CRIMINAL JUSTICE COUNCIL OF THE JUDICIARY

Report on Delaware's Problem-Solving Courts

July, 2016

EXECUTIVE SUMMARY

Over the course of the last two decades, Delaware has expanded its implementation of problem-solving court initiatives in both the adult and juvenile justice systems to include the Truancy Court, the Human Trafficking Court, the Gun Court, the Reentry Court, the Drug Court, the Mental Health Court, the Veterans Treatment Court and the DUI Court. These specialized courts were designed to address the root causes of specific, recurring issues within the criminal justice system and to mete out individualized justice in order to reduce recidivism, improve public confidence in the justice system, and provide defendants and their families with access to needed services. This report is a first attempt at analyzing which of these various initiatives have demonstrated sufficient utility or promise to warrant continuation in Delaware and to recommend enhancements to those continuing programs in order to improve outcomes.

This report is the culmination of over a year-long collaborative effort by the fifteen members of the Criminal Justice Council of the Judiciary ("the Council"), who were appointed by Chief Justice Leo E. Strine, Jr., to review all of Delaware's problem-solving courts.[1] Because of budget, personnel, and technological constraints, there is no comprehensive data from which to draw definitive conclusions about the effectiveness of these specialized courts and the success rates of those defendants who participate in the problem-solving courts compared to defendants in regular court proceedings. Nonetheless, using statistical information that has been collected to date, as well as generalized national data, and the anecdotal evidence of both the problem-solving court judges and their community partners, this report reaches conclusions and recommendations for each problem-solving court. However, before addressing each court individually in this Executive Summary, some general comments are in order.

Each of the problem-solving courts perform the unique function of attempting to address the underlying conditions that often lead to criminal activity. In many cases the participation allows the individual to avoid a conviction and the stigma and handicaps which would follow. As will be indicated in the pages that follow, most of our courts perform this function well. The real question is whether there is a better administrative process that will allow for greater consistency and efficiency and better utilize the limited resources of treatment providers.

The problem-solving courts currently operating in our state have come about because of the interest and commitment of a particular judge who recognized and was willing to undertake a new look at an old problem. It was the drive and dedication of that judge that moved the process forward and led to the creation of the particular court of their interest. This has led to two concerns. First, that when that judge retires or becomes burned out, often it is difficult to

[1] The Council did not include the DUI Court in its review because that court did not begin operating in the Court of Common Pleas until December 2014, several months after the Council began work on this project.

reenergize another judge with the same enthusiasm and commitment. As such, the problem-solving court is not as effective and places a greater burden on the overall court in which it operates. Second, the judge-driven process often leads to each judge doing it "their way" and the issues of fairness and consistency arise. This is important because the role these courts play in our criminal justice system cannot be understated. Beyond the advantages noted previously to the individuals involved, these courts divert individuals away from the traditional court and free up judicial resources to handle the more serious and complex criminal and civil matters. With thousands of felony cases filed each year in Superior Court and many more misdemeanor matters in the Court of Common Pleas, this is significant. So the question is, if we were starting over, how would we manage our problem-solving courts?

The Council believes a unified statewide treatment court would have been the answer. The matters being addressed presently by the problem-solving courts could be placed under a single umbrella and managed on a statewide (not county) basis. The Council believes this would lead to a greater ability to address multiple treatment needs of defendants assigned to these courts, as it is common for defendants to have multiple underlying conditions affecting their behavior. It would also allow for a consolidation of treatment providers into a single coordinated unit to address the particular treatment needs of each defendant and ensure communication and coordination of that treatment. This single source approach would include housing and employment addressed in the reentry court and drug and mental health issues of our traditional problem-solving courts. The various state agencies involved in providing service would have a single location point (or three if there was one in each county) to offer their services and avoid the frustration of visiting multiple sites to obtain needed and available services. Such programs have been effective in various community courts around the country and have provided a holistic approach to the issues addressed now in individual county-run courts. Of course to be effective, the unified treatment court would need dedicated staff assigned to manage the treatment court and judges specifically assigned to those courts. With the caseload of our trial courts, this would be difficult to accomplish. While perhaps Commissioners and Senior Status Judges could be tapped to manage such a unified court, funding for such positions has been and continues to be a significant issue. There are, however, significant benefits of using these positions that the Council believes will far outweigh the cost when one considers the consistency, fairness and commitment that would come with the positions.

For decades now, our society has turned to the criminal justice system in an attempt to address the treatment needs of our citizens. It has led to a booming prison population, increased expenditures by state and county governments and burgeoning caseloads that have been difficult for the Courts, prosecutors and defense counsel to manage. In spite of this effort, the problems that caused the birth of our problem-solving courts remain mostly unaffected. Drug addiction has not been significantly affected, often our solution to mental health issues is to incarcerate the individual, and the unavailability of employment and education for those leaving prison fosters few alternatives to continuing one's criminal activity. While these issues will remain unless significant resources outside of criminal justice are committed to addressing them, the problem-solving courts have

provided an avenue for one to succeed and often does so without criminalizing the individual and compounding their issues with the cloak of a criminal conviction.

The Council recognizes that it is unrealistic in difficult financial times to commit to the dramatic change of a statewide treatment court. Therefore, as explained in this summary, the Council is recommending initial steps that can be taken now to lay the foundation for a statewide treatment court if a decision is made to move in that direction. Finally, it is important to note that since the Council started its work, and because of its initial findings, many changes have already taken place in the mental health and drug courts, and a revamping of the treatment providers requirements in providing treatment is underway. As such, even before the Council's report is issued, we are pleased to see positive changes to improve efficiency and consistency, and the services provided by these courts.

With those opening comments, we will now address each court in the Executive Summary.

Truancy Court

The Truancy Court in the Justice of the Peace Court is statutorily created. It offers a holistic, multi-prong approach to the problem of truancy that includes families, the community, state agencies, service providers, and the school districts. The Council found that the program is well-run, the staff is well-trained, and the court is following demonstrated best practices. The Council recommends that the Truancy Court continue to be supported. The Truancy Court needs a technology upgrade to allow for data sharing between the Truancy Court and the Family Court and to allow for the collection of statistical data. The Truancy Court also requires additional personnel, particularly in New Castle County, to handle the significant caseload in that county.

Human Trafficking Court

The Human Trafficking Court in the Court of Common Pleas, ("CCP"), a post-adjudication (probation) program, is attempting to address the issues of participants who present some of the most difficult cases in the criminal justice system. Thes defendants have endured years of trauma and are trapped in a cycle of self-destructive, criminal behavior. While the staff and the judge overseeing this effort are extremely dedicated to this group of defendants, the Council finds that it is difficult to continue to justify the resources that are being expended on so few probationers who have demonstrated a low rate of success. The Court is highly dependent on a single judge whose dedication to the program is beyond reproach but places it in jeopardy if the judge were to leave. It is also believed that many of the issues being addressed in this Court could be equally addressed in a drug or mental health court or on a CCP calendar rather than a separate problem-solving court, as the prostitution which is leading them to this court is a symptom of more significant underlying issues. In addition, the Council finds that, at the moment this is really a specialized probation calendar of CCP rather than a traditional problem-solving court. As such, as presently structured, it is difficult to support as a problem-solving court but the decision whether to continue the program in some other form is a matter properly left to the discretion of the Chief Judge of CCP.

Gun Court

The Gun Court in the Family Court is not a problem-solving court. It does not offer any type of specialized treatment to address the underlying problem of juveniles with guns.

Instead, the Gun Court is simply a specialized docket that was created to speed up the disposition of juvenile gun cases and to monitor such cases that are transferred back and forth between the Family Court and the Superior Court through the amenability/reverse amenability process. As such, the decision whether to continue this specialized docket is a matter that rests soundly within the discretion of the Chief Judge of the Family Court.

Reentry Court

The Reentry Court in the Superior Court, as it currently is structured, also does not function as a problem-solving court. Rather, the Reentry Court is a Department of Correction ("DOC") initiative designed to provide services to offenders to help reintegrate them into society following a prison term. The judge presiding over the Reentry Court has no input into who participates in the program and has little oversight of the services provided. The Reentry Court judge merely acts as an enforcement mechanism in order to compel compliance with the terms of a defendant's release. Without predictable entry criteria, established best practices, and enhanced judicial input, the Council does not recommend supporting the Reentry Court as it currently is structured.

Drug Court

There are Drug Courts in the Family Court, the Court of Common Pleas, and the Superior Court[2] in all three counties, which have been in operation for more than a decade. Although there are data collection issues in all of the courts, the available information suggests that the adult diversion programs in the Superior Court and the Court of Common Pleas are working well to treat the underlying problem of addiction and reduce recidivism. Unfortunately there is little data available to draw any definitive conclusions about the relative success of these courts. As part of the Council's review, the Bureau of Justice Assistance Drug Court Technical Assistance Project of American University was asked to conduct a review of the drug courts in Delaware. While the body of the report will be included in the Drug Court section of this report, significant issues concerning the treatment being provided under the State contracts were raised by the reviewing team. The *ad hoc* management structure of these courts, the lack of administrative support and the lack of accurate data were all identified. The Council recommends that consideration be given to consolidating the Drug Courts of the Court of Common Pleas and Superior Court in each county with a cross designation of judges assigned to the Court to handle both felony and misdemeanor offenses. Efforts are ongoing to consolidate these courts in NCC, and if successful, to follow in Kent and Sussex. The Council also recommends that Drug Court migrate to a diversion only court and stop monitoring TASC cases that are not part of the diversion process. It is believed that the non-diversion cases can be fairly and appropriately monitored by probation, and violations can be handled by the sentencing judge. Whatever benefits may have been derived from drug court monitoring are simply not outweighed by the resources that are being expended and

[2] The Superior Court in Kent and Sussex Counties has two "tracks" for its Drug Court. Track I is a post-adjudication, fast track violation of probation ("VOP") calendar. Because Track I is not truly a problem-solving court, the Council concludes that the decision to maintain this specialized docket is a matter squarely within the administrative discretion of the President Judge of the Superior Court. Any references to the Superior Court Drug Court in this report are limited to the Track II pre-adjudication, diversion program.

could be more efficiently and effectively utilized elsewhere.

The Family Court Drug Court operates differently from its adult counterparts in the other trial courts because it is a post-adjudication program and was created by statute. There is currently pending legislation, consideration of which was tabled while the Council completed its initial review, which would re-vamp the Family Court Drug Court and make it a pre-adjudication, diversion program. The Council supports this change as it would be consistent with the practices of the other drug courts and perhaps would open the discussion as to whether those diversion cases could also be merged into a single statewide court.

Veterans Treatment Court

The first Veterans Treatment Court in Delaware began as a pilot program in the Superior Court in Kent County in 2011 and expanded to New Castle County in 2012 and Sussex County in 2014. The Veterans Treatment Court is modeled on the Drug Court and the Mental Health Court but is specially designed to serve military veterans and active duty personnel through a coordinated approach that includes not only the traditional Drug Court and Mental Health Court partners, but also includes the Department of Veterans Affairs ("VA"), specially trained volunteer veteran mentors and other organizations supporting veterans and their families. Most of the participants qualify for VA benefits; therefore, the treatment costs for those in the Veterans Treatment Court are not borne by the State. By all accounts, this Court is running well, is using the best practices established for these courts and their mentoring program is a model for other courts to follow. Given the special needs of its participants and the unique features of the program, the Council recommends continuing the support for the Veterans Treatment Court.

Mental Health Court

During the review of Mental Health Court, the coordinator support being provided to the Court of Common Pleas under a grant lost its funding. This led to a decision by the Court of Common Pleas and Superior Court to combine the Mental Health Court into a single statewide Court that is administratively and judicially handled by the Superior Court. This effort has provided good insight regarding the issues of consolidation and the referral process in each Court that will be helpful as consolidation of other Courts considered. As in other treatment courts, issues regarding treatment needs, resources and outcome data remain, and a lack of a mental health professional coordinator to assist the Court continues to be a concern. With appropriate professional and judicial resources, however, the Council believes a statewide court could also encompass those juveniles being independently managed in Family Court and would allow for a more consistent and coordinated addressing of the needs, particularly once a juvenile turns 18. At the moment, these resources are not available and consolidation of all Mental Health Courts into a single statewide court is not feasible or recommended.

I. Introduction

This initial report is the culmination of over a year-long collaborative effort by the members of the Council. The Council was created by Administrative Directive 186, which was issued by Chief Justice Leo E. Strine, Jr. in October 2014.[3] The Council is co-chaired by the Honorable William C. Carpenter, Jr. and the Honorable Jan R. Jurden. The other members of the Council are the Honorable William L. Chapman, Jr., the Honorable Kenneth S. Clark, Jr., the Honorable Robert B. Coonin, the Honorable Carl C. Danberg, the Honorable Alan G. Davis, the Honorable Alicia B. Howard, the Honorable Vivian L. Medinilla, the Honorable Mardi F. Pyott, the Honorable Andrea L. Rocanelli, the Honorable Paula T. Ryan, the Honorable Robert H. Surles, the Honorable Paul R. Wallace, and the Honorable William L. Witham, Jr.

The scope of the Council's initial mandate was broad. The Council was charged with reviewing all of the different problem-solving courts in Delaware, in both the adult and juvenile justice systems, and determining which problem-solving courts have demonstrated sufficient utility in terms of improving public safety, the rehabilitation of offenders, and the efficiency of the judicial system to warrant continuation. For those problem-solving courts that the Council recommends continuing in operation, the Council also was charged with developing statewide standards, rules of procedure, and outcome measures to govern the courts' respective operations and to measure their performance. Finally, the Council was charged with identifying the most effective policy body in which overall criminal justice policy should be addressed by the Judiciary in cooperation with the other Branches, identifying means to consolidate, eliminate, or revise the mandate of existing criminal justice policy bodies that have overlapping or inconsistent mandates, and identifying policies and procedures to ensure that the Judiciary's members on those bodies collaborate with their judicial colleagues in advance of meetings so as to ensure that the Judicial Branch's members on those bodies speak, to the extent possible, for the Judiciary as a whole.

This report contains the Council's findings and conclusions with respect to the first part of its mandate. As part of its review of all of Delaware's problem-solving courts, the Council, following its initial organizational meeting in October 2014, prepared a questionnaire, which was completed by each presiding judge of every problem-solving court in Delaware. The Council then divided into subcommittees comprised of at least two-member teams. The subcommittees were assigned a specific problem-solving court to review, and over the course of several months, the subcommittees conducted courtroom visits and interviews with the presiding judges. The full Council met on three subsequent occasions in order to receive and consider the reports of the subcommittees and had several meetings to review the draft report.

In this report, the Council will set forth an overview of each problem-solving court and offer critical findings and recommendations as to each Court. While we have tried to incorporate in our report the major recommendations from the review conducted by American University, we have also attached a copy of their complete

[3] Administrative Directive 186 later was rescinded, and the Council was reestablished by Order dated August 19, 2015.

report. To comply with the Council's next area of review, standards and procedures based upon best practices, the Administrative Office of the Courts has applied for a grant to have the National Center for State Courts ("NCSC") develop a bench book to comply with this mandate. Early on in our review, the co-chairs of the Council met with representatives of NCSC to request their assistance in our review of problem-solving courts. The NCSC had recently completed a standard and procedure manual for another state and clearly had the expertise to assist in this area. At that time funding was limited, so American University was selected to assist with our initial review. However as the Council moves to the next phase of its review, it is hoped that the NCSC will be instrumental in establishing statewide standards.

As was indicated in the Executive Summary portion of this report, the Council would recommend, if funding was ever to become available, that a unified statewide diversion treatment court be considered. This would be a single statewide court to which all treatment related diversions would be merged with consistent programming and judicial oversight developed by best practices as identified by NCSC. This would relieve the present burden that problem-solving courts now place on our trial courts and allow for better coordination of treatment and supervision services by our treatment providers and probation.

So with these general comments, we will now review each problem-solving court.[4]

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[4] The Council wishes to recognize and express its appreciation for the outstanding assistance in preparing this report by Gayle Lafferty of the Supreme Court, Ashley Tucker of the Administrative Office of the Courts as well as Linda Carmichael and Tracy Walls-Pulling of the Superior Court.

II. Truancy Court

The Truancy Court was established by statute.[5] It operates in the Justice of the Peace Court ("JP Court") in all three counties, although the Family Court has concurrent jurisdiction over contempt proceedings. It began operating in New Castle County in 1994, in Sussex County in 1997, and in Kent County in 1999. There are dedicated magistrates who are assigned to the Truancy Court based on interest, but they are rotated every two years. There currently are 2 assigned magistrates in New Castle County, 4 in Kent County, and 5 in Sussex County. There also is one statewide coordinator, one full-time case manager in New Castle County, and a part-time case manager in both Kent and Sussex County. Statewide, the program currently serves about 900 individuals (450 in New Castle County, 125 in Kent County and 325 in Sussex County). In New Castle County, the magistrates hold the Truancy Court calendar 10 days per month. In Kent and Sussex Counties, the magistrates hold the Truancy Court calendar 1 to 3 days per month.

The goal of the Truancy Court is to get truant children back into the classroom to complete their education. If a public school student has 3 or more unexcused absences from school in a single year, the school[6] may hold a truancy conference and, thereafter, may file a criminal truancy complaint against the parent or a civil truancy complaint against the truant child, if the child is 12 or older and the child's parent has a valid affirmative defense. Because truancy often is a symptom of other problems, such as drug use, mental illness, homelessness, or other family problems, truancy arraignments often are lengthy as the magistrate attempts to discern the root cause of the truancy and to identify potential resources available to help the truant child or the family.

If the child or parent accepts a plea to the truancy charge, the participant is eligible to enter the program. Once the plea is entered, sentencing is deferred. If the participant successfully completes the program, the guilty plea is automatically expunged. A failure to complete the program may result in fines or, in rare cases, jail time. Participants are monitored through regular status conferences, which are held every four or five weeks. Compliance is determined by measuring the reduction rate of unexcused absences when compared with the attendance record at filing. A participant will be deemed to have successfully completed the program if he achieves an 80% or greater reduction in the rate of unexcused absences. The average compliance rate is 43% (for 5,900 dispositions). Fully compliant cases, on average, are open for six months.

The Truancy Court collects data on its participants, but the database is not compatible with DELJIS. The Truancy Court has implemented nationally-recognized best practices, and the Truancy Court magistrate and staff receive regular training. Funding for the Truancy Court is built into the JP Court's operational budget. There is no grant funding. The magistrates do not believe that the Truancy Court operations adversely impact their availability for traditional court proceedings.

[5] 14 *Del. C.* §§ 2702, 2721-36.

[6] The magistrates report that the 19 school districts in the State do not apply the truancy laws uniformly.

The Council's findings:

- The Truancy Court is a problem-solving court that is functioning well, despite limited resources.
- The Truancy Court has uniform statewide procedures and has dedicated judicial officers and staff who are well-trained.
- Although the Truancy Court collects data on its participants, its database is not compatible with DELJIS and results in the need to enter information twice. It also limits the Truancy Court's ability to share information with the Family Court.
- There is a lack of resources in New Castle County to handle the existing caseload. There are only two Truancy Court magistrates in New Castle County who handle half of the State's truancy cases. They spend ten or more days per month on truancy cases, compared to one to three days per month spent by magistrates in the other counties.
- The caseload is dependent upon the cooperation of the school districts charged with the responsibility of referring the student to the Court. Unfortunately there is inconsistent enforcement by school districts throughout the State.

The Council's recommendations:

- *Technology upgrade*—The Truancy Court needs an upgrade in its technology so that it can share information with the Family Court, collect better statistical data, and avoid the waste of having to double enter data into its system and DELJIS.
- *Additional Staff*—There is a real need for an additional case manager and judicial officer in New Castle County. The non-truancy caseload in New Castle County is simply too large for the available staff to handle the caseload effectively.
- *Dedicated specialist*—The Truancy Court needs a dedicated case specialist who could act as a liaison between the student and/or the student's parents, the Truancy Court, and the school district. This would allow for better coordination of services and more consistent referrals from the school districts.

III. Human Trafficking Court

The Human Trafficking Court (formerly known as the Trauma Informed Probation Court) is a Court of Common Pleas' ("CCP") initiative that began in New Castle County in 2012. The program has not expanded beyond New Castle County. The Human Trafficking Court has one designated judicial officer, who continues to handle a normal caseload, and one part-time staff person who is paid for 15 hours per week by the Court of Common Pleas and is paid for 14.25 hours per week from a grant administered by the Administrative Office of the Courts ("AOC"). The program serves 20 to 30 participants, although there is no formal cap on participation. The Human Trafficking Court has two half-day calendars per month.

The goal of the Human Trafficking Court is to provide defendants who are involved in prostitution or those at risk for involvement in prostitution with access to substance abuse treatment, mental health treatment, and specialized trauma services and to provide cost-effective alternatives to incarceration. The program is voluntary, and the court may accept a referral from any source, including a self-referral. The participant must be involved with or at risk of being involved with prostitution but does not have to be facing a prostitution charge. Once referred, the major stakeholders (Probation and Parole, the Attorney General, the Public Defender, and the Treatment Access Center ("TASC")) are given two weeks to comment on the candidate's eligibility.

A candidate will not be admitted if facing a felony charge or, with some exceptions, if there is a history of violent misdemeanor convictions. As such, the opportunity for entry is limited. In addition, this is a post-adjudication Court and a plea to a misdemeanor is required for entry.

Before entry, the participant will undergo an assessment in order to determine the best course of treatment. A new participant will appear at monthly status hearings. If the participant is compliant with the program, status hearings may be reduced to every other month. To successfully complete the program, the participant must have at least 3 straight months of negative urine screens, 3 months without any new criminal charges or VOPs, and 3 months of compliance with the terms of their probation. The participant also must agree to a discharge plan that includes aftercare treatment. Successful completion does not lead to expungement of the criminal charge but can lead to an early discharge from probation and forgiveness of fines and court costs. The average length of time to complete the program is about one year. The successful completion rate is about 26%.

Because of the newness of the program, there is no reliable recidivism data, nor does the court have the ability to compare the success of its participants with defendants outside of the program. Moreover, because there are so few prostitution-related courts nationwide, there are no developed "best practices" for the Human Trafficking Court. Nonetheless, the court has implemented several key recommendations contained in a Chicago report on Model Prostitution Courts, including having an established network of collaborating partners, having eligibility criteria that does not discriminate based on gender, providing a vast array of trauma-informed services, and creating a personal safety plan for participants. Funding for the Human Trafficking Court is part of the CCP operating budget, although the part-time case manager is funded, in

part, by grant money. Because the presiding judicial officer of the Human Trafficking Court is a CCP Commissioner, the Human Trafficking Court calendars do not impact the CCP judges' trial calendars. Nonetheless, feedback from the stakeholder agencies reflects that the twice monthly calendars for a handful of probationers frequently run long and create a burden on these other agencies.

The Council's findings:

- The Human Trafficking Court has a dedicated staff that works hard and is committed to doing the best for the defendants who enter the program.
- The Human Trafficking Court has highlighted the need to train all judicial officers and criminal justice partners in trauma-informed approaches so that all involved may recognize patterns indicative of the need to direct defendants toward social services as quickly as possible.
- Despite the dedication of its staff and the vocal support of some community groups like Zoe Ministries and Dr. Susan Miller from the University of Delaware,[7] the Human Trafficking Court expends judicial and supporting agencies resources on relatively few participants who have a high noncompliance rate and a low graduation rate. Due to the nature of the cases, the Court has stepped out of its traditional role and is significantly involved with each of the defendants. This has caused concern by the supporting agencies, has affected their effectiveness, has allowed a lack of consistency in how individual defendants are handled, and resulted in some agencies no longer supporting this Court.
- Many defendants have drug and mental health issues that could be addressed in other problem-solving courts.

The Council's recommendations:

- While the decision whether to continue to support this initiative lies with the Chief Judge of CCP, the Council questions the effectiveness of the program when compared to the resources being used to staff this court. The Council believes many of the defendants' issues that make them eligible for this court could be addressed in the drug and mental health courts, particularly if some additional "trauma" training was provided to the judges of those courts. As presently structured, the Council believes it should not continue as a problem-solving court.
- The Council recommends that all judicial officers, but particularly ones involved in drug and mental health courts, should receive training in trauma-informed approaches to help identify this at-risk population and get them needed services before the cycle of crime becomes intractable.
- As a post-adjudication Court, the incentive for successful completion is limited in light of the significant hardships facing this population. If the Court is continued, a pre-adjudication diversion model should be explored.
- While the Council understands why this court was renamed to "Human Trafficking" there is little evidence to suggest the defendants of this

[7] The Council received a lengthy letter from Yolanda Schlabach, President of Zoe Ministries, praising the Human Trafficking Court and its staff and offering that organization's support.

court are the subjects of an organized criminal enterprise. While the activities they have engaged in are significant and presentunique trauma issues that need to be addressed, the long term viability of the court as presently structured is questionable.

- It is the suggestion of Council that the functions of this court be merged into the drug and mental health courts.

IV. Gun Court

Established in 2007 by Chief Judge Kuhn, the Gun Court operated in the Family Court in all three counties. Since Chief Judge Kuhn handled these calendars, when she left the court in June of 2015 a decision was made to discontinue the calendar. This decision is consistent with the recommendations of the Council when it reviewed this court. As an overview, Gun Court calendars were held in all three counties, managed by a case manager in each county. The Gun Court was held once a week in New Castle County and once every other week in both Kent and Sussex Counties. Gun Court was operated in cooperation with the Attorney General, the Public Defender, the Division of Youth Rehabilitative Services ("YRS"), and Probation and Parole. All four agencies specially assigned personnel to handle the Gun Court calendars and probation officers were specially trained to deal with the juveniles that had been charged with gun offenses.

The goal of the Gun Court was to speed up the disposition of juvenile gun cases and reduce the boomerang effect of cases that are transferred back and forth between Family Court and Superior Court through the amenability/reverse amenability process. Any juvenile charged with a gun crime who was found amenable to the Family Court process was placed on the Gun Court calendar. There was neither a referral nor an assessment process. Once a defendant was placed on the Gun Court calendar, they would continue on that calendar even if they later committed a non-gun-related crime. Although the Gun Court participants required to attend more frequent status hearings, they did not receive any type of specialized treatment relevant to their gun crimes. A defendant successfully completed the Gun Court when they completed their period of probation. There no reward (e.g., early release from supervision, expungement, forgiveness of fines and costs) for successful completion.

The Council's findings:

- The Gun Court was not a problem-solving court. It d not offer any individualized treatment options to address the underlying problem of juvenile gun crime.
- The Gun Court was simply a specialized docket that fast tracked juvenile gun cases to speed up their disposition for those juveniles who were amenable to the Family Court process.
- While gun violence by juveniles is a significant problem, there wass nothing to suggest the consolidation of these defendants in a single calendar havalue beyond the consistency that may hdeveloped from a single judge handling all of the cases.

The Council's recommendations:

- Since Gun Court is simply a specialized calendar, the Council believes that the decision whether it should continue and what resources should be dedicated to it should be left to the discretion of the administrative authority vested in the present Chief Judge of the Family Court.

V. Reentry Court

The goal of the Reentry Court is to provide an enhanced level of supervision to medium and high level offenders upon release from Level V or Level IV supervision. All of the participants are identified and assessed by the Department of Correction ("DOC"). The program is not voluntary and participants cannot opt out. The DOC receives state and federal grant funding for the program and contracts with the Delaware Council on Justice and the Achievement Center to provide case management services. There are three phases to the program. During phase 1, participants return to the Reentry Court every two weeks for status hearings. In phase 2, participants have status hearings once a month. In phase 3, status hearings are held on an as-needed basis. A participant has to successfully complete all three phases of the program. Successful completion could result in early termination of probation.

The Reentry Court does not collect data from which to determine the effectiveness of the program. The assigned judges have not received any special training, and there are no established best practices for the Reentry Court. To a large degree the program is run solely by the DOC without any significant judicial input.

The Reentry Court began in 2004 and only operates in New Castle County. There is a dedicated judge who handles the calendar on a weekly basis with the assistance of a designated case manager. There are currently approximately 50 participants, although there is no formal cap on that number.

The Council's findings:

- The Reentry Court is a DOC-run transition program. The DOC identifies the participants, the DOC develops the case plans, and the DOC contracts with the case managers and identifies the service providers. The Superior Court has little input in the process.
- The Reentry Court is not truly a problem-solving court. In theory, the program is supposed to address the particular needs of defendants who are likely to re-offend upon being released from incarceration. At the moment it appears that only the Achievement Center is making strides to achieve this goal.
- The decision to force inmates to participate appears to be a significant weakness in the program and undermines the purpose of attempting to help those who are seeking a change from their past behavior.
- The role the judiciary plays in the reentry process is unclear as is its effect on the outcome of a particular defendant.
- The Court is primarily an enforcement mechanism to ensure compliance with the program developed by the Department of Correction.
- There is a lack of communication between service providers and DOC, and it is unclear what criteria is being used to designate an inmate into the program.
- The primary provider is the Achievement Center but at the time of this report it is significantly below its capacity.

- The program as envisioned by DOC with its service providers continues to develop as the initial funding has ended. This affects the role the Court plays in its decisions on how to best manage particular participants.
- There is a lack of data for the Court to track the effectiveness of the program.
- Unfortunately it does not appear that DOC has fully embraced the reentry concept and has failed to develop the needed relationships with the service providers.

The Council's recommendations:

- The Council does not recommend that the Reentry Court continue to be supported unless the program is re-vamped and the Superior Court judges are given a greater say in how the resources of the program are developed and implemented.
- If this program is to be considered a problem-solving court, the Superior Court needs a greater voice in how the program will be run. This includes a definitive understanding as to who is eligible, how and why they are selected for the program, what assessments have been made to qualify an offender, an understanding of the progress of the offender and the options available to gain compliance by that offender.
- While the Court continues to believe there are reasons to support the reentry court program, to do so it is critical that the Court be an active participant in the development of the program and it be managed to ensure the success of the participants warrants the resources being committed by the Court to that effort. Without significant changes, there is nothing to suggest that the same role of the Court cannot be accomplished by the normal violation of probation process.

VI. Drug Court

Adult Diversion

The first Delaware Drug Court began in the Superior Court in New Castle County in 1994 through the initiative of then Superior Court Judge Richard S. Gebelein. It was one of the first Drug Courts in the United States. The Superior Court Drug Court became a statewide program in 1997. On the initiative of Chief Judge Alex J. Smalls, the Court of Common Pleas ("CCP") instituted a similar Drug Court program that began in New Castle County in 1998. The program became operational in all three counties in 2003. There are designated judicial officers who are specially assigned to handle the Drug Court calendars in each court in each county. The State has contracted with different treatment providers in each county. The individual treatment providers cap the number of participants they can accept. The cap varies between each county and each court. Currently, there are about 550 participants in the adult Drug Court programs statewide.

The goals of the adult Drug Courts are to get participants into treatment as soon as possible after arrest, to rehabilitate participants and prevent relapse, to reduce recidivism, and to avoid a criminal conviction and incarceration. The program is voluntary but must be offered by the Attorney General as part of the plea bargaining process. The candidate must undergo an assessment to determine that drug treatment is necessary and then must sign a contract agreeing to the terms and requirements of the Drug Court. Although the exact procedure varies slightly between courts and counties, generally the participant must plead guilty or at least stipulate to the facts set forth in the affidavit of probable cause and/or the police report. The judge will then defer any further action. If the participant successfully completes the terms of the program, then the charge is dismissed. If the participant does not successfully complete, then a conviction is entered (by plea or stipulated trial) and the defendant will be sentenced. A participant's progress in the diversion program is monitored by the treatment provider and the court. Participants must attend all meetings with the case manager, submit clean urine screens for 14 to 18 weeks depending on the program, attend all therapy sessions, attend all status hearings with the court, and complete any other requirements. Almost three-quarters of all participants successfully graduate from the program. Participants are not required to engage in any follow-up with the court or to continue aftercare treatment upon graduating from the program.

The Drug Courts report various issues with the ability to collect data and the usefulness of the data collected in assessing the effectiveness of the program. Most, but not all, of the Drug Courts are able to track graduation rates and termination rates, as well as neutral discharges. There is some limited ability to track recidivism data, as well. There is no ability, however, to compare outcomes of the Drug Court participants with the outcomes of defendants in regular court proceedings. All of the adult Drug Courts have adopted and implemented best practices that are based on guidelines promulgated by the National Association of Drug Court Professionals. The guidelines have been modified, however, to meet each court's program requirements and budget constraints.

Juvenile Post-adjudication

In 2002, the General Assembly adopted 10 *Del. C.* § 1012, which created the Family Court Adjudicated Drug Court Program for juveniles, which has been operational in all three counties since its adoption. Based on the findings of the American University report on adult drug courts, whichwill be discussed below, the juvenile drug court was suspended soon after the report was issued However, the Council will outline in this report the practices of the juvenile Drug Court that were found during our review with some modifications, it is expected that the Court will reconvene in the near future.

The juvenile Drug Court is a post-adjudication program. With a few exceptions, there is a single judicial officer assigned to preside in each Drug Court in each county. This approach ensures that the judicial officer becomes familiar with each participant and offers the juvenile participants the consistency and stability that they need. The drug treatment services are managed by a specially-assigned case manager employed by the State Division of Prevention and Behavioral Health Services ("PBH"). PBH contracts with the drug treatment providers. The State contract limits the number of participants to 30 in New Castle County and 15 each in Kent and Sussex Counties.

The goal of the juvenile Drug Court is to provide treatment to juveniles with substance abuse problems rather than impose legal sanctions and to provide the participants with tools for better decision-making to prevent future drug use and criminal behavior and to aid in their success at home and in school. The Attorney General must offer the juvenile the opportunity to enter the Drug Court by way of a plea. The juvenile must be evaluated first to determine that treatment is necessary. The juvenile then must enter a plea of delinquency before being accepted into the program. The course of treatment is determined by the PBH case manager and the treatment provider. There have been problems reported with consistent communication between the treatment provider and PBH. There are also reported problems with private insurance companies preventing certain levels of treatment and with long waiting times to get participants into residential facilities when needed. Regular status hearings with the Drug Court are held every three to four weeks. To successfully complete the program, a participant must attend treatment, attend school, attend court hearings, avoid police contact, and produce 60 to 90 days straight of clean drug tests. If the juvenile successfully completes the program, the delinquency adjudication may be expunged if there are no new charges within six months following graduation. The program takes about six months. The average graduation rate is 50%.

The Family Court has adopted most but not all of the best practices for juvenile Drug Court established by the National Council of Juvenile and Family Court Judges. As funds allow, the presiding judges attend conferences and receive training relevant to juvenile substance abuse. They also receive some specialized training on the use of drug testing and interpretation of results. The Family Court maintains a database, separate from its regular case management system, which allows it to track graduation rates. It also tracks recidivism data for its graduates at six months and one year following graduation. There is no ability to compare the outcomes of participants with the outcomes of non-participants.

American University Study

Shortly after the Council first met in October 2014, the Chairs of the Council consulted with the Bureau of Justice Assistance Drug Court Technical Assistance Project at American University to conduct an independent review of the adult Drug, Mental Health and Veterans Treatment Courts in the Superior Court and Court of Common Pleas in all three counties. The study team was composed of experienced drug court practitioners from around the country who were assisted by American University staff. The study team conducted its review between June 1 and November 15, 2015. Given time restrictions, the study team was not able to observe court hearings and staff meetings in every court that was part of its review but was able to talk to all of the judges and observe hearings for each type of problem-solving court in Superior Court and the Court of Common Pleas.

The study team presented its final report to the Council on November 30, 2015. Although the study team's review included adult Mental Health and Veterans Treatment Courts, most of the team's comments and recommendations were directed to the adult Drug Court, and thus the study team's report is summarized in this subsection. A copy of the study team's report attached as an appendix to this report.

The framework for the study team's review and analysis is based upon the *Ten Key Components* recognized as the standard for evaluating drug courts.[8] The study team noted that Delaware's Drug Courts formerly were national exemplars of soundly designed, multi-disciplinary programs but that, over the years, the necessary collaborations and services have dissipated.

The study team made the following findings:

- Without the needed multi-agency collaboration, management infrastructure, attention to nationally accepted practices, and ongoing personnel training, Delaware's Drug Courts have failed to keep abreast of the changing standards and practices now considered the best practices.
- There appears to be no clearly articulated target population and no useful risk/needs assessment conducted before accepting participants into the program.
- The treatment services upon which Delaware's Drug Courts depend are inadequate and are generally providing educational programming and not providing drug treatment services.
- Aftercare services are not being incorporated into the treatment continuum to promote longer term recovery after participants graduate from Drug Court.
- The lack of ongoing communication between Probation, TASC, the treatment providers and the Drug Court are hampering the effectiveness of the Courts.
- The Drug Courts in each county are not well-coordinated and lack systematic structure, process, and support components.
- Data necessary to assess the cost-effectiveness and other impacts of Drug Court is not being maintained.
- Opportunities to increase information exchange among the Drug Courts should be developed so

[8] *Defining Drug Courts: The Key Components*, National Association of Drug Court Professionals, U.S. Department of Justice, 1997.

that common issues and tasks can be jointly addressed.

- Delaware needs to develop community partnerships to gain support for the Drug Court programs and obtain necessary resources for participants such as housing, job training, employment, education, and medical/dental services.
- Delaware does not provide ongoing education and training for Drug Court personnel.

The study team made the following recommendations:

- Consolidate programs within each county that have a similar focus.
- Hire a designated Problem-Solving Court Coordinator, who has experience with the criminal justice system and substance abuse treatment, for each county for the Adult Drug, Mental Heath, and Veterans Treatment Courts.
- Hire a statewide Problem-Solving Court Coordinator in addition to the county coordinators who has particular knowledge and training in the treatment field.
- Clarify the leadership role of the Problem-Solving Court judge, the requisite composition of the team, and the respective role of the team members.
- Develop Memoranda of Understanding (MOUs) with all participating agencies.
- Clarify the operations, timeframes, and procedures applicable to the courts in each county.
- Define the target population to be served and focus on the high need/high risk participants.
- Clearly articulate the eligibility criteria for each program and ensure the criteria are consistently applied.
- Institute procedures to ensure prompt screening of arrestees and probation violators for potential eligibility for drug court.
- Use a validated screening tool to identify eligible participants, their criminal history and potential clinical disqualifications.
- Conduct a comprehensive assessment as soon as possible after the eligibility determination to formulate an individualized treatment plan to address substance abuse and/or mental health issues as well as ancillary needs.
- Detailed documentation of treatment services must be developed along with a plan to address the gaps in services to ensure an adequate continuum of care for participants. A sound quality assurance program must also be put in place.
- A multi-agency task force led by the judiciary should be created to design the structure, policies, procedures, and services of the problem-solving courts.
- Significantly increase the frequency of staff meetings and status hearings.
- Both staff meetings and court hearings should include the prosecutor, defense counsel, treatment representative, probation officer (if applicable) and judge. At the staff meeting the treatment representative should give a progress report on the participant's achievement of milestones.
- Give each participant, who should be represented by counsel, the opportunity to discuss their progress with the judge at the status hearing.

- If a jail sanction might be imposed, the participant must have the opportunity to consult with counsel and address the issue with the judge.
- A schedule of graduated sanctions and incentives for the participant's progress or noncompliance should be developed (reflecting proximal and distal behavioral goals) and consistently applied.
- Provide ongoing communication with the court regarding situations warranting prompt imposition of sanctions or incentives.
- Create a framework that provides milestones and anticipated timelines applicable to each phase of the program.
- Effective random drug testing with prompt results must be developed in each county.

The Council's Findings:

After receiving the American University study team's report, the Council's own conclusions about Delaware's Drug Courts were confirmed in many respects. Nonetheless, the Council did find some of the study team's conclusions to be based on incomplete or inaccurate information or possibly were due to misunderstandings that occurred by the study team's limited knowledge of the practices of each court. As such, the Council has not embraced all of the study team's findings and recommendations but instead has considered them in light of the collective experience of its members to render its own findings and recommendations. The Council however cannot underscore enough the impact the study has made in the area of provider services contracted by the State. After the report was issued, the Department of Health and Social Services undertook a comprehensive review of the services being provided by those contracted to provide treatment and has dramatically changed the criteria and demands made upon these service providers. This review continues and the Council expects more positive changes will occur in this critically important area for successful problem-solving courts. In addition the review conducted by American University caused the Family Court to suspend its drug court until a review of the treatment services provided to them could be completed. So it is fair to say that even before the issuance of this report, the AU's study has been a catalyst for positive change.

Adult Drug Court

- The Drug Courts do not have sufficient resources to collect all of the data necessary to draw any conclusions about the success of its programs.
- There is a real need for additional administrative court personnel. At a minimum, a statewide Drug Court Coordinator with treatment expertise should be hired to ensure the needs of the Drug Courts are being adequately addressed.
- Treatment services are inadequate and the Court has no input in the selection or the services provided by the treatment providers.
- There is a need for additional residential treatment options. Defendants often are deterred from entering the drug diversion program because of the long wait times for bed space when residential treatment is needed. This is particularly true in Kent and Sussex Counties, where heroin addiction i on the rise.
- There are very limited residential inpatient treatment beds available outside of the prison unless the

defendant has insurance to cover the expense.

- Delaware's Drug ourts have not kept abreast of the changes that have occurred in running effective drug courts and are generally continuing to use the model created by Judge Gebelein 22 years ago.
- Greater training of, and communication between, all partner agencies involved with Drug Court is needed.
- Drug Courts in all counties in both Superior Court and CCP (6 in total) are causing a drain on limited resources and consideration of a merger of those courts in each county should be considered.

Juvenile Drug Court

- The team approach to Family Court Drug Court allows for the sharing of ideas about the best approach to treatment for the individual child.
- There are not enough resources and data available to draw any supportable conclusions about the effectiveness of this program.
- There is a national study to suggest that juvenile treatment programs do not work well because they are modeled after adult programs and the sanctions employed may be traumatizing to some participants.
- Expungement of the delinquency adjudication may not be a sufficient enough incentive to compel a juvenile's compliance. Legislation was drafted but tabled in 2015 that would change the Family Court Drug Court from a post-adjudication program to a diversion program.

The Council's Recommendations:

Adult Drug Court

- The Council recommends that the idea of consolidating the adult Drug Courts (and perhaps merging them with the Veterans Treatment Court and the Mental Health Court) so that there would be one consolidated, cross-jurisdictional problem-solving court in each county should be further explored. At a minimum, consideration should be given to consolidating the drug courts of each county into a single court.
- The Drug Court should have a statewide coordinator. This position could help identify and implement best practices and assist in the creating of a meaningful database and also serve as a liaison with the treatment providers.
- The Drug Court should have a meaningful database from which it can generate statistical reports to aid in assessing the effectiveness of its programs. The data should be shareable and searchable by all of the courts.
- The Drug Court should hold yearly statewide training conferences and include all of its community partners.
- The Drug Court judges and staff should receive formal and ongoing training that includes participation in national training programs.
- The Drug Court should develop best practice documents so that the procedures utilized statewide are consistent.
- The Drug Court should coordinate drug court hearing calendars across courts to minimize the impact court proceedings have on the services being provided by other agencies.

This includes DOC, probation and treatment providers.

- The Drug Court should be consulted and allowed to provide meaningful input regarding the providers with whom the State issues contracts.
- TASC funding should be expanded to allow them to become a gatekeeper for referrals to the appropriate treatment provider and the monitoring of that treatment.
- A review of the feasibility of whether there can be an appropriate transfer of residential inpatient beds from DOC to providers outside of prison should be conducted.

Juvenile Drug Court

- The Council recommends further exploration of whether the Family Court Drug Court should be revamped into a diversion program.
- The Family Court Drug Court should have a meaningful case management system from which it can generate statistical reports to aid in assessing the effectiveness of its program. The data should be shareable and searchable.
- If the idea of consolidating the problem-solving courts is feasible, the Council recommends the decision whether to include Family Court's problem-solving courts be considered separately due to the unique population they service and the need for different social services.

Recent Change

Since the review by the Council and American University, the Superior Court and CCP have initiated discussions to consolidate their drug courts into a single statewide court. The concept is being modeled after the successful merger that occurred in the mental health courts and would initially be limited to New Castle County. Expansion to the other counties would occur once issues surrounding the merger have been resolved. Drug Court would become a diversion court handling both felony and misdemeanor offenses and administratively managed by CCP. Judges assigned to the court would be cross-designated to handle all matters referred for diversion. This is again an initial step to a single statewide treatment court. Additional staff to assist in the transition and the increased caseload has been obtained through grants but as they end, plans will need to be in place to financially absorb them as full time employees. In addition, retired Judge Herlihy will transition to CCP to assist with this court. The Council suggests that funding of senior judge positions, as legislatively created a few years ago but not funded, be considered to assist all problem-solving courts.

VII. Veterans Treatment Court

The Superior Court Veterans Treatment Court was established in Kent County by a 2011 Order of President Judge James T. Vaughn, Jr. The program was expanded to Superior Court in New Castle County in 2012 and Sussex County in 2014. Each county has a designated judicial officer (all have past military experience) who works with a core team comprised of a court case manager; a Treatment Access Center case manager; a Deputy Attorney General; a Public Defender; a Probation Officer; and a Veterans Justice Outreach Specialist from the Department of Veteran Affairs ("VA"). The Veterans Justice Outreach Specialist is unique to the Veterans Treatment Court and acts as a case manager for the individual, coordinating services provided by the VA to eligible veterans. At this time, there are no caps on the program but the program is designed to accommodate 40 participants in each county. There are approximately 21 active participants in Kent County, 15 participants in New Castle County and 6 participants in Sussex County. Cases can be transferred from one county to another based on individual circumstances.

The goals of the Veterans Treatment Court are to identify and assist justice-involved veterans with mental health or substance abuse issues, and access appropriate treatment and ancillary services, while improving public safety by reducing recidivism in the justice-involved veteran population. Participants must be veterans, active military personnel or any person with military service experience. This is a voluntary program and participants can be referred by a variety of sources, including other courts, private attorneys and service providers. Generally, the Deputy Attorney General reviews all referrals and approves participants into the program. The program has a diversion track and a probation track. Defendants entering the diversion track must stipulate to the facts set in the police report and waive their right to a jury trial. If they do not complete the program, the judge will hold a stipulated trial. The program lasts generally 8 to 18 months. Participants initially appear in court every two weeks to a month; subsequent appearances are contingent on the participant's progress in the program. Participants are deemed to have successfully completed the program if they have clean drug screens and are compliant with the treatment plan or conditions of probation established by the Veterans Justice Outreach Specialist, the Treatment Access Center case manager or the Probation Officer.

Because this is a new program, there is no reliable recidivism data and the court does not compare the success of its participants with defendants following the regular criminal process. The Veterans Treatment Court does track rates of program participation, termination and graduation. It estimates that it has a 20% recidivism rate. The Veterans Treatment Court has adopted uniform policies based on guidelines and methodologies developed by drug courts, the National Association of Drug Court Professionals ("NADCP"), and the Ten Key Components of Veterans Treatment Court established by the national Clearinghouse for Veterans Treatment Courts at the NADCP. Features specific to Veterans Treatment Court, such as recruiting individuals with a military background to serve as core team members or volunteer mentors, are incorporated into the program. Core team members and volunteer mentors receive annual to bi-annual training. Effective scheduling of the Court has limited the impact on traditional court proceedings.

The Council's findings:

- The Veterans Treatment Court is a relatively new program but it appears to be functioning effectively and is managed with sufficient resources. While there is limited data to assess its performance, the Council believes the availability of Veteran services and its unique mentoring program has the potential to have a dramatic effect on cases involving veterans.
- Operating a Veterans Treatment Court has little to no impact on State resources because of the partnership with the VA. Approximately 80% to 90% of participants qualify for services through the VA.
- Veterans Treatment Court participants have issues similar to Drug Court or Mental Health Court participants but share distinguishing characteristics such as traumas related to military service (e.g. post-traumatic stress disorder) and a shared military culture.
- The Veterans Treatment Court is working with the Attorney General's Office to broaden the class of eligible participants. These initiatives may increase the pool of eligible applicants.
- The mentorship program is a unique feature and plays a critical role in the success of the program.
- The Veterans Treatment Court receives referrals from Family Court and CCP and is a good example of how the concept of a unified court can work effectively.

The Council's recommendations:

- The Council recommends that the Veterans Treatment Court continue in its present form to allow for the program to establish itself and determine whether there is sufficient participation to warrant the program's continued existence.
- The Veterans Treatment Court should adopt a shared database with the ability to generate statistically relevant information.
- If a combined problem-solving court model is adopted, the Council recommends that the Veterans Treatment Court be considered for inclusion but should continue to recognize the participants' distinct culture and to take advantage of features unique to Veterans Treatment Court such as volunteer mentors and services provided by the VA.
- Due to the unique issues experienced by our veterans and the treatment available through the VA, the Council suggests that the Attorney General and defense counsel consider expanding the cases that are diverted to VTC to avoid the collateral consequences that arise from a conviction.
- The Council suggests that a regular review of the practices and policies of the VTC in each county occur to insure consistency statewide.
- The Council suggests a public awareness campaign regarding the work of the Court and the need for additional mentors with military backgrounds.

VIII. Mental Health Court

Adult Mental Health Courts

The goals of the Mental Health Courts are to promptly identify and connect justice-involved individuals with mental health diagnoses to needed treatment and services while reducing recidivism and improving public safety. Participants complete the program successfully if they adhere to their treatment plan and are not charged with new offenses.

The first Mental Health Court began with the help of federal grant funds in the Court of Common Pleas ("CCP") in New Castle County in 2003 and was expanded to Kent County in 2012 and Sussex County in 2013. Superior Court established its first felony Mental Health Court in 2008 and expanded the program to Kent and Sussex in 2009. While operating in two courts, the Mental Health Courts shared similar characteristics such as:

- the program is voluntary;
- most courts offer a diversion track and probation track program;
- each court in each county has a dedicated judge;
- calendars are held at regular, consistent intervals to monitor participants and ensure ongoing compliance with the program;
- referrals typically come from judicial officers, Probation, the Treatment Access Center, the Department of Justice or the Public Defender's Office; and
- the programs are run statewide.

Unfortunately in 2015, the grants that CCP was utilizing for critical case managers was not renewed and funding for those positions lapsed. This event significantly affected CCP's ability to continue to operate the courts, particularly in Kent and Sussex counties. As a result of this event, in 2016, a unified statewide mental health court was created in the Superior Court. All cases regardless of the Court that may be referring a defendant or where their charges are pending are now processed by a single unit in Superior Court. All cases, except those that were pending in CCP at the end of 2015, are being handled by the unified statewide court and a Superior Court judge oversees the court proceedings. If the caseload expands to a point where a single Superior Court judge is unable to handle the caseload, it is anticipated that a CCP judge would be cross designated to sit on the Court.

Although there may not be an official cap to the number of participants, availability of services and treatment providers impose *de facto* limits. As of June 2016, the statewide unified Mental Health Court had 39 participants in New Castle County, 20 participants in Kent County and 45 participants in Sussex County.

There are numerous nationally established best practices guidelines available for Mental Health Courts and most have been adopted by the adult Mental Health Courts. There is a need for a centralized database that can be accessed by all courts and that can assist in ensuring accurate reporting of cases and their outcomes. The statewide unified Mental Health Court does utilize the time of a Superior Court judge in each county, but there is minimal impact on Superior Court's normal operations other than the occasional scheduling conflict.

Juvenile Mental Health Courts

The Family Court began a Mental Health Court pilot program in 2006 in collaboration with the Office of the Public Defender and the Division of Child Mental Health funded by a grant from the Criminal Justice Council. The program was expanded to Kent and Sussex in 2012. The Juvenile Mental Health Court is a diversion program but, in rare circumstances, the New Castle County Juvenile Mental Health Court may consider the request of a YRS probation officer to consider a youth's violation of probation when the treatment needs of the child outweigh the need for criminal sanctions. Each county has one dedicated judge assigned to the court. There is no dedicated support staff. The Juvenile Mental Health Court works closely with the Department of Justice, the Office of the Public Defender, the State Division of Prevention and Behavioral Health ("PBH") and the Department of Services for Children, Youth, and Their Families ("DSCYF"). Treatment providers are selected by DSCYF and PBH. Although there are no caps to the number of participants, access to services imposes *de facto* caps. In January of 2015, there were 60 active participants in New Castle County, with a waiting list of 10 youth; 29 active participants in Kent County with 7 youth on the waiting list; and in Sussex County 13 active participants with no waiting list.

The goals of the juvenile Mental Health Court are to identify and assist justice-involved juveniles with mental health diagnoses to receive needed treatment while reducing recidivism and improving public safety. Although the Family Court is open to referrals from a number of different sources (e.g. family members, schools and so on), a case review must be conducted and the Department of Justice makes an initial determination of whether the participant is eligible for the program. Participants must have a diagnosis as established by the Diagnostic and Statistical Manual of Mental Disorders, AXIS I or II primary. Successful completion of the program requires that the youth comply with the established treatment plan established by the case manager; any rules established by court order, the home or the school; avoid criminal activities and appear at every hearing.

Family Court is unable to complete an assessment of the impact of the program on recidivism because there is no control group that would allow for a comparison. Family Court tracks some data but needs a centralized data collection program. Some or all of the best practices as promulgated by the "7 Common Characteristics of Juvenile Mental Health Courts" published by the GAINS Center for Behavioral Health and Just Transformation at the Substance Abuse and Mental Health Services Administration have been adopted. Opportunities for training are offered to judicial officers.

The Council's findings for all Mental Health Courts:

- The Council found that the Mental Health Court is necessary to address many of the underlying cases of criminal activity but that the nature of the disease often makes these defendants difficult to manage. Participation in the Mental Health Court however, guarantees that participants that adhere to the program receive needed treatment services.
- There were serious concerns expressed about the disparity in the qualifications of treatment and service providers contracted by the State. This lack of consistency has

serious ramifications for the client population and can be very disruptive to those receiving treatment.

- The Council found a uniform data base accessible by all the courts and service provides would enhance the services provided and provide the court more detailed information to make management decisions.
- While the Superior Court has adequately absorbed the adult program, as it grows more dedicated staff will be needed.

The Council's recommendations:

- The Council recommends that there should be a full-time statewide coordinator who would oversee the treatment program in Family Court.
- The Council believes that further conversations with PBHS would be beneficial to better understand the selection process for service and treatment providers. While this is true for both the adult and juvenile courts, it is particularly critical for those services geared towards juveniles as there is a gap in services when a youth transitions from the juvenile system to the adult system.
- A centralized database accessible to all courts and treatment providers is needed.

IX. Conclusion

After thorough review, the Council finds, without exception, dedicated judges, staff and service providers in each problem-solving court who are committed to the mission of their respective court. All believe their efforts make a difference in the lives of many who otherwise would have simply been processed (and recycled) in the criminal justice system. We recognize and applaud the dedication and commitment of these individuals.

Generally, the Council finds the problem-solving courts are functioning in a manner that appears to be addressing the mission of that court. Unfortunately, because most of the courts have not been keeping statistical information due to lack of staff, we are unable to truly assess how effective these courts are and whether their outcomes differ from those of the regular court proceedings. As such, the perceived success is largely anecdotal and derived from those most connected and committed to these courts. While perhaps a fair assessment, to truly test whether a continued commitment to these courts is warranted an effort to statistically assess their performance should be undertaken. Such an effort is simply beyond the resources currently available to the Council or these courts.

The Council's review also illustrates that there is a limit to how many problem-solving courts should and can be created. As important as these courts have become in addressing the underlying issues of addiction and mental health, we must recognize that for them to properly perform, limited resources must be diverted from the traditional court that oversees that program as well as additional resources committed by service providers and DOC entities. As such, new problem-solving courts should not be created unless there is a candid assessment of the resource costs by the Court and the service providers to the new venture. Adding the burden of a new court to the already stretched resources of a trial court does a disservice to both the problem-solving court and the overall work of the court and is simply not sustainable. The Council further recommends that before any newly created problem-solving courts become operational, policies and procedures of evidence-based best practices are adopted.

Finally, although the Council believes it has made a fair assessment of each problem-solving court, the decision whether to implement any of the Council's recommendation should be left to the discretion of the court managing that particular problem-solving court. Some of the recommendations involve potential jurisdiction changes, some require additional commitment of resources, and others change long standing practices of the past. We hope this report will serve as a catalyst for a fresh look as to how these courts operate, and when appropriate, a renewed commitment to such courts. However, it is important to recognize that these courts do not work as independent entities and there is a delicate balance between the commitment to them and the need to maintain the traditional work of the court. How this is appropriately balanced is a decision for the trial courts involved. So with these general comments, the following recommendations are made.

The Council concludes that the problem-solving court model should be a single unified treatment court that would provide a full array of services to address all of the needs of individuals referred for treatment. This would include:

- A centralized treatment court in each county that would encompass all problem-solving courts;
- A dedicated statewide coordinator with training and knowledge in treatment services whose responsibilities would include statistical analysis, ensuring adherence to statewide policies and advising the court of the effectiveness of the service providers;
- County coordinators to schedule and manage the treatment court in each county;
- Dedicated probation officers who are trained in supervising individuals with addiction and mental health issues;
- Dedicated representatives from the Department of Labor and the Department of Housing to provide a single coordinated point of contact to assist in addressing employment and housing needs of treatment court defendants;
- Dedicated judicial officers to handle all cases referred to the treatment court; this includes a greater use of retired judges and commissioners as judges assigned to those courts thus relieving the burden of using active judges.
- Standardized procedures and practices to ensure statewide consistency and the use of evidence based best practices.

The Council appreciates that it is not realistic to move directly to the centralized statewide court that it believes would be most effective. As such, there are some initial steps that can and should be implemented in a reasonably prudent manner. They include:

- Working with the National Center of State Courts to develop standardized procedures and practices (benchbook) to be utilized by problem-solving courts. This will help develop consistency in all counties and reduce the individualized judicial preferences that presently exist;
- Request funding for statewide and county coordinators for all problem-solving courts in the next budget cycle;
- Continue the merger of problem-solving courts that began this year with mental health court and will be implemented this fall with drug courts;
- Request funding for a senior judges program that will provide a pool of retired judges to sit in the problem-solving courts;
- Request that the Courts have a greater voice in the selection and contractual requirements of treatment service providers;
- To the extent it is practical to do so, merge similar courts that have been created for adult and juvenile offenses into a single treatment court;
- Develop a statewide management information system to collect statistical information to allow for a better assessment of the success of the program and to monitor the program's compliance with national standards;
- Develop a more efficient drug testing program that would allow for immediate information regarding the defendant's use while in the problem-solving court jurisdiction; and
- Regular education and training programs for all judges, prosecutors and defense counsel to ensure the components of the criminal justice community understand how they can support the work of the problem-solving courts.

The Council stands ready to assist the Supreme Court in the implementation of the recommendations set forth in this report. It will also now turn its attention to the other matters for review in the Order establishing the Criminal Justice Council of the Judiciary.

Respectfully submitted,

The Honorable William C. Carpenter, Jr., Chair

The Honorable Jan R. Jurden, Co-Chair