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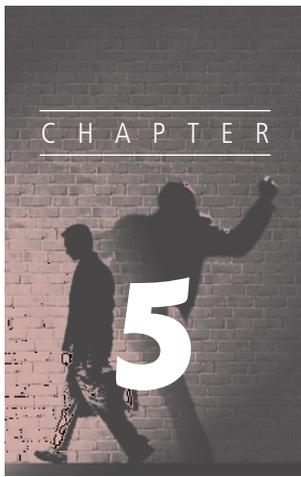
# CRIMINAL COURTS

A CONTEMPORARY PERSPECTIVE



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# Specialized Courts



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## Introduction

During the 1980s, the number of drug offenders locked up in state and federal prisons skyrocketed. In fact, the rate at which drug offenders were sent to prison went from 19 per 1,000 adult arrests for drug offenses in 1980 to 104 per 1,000 arrests in 1992 (Bureau of Justice Statistics, 1995). The staggering costs of incarcerating increasing numbers of drug offenders, coupled with mounting evidence that imprisonment was not an effective approach to dealing with drug abuse and addiction, led policy makers to search for alternative solutions that would be cost-effective, politically palatable, and successful in reducing drug abuse and drug-related crime (see “California Voters Approve Proposition 47” on the next page for one example).

This search for a more effective strategy led to the development of the drug treatment court. The movement started in 1989, when then-State Attorney General Janet Reno joined forces with Florida judges and the Dade County (Miami) public defender to establish the nation’s first treatment-based drug diversion court. Unlike a traditional court, which operates according to an adversarial model and emphasizes punishment, the Miami Drug Court stressed collaboration among criminal justice officials, ongoing judicial supervision of offenders, mandatory drug treatment, and a rehabilitation program providing vocational, education, family, and medical services. The drug court movement spread rapidly. By 2015, there were more than 2,600 programs for adult and juvenile offenders operating in state and federal courts throughout the United States (Office of National Drug Control Policy, n.d.).

As evidence mounted that drug treatment courts were both more cost-effective and more successful in reducing drug use and drug-related crime, states began to experiment with other specialized courts: domestic violence courts, mental health courts, veterans’ courts, reentry courts, community courts, and homeless courts. These courts, which generally are referred to as “problem-solving” courts, are distinguished by several unique

characteristics: a focus on solving offenders' underlying problems, a nonadversarial approach to decision making that involves social service providers as well as criminal justice officials, ongoing judicial supervision and monitoring of offenders in the program, and sanctions for noncompliance with program requirements (Farole, Puffett, Rempel, & Byrne, 2005). All of these courts, in other words, are designed to address the problems that landed the offender in court and not just respond to the offender's criminal behavior, while at the same time holding the offender accountable and protecting the safety of the community.

### CALIFORNIA VOTERS APPROVE PROPOSITION 47

In November of 2014, California voters approved Proposition 47, the Reduced Penalties for Some Crimes Initiative. The initiative (1) reclassified most nonserious and nonviolent property and drug crimes from felonies to misdemeanors and (2) allowed offenders serving prison sentences for any of the reclassified offenses to be resentenced. The initiative also stated that offenses committed by offenders with prior convictions for serious violent crimes and certain drug offenses were ineligible for reclassification. Included among the reclassified offenses is personal use of most illegal drugs.

A report by the state's Legislative Analyst's Office estimated that the initiative would reduce both the jail and prison populations substantially and that the savings to the state would range from \$100 million to \$200 million per year.

In this chapter, we focus on specialized courts or problem-solving courts. We emphasize the two types of courts—drug treatment courts and domestic violence courts—that have spread most rapidly and have generated the most research. We end the chapter with a discussion of the juvenile court, a specialized court with its origins in the 19th century.

### Problem-Solving Courts

Since 1990, specialized courts have become “an important feature of the American court landscape” (Casey & Rottman, 2005, p. 35). **Specialized courts** are limited-jurisdiction courts that focus on certain crime problems such as drugs, domestic violence, and offenders with mental health problems. These courts are similar to traffic courts in that they address a specific problem, but, as we explain below, several factors set them apart. Specialized courts go by a number of names. Sometimes they are called **problem-solving courts**. Other times they are called boutique courts. They are also sometimes

called collaborative justice courts. We use the terms *specialized* or *problem-solving* courts throughout the discussion that follows.

### Origins of Problem-Solving Courts

Where did problem-solving courts originate? The answer lies in the problem-solving movement that has been seen elsewhere in the criminal justice system, particularly in policing. Changes in policing were sparked by influential scholarship, such as Goldstein's (1979, 1990) work on problem-oriented policing and J. Q. Wilson and Kelling's (1982) "broken-windows" argument. These scholars argued that targeting minor crimes, such as drug use, vandalism, and loitering, would eventually lead to reductions in more serious crimes. They also urged police departments to shift from a reactive crime control strategy to an emphasis on order maintenance and community accountability. The overarching argument was that by focusing on problems—small and large—within neighborhoods, the police would reduce urban disorder, fear of crime, and, eventually, crime itself.

Other developments in and out of the criminal justice system also encouraged the development of problem-oriented approaches, according to researchers at the Center for Court Innovation (Berman & Feinblatt, 2001, pp. 5–6). These developments included

- Breakdowns among the kinds of social and community institutions (including families and churches) that traditionally addressed problems such as addiction, mental illness, quality-of-life crime, and domestic violence
- Large increases in the nation's prison population and the resulting prison overcrowding
- Trends emphasizing the accountability of public institutions
- Advances in the availability and reliability of therapeutic interventions, which have given many within the criminal justice system greater confidence in using certain forms of treatment
- A shift in public policies and priorities—for example, the way the broken-windows theory has altered perceptions of the importance of low-level crime

As the prison population doubled and then doubled again and as the need to address offender problems such as drug abuse and mental illness became increasingly obvious, jurisdictions began to search for more effective ways to meet these needs.

Not long after *problem oriented* and **broken windows** became familiar terms in criminal justice circles, Philadelphia implemented a "Protection From Abuse Court." There, a judge oversaw all of the civil protection orders in one courtroom. Next, Cook

County, Illinois, established a domestic violence calendar in one of its criminal courts. These two projects were somewhat obscure, though, relative to the drug court in Dade County, Florida. It opened to much fanfare in 1989 and was the first in the United States to sentence drug offenders to judicially supervised drug treatment. Shortly thereafter, Dade County started a specialized domestic violence court, and in 1993, the first community court, the Midtown Community Court, opened in New York City's Times Square. This court was among the first to combine punishment and assistance to offenders and victims. It also focused exclusively on minor quality-of-life offenses.

The movement to establish problem-solving courts also was affected by passage of the Violent Crime Control and Law Enforcement Act of 1994. This legislation authorized the U.S. Attorney General to fund drug courts across the country. By the end of 1994, more than 40 drug courts were operating in jurisdictions throughout the United States. The Violence Against Women Act, which provided funding to states and local communities in an effort to combat domestic violence, sexual assault, and other crimes of violence targeting women, was also passed in 1994. Enactment of this law prompted a number of jurisdictions to establish domestic violence courts.

Other jurisdictions experimented with courts designed to target problems such as mental illness, homelessness, and reentry. In 1996, Marion County, Indiana, started its Psychiatric Assertive Identification Referral/Response (PAIR) program; this was the nation's first mental health court. Brooklyn, New York, then started the first domestic violence court for handling felony domestic violence cases. In 1989, San Diego implemented the first homeless court. In 1999, the Office of Justice Programs, in the U.S. Department of Justice, funded nine "reentry courts," which are specialized courts that help reintegrate parolees into the community.

### **Distinguishing Features of Problem-Solving Courts**

According to the New York-based Center for Court Innovation (CCI), problem-solving courts attempt to respond more creatively and effectively to both local crime problems such as drug dealing and domestic violence and to the problems of individuals, such as drug addiction and mental illness, which lead to criminal behavior (Wolf, 2007). The center has identified six "principles of problem-solving justice" that make these courts different from traditional courts. These principles are summarized in the following box and discussed below.

The first principle of problem-solving justice focuses on the need for enhanced information—that is, specialized knowledge about the problems that fuel criminal behavior and about the background and circumstances of each individual offender. To make informed and individualized decisions, judges and other criminal justice officials

need to understand the complex linkages between criminal behavior and such things as drug addiction, homelessness, and mental health problems. They also need information on the “physical and psychological health of defendants” (Wolf, 2007, p. 3). Officials working in problem-solving courts attempt to gather as much information as possible about the offender’s background and criminal history before rendering a decision. To do this, they rely on assessments that identify defendants’ risks and needs in a variety of areas, including substance abuse, education, employment, and mental and physical health. They use the results of these assessments to develop individualized case plans.

### SIX PRINCIPLES OF PROBLEM-SOLVING JUSTICE

- *Enhanced information*: specialized knowledge about the problems that fuel criminal behavior (e.g., drug addiction, domestic violence, mental health problems) and about the individual circumstances of offenders themselves
- *Community engagement*: interaction between criminal justice officials and members of the community on issues of crime and justice
- *Collaboration*: collaborative efforts to improve public safety that involve criminal justice officials, social service providers, and community leaders
- *Individualized justice*: customized responses to offenders that seek to address each offender’s underlying problems
- *Accountability*: monitoring offenders’ compliance with program conditions and holding them accountable for noncompliance
- *Outcomes*: a focus on outcomes for offenders and victims, rather than case processing

SOURCE: Wolf (2007).

The second and third principles of problem-solving justice are community engagement and collaboration. Unlike judges in traditional courts, who maintain that objectivity and independence are sacrificed if community members are allowed to influence their decisions, judges in problem-solving courts believe that it is important to interact with community members and to listen to their concerns about crime and justice in the community. Related to this is the idea that public safety is improved and justice enhanced when criminal justice officials collaborate with other government agencies, social service providers, schools, and other relevant stakeholders to identify defendants’ underlying problems and to develop case plans that target these problems. According to Wolf (2007), “The point is not for courts to dictate solutions but to facilitate planning

and interagency partnerships, allowing all players in the criminal justice system—along with relevant stakeholders in the community—to work together toward a common goal” (p. 6).

This leads to the fourth principle, which is individualized justice. A defendant, in other words, should be treated as an individual and not as simply another case on the court’s docket. This principle is a reaction to the notion of assembly-line justice and to the assumption that punishment should fit the crime but should not be tailored to the individual. As Wolf (2007) notes, “Many court cases are not complicated in a legal sense, but they involve individuals with complicated lives. Problem-solving justice recognizes this and seeks to give judges the tools they need to respond appropriately” (p. 7). Thus, sanctions are customized to address a defendant’s underlying problems and to link the defendant to needed services, with the goal of reducing recidivism and enhancing the likelihood that the defendant will become a productive member of society.

Problem-solving justice also emphasizes accountability and regular compliance monitoring. Defendants who appear in problem-solving courts are expected to comply with the requirements of the court and to complete all mandated treatment and educational programs. The courts stress that criminal behavior has consequences and that failure to comply with program requirements will be met with sanctions. Compliance is monitored through regular meetings between defendants and court personnel, and accountability is ensured by the swift and certain imposition of sanctions for noncompliance. Drug court judges, for example, closely supervise offenders who are required to participate in substance abuse treatment. The judge receives regular updates on offenders’ progress, and offenders return to court frequently so that the judge can congratulate them on staying drug and crime free or admonish them for failing to follow the prescribed treatment program.

The final principle of problem-solving justice is a focus on case outcomes rather than case processing. The effectiveness of problem-solving courts is measured not by the number of cases handled per day or the average time from arrest to case disposition but by the court’s graduation rate, the recidivism rates of defendants who have graduated, and improvements in defendants’ educational attainment, physical and mental health, and employment prospects. One judge summarized this principle as follows: “Outcomes—not just process and precedents—matter. Protecting the rights of an addicted mother is important. So is protecting her children and getting her off drugs” (Kaye, 1999, p. 13).

As these six principles make clear, courts that engage in problem-solving justice depart in important ways from the traditional, adversarial model of the criminal court system. These courts—and the criminal justice officials and social service agency personnel who staff them—have embraced a new and, many would contend, more effective way to respond to criminal behavior and to deliver justice.

### THE MANDATE OF PROBLEM-SOLVING COURTS

Problem-solving courts use their authority to forge new responses to chronic social, human, and legal problems—including problems like family dysfunction, addiction, delinquency, and domestic violence—that have proven resistant to conventional solutions. They seek to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to changing the behavior of litigants and ensuring the well-being of communities. And they attempt to fix broken systems, making courts (and their partners) more accountable and responsible to their primary customers—the citizens who use courts every day, either as victims, jurors, witnesses, litigants, or defendants.

SOURCE: Berman and Feinblatt (2001, p. 3).

### Restorative Justice and Problem-Solving Courts

Many problem-solving courts embrace, either explicitly or implicitly, the principles of **restorative justice**. Unlike other utilitarian perspectives on punishment (e.g., deterrence, incapacitation, and rehabilitation), which emphasize punishment for crime prevention and focus almost exclusively on the offender, restorative justice views punishment as a means to repair the harm and injury caused by the crime, focusing on the victim and the community as well as the offender (Braithwaite, 1989, 1999; Kurki, 1999). The goal of restorative justice “is to restore the victim and the community and to rebuild ruptured relationships in a process that allows all three parties to participate” (Kurki, 1999, p. 236).

Restorative justice is concerned with two key concepts: harm and repair. First, it is clear that crime causes several types of harm (Karp, 2001, p. 729). For example, there is the material harm, especially the damage to property and lost wages associated with crime. There is also personal and relationship harm. This can include everything from physical injury to emotional damage to victims and their families. Restorative justice also identifies public and private harms. Private harms are borne by individual victims of crime, and public harm amounts to damaged community cohesiveness.

Restorative justice is not just about harm, however. Repair is critical. That is, restorative justice emphasizes the importance of repairing the harm that crime causes and thereby restoring a sense of community. Repair can be manifested in a number of ways, such as by having the perpetrator fix damaged property. Or, as Karp (2001) put it, repair “may involve restoring offenders by creating social support, integrative opportunities, and competencies” (p. 730). Repair may also “involve rebuilding communities by renewing respect for and commitment to the criminal justice system; by fostering new social ties among community members; by enriching the deliberative democratic process; and

by focusing attention on community problems so that broader institutional weaknesses, such as in schools or families, can be addressed” (p. 730).

Restorative justice achieves its goals through a variety of practices. These practices include victim-offender mediation, family group conferencing, sentencing circles, and citizen supervision of probation. What typically occurs is a face-to-face meeting involving the victim, the offender, the victim’s and offender’s families, and other members of the community. Participants in the process discuss the effects of the crime on the victim, the offender, and the community and attempt to reach a collective agreement regarding the most appropriate sanction. Although this *process* differs significantly from the traditional criminal justice process, the *outcomes* are often similar to those imposed by judges and other criminal justice officials: apologies, restitution, fines, community service, alcohol or drug abuse treatment, anger management programs, intensive supervision probation, or short jail terms.

Restorative justice sounds good on paper, but it confronts serious obstacles depending on where it is attempted. For example, it has almost no chance of succeeding in areas where there is no defined sense of community. The whole practice is premised on the idea of community and of welcoming offenders “back into the fold.” It is also unlikely that victims of serious crimes would opt for the restorative justice approach because it requires that victims and offenders work together to repair harm. Some have therefore argued that restorative justice is most likely to succeed in tight-knit rural communities or with offenders (especially young ones) who are accused of committing relatively minor offenses (for other criticisms of restorative justice, see Levrant, Cullen, & Fulton, 1999). Others, though, have argued that restorative justice can be effective for dealing with crimes as serious as homicide (Eschholz, Reed, & Beck, 2003; Umbreit & Vos, 2000).

In the sections that follow, we focus on two types of problem-solving courts: drug treatment courts and domestic violence courts. These two types of courts—and especially drug courts—are found in many jurisdictions throughout the United States, and there is now a substantial amount of research on their effectiveness. We then briefly discuss other types of specialized courts, including community courts, mental health courts, homeless courts, and reentry courts.

## Drug Treatment Courts

Increases in the number of drug offenders appearing in state and federal courts, coupled with mounting evidence of both the linkages between drug use and crime and the efficacy of drug treatment programs, led a number of jurisdictions “to rethink their approach to handling defendants charged with drug and drug-related offenses” (Drug Court Clearinghouse and Technical Assistance Project, 1999, p. 3). Some jurisdictions, such as Cook County (Chicago), Illinois, established specialized dockets designed to manage the drug caseload more efficiently and to alleviate stress on the felony court system (Inciardi, McBride, & Rivers, 1996). Other jurisdictions, such as Dade County

(Miami), Florida, created **drug treatment courts** that incorporated intensive judicial supervision of drug offenders, mandatory drug treatment, and a rehabilitation program providing vocational, education, family, and medical services.

### VIEW FROM THE FIELD

#### The Role of the Drug Court Coordinator

*Jacque van Wormer*

Ask almost any team member involved in a drug court, and he or she will tell you that outside of the judge, one of the most pivotal roles in the drug court is that of the drug court coordinator (also referred to as a drug court administrator). Given the recent explosion of drug courts within the adult, juvenile, and dependency court systems over the past two decades, coordinators are essentially a recent phenomenon and addition to the criminal justice system. Although often defined differently by jurisdiction, this role is unique in that it requires a strong blend of administrative, practitioner, and political experience to get the job done. Duties can include providing direct case management and treatment to drug court participants, serving on the drug court team, conducting data collection, meeting with elected officials to secure funding, and presenting in front of legislative bodies. Travel across the country, and you will find that the duties and positions vary as greatly as our courts. Given that many drug courts have been able to successfully institutionalize their programs within the court structure, there is no question that the role of the drug court coordinator will continue to expand and grow within our nation's court system.

#### Key Elements of Drug Courts

Although the nature and characteristics of drug courts throughout the United States vary widely, they share several “key elements” (National Association of Drug Court Professionals, 1997):

- Integration of substance abuse treatment with justice system case processing
- Use of a nonadversarial approach
- Early identification and prompt placement of eligible participants
- Access to a continuum of treatment, rehabilitation, and related services
- Frequent testing for alcohol and illicit drugs
- A coordinated strategy among judge, prosecutor, defense, and treatment providers to govern offender compliance
- Ongoing, judicial interaction with each participant

As this list suggests, there are important differences between drug treatment courts and traditional trial courts. Drug courts are explicitly nonadversarial, the judge is an active participant in adjudication of the case and in supervision of the offender, and the focus is on treatment rather than punishment.

In the typical preadjudication drug court, drug offenders who meet the eligibility criteria for the program are given a choice between participation in the drug court and traditional adjudication. Although the eligibility criteria vary, most programs exclude offenders who have prior convictions for violent offenses or whose current offense involved violence or use of a weapon (see “Eligibility Criteria for the Douglas County [NE] Adult Drug Court”). They target offenders whose involvement with the criminal justice system is due primarily to their substance abuse. Offenders who are accepted into the program—which may last 12 months, 18 months, or longer—and who agree to abide by the requirements of the program are immediately referred to a substance abuse treatment program for counseling, therapy, and drug abuse education. They also are subject to random urinalysis and are required to appear frequently before the drug court judge. Offenders who do not show up for treatment sessions or drug court or who fail drug tests are subject to sanctions; repeated violations may result in termination from the program and adjudication and sentencing on the original charges. If the offender completes the program, the charges are dismissed.

### **ELIGIBILITY CRITERIA FOR THE DOUGLAS COUNTY (NE) ADULT DRUG COURT**

To be considered for the drug court, defendants must meet all of the following eligibility criteria:

- No more than one prior nonviolent felony conviction
- Demonstrated need for substance abuse treatment
- Medium or high level of service inventory (LSI) risk/need level
- Defendants with *any* of the following characteristics are ineligible:
  - Prior felony conviction for a crime of violence
  - Prior offense involving use or possession of a dangerous weapon
  - Known gang involvement
  - More than one misdemeanor conviction for crimes against persons
  - Unable to attend drug court sessions
  - Unwilling to submit to random drug testing

**SOURCE:** Spohn, Piper, Martin, and Davis-Frenzel (2001).

### Do Drug Courts Work?

The popularity of drug courts reflects the view that drug courts, in contrast to traditional adjudication, “work.” But what does this mean? How do we measure the effectiveness of drug courts? To answer this question, we need to understand what drug courts are designed to do. Most experts would agree that these courts are designed, first and foremost, to reduce crime by preventing recidivism. There also is an expectation that drug courts will be more cost-effective than traditional adjudication. In other words, “officials want to know if drug courts reduce crime and save money doing so” (Goldkamp, White, & Robinson, 2001, p. 31). Other offender-based outcome measures would include such things as reduced drug use, enhanced education, better employment prospects, and improved mental and physical health (see “Measuring the Performance of Drug Treatment Courts” for a list of drug court performance measures).

#### MEASURING THE PERFORMANCE OF DRUG TREATMENT COURTS

The National Drug Court Institute’s National Research Advisory Committee has suggested that drug courts be evaluated based on three primary performance measures:

- *Retention in the drug court treatment program*—those who complete the program or are still enrolled in the program divided by those who entered the program during a particular time period
- *Sobriety*—negative drug tests, as a percentage of all tests given to drug court participants
- *Recidivism*—rate of new arrests for drug court participants, both during program participation and after program completion

SOURCE: Heck and Thanner (2006).

There is mounting evidence that drug courts reduce offender recidivism and prevent drug relapse. A report by the U.S. General Accounting Office (GAO) summarized the results of 20 evaluations of 16 drug courts that had been completed by early 1997 (U.S. GAO, 1997). The GAO report indicated that these early evaluations generally concluded that drug courts were effective in reducing drug use and criminal behavior. A later review by Belenko (1998) summarized the results of 30 evaluations of 24 drug courts that had been completed by May 1998. Belenko observed that most of these evaluations concluded that criminal behavior was significantly reduced while the

offender was participating in the program. For example, an evaluation of a Ventura County (California) drug court, which tracked recidivism over an 8-month time period, found that only 12% of the drug court participants were rearrested, compared to 32% of those in a comparison group. A Jackson County (Missouri) evaluation similarly revealed 6-month rearrest rates of 4% for program participants and 13% for nonparticipants.

Belenko's (1998) review also included studies that assessed the impact of drug court participation on *postprogram* recidivism. Eight of the nine evaluations reported lower recidivism rates for the drug court group as compared to a comparison group of similarly situated offenders who did not participate in the drug court program. An evaluation of the Multnomah County (Oregon) drug court, for example, found statistically significant differences between drug court participants (an average of 0.59 new arrests) and drug court-eligible nonparticipants (an average of 1.53 new arrests) over a 24-month tracking period. These results led Belenko (1998) to conclude that

although the evaluations vary considerably in scope, methodology and quality, the results are consistent in finding that... drug courts provide more comprehensive and closer supervision of the drug-using offender than other forms of community supervision, drug use and criminal behavior are substantially reduced while clients are participating in drug court, [and] criminal behavior is lower after program participation. (pp. 17–18)

Belenko's (1998) concerns about the studies' research designs and methodologies were echoed by another team of researchers who analyzed the results of 42 separate drug court evaluations (D. B. Wilson, Ojmarh, & MacKenzie, 2002). Their conclusion was that "drug offenders participating in drug court are less likely to reoffend than similar offenders sentenced to traditional correctional options, such as probation" (p. 20). Their main criticism of the available literature was that many of the research designs "made no attempt to statistically control for differences between drug court and comparison participants, and a common comparison group, drug court drop-outs, has a bias favoring the drug court condition" (p. 20).

A number of drug court researchers have compared the records of those who successfully completed the drug court treatment program with those who either left voluntarily or were removed from the program because of noncompliance with program conditions. This is a methodologically questionable approach because, as one researcher has pointed out, it amounts to saying that the "successes succeed and failures fail" (Goldkamp et al., 2001, p. 32). A number of drug court evaluations avoid this problem by comparing drug court participants to those who would have been eligible for the program but did not participate (Finigan, 1998; Goldkamp & Weiland, 1993;

Gottfredson, Coblenz, & Harmon, 1997; Peters & Murrin, 1998; Sechrest, Shichor, Artist, & Briceno, 1998; Harrell, Mitchell, Hirst, Marlowe, & Merrill, 2002). A common finding of these studies is that recidivism is reduced, both during program participation and following graduation from the drug court program. Other researchers have randomly assigned subjects to treatment and control conditions, finding less recidivism among drug court participants (Gottfredson & Exum, 2002; Gottfredson, Najaka, & Kearley, 2003). We discuss the results of this drug court evaluation in “Current Research” on p. 135.

There also is evidence that drug courts are cost-effective alternatives to traditional adjudication. For example, a report on the second decade of drug courts (U.S. Department of Justice, 2006), which acknowledged that it is difficult to determine precisely the cost savings achieved by drug courts, reported that an evaluation of the Multnomah County Drug Court in Portland, Oregon, did result in savings to taxpayers. The savings amounted to \$5,000 per participant or \$1.5 million per year for the court’s annual caseload of 300 participants (U.S. Department of Justice, 2006, p. 27). A study of the Superior Court Drug Intervention Program in Washington, DC, similarly found that every dollar spent on program costs resulted in a savings of two dollars for crimes that were prevented (Roman & Harrell, 2001). As the authors of the U.S. Department of Justice report (2006) concluded, “Significant savings for taxpayers—primarily from reduced jail and probation time—can be achieved by using drug courts as an alternative to incarceration for drug-involved offenders” (p. 30).

The most comprehensive study of the effectiveness of drug treatment courts is a multisite analysis by the Urban Institute (Rossman, Roman, Zweig, Rempel & Lindquist, 2011). The authors of this study measured multiple outcomes (crime, drug use, employment, family functioning, homelessness and mental health) using data from 23 drug courts and 6 comparison sites in 8 states. They found that drug courts produced significant reductions in drug use and criminal behavior. Also, compared to drug offenders who were not adjudicated in drug courts, drug court participants were less likely to report a need for employment, educational and financial services; they also reported less family conflict. On the other hand, there were no differences in employment rates, income, family emotional support, depression or homelessness. The researchers also reported that although the cost of running a drug court was greater than the cost of running a traditional court, “overall, the net benefit of drug courts is an average of \$5,680 to \$6,208 per participant, returning \$2 for every \$1 of cost” (Rossman et al., 2011, p. 8).

Given the generally positive results of studies evaluating drug courts, it is not surprising that they have become the most popular type of problem-solving court in the United States. It also is not surprising that their success has prompted the development of other types of courts focusing on specific problem populations, such as defendants arrested for domestic violence.



## CURRENT RESEARCH

**SOURCE:** "The Effectiveness of Drug Treatment Courts: Evidence From a Randomized Trial." Denise C. Gottfredson, Stacy S. Najaka, and Brook Kearley. *Criminology & Public Policy*, 2, 171–196, 2003.

Although there is a substantial amount of research evaluating drug courts, much of this research suffers from methodological problems, including the use of pre-post comparisons of drug court participants only or post-only comparisons of drug court participants with dissimilar control groups.

To address these problems, Gottfredson and her colleagues conducted a more rigorous evaluation of the Baltimore City Drug Treatment Court (BCDTC) using an experimental research design. Offenders who were eligible for the drug court were randomly assigned to the drug treatment court or to "treatment as usual" in a district or circuit court. The study participants included 235 arrestees, 139 of whom were randomly assigned to the BCDTC and 96 of whom were assigned to traditional adjudication. All arrestees were followed for 24 months following their random assignment to the experimental or control group.

The results of the evaluation revealed that "the BCDTC is reducing criminal offending in a population of drug-addicted chronic offenders" (p. 189). The rearrest rate during the 2-year follow-up period was 66.2% for drug court participants and 81.3% for offenders in the control group; drug court subjects also had significantly fewer arrests (average of 1.6) than did control group subjects (average of 2.3). However, the authors also found that only half of the drug court subjects participated in a certified drug treatment program for at least 10 days. Further analysis revealed that the drug court participants who did receive treatment were substantially less likely to be rearrested than either the untreated drug court participants or the control subjects; the rearrest rate was 56.7% for the drug court participants who received treatment, 75% for the drug court participants who did not receive treatment, and 81.3% for the control group. This led the authors of the study to conclude that "drug treatment is an important ingredient in the success of the program, at least for the seriously addicted offenders included in this study" (p. 193).

## Domestic Violence Courts

**Domestic violence courts**, like drug courts, developed in response to a combination of factors. One important factor was the increase in the number of domestic violence cases on state court dockets. Changes in attitudes toward domestic violence, coupled with policy changes implemented by police and prosecutors that made it more likely that perpetrators of domestic violence would be arrested and prosecuted, resulted in increases in the number of domestic violence cases that made it into the court system. At the same time, there was growing dissatisfaction with the response of the criminal justice system to

crimes of domestic violence (Jordan, 2004). Critics charged that criminal justice officials did not take domestic violence cases seriously and that, as a result, “in all too many instances, either perpetrators were never brought to court or their cases were quickly dismissed” (Mazur & Aldrich, 2003, p. 5).

### **NEW YORK JUDGE JUDITH S. KAYE ON THE NEED FOR DOMESTIC VIOLENCE COURTS**

One possible judicial response to the current situation is to continue to process domestic violence cases as any other kind of case, and to continue to observe systemic failures. Another response, however—the problem-solving response—is to try to design court programs that explicitly take into account the special characteristics that domestic violence cases present. If domestic violence defendants present a particular risk of future violence, then why not enhance monitoring efforts to deter such actions? If victims remain in abusive situations due to fear for their own and their children’s well being, then why not provide links to services and safety planning that may expand the choices available to them? If cases are slipping between the cracks of a fragmented criminal justice system, then why not work together to improve coordination and consistency?

**SOURCE:** Cited in Mazur and Aldrich (2003, p. 6).

The movement to establish domestic violence courts also was influenced by the enactment of the Violence Against Women Act in 1994, which provided federal funding to the states to address domestic violence. The statute provided grants for “personnel, training, technical assistance, data collection and other equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women” (42 USC 379(6)(g)). A number of states used the funding provided by the act to set up domestic violence courts.

Like drug courts, domestic violence courts spread rapidly throughout the United States; they also are found in Canada, Australia, and the United Kingdom (Eley, 2005). According to a survey conducted by the National Center for State Courts, there were approximately 200 domestic violence courts in 1998 (Karan, Keilitz & Denaro, 1999). More recent estimates suggest that more than 300 courts nationwide are giving specialized attention to domestic violence cases. However, not all of these are stand-alone courts that process only domestic violence cases and that coordinate with other social service agencies. Some simply reserve time on the court’s calendar for specialized processing of domestic violence cases (Levey, Steketee, & Keilitz, 2001). A report by the Center for Court Innovation identified 208 *criminal domestic violence courts*, which they defined as “courts that handle domestic violence cases on a separate calendar or that assign domestic violence cases to one or more dedicated judges or judicial officers” (Labriola, Bradley, O’Sullivan, Rempel & Moore, 2009, p. iv).



### COMPARATIVE COURTS

As of April 2009, there were 104 specialist domestic violence courts (SDVCs) in the United Kingdom. Like domestic violence courts in the United States, these courts involve a collaborative effort by the police, prosecutors, court staff, probation officials, and social service agencies. These agencies work together to identify and track domestic violence cases, to identify the victim's level of risk for repeated victimization, to support victims of domestic violence, and to ensure that perpetrators are brought to justice.

In March 2008, the findings of an evaluation of 23 SDVCs were released by Her Majesty's Courts Service of the Home Office. The report, "Justice With Safety, Special Domestic Violence Courts Review 2007–2008," assessed the performance of the courts using a variety of measures and attempted to determine whether the courts were using the best practices outlined in the SDVC national resource manual. The authors of the report found that the arrest rate for crimes of domestic violence reported to the police was high (an average of over 80%) and that about two thirds of all cases were successfully prosecuted.

The report also found, however, that there was considerable variability across courts in overall performance, with some courts having substantially higher levels of success than others in bringing offenders to justice and supporting victims. The authors of the report attributed these differences to variations in the degree to which the courts had incorporated the key principles outlined in the national resource manual. They found that the SDVCs that were more successful were those that had

- Strong multiagency partnerships
- Effective systems for identification of cases
- Independent Domestic Violence Advisor (IDVA) services with a focus on supporting victims at court
- Good training and dedicated staff
- Criminal justice perpetrator programs
- Safe court facilities

The report concluded that "most successful courts were embedded in an approach that recognized that the SDVC was one arm of a coordinated response that addressed victim safety."

**NOTE:** A copy of the Justice With Safety report can be found at <http://www.crimereduction.homeoffice.gov.uk/dv/dv018.htm>.

### Domestic Violence Courts: Victim Safety and Offender Accountability

Unlike most other specialized courts, which focus almost exclusively on the rehabilitation of offenders, domestic violence courts also emphasize ensuring the safety of the victim. That is, these courts attempt to tailor interventions to the needs of victims (and their

children), while at the same time monitoring offenders and holding them accountable for their behavior. As a focus group brought together by the Center for Court Innovation (n.d.b) put it, “Domestic violence courts do not view defendant rehabilitation as a high-priority part of the problem-solving process. This differs sharply from most problem-solving courts (with the possible exception of community courts). Rather, the mission of domestic violence courts concentrates more on the promotion of victim safety and offender accountability.”

According to one survey of domestic violence courts (Labriola et al., 2009), most courts use dedicated victim advocates who accompany victims to court, explain judicial proceedings, and ensure that victims have access to needed services. A majority of the courts also issue a temporary order of protection or restraining order at first appearance and impose of final order of protection prohibiting or limiting contact with the victim at sentencing; use batterer programs in some types of cases; and typically order offenders to undergo alcohol or substance abuse treatment and/or mental health treatment. The survey also revealed a number of obstacles to effective functioning of domestic violence courts, including scarce resources, lack of training for judges and other team members, and staff turnover. Respondents further noted that the efficacy of domestic violence courts depended to some extent on the willingness of victims to cooperate in the prosecution of the case.

An example of a domestic violence court can be found in the state of Rhode Island. According to the court’s website, “The mission of the Domestic Violence Court is to effectively manage a specialized domestic abuse docket within the overall framework of affording protective orders and services to victims and their families while at the same time ensuring batterer accountability and encouraging behavior changes.” To accomplish its mission, the court assesses family needs and holds abusers accountable. It also has routine compliance reviews, just like drug courts. The court’s goals are

- To promote the cessation of the violence
- To protect the abused party, the children of the parties and other family members
- To protect the general public
- To hold perpetrators accountable for their violent behavior and for stopping the behavior
- To rehabilitate the perpetrator through appropriate interventions
- To convey the message that domestic violence will NOT be tolerated

Another domestic violence court is found in Lexington County, South Carolina (Gover, MacDonald, & Alpert, 2003). In that court, all nonfelony domestic violence cases are processed by a single court. This rural court collaborates with sheriff’s office investigators, a victim advocate, and a full-time prosecutor. Mental health officials also

work with the court to diagnose offenders' needs and assign them to the proper treatment program. The court even draws on the services of a legal advocate from a local domestic violence shelter. Most of the offenders who come before the court participate in a 26-week group-based cognitive therapy program in exchange for a suspended jail sentence. As Gover and her coauthors (2003) noted, the overall goal of the Lexington County court "is to improve investigations and prosecution of domestic violence cases through increased resources, improved collaboration, and a progressive new court approach. Additionally, the goal . . . is to improve victim safety by holding defendants accountable for their actions and reducing recidivism" (p. 114).

### Do Domestic Violence Courts Work?

Compared to the volume of research on the effectiveness of drug treatment courts, there is relatively little research evaluating domestic violence courts. One early evaluation compared case outcomes before and after the initiation of the Miami domestic violence court (Goldkamp, Weiland, Collins, & White, 1998). The authors of this study found that the dismissal rate for misdemeanor cases processed in the specialized court was 37% lower and that offenders who participated in an integrated batterer substance abuse treatment program were less likely than offenders in a control group to reoffend against the same victim. An analysis of the Brooklyn (New York) court also found that case dismissals were reduced and that services provided to victims were expanded (Mazur & Aldrich, 2003; see also Davis, Smith, & Rabbit, 2001).

An evaluation of the Lexington County, South Carolina, domestic violence court described above also found positive results (Gover et al., 2003). Compared to offenders who were processed prior to the implementation of the specialized court, offenders adjudicated in the domestic violence court were less likely to be rearrested for domestic violence; they also took longer to reoffend than did the offenders in the control group. The study also revealed that the number of arrests for domestic violence increased following the implementation of the domestic violence court. The authors suggested that this resulted from a change in the response of law enforcement to reports of domestic violence; that is, law enforcement officers in the county responded by making more arrests of domestic violence abusers. According to the authors of the study, "This likely occurred because officers realized the court was taking the charges and offenders seriously" (p. 127).

There also is evidence that domestic violence victims have positive attitudes toward domestic violence courts generally and toward their own experiences in these courts specifically. One study found that victims of domestic violence supported the idea of a specialized domestic violence court and reported that the existence of such a court would make them more likely to report future violence (Smith, 2001). Another evaluation revealed that victims whose cases were prosecuted by domestic violence courts were

at least “somewhat” satisfied with the outcome and handling of their cases (Hotelling & Buzawa, 2003). A study of five domestic violence courts in England and Wales also found that victims were satisfied with both the procedures used in the courts and the outcomes of their cases (Cook, Burton, Robinson, & Vallely, 2004).

A recent review of the literature on the impact of domestic violence courts concluded that evidence of their effectiveness was mixed (Labriola et al., 2009). Most studies found the domestic violence courts did expedite the processing of misdemeanor cases. However, there was little evidence that the courts reduced offender recidivism: of the 10 extant studies, 3 reported lower recidivism rates, 5 reported no change in recidivism rates, and 2 produced mixed results. The review also noted that most studies concluded that batterer treatment programs either did not affect recidivism at all or produced very modest effects. These findings led the authors to conclude that “because the domestic violence court intervention itself varies from site to site, it is premature to focus on outcomes generically (e.g., for recidivism). Before we can ascertain which specific policies and practices produce such reductions and which do not, we need to know much more about how the courts operate and about the variations in how common policies are implemented” (Labriola et al., 2009, pp. 10–11).

### Other Problem-Solving Courts

Although drug treatment courts and domestic violence courts have attracted the most attention and generated the largest body of research, they are not the only types of specialized or problem-solving courts. An assortment of innovative court models has been developed in an effort to address the underlying problems of defendants, victims, and communities. In fact, in 2000 and again in 2004, the Conference of Chief Justices and the Conference of State Court Administrators passed a resolution calling for “the careful study and evaluation of the principles and methods employed in problem-solving courts and their application to other significant issues facing state courts” (Casey & Rottman, 2005, p. 35).

One type of specialized court is the **community court**, which, like drug courts and domestic violence courts, focuses on partnerships with community agencies and problem solving. These courts are located in neighborhoods rather than the downtown core and emphasize finding solutions to crime problems plaguing the local community. Most of them handle only misdemeanor or low-level felony offenses and often require convicted offenders to perform community service as a condition of the sentence. As of 2012, there were community courts operating in dozens of U.S. cities; these courts also are found in South Africa, England, Canada, and Australia (Center for Court Innovation, n.d.a)

Perhaps the best-known community court is the Midtown Community Court, which opened in October 1993 in New York City’s Times Square. The purpose of this

neighborhood-based court is to provide “accessible justice” for quality-of-life crimes occurring in and around the entertainment district that is located in Times Square. The Midtown Community Court focuses on devising innovative responses to less serious crimes such as vandalism, shoplifting, prostitution, and minor drug offenses. Offenders convicted of these crimes are required to perform community service or make other types of restitution to the community. Social workers and other social service agency personnel work with court officials to address offenders’ underlying problems, such as homelessness, unemployment, and substance abuse. The goal is to give offenders the structure and support they need to avoid reoffending.

The first **Veterans treatment court** opened in Buffalo, New York, in 2008. The development of this type of problem-solving court reflects the reality that veterans have higher rates of unemployment, homelessness, substance abuse, and mental-health problems than nonveterans, and that these problems often lead to involvement with the criminal justice system. One difference between veterans courts and other problem-solving courts is that the typical veterans court assigns each participant a mentor who is also a veteran of the same service. Similar to participants in other problem-solving courts, veterans court participants are required to complete relevant treatment programs; their progress is monitored by a dedicated veterans court judge and by other criminal justice and social service professionals. Although most veterans courts limit eligibility to nonviolent offenders, some critics argue that it is a mistake to do so, given that veterans who commit violent crimes may be more in need of treatment than those who engage in nonviolent crimes.

Concerns about veterans courts also have been raised by local chapters of the American Civil Liberties Union, which object to the creation of a new class of criminals based solely on their status as veterans. For example, Lee Rowland of the American Civil Liberties Union of Nevada opposed the proposed state veterans court because it provided “an automatic free pass based on military status to certain criminal defense rights that others don’t have” (quoted in Lithwick, 2010). Similarly, Mark Silverstein, legal director of the Colorado ACLU, objected to the veterans court initiative there, arguing that “the legal category of ‘veteran’ is both too broad and too narrow, sweeping in both Vietnam and World War II veterans, who have very different experiences, while excluding nonveterans who also suffer from PTSD but aren’t eligible for any special courts” (Lithwick, 2010).

These concerns notwithstanding, the number of veterans courts has grown since 2008. A 2012 inventory by the Department of Veterans Affairs found that Veteran Outreach Specialists were operating in 168 courts (McGuire, Clark, Blue-Howells & Coe, 2013).

**Homeless courts**—such as the one found in San Diego—represent another example of specialized courts. These courts are designed to help homeless individuals resolve

minor criminal matters—arrests for disturbing the peace, vagrancy, public drunkenness, or sleeping on the sidewalk or in some other public place—that may restrict their access to social services, employment, or public housing. California’s Administrative Office of the Courts describes the need for homeless courts in this way:

Resolution of outstanding warrants not only meets a fundamental need of homeless people but also eases court case-processing backlogs and reduces vagrancy. Homeless people tend to be fearful of attending court, yet their outstanding warrants limit their reintegration into society, deterring them from using social services and impeding their access to employment. They are effectively blocked from obtaining driver’s licenses, job applications, and rental agreements. (California Administrative Office of the Courts, 2004)

To address these needs, homeless courts—which in San Diego and other cities hold sessions at local homeless shelters—help homeless individuals pay fines and resolve outstanding infractions and misdemeanor offenses. Defendants who are convicted in these courts typically receive an alternative sentence that involves participation in an agency program (e.g., substance abuse treatment, life skills education, computer training, job skills training) rather than a more traditional sentence of a short stay in jail and a fine.

**Mental health courts** are another type of problem-solving court, one developed in recognition of the fact that “jails have become the de facto mental health treatment centers” for defendants with mental health problems (Goss, 2008, p. 405). Mental health courts are important and necessary because there are many mentally ill offenders who have historically “slipped through the cracks” of the criminal court system (Watson, Luchins, Hanrahan, Heyrman, & Lurigio, 2000). By some estimates, there are more than a quarter of a million mentally ill offenders in America’s prisons and jails (Ditton, 1999).

Traditionally, the criminal justice system and mental health agencies have not been close collaborators (Denckla & Berman, 2001). The purpose of mental health courts is to bring these entities together to provide needed services to mentally ill offenders. The four original mental health courts are located in Broward County, Florida; Anchorage, Alaska; King County, Washington; and San Bernardino, California. Participation in the courts is voluntary and is usually reserved for low-level offenders. In the King County Mental Health Court, a court liaison to the treatment community is present at all hearings and is responsible for linking the defendant with appropriate services. Defendants participate in court-ordered treatment programs, and their charges are often dropped upon successful completion of treatment. They are also supervised by probation officers who have small caseloads and have a background in the mental health field.

Another interesting specialized court is the so-called **reentry court**. One such court, the Harlem Parole Reentry Court, began its operations in June 2001. Its purpose was to “test the feasibility and effectiveness of a collaborative, community-based approach to

managing offender reentry, with the ultimate goal of reducing recidivism and prison return rates” (Farole, 2003, p. vii). The court does not adjudicate new offenses but instead provides oversight and support services to offenders reentering the community. Parolees who violate the terms of their supervision, however, are dealt with in a fairly traditional fashion.

The problem-solving courts discussed above are relatively recent additions to the criminal justice system. All of them developed within the past two decades. In the next section, we discuss a specialized court—the juvenile court—with a much longer history.

## Juvenile Courts

In November 2008, an 8-year-old boy used a .22-caliber rifle to kill his father and another man who was renting a room in the family’s home in St. Johns, Arizona. Initially charged with two counts of premeditated murder and facing trial in adult court, the young boy eventually pled guilty to one count of negligent manslaughter in **juvenile court**. Under the terms of the plea agreement, the third-grader was to undergo a mental evaluation prior to being sentenced and follow-up evaluations at ages 12, 15, and 17.

Although this case—which involved a double murder—is not typical of the cases heard in juvenile court, it illustrates the dilemma that confronts criminal justice officials when very young children commit crimes. There is an assumption that children lack the moral and cognitive capacities to understand and appreciate the consequences of their behavior and thus are not capable of criminal intent. At the same time, there is a belief that a child who commits a crime is in need of supervision and guidance, which courts and social service agencies could provide if the child was under their jurisdiction.

The complementary beliefs that children should not be prosecuted in adult court but nonetheless require judicial supervision influenced the development of the juvenile court system. Like the other specialized or problem-solving courts discussed in this chapter, the juvenile court emphasizes treatment or rehabilitation rather than punishment, with the ultimate goal of transforming juvenile delinquents into productive citizens. The juvenile court operates under the doctrine of **parens patriae** (“parent of the country”), which gives the court authority over a child in need of protection and guidance and allows the court to act **in loco parentis** (“in place of the parents”) to make decisions in the best interests of the child.

The first juvenile court was established in 1899 in Cook County (Chicago), Illinois. Prior to this time, some states passed laws requiring separate trials for juveniles and adults; others established public reformatories—sometimes called “houses of refuge”—for delinquent, vagrant, abandoned, or neglected youth. As Lawrence and Hemmens (2008) note, the early reform schools “were intended for education and treatment, not for punishment but hard work, strict regimentation, and whipping were common” (p. 22). Critics also charged that the houses of refuge engaged in racial discrimination and that sexual and

physical abuse were common. There also were allegations that children were being committed to reform schools for noncriminal behavior, on the premise that commitment to the juvenile institution would have beneficial effects on the child (Pisciotta, 1982).

Concerns about the ineffectiveness and abuses of reform schools spurred the development of the juvenile court system. Also influential was the so-called child-saving movement of the late 19th century, which advocated state intervention to save at-risk children who were not being adequately controlled or supervised by their parents. These reformers lobbied for legislation that would give courts jurisdiction over children who committed crimes as well as those who were incorrigible or who repeatedly ran away from home.

The traditional view of the emergence of the juvenile court characterizes the **child savers** as a group of benevolent and civic-minded individuals whose goal was to help delinquent, abused, and neglected children who were suffering due to the negative effects of rapid industrialization. However, Platt's (1977) assessment of the movement is more negative. He argued that the "child saving movement" did little to humanize the justice system for children but rather "helped create a system that subjected more and more juveniles to arbitrary and degrading punishments" (p. xvii). According to Platt, the attention of the juvenile court was originally focused on a select group of at-risk youth. That is, court personnel originally focused on the children of urban, foreign-born, and poor families.

Feld (1999) contends that in modern times, the juvenile court continues to intervene disproportionately in the lives of the poor. He also charges that the social welfare and social control aims of the juvenile court are irreconcilable and asserts that attempts to pursue and reconcile these two competing agendas have left the contemporary juvenile court in crisis. According to his analysis, the juvenile court is "a conceptually and administratively bankrupt institution with neither a rationale nor a justification" (pp. 3–4). He also contends that the juvenile court today offers a "second-class criminal court for young people" and does not function as a welfare agency (p. 4). Feld suggests that the distinction between adult and juvenile courts should be eliminated and that social welfare agencies should be used to address the needs of youth. His suggestion would make age a mitigating factor in our traditional, adjudicatory (adult) court system.

### **Jurisdiction and Operation of the Juvenile Court**

The jurisdiction of the modern juvenile court is based on the age of the youth and is determined by state statutes. In a majority of states, the juvenile court has jurisdiction over all youth who were younger than 18 at the time of the offense, arrest, or referral to court (Office of Juvenile Justice and Delinquency Prevention [OJJDP], 2003b). A number of states set a different upper age limit for juvenile court jurisdiction; in 3 states, it is age 15, and in 10 states, it is age 16 (OJJDP, 2003b, p. 5). In addition and as discussed in more detail below, all states allow juveniles to be tried as adults in criminal court under certain circumstances.

Each year, juvenile courts in the United States process more than 1 million delinquency cases; in 2011, the number was 1.24 million (OJJDP, 2014a). As shown in Table 5.1, the courts disposed of 317,500 person offenses (including 900 cases of homicide and 5,700 cases of forcible rape), 447,500 property offenses, 152,600 drug law violations, and 318,600 public order offenses. The most common individual offenses were simple assault, larceny-theft, drug law violations and obstruction of justice. The number of cases handled by juvenile courts has declined steady since 2002, largely due to a substantial decline in the number of property offenses (down 32% from 2002 through 2011). There also was a substantial decrease in the number of homicide cases (-40%). In fact, the only type of case for which there was an increase was robbery.

**Table 5.1 Delinquency Cases in Juvenile Courts, 2011**

Most Serious Offense	Number of Cases	Percent Change, 2002–2011
Total	1,236,200	-26%
<b>Person Offenses</b>	317,500	-22
Criminal homicide	23,200	-40
Forcible rape	31,600	-12
Robbery	23,900	+10
Aggravated assault		-27
Simple assault		-23
Other violent sex offenses		-20
Other person offenses		-24
<b>Property Offenses</b>	447,500	-32
Burglary	79,800	-28
Larceny-theft	219,700	-29
Motor vehicle theft	5,400	-66
Arson	70,400	-39
Vandalism	39,300	-29
Trespassing	12,000	-27
Stolen property offenses	8,200	-46
Other property offenses		-59
<b>Drug Law Violations</b>	152,600	-17
<b>Public Order Offenses</b>	318,600	-24
Obstruction of justice	149,700	-24
Disorderly conduct	26,400	-23
Weapons offenses	14,400	-19
Liquor law violations	11,700	-5
Nonviolent sex offenses	26,300	-26

SOURCE: Office of Juvenile Justice and Delinquency Prevention (2014a).

Most youth handled by the juvenile courts in 2011 were male (OJJDP, 2014a). However, the proportion of cases involving females increased substantially between 1985 and 2011; females comprised 28% of the juvenile court caseload in 2008, compared to only 17% in 1985. The female caseload increased (from 1985 to 2008) 228% for person offenses, 193% for public order offenses, 136% for drug law violations, and 33% for property offenses. In contrast, the male caseload declined by 22% for property offenses; it increased by 134% for drug law violations, by 115% for public order offenses, and by 93% for person offenses. Thus, the female juvenile court caseloads increased more than the male court caseloads for each of the four major categories of offenses (OJJDP, 2011).

Although nearly two thirds of the youth adjudicated in juvenile courts in 2011 were White, Black youth were overrepresented and Asian youth were underrepresented. In 2011, 76% of the U.S. juvenile population was White, 16% was Black, 5% was Asian (including Native Hawaiian and Other Pacific Islander), and 2% was Native American. Blacks were overrepresented overall and for each of the four major categories of offenses. They comprised 33% of all cases adjudicated in juvenile court, 40% of cases involving person offenses, 32% of cases involving property offenses, 20% of cases involving drug law violations, and 34% of cases involving public order offenses. Stated another way, there were more than two times as many Blacks handled by the juvenile courts as there were Blacks in the U.S. juvenile court population; for person offenses, the ratio was 2.5:1. In contrast, Asian youth accounted for only 1% of the juvenile court caseload (OJJDP, 2014a).

There are important differences between the adult court system and the juvenile court system. These differences reflect the doctrines of *parens patriae* and *in loco parentis* discussed earlier; together, these doctrines ensure that the juvenile court, like other problem-solving courts, will emphasize rehabilitation, rather than punishment, of the youth. Similar to drug treatment courts, the focus of the juvenile court is on solving the underlying problems responsible for the youth's criminal behavior.

Perhaps the most important difference between the two types of court systems is that juvenile court hearings are considered quasicivil, rather than criminal, proceedings. Whereas adults found guilty are convicted of a crime, juveniles are *adjudicated delinquent*. Juvenile court proceedings also are less formal than those found in criminal courts: The judge may or may not wear judicial robes and may or may not be seated on a raised bench, and there is more direct interaction between the judge and the juvenile. Another important difference is that juvenile court proceedings, unlike criminal court hearings, are not open to the public, and law enforcement and court personnel are prohibited from releasing the names of juveniles to the media. Finally, with very few exceptions, there is no right to a jury trial in juvenile court.

It is important to point out that in many jurisdictions, the juvenile court is not a separate court with its own judges and other court officials. Although this is the situation in a few states and in larger counties in other states, in many jurisdictions, the

juvenile court is either part of a family court that handles a broad array of family matters (e.g., divorce and child custody, paternity claims, and adoption of children as well as delinquency cases) or part of the jurisdiction's trial court of limited jurisdiction. Generally, separate juvenile courts are found in jurisdictions with larger caseloads.

### Transfer of Juveniles to Criminal Court

In 2003, juveniles accounted for 9% of all arrests for murder/manslaughter, 16% of all arrests for forcible rape, 24% of all arrests for robbery, and 14% of all arrests for aggravated assault (OJJDP, 2003a, p. 4). The number of juveniles arrested increased 100% between 1985 and 1994 but declined by 18% from 1994 to 2003. Juvenile arrests for *violent* crimes increased from 66,976 in 1985 to 117,200 in 1994 (an increase of 75%) but declined to 92,300 (a decrease of 32%) in 2003.

The increase in juvenile crime during the 1980s and early 1990s, coupled with highly publicized cases of very young children accused of murder and other violent crimes, prompted a number of states to alter procedures for handling certain types of juvenile offenders. In 1995, for example, Illinois lowered the age of admission to prison from 13 to 10. This change was enacted after two boys, ages 10 and 11, dropped a 5-year-old boy out of a 14th-floor window of a Chicago public housing development. In 1996, a juvenile court judge ordered that both boys, who were then 12 and 13, be sent to a high-security juvenile penitentiary; her decision made the 12-year-old the nation's youngest inmate at a high-security prison ("Chicago Boy," 1996).

Other states responded to the increase in serious juvenile crime by either lowering the age when children can be transferred from juvenile court to criminal court and/or expanding the list of offenses for which juveniles can be waived to criminal court. A report by the U.S. General Accounting Office (1995) indicated that between 1978 and 1995, 44 states passed new laws regarding the **waiver of juveniles to criminal court**; in 24 of these states, the new laws increased the population of juveniles that potentially could be sent to criminal court. California, for example, changed the age at which juveniles could be waived to criminal court from 16 to 14 (for specified offenses); Missouri reduced the age at which children could be certified to stand trial as adults from 14 to 12.

By 2004, there were 15 states with mandatory waiver in cases that met certain age, offense, or other criteria and 15 states with a rebuttable presumption in favor of waiver in certain kinds of cases. Currently, all but 5 states give juvenile court judges the power to waive jurisdiction over juvenile cases that meet certain criteria—generally, a minimum age, a specified type or level of offense, and/or a sufficiently serious record of prior delinquency (National Center for Juvenile Justice, 2004). And 15 states have direct file waiver provisions, which allow the prosecutor to file certain types of juvenile cases directly in criminal court.

In 1966, the U.S. Supreme Court ruled in *Kent v. United States* (1966) that waiver hearings must measure up to “the essentials of due process and fair treatment.” The court held that juveniles facing waiver are entitled to representation by counsel, access to social services records, and a written statement of the reasons for the waiver. In an appendix to its opinion, the court also laid out the “criteria and principles concerning waiver of jurisdiction.” The criteria that courts are to use in making the decision are as follows:

- The seriousness of the alleged offense and whether protection of the community requires waiver
- Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner
- Whether the alleged offense was against persons or against property
- Whether there is evidence upon which a grand jury may be expected to return an indictment
- The desirability of trial and disposition of the entire offense in one court when the juvenile’s associates are adults who will be charged with a crime in criminal court
- The sophistication and maturity of the juvenile as determined by consideration of his or her home, environmental situation, emotional attitude, and pattern of living
- The record and previous history of the juvenile
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services, and facilities currently available to the juvenile court

A recent report by the Office of Juvenile Justice and Delinquency Prevention (2014b) noted that the number of delinquency cases waived to criminal court increased by 70% from 1985 to 1994 but declined by 61% between 1994 and 2011. (The report attributed the decline in the number of cases waived to criminal court in part to statutory changes that excluded certain cases from juvenile court or allowed prosecutors to file serious cases directly in criminal court and in part to a decline in juvenile violent crime rates.) During most of this time period, the waiver rate was highest for person offenses; however, from 1989 to 1992, the rate was higher for drug offenses than for person offenses. Not surprisingly, cases involving older youth were more likely than those involving youths 15 and younger to be waived, and cases involving males were substantially more likely than those involving females to be waived.

Decisions to transfer juveniles to adult criminal courts are important because of the sentencing consequences of being convicted in criminal rather than juvenile court. Although there is some evidence that transferred youth are treated more leniently in criminal court than they would have been in juvenile court (OJJDP, 1982)—in large

part because they appear in criminal court at a younger age and with shorter criminal histories than other offenders—most studies reveal just the opposite. Fagan (1991), for example, compared juvenile and criminal court outcomes for 15- and 16-year-old felony offenders in New York (where they were excluded from juvenile court) and New Jersey (where they were not). He found that youth processed in criminal courts were twice as likely as those processed in juvenile courts to be incarcerated.

A more recent study compared sentencing outcomes of juveniles (those under age 18) and young adults (those ages 18–24) processed in Pennsylvania’s adult criminal courts from 1997 to 1999 (Kurlychek & Johnson, 2004). When they examined the raw data, Kurlychek and Johnson (2004) found that the mean sentence imposed on juvenile offenders was 18 months, compared to only 6 months for young adult offenders. These differences did not disappear when the authors controlled for the seriousness of the offense, the offender’s criminal history, the offense type, whether the case was settled by plea or trial, and the offender’s gender. Once these factors were taken into consideration, juveniles still received sentences that were 83% harsher than those imposed on young adults. Further analysis revealed that “‘being juvenile’ resulted in a 10% greater likelihood of incarceration and a 29% increase in sentence length” (p. 502). These findings led Kurlychek and Johnson to suggest that “the transfer decision itself is used as an indicator of incorrigibility, threat to the community, and/or lack of potential for rehabilitation, resulting in a considerable ‘juvenile penalty’” (p. 505).



### CURRENT CONTROVERSY

In June 2001, Lionel Tate, an African American boy who was 12 years old when he killed a 6-year-old family friend while demonstrating a wrestling move he had seen on television, was sentenced to life in prison without the possibility of parole. Tate, who claimed that the death was an accident, was tried as an adult in Broward County, Florida; he was convicted of first-degree murder. One month later, Nathaniel Brazill, a 14-year-old African American, was sentenced by a Florida judge to 28 years in prison without the possibility of parole. Brazill was 13 years old when he shot and killed Barry Grunow, a popular 30-year-old seventh-grade teacher at a middle school in Lake Worth, Florida. Although Brazill did not deny that he fired the shot that killed his teacher, he claimed that he had only meant to scare Grunow and that the shooting was an accident. Like Tate, Brazill was tried as an adult; he was convicted of second-degree murder.

These two cases raised a storm of controversy regarding the prosecution of children as adults. Those on one side argue that children who commit adult crimes, such as murder, should

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be treated as adults; they should be prosecuted as adults and sentenced to adult correctional institutions. As Marc Shiner, the prosecutor in Brazill's case, put it, "This was a heinous crime committed by a young man with a difficult personality who should be behind bars. Let us not forget a man's life has been taken away" (Randall, 2001). Those on the other side contend that prosecuting children as adults is unwarranted and misguided. They assert that children who commit crimes of violence typically suffer from severe mental and emotional problems and that locking kids up in adult jails does not deter crime or rehabilitate juvenile offenders. Although they acknowledge that juvenile offenders should be punished for their actions, they claim that incarcerating them in adult prisons for the rest of their lives is an inappropriately harsh solution. According to Vincent Schiraldi, president of the Justice Policy Institute, "In adult prisons, Brazill will never receive the treatment he needs to reform himself. Instead, he will spend his time trying to avoid being beaten, assaulted, or raped in a world where adults prey on, rather than protect, the young" (Center for Juvenile and Criminal Justice, n.d.).

Nathaniel Brazill is still incarcerated in the Brevard Correctional Institution. He will not be released until 2028, when he will be 41 years old. Lionel Tate's conviction, on the other hand, was overturned by a Florida appellate court in 2003. The court ruled that Tate should be retried because his competency to stand trial was not evaluated before he went to trial. The state decided not to retry Tate and instead offered him a plea agreement; Tate pled guilty to second-degree murder in exchange for a sentence to time served (which was about 3 years), plus 1 year of house arrest and 10 years of probation. He was released from prison in January 2004. In May 2005, he was back in jail in Fort Lauderdale, Florida, after he allegedly robbed a pizza delivery man at gunpoint. Because he was on probation at the time of the crime, Tate faced a potential life sentence on the robbery charge. He avoided this fate by pleading guilty; in 2006, he was sentenced to 30 years in prison.

What do these two cases tell us about the juvenile justice system? Do you think that the outcome for Lionel Tate would have been different if his original case had been tried in a juvenile court rather than being waived to adult court?

## SUMMARY

Frustration with conventional criminal courts and traditional adjudication procedures led state and local jurisdictions throughout the United States to establish problem-solving courts. These courts—drug courts, domestic violence courts, community courts, homeless courts, mental health courts, and reentry courts—take a broader and more comprehensive approach to delinquency and criminality. Rather than focusing solely on the crime for which the defendant has been arrested, problem-solving courts attempt to address the underlying social and economic factors that contributed to the defendant's involvement

in crime. Specialized courts also involve collaboration among criminal justice and social service agencies and are more likely than traditional courts to incorporate the principles of restorative justice. Although most of these courts have not yet been subject to extensive evaluation, there is evidence that drug courts are effective in reducing recidivism and preventing drug relapse and that victims of domestic violence whose cases are handled in domestic violence courts generally are satisfied with the process and with case outcomes.

A specialized court with a longer history is the juvenile court, which developed in response to the child savers' concerns about the ineffectiveness and abuses of reform schools and the fate of children who were not adequately controlled or supervised by their parents. The juvenile court operates under the doctrines of *parens patriae* and *in loco parentis*, which allow the court to make decisions in the best interests of the juveniles who appear before it. These quasivil courts are less formal than adult courts; their hearings are not open to the public, and generally, there is no right to trial by jury. Juvenile courts have jurisdiction over most crimes involving children under a certain age, but serious crimes involving even very young children can be transferred to the adult court system. The decision to waive the case to adult court has important consequences, as research shows that juveniles tried in criminal courts are more likely to be incarcerated and receive longer sentences than youth adjudicated in juvenile courts or young adults whose cases were originally filed in adult court.

It seems unlikely that the specialized court movement will die out any time soon. Although both problem-solving courts and juvenile courts have detractors as well as supporters, most commentators believe that the courts' focus on addressing the underlying problems of those who find themselves in the arms of the law is a more effective and less costly strategy than the traditional crime control approach.

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## DISCUSSION QUESTIONS

1. How do specialized courts, such as drug treatment courts, differ from traditional courts? What do you think is the most important difference between these types of courts?
2. What are the advantages of adjudicating cases—for example, domestic violence cases or cases involving defendants with mental health problems—in a specialized court? Are there any disadvantages to this approach?
3. How does restorative justice differ from the other utilitarian perspectives on punishment? How are the principles of restorative justice incorporated into problem-solving courts?
4. Assume that you have been asked to evaluate the effectiveness of a specialized court. How would you measure the court's success?

5. How did the research design used by Gottfredson et al. (2003) improve upon the research design typically used to evaluate drug treatment courts? What did their evaluation of the BCDTC reveal? (See “Current Research” on p. 135.)
6. How does the focus of domestic violence courts and veterans courts differ from that of drug treatment courts and other problem-solving courts?
7. Why did arrests for domestic violence increase following the implementation of the Lexington County (South Carolina) Domestic Violence Court?
8. If you were a local elected official and could choose whether to fund a community court, a homeless court, a mental health court, veterans court, or a reentry court, which would you choose? Why?
9. How do juvenile courts differ from adult criminal courts? What accounts for these differences?
10. What are the pros and cons of prosecuting juveniles in adult criminal courts? Would you favor or oppose a “blanket rule” that all crimes involving youth under a certain age—say 16—must be adjudicated in a juvenile court? Why?
11. What do you envision as the future of problem-solving courts? Will additional types of courts develop in the years to come? If so, what types of courts might these be?

### KEY TERMS

Broken windows	In loco parentis	Restorative justice
Child savers	Juvenile court	Specialized court
Community court	Mental health court	Veterans treatment court
Domestic violence court	Parens patriae	Waiver of juveniles to criminal court
Drug treatment court	Problem-solving court	
Homeless court	Reentry court	

### INTERNET SITES

Center for Court Innovation: <http://www.courtinnovation.org/>

Center on Juvenile and Criminal Justice: <http://www.cjcj.org>

Drug Court Clearinghouse and Technical Assistance Project (Justice Programs Office at the School of Public Affairs, American University): <http://www1.spa.american.edu/justice/>

National Center for Juvenile Justice: <http://www.ncjservehttp.org/NCJJWebsite/main.html>

Office of Juvenile Justice and Delinquency Prevention: <http://ojjdp.ncjrs.org/>

### STUDENT STUDY SITE

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