the San Diego Juvenile Delinquency Drug Court, which was launched in 1998 by Judge James Milliken, who has since retired. Judge Milliken brought a diverse array of partners to the table to launch the experiment.[17] "He went to the head of Health and Human Services to get buy-in for treatment services. Then he went to the sheriff, then probation, the public defender and prosecution," said Thomas Alexander, the court's substance abuse manager. "He sold it by saying that we would be addressing a population that was responsible for higher recidivism and a lot of the juvenile felony filings. He said we'd be saving time and money and turning some young people around who would otherwise end up graduating to the adult system."

Interest in the project was fueled by studies that showed that about 85 percent of kids who commit crimes in San Diego County also abuse drugs and alcohol, and that nearly 60 percent of kids who commit serious crimes are actually high on drugs when they're booked in Juvenile Hall.[18] The Juvenile Drug Court was part of a wholesale shift in the county's approach to juveniles who abuse drugs. In 1998, the county supervisors tripled the number of field officers and partnered with community-based groups to provide caseworkers. There was also a concerted effort to increase the county's drug-treatment capacity for juveniles from 600 slots in 1997 to more than 3,500 by 2001.

In other areas of innovation, California was the first state in the country to create courts for youth that focus on dating violence and on mental health. In developing these models, jurisdictions sought to address difficult problems. Research indicates that 15 to 20 percent of juveniles in the justice system nationwide suffer from a severe biologically based mental illness and at least one out five juvenile offenders has serious mental health problems.[19] Recognizing this, U.C.L.A.'s Neuropsychiatric Institute joined the treatment team of Los Angeles' juvenile mental health court to provide assessment and treatment for the court's most severely afflicted participants.

In Santa Clara County, the Court for the Individualized Treatment of Adolescents, so named as to avoid the "mental health" label, was launched


"A Change in My Life"

A day in court changed my life;
Well, part of it.
I went there, scared
Because I had never been to court.
When they called my name,
I went up to room B
With my mom and dad and my brother, too.
She said, "Come in."
We came in and sat down.
She asked why I had ditched.
I told her we went through some family problems.
She asked my brother, too;
He gave her the same answer.
She said we didn't have to pay a fine;
That she was letting us have a chance.
A chance to pick up our grades.
We're going back in two months
To show her.
She told me that I need to get a calendar,
So I can write down my homework.
If I don't do all of my homework,
If I'm tardy or miss school,
Then I'll have to pay.
Pay $170.00.
I said, "OK."
She said, "OK, that's it."
We left and I thought to myself,
"I'm going to do all my work,
Not get any tardies or be absent."
We went to the store,
Mom bought me a calendar.
Ever since then,
my work.

"A Change in My Life," a poem written by a participant in a teen court program.

in February 2001 and works with young people suffering from serious mental illness, such as bipolar disorder, attention deficit and hyperactivity disorder, major depression, psychosis and mental retardation. Among other things, the court seeks to improve screening and assessment, and provide better links to community services, such as probation and aftercare providers. A major goal of this program is to avoid removal of the youth from their families.

The dating violence court, officially known as the Juvenile Domestic and Family Violence Court, was started in 1999 by Superior Court Judge Eugene Hyman, who sought to address the problem of youth who were committing acts of domestic violence. According to the Santa Clara County Domestic Violence Council's Death Review Committee, 12 to 42 percent of deaths in the county linked to domestic violence occurred in relationships that started when the victim was underage.[20] "Clearly," Hyman and co-authors wrote in an article describing the court in 2002, "domestic violence among teens can have very serious outcomes."[21]

*First mental health courts established (San Bernardino and Santa Clara Counties)*

*First dating violence court established (Santa Clara County)*

*First domestic relations (family law) drug court established (Riverside County)*

*The Comprehensive Drug Court Implementation Act increases funding for a wide range of drug courts, such as juvenile and family drug courts*

The Santa Clara court operates much like an adult domestic violence court. The court worked closely with a private agency to create a batterer intervention program. The program is supplemented by substance abuse programs, mental health services and other counseling as needed.

Consistent with the overarching theme of juvenile courts, the emphasis in all these specialized courts is the combination of services and programs designed to change behavior while holding juveniles accountable for their offenses. Like their counterparts that serve adults, these juvenile courts combine judicial supervision with social services in a team approach.

There are signs that this approach is spreading. Judge Leonard P. Edwards, former member of the California Judicial Council and the first juvenile court judge in the country to receive the National Center for State Courts' prestigious William H. Rehnquist Award for Judicial Excellence, noted the 1989 adoption, by the Judicial Council, of Standard of Judicial Administration 24. Standard 24 encourages juvenile court judges, among other things, to take an active leadership role to encourage the development of new programs to meet the needs of at-risk children, to foster "interagency cooperation and coordination" among the court and public and private agencies that work with children and their families, and to take an active part "in the formation of a community-wide network" to better address issues that affect court participants.

The "restorative justice" model for juvenile justice was one of the primary recommendations from the 1996 report entitled, "California Task Force to Review Juvenile Crime and the Juvenile Justice Response." Restorative justice is a philosophy that, like collaborative justice and problem-solving courts, encourages active collaborative communication among all parties involved in an offense or conflict. Since 2002, the Collaborative Justice Courts Advisory Committee has been working closely with the Administrative Office of the Courts' Center for Families, Children & the Courts to develop the California Community Justice Project to promote community justice principles and facilitate the development of innovative, restorative practices.

The Collaborative Justice Courts Advisory Committee staff served on the planning committee convened by the Administrative Office of the Courts' Center for Families, Children & the Courts for the Juvenile Court Centennial Conference held in 2003 and coordinated a track at the conference about collaborative justice in the juvenile system.

The Administrative Office of the Courts was able to enhance funding for collaborative justice initiatives in juvenile settings under the Juvenile Accountability Block Grant Program, and in 2004 established a pilot program funded by the Office of Traffic Safety for prevention of DUI for high-risk juvenile offenders through peer courts and juvenile drug court projects.

## COLLABORATIVE JUSTICE PICKS UP SPEED

At the end of 1999, the Drug Court Oversight Committee was slated to sunset, but the Judicial Council concluded that not only the state's drug courts but its ever growing number of other problem-solving courts could benefit from continued state-level coordination, and the Collaborative Justice Courts Advisory Committee was established.

The committee was considered temporary at first. "It was sort of touch and go in the beginning," said Judge Darrell Stevens, the committee's first chairman. "We were on trial for the first year and then reported to the Judicial Council and they took off the sunset clause.... My understanding was that not everybody back then was really that big a believer in drug court. Many people saw them as boutique courts and there was a lot of debate on the council as to whether the committee should even be formed. We were very fortunate that Chief Justice George and Administrative Director Vickrey felt strongly about this innovation."

Over the last few years, the committee has effectively helped institutionalize collaborative justice courts on the state level. It has been involved in virtually all key areas from funding, evaluation and the establishment of key components to education and responding to changes in the political landscape, like the passage of the statewide referendum Proposition 36. The committee has also helped shape thinking about collaborative justice courts, emphasizing not only their potential to improve outcomes for victims and offenders, but also their ability to save money for state and local jurisdictions in the long term and to enhance access to justice.

*Judicial Council establishes Collaborative Justice Courts Advisory Committee*

*Voters approve Proposition 36, which includes $120 million in annual funding for drug treatment; a statewide work group is established by the Administrative Office of the Courts to implement Proposition 36 in the courts*

*In the nation: In a joint resolution passed at their annual meeting, the Conference of Chief Justices and the Conference of State Court Administrators agree to promote the widespread integration of problem-solving courts into state court systems*

## STUDYING COST SAVINGS

The financial benefits have probably proved to be the most persuasive argument for sustaining drug court funding during the state's ongoing financial crisis. Although drug court funding has repeatedly been on the chopping block the last few years, drug court advocates have argued successfully that money saved in incarceration costs makes the state's investment worthwhile. This has led the Legislature in recent years to continue to fund drug courts—but with the caveat that drug courts, whether funded by the Partnership Act or the Comprehensive Drug Court Implementation Act—should focus on generating savings for the state through strategies such as serving felons with prison exposure.

Remarkably, drug courts have seen their state funding grow even with the state facing a $6 billion plus deficit.

Drug court advocates have also used financial arguments to create a state funding stream for dependency drug courts, arguing that by more speedily reuniting families torn apart by drugs, the state not only saves money in foster care and related social service costs but also avoids federal penalties by ensuring compliance with federally mandated guidelines for speedy permanency planning. In 2004, the Legislature and Governor approved $1.8 million for dependency drug courts, an amount distributed to nine courts. In 2005, the Legislature appropriated funds for the Department of Social Services to evaluate the costs and benefits of dependency drug courts.

A significant tool in the funding debate is a study sponsored by the California Administrative Office of the Courts. Called "California Drug Courts: A Methodology for Determining Costs and Avoided Costs," the three-phase study made cost savings tangible.[22] Eight of the nine drug courts in

## COSTS SAVED BY DRUG COURTS

### Investment Costs

- *Investment in drug court is similar to that in traditional court processing, ranging from about $5,000 to $19,000 per participant*

### Outcomes

- *Most of the benefits of drug court come from less costly outcomes for participants due to higher retention rates and reduced recidivism*
- *Retention rates for drug courts in the study averaged 52 percent and nearly half the courts had retention rates greater than 65 percent*
- *Recidivism rates averaged 17 percent for graduates, 29 percent for all drug court participants and 41 percent for a comparison group of offenders*

### Outcome Costs

- *Outcome benefits ranged from about $3,200 to over $20,000 saved per participant*

**Source: "California Drug Courts: A Methodology for Determining Costs and Benefits; Phase II: Testing the Methodology" (October 2004)**

this study produced net benefits over a four-year period. For a group of 900 participants who entered these drug courts, the state realized a combined net benefit of $9,032,626, and similar benefits could be expected in the future, the study said. However, the study found that savings varied among sites—from about $3,200 to over $20,000 per participant.

The Collaborative Justice Courts Advisory Committee has also advised the Judicial Coucil regarding implementation of Proposition 36, which diverts non-violent drug offenders into treatment and adds $120 million

annually for treatment programs statewide. When the measure passed with 61 percent of the statewide vote, the Administrative Office of the Courts established a work group that created implementation models based on drug court protocols. In areas such as promoting early intervention and creating links between courts and treatment agencies, "the drug court model is being used by the many courts to implement Proposition 36," said Judge Manley, a member of the work group on Proposition 36. In addition, many courts created a mechanism for those who failed out of Proposition 36 courts to go directly into drug court.

To educate practitioners about the implementation standards, the Administrative Office of the Courts sponsored statewide symposia for judges funded by the California Endowment and the University of California at San Diego. It also co-sponsored conferences with the Department of Alcohol and Drug Programs and developed an on-line course for those involved in Proposition 36 courts. Proposition 36 has succeeded in linking thousands of additional offenders to drug treatment. It has also helped increase public awareness about the costs of incarceration and the efficacy of drug treatment.

*First community court established (Van Nuys)*

*First juvenile mental health courts established (Santa Clara County and Los Angeles County)*

*The Administrative Office of the Courts uses a distance learning broadcast to train teams planning mental health courts*

"The Judicial Council and the Administrative Office of the Courts have been effective partners with the Department of Alcohol and Drug Programs in helping implement Proposition 36, and in developing the drug court system in California. This is an example of collaboration between the branches of government that works." said Kathryn P. Jett, Director, California Department of Alcohol and Drug Programs.

Some drug courts have changed their eligibility requirements to include new populations since the advent of Proposition 36. Drug courts can do this because they have more flexibility than Proposition 36 courts in determining eligibility. For instance, "drug courts can target drug-abusers who've been charged with burglary or other crimes and not necessarily a drug crime," said Del Sayles-Owen, deputy director in the Department of Alcohol and Drug Program's Office of Criminal Justice Collaboration.

Proposition 36 funding sunsets in 2006, at which time the Legislature may consider proposals to renew the law. While the story of Proposition 36 is still being written, it has already demonstrated the political popularity of the collaborative justice approach and the flexibility of California's drug courts, which have modified their practice and expanded their capacity in response to the new law.

**Figure 2: SELECTED FINDINGS OF THE DRUG COURT PARTNERSHIP EVALUATION (2002)[24]**

**Seventy percent of participants had used drugs five or more years, with an average of two arrests (one conviction and incarceration) per participant in the two years prior to drug court.**

### Reduction in Recidivism

- *Participant arrest rate 85 percent lower in the two years after entering drug court than in the two years prior to entering drug court*

### Cost Savings

- *$43 million in estimated jail and prison costs averted through the $14 million Drug Court Partnership program*

### Social Outcomes

- *95 percent of babies born to participants during drug court were drug free*
- *70 percent of participants were employed when completing drug court; 38 percent were employed at time of entry into drug court*

## IDENTIFYING BEST PRACTICES

The search for best practices has been another area of focus of the Collaborative Justice Courts Advisory Committee. In 2001, the committee contracted with the National Center for State Courts and the Justice Management Institute to identify national trends in problem-solving courts, with particular attention to the most promising practices. Based on the National Center's research and inspired by the federally endorsed "Key

Components," the committee established 11 guiding principles of collaborative justice courts. *(See Figure 1.)*

The Justice Management Institute helped committee staff develop a survey to assist local courts in identifying promising practices. In the end, the National Center and the Justice Management Institute studies identified several practices common to collaborative justice courts in California:

- Team approach
- Proactive role of the judge
- Immediacy of response
- Community involvement
- Participant accountability
- Coordination of related cases

*Two studies demonstrating that drug courts save money are published ("California Drug Courts: A Methodology for Determining Costs and Avoided Costs" and "Drug Court Partnership: Final Report")*

*California Drug Courts win National Association of Drug Court Professionals Award*

*The Legislature passes the Trial Court Facilities Act, co-sponsored by the Judicial Council and the California State Association of Counties, shifting ownership of court facilities from local governments to the state*

Although the National Center found few differences between practices in California and around the country, the ones they did find were noteworthy. It found, for instance, California's effort to identify promising practices across the full range of collaborative justice courts to be unusual, as was the state's attempt to coordinate and support development of these varied courts through an integrated court system program.

Another important research effort was mandated by the Drug Court Partnership Act of 1998. That study, conducted from the spring of 1999 to the winter of 2001, measured reductions in crime, cost savings and social outcomes.[23] *(See Figure 2.)*

The advisory committee is currently looking at ways to ensure that courts around the state are updated on an ongoing basis about promising practices, and has already made efforts in that direction. In 2001, the Collaborative Justice Program Unit redesigned and expanded its Web site and experimented with distance learning by broadcasting a training module via satellite to approximately 450 practitioners in 29 teams planning mental health courts. Further, it partners with the California Association of Drug Court Professionals to sponsor its annual conferences, supports quarterly drug court coordinator network meetings and has worked with the Center for Judicial Education and Research at the Administrative Office of the Courts to develop a course on substance abuse for its Continuing Judicial Studies Program. In addition, the unit participates in educational projects sponsored by the Center for Families, Children & the Courts, such as their statewide symposium for peer courts in 2001.

The committee has also collaborated with the Center for Judicial Education and Research to recommend minimum educational standards for practitioners in collaborative justice courts. An early product of this collaboration was an online course for judicial officers in Proposition 36 courts. Included in the training package were copies of a Proposition 36 self-study course on CD-ROM, materials prepared by several California judicial officers and a script for judicial officers to use when taking a defendant's plea. During the first six to nine months that the course was available, approximately 200 judicial officers reviewed the material and completed the course. Currently, the committee is partnering with the Center for Judicial Education and Research to develop judicial education curricula in collaborative justice through a grant from the State Justice Institute. A two-day course focusing on broad application of collaborative justice in the court system will be presented in 2005 at a weeklong Statewide Judicial Branch Conference, which will bring together the Judicial Council and the State Bar and the California Judges Association annual meetings.

To continue expanding outreach to the full range of collaborative justice courts, the committee sponsors networking meetings for each type of collaborative court on an intermittent basis, as well as grant management trainings, co-sponsored with the Administrative Office of the Courts' grants program.

The growth of California's collaborative justice courts is happening in the context of significant change within the judicial branch's infrastructure. As part of the system-wide unification process, the state assumed control of trial court funding, which had previously been bifurcated between the counties and the state. In 1998, voters passed a constitutional amendment that provided for voluntary unification of superior and municipal courts in each county into a single countywide trial court system. And legislative acts in 2001 and 2002 mandated the transfer of 21,000 court workers and 450 court facilities from county to state supervision. All of these changes have given the state court system more resources and more policy-making authority.

## THE FUTURE: WHAT'S NEXT FOR COLLABORATIVE JUSTICE IN CALIFORNIA?

Advocates of collaborative justice within the California courts say they are constantly on the lookout for ways to increase support for innovation. For instance, they see in the voter-approved Proposition 63, which is expected to allocate $500 to $700 million a year for mental health services, an

## TRANSFERRING PRINCIPLES AND PRACTICES TO GENERAL CALENDARS

**Judges interviewed in focus groups considered the following principles and practices more potentially transferable from collaborative justice courts to general calendars (listed in approximate order of consensus concerning their transferability):**

1. **Proactive, problem-solving orientation of the judge;**
2. **Interaction with the defendant/litigant;**
3. **Ongoing judicial supervision/return court appearances;**
4. **Integration of social services (although considerable qualifications were expressed concerning the ability to do this as effectively outside a specialized court setting);**
5. **Team-based, non-adversarial approach (although not appropriate in all situations and partly dependent on the attorneys); and**
6. **Sanctions and rewards (although approximately as many judges felt these practices were not transferable).**

**Source: "Collaborative Justice in Conventional Courts: Opportunities and Barriers," Center for Court Innovation and Judicial Council of California, 2004**

*California funds collaborative justice dependency drug courts with $1.8 million*

*"Collaborative Justice in Conventional Courts: Opportunities and Barriers" is published*

*In the nation: In a joint resolution passed at their annual meeting, the Conference of Chief Justices and the Conference of State Court Administrators reaffirm their commitment to advance the study, evaluation and integration of problem-solving techniques into the administration of justice*

opportunity to partner with the mental health system to expand mental health courts and other court-related mental health programs.

They are also seeking ways to institutionalize successful practices, although how to achieve that goal—or even what "institutionalization" means—remains an open question. Clearly, there are many different approaches. One proposed strategy involves disseminating promising practices from collaborative justice courts to traditional courts, a subject

studied in a report commissioned by the Collaborative Justice Courts Advisory Committee. The report—the first ever to assess the potential for transferring best practices from problem-solving courts to mainstream courts—was issued in 2004 by a team of researchers from the Center for Court Innovation and the Administrative Office of the Courts' Office of Court Research, who conducted focus groups with dozens of judges in both California and New York. The study found several elements—including links to treatment, direct interaction with litigants and judicial monitoring of offender compliance with alternative sanctions—that could be replicated outside of the specialized court setting at little or no cost.[25]

Some judges in California have already begun to do this. Judge Marcus in Los Angeles, for example, has been applying problem-solving principles to cases involving welfare fraud. Traditionally, those convicted were placed on probation and ordered to perform community service and re-pay the money. "They'd get five years' probation and be given a date four years and eight months later, and invariably none of them had done what they were supposed to so they'd be sentenced to 180 days in jail. That's ineffective because you haven't gotten restitution and community service, and you're wasting a jail bed on a non-violent population," Marcus said. In contrast, Marcus has a much higher compliance rate through more rigorous monitoring and the application of interim sanctions. He might order an offender to perform 80 hours of a 200-hour community service sentence within four months and schedule a return appearance shortly after the four-month deadline to check on compliance. "If they haven't done it, I might raise their bail and send them to jail for a couple of days," Marcus said. This kind of "shock incarceration"—borrowed from the drug court playbook—has proven far more effective than the traditional approach, Marcus said.

Another approach involves adapting and streamlining problem-solving techniques to accommodate a much larger population than that handled currently by full-scale collaborative justice courts. In Santa Clara County, for example, eight judges handle all of the county's 7,000 to 9,000 narcotics cases a year. The judges, who handle both Proposition 36 and traditional drug court cases, are located in a special courthouse with many drug-treatment and other social services on site and additional services across the street. The judges are able to accommodate such a high volume caseload by "taking the best of the drug court model," including judicial monitoring, drug testing and sanctions and rewards, and eliminating other ingredients, like elaborate teamwork, Judge Manley said. Cases involving mentally ill offenders are also now being handled in the same courthouse.

This approach has helped the county dramatically reduce its trial calendar from about 1,700 a year to about 400. "If you want treatment, you stay in that building; if you want to fight and go to trial, you are then sent to another court, which is adversarial," Manley said. "When you create a whole courthouse around treatment and alternatives to incarceration, I think it creates an atmosphere where you're more likely to settle even more serious cases, just as you're more likely to have success with the mentally ill when you put them all together because the successes of those they observe give them hope and make them more likely to want to participate in a court like that."

Orange County is considering a similar approach with its new Santa Ana Community Court, which would house all of the county's collaborative justice courts under a single roof. Under the proposal, the courthouse would contain a drug court, a dual diagnosis court and a homeless court, plus a new caseload of mental health–related matters existing in the criminal caseload that are not currently addressed by other collaborative efforts (this new caseload is a result of the passage of Proposition 63, which will provide more funding for people with serious mental illness).

Dependency drug court systems that serve large caseloads have also been developed. Jurisdictions implementing these models include San Diego, Sacramento and Santa Clara. These projects are currently the subject of an evaluation by the California Department of Social Services.

According to William C. Vickrey, Administrative Director of the Courts, "The long-term goal of these institutionalization efforts is to make collaborative justice courts available to all cases for which they might be appropriate."

This commitment to implementing problem-solving principles is why California is considered a national leader in the movement to develop courts that offer greater public access to the justice system, emphasize partnerships with stakeholders and seek to improve public confidence in justice. With its hundreds of collaborative justice courts and its commitment to continue to study and support them, California, along with other court systems across the country, continues to move forward in expanding the scope of problem-solving principles and practices.

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## Judicial Council of California

The 27-member Judicial Council is the policymaking body of the California courts, the largest court system in the nation. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial and accessible administration of justice. The Administrative Office of the Courts serves as the council's staff agency.

This publication was developed as a project of the Judicial Council's Collaborative Justice Courts Advisory Committee, which makes recommendations to the Judicial Council for improving and evaluating collaborative justice courts throughout the state.

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## Center for Court Innovation

The winner of an Innovations in American Government Award from the Ford Foundation and Harvard's John F. Kennedy School of Government, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how courts and criminal justice agencies can aid victims, change the behavior of offenders and strengthen communities.

In New York, the Center functions as the state court system's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's problem-solving courts include the Red Hook Community Justice Center and the Midtown Community Court as well as drug courts, domestic violence courts, youth courts and mental health courts.

The Center disseminates the lessons learned from its experiments in New York to both national and international audiences. The Center's technical assistance team has, among other things, played a key role in helping three dozen jurisdictions (including England and Wales) replicate the community court model. The Center's help takes numerous forms: writing research reports, hosting site visits to its demonstration projects, helping create community outreach and needs assessment plans, leading brainstorming sessions, designing evaluation schemes and providing ongoing training.

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