MENTAL HEALTH COURTS: NO LONGER EXPERIMENTAL

Gregory L. Acquaviva[*]

Mental health courts (MHCs) are problem-solving courts that, via a separate docket, divert mentally ill offenders away from jail and into long-term community mental health treatment.[1] By combining a "problem-solving orientation," the use of therapeutic jurisprudence, and a redefinition of adversarialism,[2] MHCs seek to reduce recidivism. Though in existence for less than a decade,[3] MHCs are not experimental courts. Rather, MHCs are successful, permanent components of the criminal justice system, possessing documented results,[4] which have led to their blossoming in jurisdictions nationwide.[5]

Despite initial success, planners and policymakers refuse to acknowledge the permanent place MHCs should hold in the judicial landscape.[6] Instead, planners nationwide establish MHCs as "pilot," or temporary, programs, whose future existence is contingent on innumerable societal, fiscal, and political factors. However, the popular pilot model of MHC creation is dangerous. Often funded solely or predominantly with grant money,[7] the pilot model establishes courts without the requisite foresight to maintain, protect, and ensure a stable existence. MHCs established as pilot programs often face "growing pains" at the conclusion of their initial charter, as the MHCs future becomes uncertain, often due to budgetary constraints. Recently, these growing pains have been experienced in California,[8]

[*] J.D. Candidate, May 2006, Seton Hall University School of Law; B.A., 2003, History and Political Science, Interdisciplinary, Monmouth University. I would like to thank Professor John Kip Cornwell, Sachin Bhatt, and Pat Gilmartin for their assistance with this Comment.

[1] *See infra* notes 111–35 and accompanying text.

[2] *See infra* notes 119–30 and accompanying text.

[3] *See infra* notes 99–110 and accompanying text.

[4] *See infra* notes 146–69 and accompanying text.

[5] *See infra* notes 136–45 and accompanying text.

[6] *See infra* notes 169–74 and accompanying text.

[7] *See infra* notes 176–85 and accompanying text.

[8] *See* NATIONAL ALLIANCE FOR MENTAL ILLNESS, SURVEY OF MENTAL HEALTH COURTS (February 2005) [hereinafter SURVEY OF MENTAL HEALTH COURTS FEBRUARY

Florida,[9] Nevada,[10] Oregon,[11] Pennsylvania,[12] Tennessee,[13] Utah,[14] and Washington,[15] where MHC advocates scrambled to maintain current or find additional funding sources.

Rather than continue the implementation of the pilot model of MHC establishment, planners must recognize MHC permanence, think prospectively, and take action to implement strategies to provide resources for the indefinite support of MHCs. By providing for long-term support, an operative infrastructure, and continued maintenance, planners will prevent and mitigate the growing pains experienced throughout the nation, while simultaneously respecting and legitimizing MHC goals and missions.

Part I of this Article explores the emergence of MHCs in American jurisprudence. MHCs were the product of numerous factors including high recidivism rates among mentally ill offenders, pervasive institutional problems (such as jail overcrowding, an influx of mentally ill offenders to jails and prisons, and an inability of correctional

2005], (on file with author). The Superior Court of California, County of Placer reported that the "[s]cope of future operations [is] to be determined." *Id.* This language is strikingly similar to language used by the Superior Court of California in Santa Barbara County in the July 2004 report, indicating that due to declining federal grant money the future funding and scope of the MHC was uncertain. *See* NATIONAL ALLIANCE FOR MENTAL ILLNESS, SURVEY OF MENTAL HEALTH COURTS (July 2004) [hereinafter SURVEY OF MENTAL HEALTH COURTS JULY 2004], (on file with author). Within a year, the Santa Barbara MHC was removed from the survey. SURVEY OF MENTAL HEALTH COURTS FEBRUARY 2005, *supra*.

[9] *See* Chuck Nowlen, *Do We Need a Mental Health Court?*, CAPITAL TIMES (Madison, Wis.), July 5, 2003, at 1A (noting the MHC in Fort Lauderdale has "been eyed lately as [a] potential line item budget cut[]").

[10] *See id.* Nevada state legislator Sheila Leslie noted the state's MHCs are feeling budget-cutting pressures. *Id.; see also* Susan Voyles, *Special Courts Face Cash Cuts*, RENO GAZETTE-J., Dec. 29, 2002, at 1A. Judge Peter Breen said MHCs need permanent financing sources rather than living hand-to-mouth on grants susceptible to state and county budget cuts. *Id.*

[11] *See* Sarah Lemon, *'Mental Health Court' Concept Considered a Potential Solution*, MAIL TRIBUNE (Medford, Or.), Sept. 7, 2003, http://www.mailtribune.com/archive/2003/0907/local/stories/02local.htm. According to Circuit Court administrator Jim Adams, if Oregon does not pass a tax surcharge, then the Jackson County MHC cannot maintain existing programs. *Id.*

[12] *See* Nowlen, *supra* note 9 (noting the MHC in Pittsburgh has been targeted as a budget cut).

[13] *See* Silvia Castaneda, *Budget Cuts May End Mental Health Court for Metro*, (News 2 WKRN television broadcast June 21, 2004). The Davidson County MHC's grant expired. *Id.* Combined with a mayoral budget cut, the program is in jeopardy. *Id.*

[14] Elizabeth Neff, *Mental Health Courts in Peril; Funding Loss Threatens Program for Nonviolent Offenders*, SALT LAKE TRIB., Aug. 17, 2004, at C1.

[15] *See* Nowlen, *supra* note 9 (noting the MHC in Seattle has been eyed as a budget cut).

institutions to accommodate and treat the mentally ill),[16] "McJustice,"[17] and judicial dissatisfaction.[18] These systematic failures sparked MHCs' rapid spread and evolution over the past nine years.[19] But, in just a brief time, MHCs encountered significant preliminary success in reducing recidivism[20] and have become a fixture in the American legal landscape,[21] as now 113 MHCs exist in thirty-five states.[22] Despite their prominence, MHCs, as discussed in Part II, are suffering from growing pains, most notably budget insufficiencies created by shortsighted policymakers establishing MHCs as pilot programs.[23] Part III offers a solution for the growing pains afflicting MHCs established as experimental: abandonment of the pilot model. Rather than establish MHCs as pilot programs, planners and policymakers should implement strategies providing the resources, funding, and infrastructure necessary to maintain MHCs indefinitely. MHC advocates must think and act prospectively. By providing for mechanisms to increase community support,[24] diversify funding,[25] maintain personnel,[26] and create adequate infrastructure,[27] court planners will create stable, enduring, community-based MHCs.[28]

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[16] *See infra* notes 32–86 and accompanying text.

[17] Greg Berman, ed., *What is a Traditional Judge Anyway? Problem Solving in the State Courts*, JUDICATURE, Sept.-Oct. 2000, at 78, 80 (comments of Judge Kathleen Blatz).

[18] *See infra* notes 87–98 and accompanying text.

[19] *See infra* notes 99–135 and accompanying text.

[20] *See infra* notes 146–69 and accompanying text.

[21] *See infra* notes 136–45 and accompanying text.

[22] *See* NATIONAL ALLIANCE FOR MENTAL ILLNESS, SURVEY OF MENTAL HEALTH COURTS (December 2005) [hereinafter SURVEY OF MENTAL HEALTH COURTS DECEMBER 2005], *available at* http://www.mentalhealthcourtsurvey.com/pdfs/Mental_Health_Courts.pdf (updated periodically).

[23] *See infra* notes 171–89 and accompanying text.

[24] *See infra* notes 190–237 and accompanying text.

[25] *See infra* notes 238–64 and accompanying text.

[26] *See infra* notes 265–93 and accompanying text.

[27] *See infra* notes 294–310 and accompanying text.

[28] While calling upon planners and policymakers to abandon the pilot model of MHC creation in favor of establishing permanent MHCs, I do not, however, lose sight of the fact that MHC pilot programs are rational and may be more politically palatable than the alternative this Comment proposes. For example, the Pennsylvania Supreme Court recognized that it is "rational" for a state legislature to limit a program's "initial reach to a small group . . . before prescribing the same procedures more generally throughout the state. . . . [T]here is nothing improper about this method of attacking social problems of statewide dimension, as the Legislature is free, for reasons of necessity or otherwise, to address such issues incrementally." Harrisburg Sch. Dist. v. Zogby, 828 A.2d 1079, 1090–91 (Pa. 2003). Thus, while the pilot model can be an attractive option to legislators and planners, I maintain that such a short-sited model is not the best option.

I. THE EMERGENCE OF MENTAL HEALTH COURTS IN THE UNITED STATES

A. The Need for Mental Health Courts

MHCs are a product of a "desperation"[29] confronting the criminal justice system, a desperation consisting of numerous factors such as a "revolving door" epidemic and the judicial dissatisfaction associated with "McJustice."[30] These systematic failures continue today. Specifically, recidivism is a significant problem for mentally ill offenders who often make repeated visits to correctional institutions. Further escalating the recidivism problem is the inability of the detention facilities to adequately deal with mentally ill offenders, who find themselves subject to detrimental forces within the confines of overcrowded, ill-equipped jails and prisons. Additionally, these problems, combined with the rising caseloads and lack of tools available to judges, created a heightened sense of judicial dissatisfaction with traditional handling of mentally ill offenders. These concerns highlight the need for continued MHC establishment and expansion.[31]

i. The Revolving Door and Other Institutional Concerns

The "revolving door" refers to the carousel mentally ill individuals ride: a minor, non-violent crime, followed by a court appearance, followed by incarceration, followed by release, followed by another minor, non-violent crime. Thus, the mentally ill offender's low-level crimes are "recycling problems."[32] Bruce J. Winick, professor of law at the University of Miami School of Law, posits that these recycling problems have not been adequately addressed by traditional interventions. "The traditional judicial model addressed symptoms, but not the underlying problem. The result was that the problem reemerged,

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[29] Jenni Bergal, *Justice That Works; Mentally Ill Defendants Avoid the Revolving Door of Jail, Get Their Lives Back on Track Through Mental Health Court's Assistance*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Nov. 24, 2002, at 1A.

[30] See Berman, *supra* note 17, at 80 (comments of Judge Kathleen Blatz); *see also infra* notes 87–98 and accompanying text.

[31] Lisa Shoaf, *A Case Study of the Akron Mental Health Court*, 32 CAP. U.L. REV. 975, 977 (2003) ("There was no real impetus for implementing the [Akron MHC], other than the growing awareness that severely mentally ill individuals were increasingly finding themselves caught in a 'revolving door' in and out of the criminal justice system and were never able to receive the assistance they required.").

[32] Bruce J. Winick, *Therapeutic Jurisprudence and Problem Solving Courts*, 30 FORDHAM URB. L.J. 1055, 1060 (2003).

constantly necessitating repeated judicial intervention."[33] Statistics prove the revolving door's reality,[34] as 48% of mentally ill federal prisoners have three or more prior probations, incarcerations, or arrests, compared to just 28% of non-mentally ill prisoners.[35] The crime/court/jail/release cycle increases the "criminalization" of the mentally ill, whereby these offenders are continually arrested and prosecuted for minor offenses without receiving adequate mental health treatment.[36] Though the revolving door is a problem unto itself, its broad effects generate inefficient utilization of court resources, jail overcrowding, and ineffective mental health treatment. For example, the sheer volume of mentally ill individuals on dockets[37] causes courts to devote inordinate resources to such offenders, diverting attention away from more serious, dangerous, and violent criminals.[38]

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[33] *Id.*

[34] Pub. L. No. 106-515, § 2, 114 Stat. 2399, 2399 (2000) (finding, in accordance with a Bureau of Justice Statistics report, that three-quarters of mentally ill inmates have been sentenced to prison, jail, or probation at least once prior to their current incarceration).

[35] DEREK DENCKLA & GREG BERMAN, CTR. FOR COURT INNOVATION, RETHINKING THE REVOLVING DOOR: A LOOK AT MENTAL ILLNESS IN THE COURTS 4 (2001), *available at* http://www.courtinnovation.org/_uploads/documents/rethinkingtherevolvingdoor.pdf (citing PAULA M. DITTON, U.S. DEP'T OF JUSTICE, MENTAL HEALTH AND TREATMENT OF INMATES AND PROBATIONERS 5 (Bureau of Justice Statistics Special Report, July 1999), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/mhtip.pdf); Bentson H. McFarland et al., *Chronic Mental Illness and the Criminal Justice System,* 40 HOSP. & CMTY. PSYCHIATRY 718 (1989) (noting that family members of the mentally ill report that such individuals average more than three arrests)). A total of 49% of federal prisoners with mental illness have at least three previous probations, incarcerations, or arrests. DENCKLA & BERMAN, *supra*, at 4. These national numbers are corroborated by local statistics. For example, in Lucas County, Ohio, over 72% of people with mental illness are re-arrested within three years of their jail release. Lois A. Ventura et al., *Case Management and Recidivism of Mentally Ill Persons Released From Jail*, 49 PSYCHIATRIC SERVICES 1330, 1333 (1998).

[36] *See* Christin E. Keele, Note, *Criminalization of the Mentally Ill: The Challenging Role of the Defense Attorney in the Mental Health Court System*, 71 UMKC L. REV. 193, 194–95 (2002) (noting most cases criminalizing mental illness involve minor crimes, where the acts are manifestations of their illness and corresponding lack of treatment) (citing H. Richard Lamb, M.D. & Linda E. Weinberger, Ph.D., *Persons with Severe Mental Illness in Jails and Prisons: A Review*, 49 PSYCHIATRIC SERVICES 483, 484 (1998)); s*ee also* Marc F. Abramson, *The Criminalization of Mentally Disordered Behavior: Possible Side-Effect of a New Mental Health Law*, 23 HOSP. & CMTY. PSYCHIATRY 101 (1972).

[37] *See generally* DITTON, *supra* note 35 (discussing statistics regarding incarcerated mentally ill individuals). Between 600,000 and 700,000 mentally ill individuals are annually booked in jail.

[38] *See* JUDGE DAVID L. BAZELON, CENTER FOR MENTAL HEALTH L., CRIMINALIZATION OF PEOPLE WITH MENTAL ILLNESS: THE ROLE OF MENTAL HEALTH COURTS IN SYSTEM REFORM 2 (Jan. 2003).

Such negative effects travel with mentally ill offenders from overburdened courts to overcrowded jails.[39] Since 1970, the national jail and prison population increased fivefold, to 1.6 million people.[40] The "critically overcrowded" incarceration system has many causes, including deinstitutionalization,[41] the War on Drugs, and increased "quality of life" offense enforcement.[42] In a thirty-year span, these factors quadrupled the ratio of incarcerated individuals in state and federal prisons per 100,000 in the community.[43] The United States has the world's third-highest incarceration rate, trailing only Russia and Rwanda.[44]

Further escalating the overcrowding quagmire is an influx of mentally ill offenders,[45] a prevalence that "threatens to overwhelm the

[39] GREG BERMAN & JOHN FEINBLATT, CTR. FOR COURT INNOVATION, PROBLEM SOLVING COURTS: A BRIEF PRIMER 5 (2001) [hereinafter BERMAN & FEINBLATT, PROBLEM SOLVING], *available at* http://www.courtinnovation.org/pdf/prob_solv_courts.pdf (recognizing the surging incarcerated population).

[40] DENCKLA & BERMAN, *supra* note 35, at 3 (citing UNITED STATES DEP'T OF JUSTICE, , CORRECTIONAL POPULATIONS IN THE UNITED STATES, 1998 (Bureau of Justice Statistics Internet Report, 1999)). *Compare with* Mark R. Munetz , M.D. & Jennifer L.S. Teller, Ph.D., *The Challenges of Cross-Disciplinary Collaborations: Bridging the Mental Health and Criminal Justice Systems*, 32 CAP. U.L. REV. 935, 937–38 (2003) (noting that in 2002 the population of American state and federal prisons was 1,440,655, with another 665,475 individuals in local jails. "As of June 30, 2002, the nation's prison and jail population exceeded two million people for the first time in history.").

[41] *See infra* notes 79–86 and accompanying text.

[42] *See, e.g.*, J.S. GOLDKAMP & C. IRONS-GUYNN, U.S. DEP'T OF JUSTICE, EMERGING JUDICIAL STRATEGIES FOR THE MENTALLY ILL IN THE CRIMINAL CASELOAD: MENTAL HEALTH COURTS IN FORT LAUDERDALE, SEATTLE, SAN BERNARDINO, AND ANCHORAGE (Bureau of Justice Assistance, April 2000), *available at* http://www.ncjrs.org/html/bja/mentalhealth/contents.html; DENCKLA & BERMAN, *supra* note 35, at 2.

[43] Steven Lamberti, M.D., *New Approaches to Preventing Incarceration of Severely Mentally Ill Adults*, PSYCHIATRIC TIMES, June 1, 2004, at 33 ("The number of individuals incarcerated in state and federal prisons per 100,000 in the community quadrupled from 100 to over 400 between 1965 and 1996. Similar trends have been noted in jails across the nation . . . [leading to] a combined rate of approximately 700 per 100,000 residing in jails and prisons."); *see also* Munetz & Teller, *supra* note 40, at 938 (recognizing that the "6.6 million Americans incarcerated, on probation, or parole in 2001" represented a 258% increase from 1980).

[44] Lamberti, *supra* note 43, at 33; *compare with* Munetz & Teller, *supra* note 40, at 937 (noting that America's incarceration rate of 701 per 100,000 individuals ranks the United States ahead of Russia as the world leader in incarcerating its citizens).

[45] *See* Munetz & Teller, *supra* note 40, at 940. According to Stephan Haimowitz, "although mental illness does not actually lead to legal problems, and some crimes committed by people with mental disabilities are not a result of their disability, many people do enter and remain in the criminal justice system as a result of mental disorders." *Id.* (quoting Stephan Haimowitz, *Can Mental Health Courts End the Criminalization of Persons with Mental Illness?*, 53 PSYCHIATRIC SERVICES 1226, 1228 (2002).

criminal justice system."[46] Approximately 16% of inmates nationwide are mentally ill,[47] while 30%–75% of detained juveniles have mental problems.[48] These "shockingly high"[49] percentages reflect a 154% increase in the proportion of mentally ill offenders in jail from 1980 to 1992.[50] The effect of mentally ill offenders on the criminal justice system is overwhelming.[51] Approximately 250,000 severely mentally ill Americans are incarcerated,[52] while as many as 40% of the nation's mentally ill encounter the criminal justice system.[53] This influx forced the criminal justice system to replace the mental health system as the nation's primary provider of mental health treatment.[54] Thus,

[46] COUNCIL OF STATE GOVERNMENTS, CRIMINAL JUSTICE/MENTAL HEALTH CONSENSUS PROJECT 6 (2002) [hereinafter CONSENSUS PROJECT], *available at* http://www.consensusproject.org.

[47] DITTON, *supra* note 35, at 1; *see also* DENCKLA & BERMAN, *supra* note 35, at 3. Specifically, 7% of jail inmates and 14% of prison inmates suffer from schizophrenia, bipolar disorder, or major depression. LeRoy L. Kondo, *Advocacy of the Establishment of Mental Health Specialty Courts in the Provision of Therapeutic Justice for Mentally Ill Offenders*, 28 AM. J. CRIM. L. 255, 257 (2001).

[48] *See also* Coalition for Juvenile Justice: What's New, http://www.juvjustice.org/resources/fs002.html (last visited Mar. 6, 2006)) (estimating that one half to three-quarters of juveniles in the criminal justice system have diagnosable mental health problems). *Compare* Symposium, *The Birth of a Problem Solving Court*, 29 FORDHAM URB. L.J. 1758, 1777 (2002) [hereinafter *The Birth of a Problem Solving Court*] (comments of Lisa Schreibersdorf, Brooklyn Defender Services) (estimating the percentage of mentally ill juveniles at 30%) *with* Agata DiGiovanni, *The Los Angeles County Juvenile Mental Health Court: An Innovative Approach to Crime, Violence, and Delinquency Among Our Youth*, 23 J. JUV. L. 1, 2 (2002/2003) (estimating the percentage of mentally ill juveniles at 50%–75%).

[49] BAZELON, *supra* note 38, at 4.

[50] Amy Watson et al., *Mental Health Courts and the Complex Issue of Mentally Ill Offenders*, 52 PSYCHIATRIC SERVICES 477, (April 2001), *available at* http://ps.psychiatryonline.org/cgi/reprint/52/4/477.

[51] *See* Paul F. Stavis, *Why Prisons are Brim-Full of the Mentally Ill: Is Their Incarceration a Solution or a Sign of Failure?*, 11 GEO. MASON U. CIV. RTS. L.J. 157, 157–58, 202 (2000) (showing the direct relationship between deinstitutionalization and jail overcrowding).

[52] *Compare* Robert Bernstein & Tammy Seltzer, *Criminalization of People with Mental Illnesses: The Role of Mental Health Courts in System Reform*, 7 UDC/DCSL L. REV. 143, 145 (2003) (projecting the incarcerated population of mentally ill Americans at 250,000), *with* Kondo, *supra* note 47, at 256 (projecting the population at 210,000), *with* THE NATIONAL ALLIANCE OF THE MENTALLY ILL, THE CRIMINALIZATION OF PEOPLE WITH MENTAL ILLNESS—NAMI'S POSITION (projecting the population at 283,000).

[53] Pub. L. No. 106-515, § 2, 114 Stat. 2399, 2399 (2000) (finding, in accordance with the National Alliance of Mentally Ill, that 25%–40% of America's mentally ill contact the criminal justice system); *see also* Kondo *supra* note 47, at 272.

[54] John Petrila et al., *Preliminary Observations from an Evaluation of the Broward County Mental Health Court*, 37 CT. REV. 14, 14 (2002) (citing Fox Butterfield, *Asylums Behind Bars: A Special Report; Prisons Replace Hospitals for the Nation's Mentally Ill,* N.Y. TIMES, Mar. 5, 1998, at A1, A18; E. Fuller Torrey, *Jails and Prisons—America's New Mental Hospitals,* 85 AMER. J. PUB. HEALTH 1611 (1995)). Additionally, there are three

in 1992, the Los Angeles County jail became the nation's largest mental institution,[55] with Cook County Jail, Illinois,[56] and Riker's Island, New York, as second and third respectively.[57] But, no matter what statistics are referenced,[58] the prospects of treating incarcerated mentally ill offenders are bleak, as jails are referred to as: "the black hole of the mental health system,"[59] "hospitals of last resort,"[60] "surrogate mental hospitals,"[61] "the dumping ground for the mentally ill,"[62] and "America's new asylums."[63]

Despite the staggering population of incarcerated mentally ill offenders, correctional institutions cannot effectively accommodate or treat them. In short, jail and prison facilities are inadequate for caring for the mentally ill.[64] Correctional institutions were never intended to be mental health hospitals, thus they lack proper resources,

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times as many people with severe mental illness in prison as there are in mental hospitals. Jennifer S. Bard, *Re-arranging Deck Chairs on the Titanic: Why the Incarceration of Individuals with Serious Mental Illness Violates Public Health, Ethical, and Constitutional Principles and Therefore Cannot be Made Right by Piecemeal Changes to the Insanity Defense*, 5 HOUS. J. HEALTH L. & POL'Y 1, 17 (2005).

[55] Watson et al., *supra* note 50, at 477–78 (citing Michael Jonathan Grinfeld, *Report Focuses on Jailed Mentally Ill*, PSYCHIATRIC TIMES, July 1993, at 1 (noting the Los Angeles County jail houses 3300 inmates requiring daily mental health services)); *see also* Munetz & Teller, *supra* note 40, at 939.

[56] On any day, the Cook County Jail holds approximately 1000 inmates in need of treatment for mental illness. Jaime Levy Pessin, *Stopping the Revolving Door: New Court Seeks New Ways to Provide Justice to the Mentally Ill*, CHIC. LAW., Mar. 2005, at 8.

[57] Keele, *supra* note 36, at 196 (citing Mark J. Heyrman, *Mental Illness in Prisons and Jails*, 7 U. CHI. L. SCH. ROUNDTABLE 113, 113 (2000)).

[58] *See* Michael A. Scarcella, *Charlotte County Working on Mental Health Court*, SARASOTA HERALD-TRIBUNE, Dec. 24, 2004, at BC1 (discussing the changing face of mental health treatment on a smaller scale. "'We're becoming the mental health hospitals for the state,' [John] Davenport [Charlotte County Sheriff-elect] said . . . . He noted that the February 2002 closure of the state psychiatric hospital in DeSoto County, G. Pierce Wood, put caring for the mentally ill in the hands of the community.").

[59] Keele, *supra* note 36, at 196 (citing David Sapinsky, *Troubling Statistics, Persistent Problems* (ABC News television broadcast Dec. 11, 2000) (referring to comments of Laurie Flynn, executive director of NAMI).

[60] DENCKLA & BERMAN, *supra* note 35, at 3.

[61] Kondo, *supra* note 47, at 258.

[62] Mike O'Neal, *Half of County's Inmates Medicated for Mental Illness*, CHATTANOOGA TIMES FREE PRESS, June 19, 2005, at B3 (quoting Cameka Sanderfur, criminal justice mental health liaison for Hamilton County, Tennessee).

[63] Kondo, *supra* note 47, at 307 (citing *House Republicans Angling to Fill Committee's Vacancy*, COLUMBUS DISPATCH (Columbus, Ohio), July 25, 1999, at 7A) [hereinafter *House Republicans*] (quoting Representative Ted Strickland).

[64] Hamilton County, Tennessee is a prime example of this dilemma. O'Neal, *supra* note 62. There, 300 of the county's nearly 600 inmates take daily psychotropic drugs for mental disorder treatment. *Id.* However, the doctor is only available one day a week and sometimes can only evaluate four patients per day. *Id.*

facilities, and professionals to address mental illness.[65] Shockingly, one-fifth of jails have absolutely *no* access to mental health services.[66] The sponsor of federal legislation promoting MHC creation,[67] Senator Mike DeWine, argued that "correctional facilities simply do not have the means, or the expertise, to properly treat mentally ill inmates."[68] Thus, due to the criminal justice system's inadequacies, 83% of mentally ill state prisoners and 89% of mentally ill jail inmates do *not* receive treatment.[69] And the minority who do receive treatment must wait on long lines, without participation incentives, and be subjected to stigmatization.[70]

This inability to provide adequate mental health treatment gravely affects a sensitive population. While incarceration is unpleasant, inadequate mental health care escalates the mentally ill's stressful ordeal, causing crises and a plethora of avoidable problems.[71] These poorly-cared for individuals are vulnerable to physical abuse by other inmates, are exposed to deadly diseases, and often commit suicide.[72] Such vulnerabilities and insufficient treatment cause deterioration in jail.[73] Ultimately, "[o]nce someone with a mental disorder enters the criminal justice system, it is unlikely that their mental

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[65] *E.g.*, DENCKLA & BERMAN, *supra* note 35, at 3; GOLDKAMP & IRONS-GUYNN, *supra* note 42, at 60; Kondo, *supra* note 47, at 260; Debra Baker, *A One-of-a-Kind Court May Offer the Best Hope for Steering Nonviolent Mentally Ill Defendants into Care Instead of Jail*, 84 A.B.A. J. 20 (1998) (noting the vast majority of jails provide inadequate, if any, training to corrections officer in treating mental illness); *compare with* Nancy Wolff, *Interactions Between Mental Health and Law Enforcement Systems: Problems and Prospects for Cooperation*, 23 J. HEALTH POL. POL'Y & L. 133, 144 (1998) (stating that fewer than 20% of jails offer any mental health services to inmates).

[66] Baker, *supra* note 65, at 20.

[67] *See infra* notes 136–40 and accompanying text.

[68] Kondo, *supra* note 47, at 259 (citing Mike DeWine, *Treatment for Mentally Ill Inmates*, CONGRESSIONAL PRESS RELEASES (FEDERAL DOCUMENT CLEARING HOUSE) Oct. 20, 1999, at 1) [hereinafter, DeWine, CONGRESSIONAL PRESS RELEASE].

[69] DENCKLA & BERMAN, *supra* note 35, at 3 (citing DITTON, *supra* note 35).

[70] *See id.*

[71] GOLDKAMP & IRONS-GUYNN, *supra* note 42.

[72] Baker, *supra* note 65, at 20.

[73] *See* DENCKLA & BERMAN, *supra* note 35, at 3–4; Kondo, *supra* note 47, at 306 (citing *House Republicans*, *supra* note 63) (discussing the opinion of Representative Ted Strickland); *see also* Anna B. Brutzman, *Judges Push Mental-Health Court*, GREENVILLE NEWS (S.C.), Feb. 8, 2005, at 15B (noting comments of Dave Almeida, executive director of the South Carolina chapter of the National Alliance for the Mentally Ill); Sheila Burke, *Public, Offenders Win in This Deal*, TENNESSEAN, Dec. 10, 2004, at 1B. ("'It [jail] was hell,' [Hollis] Bowman-Lovejoy said. The constant noise from the other inmates exacerbated her mental illness. 'I couldn't sleep for three or four days,' she said.").

health will improve."[74] Yet, an irony exists, in that "mental health treatment often is a necessary component of effective rehabilitation and recidivism prevention programs."[75]

While jail overcrowding and the corresponding inability to handle mentally ill offenders are at a crisis level, such plagues are not isolated. Rather, today's problems are the result of yesterday's social changes, which created holes in society's safety net.[76] The two major holes are the deinstitutionalization of the nation's mental asylums and failing community treatment. These holes promoted the shunting of the mentally ill into the criminal justice system at "an alarming rate,"[77] in hopes that ill offenders would receive minimal services unavailable in the community.[78]

Deinstitutionalization is the systematic shift of the mentally ill from sizeable, residential, government-run asylums to fragmented, community-based treatment.[79] This "mass exodus" of the mentally ill away from psychiatric facilities and into the community has been "striking."[80] For example, 763,391 people, or 92%, of those who would have resided in public psychiatric hospitals in the 1950s were

[74] James R. Walker, Comment, *Getting the Mentally Ill Misdemeanant Out of Jail*, 6 SCHOLAR 371, 388 (2004) (citing Baker, *supra* note 65, at 21).

[75] Richard E. Redding, *Justice, Ethics, and Interdisciplinary Teaching and Practice: Why it is Essential to Teach About Mental Health Issues in Criminal Law (And a Primer on How to Do it)*, 14 WASH. U. J.L. & POL'Y 407, 410 (2004); *see also* Stacey M. Faraci, *Slip Slidin' Away? Will our Nation's Mental Health Court Experiment Diminish the Rights of the Mentally Ill?*, 22 QUINNIPIAC L. REV. 811, 848 (2004).

[76] Bernstein & Seltzer, *supra* note 52, at 143 (citing CONSENSUS PROJECT, *supra* note 46).

[77] *Id.*

[78] *See* Redding, *supra* note 75, at 409.

[79] *See* DENCKLA & BERMAN, *supra* note 35, at 2 (defining deinstitutionalization as "a systematic shift in resources for treating people with mental illness—from large, residential, state-run psychiatric hospitals to community-based treatment"); *see also* Walker, *supra* note 74, at 373 (citing Heyrman, *supra* note 57, at 114) (defining deinstitutionalization as "the push for more community-based treatment necessitating discharge from state psychiatric facilities").

[80] Walker, *supra* note 74, at 378 (citing H. Richard Lamb, *Deinstitutionalization at the Beginning of the New Millennium*, *in* DEINSTITUTIONALIZATION: PROMISE AND PROBLEMS 3 (H. Richard Lamb & Linda E. Weinberger eds., 2001)).

not housed there by the 1990s.[81] Thus in 2000, only 54,836 mentally ill individuals were institutionalized.[82]

Despite the last half century's deinstitutionalization, community mental health treatment has not accommodated the massive patient increase.[83] MHCs are reactive to the mental health system's failures:[84] failures due to lacking resources, services, and funding.[85] Judge Mark Chow of the King County Mental Health Court said, "If there were sufficient services out there in the community, we wouldn't need mental health court."[86] Thus, the irony is clear: MHCs divert mentally ill offenders into treatment, but if treatment were effective, such individuals would not offend.

ii. "McJustice" and Judicial Dissatisfaction

While the revolving door faced by the mentally ill strained the criminal justice system's resources, judicial dissatisfaction with "traditional" handling of mentally ill offenders simultaneously increased. This dissatisfaction prompted the expansion of problem-solving justice and MHCs. Kathleen Blatz, Chief Justice of the Supreme Court of Minnesota posits:

> [T]he innovation that we're seeing now (the rise of problem-solving courts) is a result of judges processing cases like a vegeta-

[81] Kondo, *supra* note 47, at 269 (citing E. Fuller Torrey, OUT OF THE SHADOWS: CONFRONTING AMERICA'S MENTAL ILLNESS CRISIS 8–9 (1997)). *Compare with* DENCKLA & BERMAN, *supra* note 35, at 3 (citing Terry Kupers, PRISON MADNESS: THE MENTAL HEALTH CRISIS BEHIND BARS AND WHAT WE MUST DO ABOUT IT, 1999) (estimating that in 1955, 560,000 mentally ill individuals were institutionalized, compared to less than 80,000 in 1999).

[82] Bergal, *supra* note 29 (referencing the United States Department of Health and Human Services). Deinstitutionalization has continued into the twenty-first century as well. For example, Dr. Gerald Ross, executive director of the Charlotte Community Mental Health Services, cites the 2002 closing of G. Pierce Wood, a DeSoto County, Florida, psychiatric hospital, as a reason causing increased jailing of mentally ill individuals. Amy Abern, *Program Provides Outlet, Safety for Mentally Ill; Through Art and Individual Attention, the DOORS Program Helps Break a Vicious Cycle*, SARASOTA HERALD-TRIB., July 29, 2005, at BC1.

[83] *See* Pessin, *supra* note 56, at 8 (recognizing that community mental health treatment did not increase as the number of hospital beds decreased during deinstitutionalization).

[84] *See* BAZELON, *supra* note 38, at 2 ("As communities grapple with this fallout from unresponsive mental health and social services systems, reforms are being proposed.").

[85] Wendy N. Davis, *Special Problems for Specialty Courts*, 89 A.B.A. J. 32, 37 (2003) (quoting Oscar Morgan, senior consultant for mental health policy and programs at the National Mental Health Association: "We believe that the mental health courts are in some ways an outgrowth of the fact that mental health services are underfunded.").

[86] *Id.*

> ble factory. Instead of cans of peas, you've got cases. You just move 'em, move 'em, move 'em. One of my colleagues on the bench said: "You know, I feel like I work for McJustice: we sure aren't good for you, but we are fast."[87]

Judges are dissatisfied. Dissatisfied with their tools. Dissatisfied with their assignments. Dissatisfied with the "revolving door" of criminal justice.[88] Stories of despair abound.[89] For Judge Judy Harris Kluger, a New York City Criminal Court Administrative Judge, it was the sheer volume of crime. She once arraigned 200 cases in a single session, too busy to look up and view the defendants before her.[90] For Judge Laura Ward, of the Manhattan Treatment Court, it was recognizing that the status quo was unproductive. "Sitting in arraignments, I quickly realized that jail wasn't the answer. You'd put them in jail on Monday for a crack pipe, only to have them back in court on Wednesday for something new."[91] Ultimately, judges, like Kluger and Ward, desired a better system. Patrick McGrath, Deputy District Attorney of San Diego, sums up judicial dissatisfaction, stating:

> I think it's fair to say there's a sense of yearning out there. If you grab a judge, a defense attorney and prosecutor and sat them down together and bought them a round of drinks, after a few beers, they'll all complain about the same thing: "I have all this education and what do I do? I work on an assembly line. I don't affect case outcomes." I think in a lot of ways problem-solving courts are addressing all of our yearning to do more than just process cases.[92]

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[87] Berman, *supra* note 17, at 80.

[88] *See* GREG BERMAN & JOHN FEINBLATT, CTR. FOR COURT INNOVATION, JUDGES AND PROBLEM-SOLVING COURTS 21 (2002) [hereinafter BERMAN & FEINBLATT, JUDGES], *available at* http://www.courtinnovation.org/pdf/judges_problem_solving_courts.pdf.

[89] For example, Judge Legrome Davis, a Philadelphia criminal court judge, sentenced, in one year, 5000 pleading felons. Berman, *supra* note 17, at 80. For the next half decade, he watched those 5000 individuals repetitively offend. *Id.* Santa Clara drug court's Judge Stephen V. Manley felt the system failed individuals and families. BERMAN & FEINBLATT, JUDGES, *supra* note 88, at 21–22. "When you begin sentencing the children of those you sentenced . . . you have to ask yourself, 'Have you made any change?' . . . [Y]ou begin to question why we're doing the same thing over and over again." *Id.*

[90] Berman, *supra* note 17, at 81 ("[M]y claim to fame was that I arraigned 200 cases in one session. That's ridiculous. When I was arraigning cases, I'd be handed the papers, say the sentence is going to be five days, ten days, whatever, never even looking at the defendant.").

[91] BERMAN & FEINBLATT, JUDGES, *supra* note 88, at 21.

[92] John Feinblatt & Derek Denckla eds., *What Does it Mean to be a Good Lawyer? Prosecutors, Defenders and Problem-Solving Courts*, JUDICATURE, Jan.-Feb. 2001, at 206, 209.

Judicial dissatisfaction traces back to rising caseloads. State court case filings reached 91.5 million in 1998, an all-time high.[93] In New York City alone, the misdemeanor caseload increased by 85% in the decade following 1989.[94] This upsurge was consistent with national trends, as from 1984 to 1998 criminal filings increased 50%.[95] The caseload volume overwhelmed courts,[96] transforming courtrooms into "plea bargain mills" which value efficiency: maximum volume, minimum time.[97] According to Judge Judith S. Kaye, Chief Judge of New York State, the "volume of our dockets demands efficient management. But processing more cases more quickly isn't the whole answer. We also need to take a step back and ask 'Is there a better way to do this?' In fact, across the country, some judges are starting to rethink business as usual."[98]

B. The Birth of Mental Health Courts

Over the past two decades, the Sunshine State was a legal innovation laboratory. By establishing the nation's first drug court in 1989, Dade County, Florida became the birthplace of modern problem-solving justice.[99] Only eight years later, spurred by the success of drug courts nationally,[100] the country's first MHC commenced in Broward County.[101]

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[93] Greg Berman & John Feinblatt, *Problem-Solving Justice: A Quiet Revolution*, JUDICATURE, Jan.-Feb. 2003, at 182 [hereinafter Berman & Feinblatt, *A Quiet Revolution*].

[94] BERMAN & FEINBLATT, PROBLEM SOLVING, *supra* note 39, at 6 (citing Greg Rohde, *Crackdown on Minor Offenses Swamps New York City Courts,* N.Y. TIMES, Feb. 2, 1999, at A1).

[95] David B. Rottman, *Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges)?*, 37 CT. REV. 22, 25 (2000). Comparatively, the United States population grew by only 15% over the same time period. *Id.*

[96] Cait Clarke & James Neuhard, *"From Day One": Who's in Control as Problem Solving and Client-Centered Sentencing Take Center Stage?*, 29 N.Y.U. REV. L. & SOC. CHANGE 11, 26 (2004) (citing Paul D. Carrington, *Crowded Dockets and the Courts of Appeal: The Threat to the Function of Review and the National Law*, 82 HARV. L. REV. 542, 542–49 (1969)) ("[T]he number of criminal cases overwhelmed court systems.").

[97] *See* BERMAN & FEINBLATT, PROBLEM SOLVING, *supra* note 39, at 7 (citing Judge Judith S. Kaye, *Making the Case for Hands-On Courts*, NEWSWEEK, Oct. 11, 1999, at 13).

[98] Kaye, *supra* note 97, at 13.

[99] *E.g.*, AUBREY FOX & ROBERT V. WOLF, CTR. FOR COURT INNOVATION, THE FUTURE OF DRUG COURTS: HOW STATES ARE MAINSTREAMING THE DRUG COURT MODEL 1 (2004), *available at* http://www.courtinnovation.org/pdf/future_of_drug_courts.pdf.

[100] *See* DiGiovanni, *supra* note 48, at 8 ("The success of drug courts has been influential in the recent emergence of mental health courts across the nation.").

[101] GOLDKAMP & IRONS-GUYNN, *supra* note 42. By administrative order of Chief Judge Dale Ross, the Broward County MHC began operation on June 6, 1997. *Id.*

Despite Florida's predilection for jurisprudential innovation, the catalyst for the nation's first MHC was Aaron Wynn. In the mid-1980's, Wynn suffered brain damage in a motorcycle accident.[102] Despite attempts to access viable treatment in the mental health and criminal justice systems, Wynn's anger was uncontrollable, precipitating a 1993 incident where Wynn knocked down and killed an 85-year-old woman outside a grocery store.[103] Wynn was charged with manslaughter,[104] and the MHC movement inauspiciously began.[105]

The next year, Broward County received a "scathing grand jury report" concerning "severe shortfalls" in the county's mental health system.[106] Combined with Wynn's high-profile crime, the report forced Broward County to act, leading to the 1994 creation of a multi-agency task force.[107] The ad hoc committee of various county stakeholders, led by Judge Mark A. Speiser, proposed the establishment of a MHC.[108] Judge Ginger Lerner-Wren, the first judge to preside over

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[102] *See, e.g.*, Bergal, *supra* note 29.

[103] *See id.*

[104] *See, e.g.*, *id.*

[105] High-profile crime has been a common spark for MHC creation. Kondo, *supra* note 47, at 302 ("At times, a newsworthy criminal event triggers immediate public awareness for the need for specialized courts."). For example, in King County, Washington, a retired firefighter was murdered by a man with a violent history and multiple psychiatric hospitalizations. JOHN R. NEISWENDER, EXECUTIVE SUMMARY OF EVALUATION OF OUTCOMES FOR KING COUNTY MENTAL HEALTH COURT 2 (2004), *available at* http://www.metrokc.gov/KCDC/mhcsum32.pdf. The crime was committed within two weeks of a jail release on a misdemeanor charge. *Id.* "The incident galvanized the community and became the impetus for the formation of a task force that studied how the mentally ill defendant was treated in the criminal justice system." *Id.* Charlotte County, Florida, is currently planning an MHC. *Id.* Officials cite the June 2004 murder of a seven year-old girl in a motel room as the court's catalyst. *Id.* The girl's mother, who had a lengthy history of mental illness, later confessed to the homicide. *Id.* This trend may continue. *See* Kate Gurnett, *Mental Health Court Possible*, THE TIMES UNION (Albany, N.Y.), June 9, 2005, at B1 (noting that Albany, New York officials are considering creating a MHC following three incidents since 1995 of mentally ill mothers murdering their children); Jeff Long, *Mental Health Court is Studied; Woodstock Slaying Might Have Been Averted, Official Says*, CHI. TRIBUNE, July 15, 2005, at 1 (noting that DuPage County, Illinois, has formed a task force to study the creation of a MHC, prompted, in part, by an alleged murder committed by a man suffering from bipolar disorder, who doused a woman with gasoline and set her ablaze).

[106] JUDGE GINGER LERNER-WREN, BROWARD'S MENTAL HEALTH COURT: AN INNOVATIVE APPROACH TO THE MENTALLY DISABLED IN THE CRIMINAL JUSTICE SYSTEM 2 (2000), http://www.ncsconline.org/WC/Publications/KIS_ProSol_Trends99-00_FlaMentalPub.pdf (last visited Mar. 6, 2006).

[107] *Id.*

[108] *See id.*

the Broward County MHC,[109] said, "[t]he court came to be out of desperation. But it has turned out to be a great vehicle."[110]

C. The Mental Health Court Model

MHCs are problem-solving courts[111] that, via a separate docket,[112] use judicial process to divert mentally ill offenders away from jail and into long-term community mental health treatment.[113] By avoiding incarceration, MHCs use a multi-disciplinary approach to treat the underlying, or "root,"[114] cause of the offender's criminal conduct: mental illness.[115] According to Associate Judge Lawrence P. Fox, of

[109] Judge Lerner-Wren was formerly the county's public guardian, responsible for overseeing the health and welfare of incapacitated adults, and oversaw the implementation of an agreement improving conditions within South Florida State Hospital and surrounding community mental health systems. Petrila et al., *supra* note 54, at 16; *see also* Bergal, *supra* note 29.

[110] Bergal, *supra* note 29.

[111] There is no clearly articulated definition or philosophy that unites all problem-solving justice practitioners. BERMAN & FEINBLATT, PROBLEM SOLVING, *supra* note 39, at 3. However, problem-solving courts are, generally, collaborative, holistic courts that seek to resolve the root causes of conflicts via an interdisciplinary approach. The specific issues facing problem-solving courts (drug use, domestic violence, mental health, etc.) are modern, persistent issues, resulting from social, legal, and personal problems that traditional courts are ill-equipped to handle. With an orientation toward the future and design to seek tangible outcomes, judicial authority combines punishment and treatment to reduce recidivism, increase efficiency, and increase public safety. *See* Winick, *supra* note 32, at 1055, 1061; *see* GREG BERMAN & JOHN FEINBLATT, CTR. FOR COURT INNOVATION, JUDGES AND PROBLEM-SOLVING COURTS 4 (2002), *available at* http://www.courtinnovation.org/pdf/judges_problem_solving_courts.pdf; DENCKLA & BERMAN, *supra* note 35, at 7.

[112] Faraci, *supra* note 75, at 825.

[113] *See* Winick, *supra* note 32, at 1059 ("Mental health courts seek to divert [the mentally ill offenders] from the criminal justice system and to persuade them to voluntarily accept treatment while in the community.") (citing GOLDKAMP & IRONS-GUYNN, *supra* note 42; Petrila et al., *supra* note 54, at 14–15).

[114] Teresa W. Carns et al., *Therapeutic Justice in Alaska's Courts*, 19 ALASKA L. REV. 1, 5 (2002); *see also* Daniel J. Becker & Maura D. Corrigan, *Moving Problem-Solving Courts into the Mainstream: A Report Card from the CCJ-COSCA Problem Solving Court Committee*, 39 CT. REV. 4 (2002) ("[P]roblem-solving courts generally focus on the underlying chronic behaviors of criminal defendants").

[115] *See* Bruce J. Winick, *Preventative Outpatient Commitment for Persons With Serious Mental Illness: Outpatient Commitment: A Therapeutic Jurisprudence Analysis*, 9 PSYCHOL. PUB. POL'Y & L. 107, 126 (2003). Mental illness, not criminality, is the root cause of many offenses by mentally ill individuals.

> However structured, the mental health court proceeds on the assumption that, for at least some defendants charged with minor, non-violent offenses, the problem is more a product of mental illness than of criminality, and that facilitating the offender's access to and engagement in mental health treatment constitutes a more effective response to the underlying problem than would criminal conviction and sentence.

the Cook County, Illinois, MHC, "It's innovative and appropriate for criminal justice to recognize we have a lot of people in jail more because of their mental illness than their criminality . . . . They need treatment more than they need to be in jail, more than they need to be punished."[116] In short, MHC's focus is on therapeutic intervention, not prosecution.[117] Though MHCs vary greatly in their daily operations, eligibility requirements, and procedural safeguards,[118] they share unifying characteristics. First, MHCs possess a "problem-solving orientation," requiring unique success measurements.[119] Thus, rather than evaluating effectiveness by traditional criteria (such as convictions), MHC stakeholders assess achievement in terms of treatment provision and illness mitigation.[120] By addressing systematic problems through novel methods and measurements, MHCs demonstrate dissatisfaction with standard case processing and "business as usual."[121]

Second, MHCs use "therapeutic jurisprudence."[122] Therapeutic jurisprudence[123] is an interdisciplinary legal approach emphasizing the creation of beneficial consequences via legal actors, rules, and

> Mental health courts represent a multi-agency and systemwide response to the problem of untreated mental illness . . . .

Id.; *see also* Winick, *supra* note 32, at 1059. Broward County's MHC is a misdemeanor court for "people arrested for minor offenses whose major problem is mental illness rather than criminality." *Id.* (citing Petrila et al., *supra* note 54, at 15–16).

[116] Pessin, *supra* note 56, at 8. "By acknowledging that crime isn't always a function of a person's nefarious intentions, courts are passing up on punishment in favor of therapy." *Id.*

[117] O'Neal, *supra* note 62.

[118] *See* GOLDKAMP & IRONS-GUYNN, *supra* note 42.

[119] *See* GREG BERMAN, CTR. FOR COURT INNOVATION, THE HARDEST SELL? PROBLEM-SOLVING JUSTICE AND THE CHALLENGES OF STATEWIDE IMPLEMENTATION 2 (2004), *available at* http://www.courtinnovation.org/pdf/hardest_sell.pdf (noting the problem-solving orientation requires a "significant shift in judicial orientation").

[120] *See id.*; *see also* Jennifer Skeem & John Petrila, *Problem-Solving Supervision: Specialty Probation for Individuals with Mental Illnesses*, 40 CT. REV. 8 (2004) (recognizing that problem-solving courts attempt to achieve outcomes that extend beyond the judicial system's traditional goals, thus responding to larger social problems invading on the justice system).

[121] *See* DENCKLA & BERMAN, *supra* note 35, at 8 (citing HOWARD FINKELSTEIN & DOUGLAS BRAWLEY, BROWARD COUNTY PUBLIC DEFENDER'S OFFICE, INTRODUCTION; BROWARD COUNTY MENTAL HEALTH COURT STATUS REPORT (1997), http://www.browarddefender.com/mhealth/volume_i_mental_health.htm#VolI,No.I (last visited Feb. 15, 2006)).

[122] *Id.* at 9.

[123] The therapeutic jurisprudence theory was first coined in 1987 by Professor David Wexler in a paper to the National Institute of Mental Health. Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 442 n.8 (1999).

procedures.[124] Fundamental to therapeutic jurisprudence is a notion that therapeutic options (options promoting mental health that compliment judicial values), improve efficacy by serving individuals and their problems.[125] Thus, in various manners, MHCs direct attention away from the docket's binary dispute and towards the offender's and community's needs.[126]

Third, MHC legal actors perform non-traditional roles, redefining adversarialism and relaxing courtroom proceedings.[127] These modern roles require increased judicial monitoring of MHC participants, as offenders frequently return to court allowing judicial assessment of their treatment's progression.[128] The interaction with the bench is consistent with therapeutic jurisprudence, as judges directly engage participants, encouraging modified behavior.[129] This active judiciary is consistent with the problem-solving approach of handling difficult situations and not delegating problems to other governmental actors.[130]

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[124] *See* Carolyn Copps Hartley & Carrie J. Petrucci, *Justice, Ethics, and Interdisciplinary Teaching and Practice: Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law*, 14 WASH. U. J.L. & POL'Y 133, 137 (2004) (citing ESSAYS IN THERAPEUTIC JURISPRUDENCE xi (David B. Wexler and Bruce J. Winick eds., 1991) (stating that therapeutic jurisprudence "asks how the law itself might serve as a therapeutic agent without displacing due process")).

[125] *See* LAW IN A THERAPEUTIC KEY xvii (David B. Wexler & Bruce J. Winick eds., 1996).

> Legal rules, legal procedures, and the roles of legal actors (such as lawyers and judges) constitute social forces that, like it or not, often produce therapeutic or antitherapeutic consequences. Therapeutic jurisprudence proposes that we be sensitive to those consequences, and that we ask whether the law's antitherapeutic consequences can be reduced, and its therapeutic consequences enhanced, without subordinating due process and other justice values.

Id.; *see also* Rottman, *supra* note 95, at 22 (recognizing that a problem-solving orientation is more appropriate and effective for cases involving mental illness); David Rottman & Pamela Casey, *Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts*, NAT'L INST. JUST. J. 12, 14 (July 1999) ("Therapeutic jurisprudence claims that attending to the individuals as well as the issues involved in a case leads to more effective dispositions.") (citing Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 194, 195 (1991)).

[126] *E.g.*, Rottman & Casey, *supra* note 125, at 14.

[127] *See* DENCKLA & BERMAN, *supra* note 35, at 9 (noting MHCs have a non-adversarial dynamic). This non-adversarial dynamic is also highlighted by the collaboration among parties to MHC proceedings. Nancy J. Needell, M.D. & Judge Matthew D'Emic, *The Brooklyn Mental Health Court—A Collaborative Effort*, PSYCHIATRIC TIMES, May 1, 2005, at 10.

[128] *See, e.g.*, Needell & D'Emic, *supra* note 126.

[129] *See, e.g.*, BERMAN, *supra* note 119, at 3.

[130] Center for Court Innovation, http://www.problem-solvingcourts.org/ps_char.html (last visited Feb. 15, 2006) (recognizing propensity of traditional courts to pass-

In addition to the three common characteristics, MHCs share a common vision. At its broadest, the purpose of MHCs is to qualitatively improve individual and social outcomes for offenders with underlying mental illnesses.[131] However, secondary goals abound. MHCs desire to improve public safety and formulate compassionate treatment for mental disorders.[132] MHCs seek to decriminalize mental illness,[133] while reducing recidivism.[134] Ultimately, these secondary objectives seek to end the mental illness/criminal behavior cycle by providing viable treatment in lieu of criminal sanctions.[135]

D. Mental Health Court Proliferation

Recognizing the extensive criminal justice problems associated with mental illness and the "positive results" [136] of early MHCs in Broward County, Florida and King County, Washington, the federal government acted. Congress enacted "America's Law Enforcement and Mental Health Project," which President Bill Clinton signed on November 13, 2000.[137] The bipartisan Act, sponsored by Senator Mike

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off cases to other courts, probation departments, etc.). According to Martha Metter, a community support worker with the Crider Center for mental health in St. Charles County, Missouri, the county's mental health drug court team is "a little family" that actively supports the court's clients. Valerie Schremp Hahn, *Court Helps Troubled People: County's New Mental Health Court Provides Clients With What May be the First Stable Relationship of Their Lives*, ST. LOUIS POST-DISPATCH, June 6, 2005, at 1.

[131] Rottman, *supra* note 95, at 22 ("The purpose of the new specialized courts is to qualitatively improve outcomes for litigants and society in cases involving individuals with underlying social and emotional problems."). Further, the King County MHC mission statement states, "the purpose of the mental health court is to insure that mentally ill people are treated with dignity and provided with the opportunity for treatment while at the same time protecting the public's safety" and "preventing criminalization of the mentally ill." Faraci, *supra* note 75, at 824.

[132] *See* NEISWENDER, *supra* note 105, at 2.

[133] *See* Nancy Bartley, *Help, Not Punishment, for Mentally Ill: King County's Mental Health Court Making a Difference*, SEATTLE TIMES, Feb. 20, 2001, at B1.

[134] *See* DENCKLA & BERMAN, *supra* note 35, at 7; Bartley, *supra* note 133.

[135] BAZELON, *supra* note 38, at 5.

> The goals of these mental health courts, then, are 1) to break the cycle of worsening mental illness and criminal behavior that begins with the failure of the community health system and is accelerated by the inadequacy of treatment in prisons and jails and 2) to provide effective treatment options instead of the usual criminal sanctions for offenders with mental illnesses.

Id.; *see also* Shoaf, *supra* note 31, at 976, 988 (stating the Akron MHC's goal "is to transition the client from a highly restrictive environment involving intensive case management to a much less restrictive environment involving minimal case management." Stated more simply, the MHC's goal is "to divert mentally ill non-violent repeat offenders from jail and into treatment.").

[136] 42 U.S.C.S. § 3796ii (LEXIS through Jan. 11, 2006).

[137] *E.g.*, *id.*; Keele, *supra* note 36, at 197.

DeWine and Representative Ted Strickland,[138] made federal funds available to localities establishing or expanding MHCs. The Attorney General gained authority to grant funds to 100 programs that involve, "continuing judicial supervision, including periodic review, over preliminarily qualified offenders with mental illness . . . ; and the coordinated delivery of services," including: specialized stakeholder training; voluntary outpatient mental health treatment; centralized case management; and continued treatment supervision.[139] Since then, the federal program, which makes ten million dollars available per year from 2001–2004, provided grants to thirty-seven courts in 2002 and 2003.[140] This legislative action propelled an MHC explosion,[141] as by December 2005, 113 MHCs existed in thirty-five states.[142]

The number of MHCs may again expand due to federal legislation. Sponsored by Senators DeWine and Dick Durbin and signed into law by President George W. Bush, the "Mentally Ill Offender Treatment and Crime Reduction Act of 2004"[143] created a new, five-year grant program to fund states and localities seeking to establish mental health courts, provide in-jail treatment and transitional services, and provide training to mental health court stakeholders.[144]

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[138] Watson et al., *supra* note 50, at 480.

[139] 42 U.S.C.S. § 3796ii (LEXIS through Jan.11, 2006). The Act calls for the creation of programs to train court and law enforcement personnel to recognize mentally ill offenders, to provide voluntary mental health treatment as a diversion from criminal sanctions, to centralize case management by coordinating treatment plans with the provision of social services, and to provide continuity in psychiatric care after release. *Id.*

[140] *See* SURVEY OF MENTAL HEALTH COURTS FEBRUARY 2005, *supra* note 8.

[141] The proliferation of MHCs mimics the proliferation of drug courts. BERMAN & FEINBLATT, PROBLEM SOLVING, *supra* note 39, at 5. For example, in 1989, the first drug court was opened in Dade County, Florida. *Id.* at 4. Five years later, the Crime Act was passed, authorizing the Attorney General to make grants to establish drug courts. *Id.* As of October 2003, 1091 drug courts existed, with another 413 in the planning stages. Michael C. Dorf & Jeffrey A. Fagan, *Problem-Solving Courts: From Innovation to Institutionalization*, 40 AM. CRIM. L. REV. 1501, 1503 (2003) (citing OJP DRUG COURT CLEARINGHOUSE, DRUG COURT ACTIVITY UPDATE: OCT. 15, 2003). *But see* Pessin, *supra* note 56, at 8 (numbering drug courts nationwide at 1800). Since their inception, more than 226,000 defendants have participated in drug court-related programs. Aubrey Fox & Greg Berman, *Going to Scale: A Conversation About the Future of Drug Courts,* 39 CT. REV. 4, 4 (2002). The speed of drug court proliferation has been called "break-neck." Faraci, *supra* note 75, at 811.

[142] *See* SURVEY OF MENTAL HEALTH COURTS DECEMBER 2005, *supra* note 22 (defining MHCs as "courts that: are adult criminal courts; have a separate docket dedicated to persons with mental illnesses; divert criminal defendants from jail into treatment programs; and monitor the defendants during treatment and have the ability to impose criminal sanctions for failure to comply.").

[143] 42 U.S.C.S. § 3797aa (LEXIS through Jan.11, 2006).

[144] *Id.*

Most notably, the Act authorizes the Department of Justice to appropriate fifty million dollars in 2005, with additional grant funding for 2006 to 2009 to be determined.[145]

E. Mental Health Court Effectiveness

MHCs did not proliferate simply due to federal funding. MHCs also grew exponentially due to their effectiveness,[146] specifically in reducing recidivism.[147] For example, Broward County's MHC significantly mitigated revolving door problems.[148] Notably, from October 2001 to September 2002, only 27% of MHC participants were rearrested.[149] Further, none of the first 675 participants have since com-

[145] *Id.* § 3797aa(h).

[146] Idaho State Senator Dick Compton said of his state's two MHCs in Coeur d'Alene and Idaho Falls, which both began on an experimental basis: "Once in a while a gem comes along that you say, 'Thank God,'. . . . The figures are extraordinary—from people not in jail to people who go to work, believe it or not, after living under a bridge. Josh Wright, *Mental Health Courts Win Senate Approval; Bills Would Expand Program Statewide, Provide Funding*, SPOKESMAN-REV. (Spokane, Wash.), Mar. 30, 2005, at B2. Anecdotal evidence verifying the impact of MHCs is abundant. For example, during a Nevada Senate Human Resources and Education Subcommittee meeting, Walter Bliss, the father of a schizophrenic man who, after numerous encounters with law enforcement, was placed into the Clark County Mental Health Court, said: "This mental health court is absolutely necessary. It is so relaxing for us to have some peace in our life and know that (our son) is having the care that he needs." Sean Whaley, *Clark County: Praises Sung for Mental Health Court*, LAS VEGAS REV.-J., Feb. 19, 2005, at 4B. A more recent example is the case of a twenty-five year-old immigrant from Barbados who participated in the Brooklyn MHC. Leslie Eaton & Leslie Kaufman, *Judges Turn Therapist in Problem-Solving Court*, N.Y. TIMES, Apr. 26, 2005, at A1. According to Mary Elizabeth Anderson, a lawyer with the Legal Aid Society, "He would have been in jail without . . . [the MHC], there is no doubt." *Id.*

[147] *See* Kondo, *supra* note 47, at 302 ("[V]isionary political leaders may pioneer state judiciary experimentation based upon past successes reported by other specialty courts in distant jurisdictions."); *see also* Clay Barbour, *Court Doles Out Compassion,* ST. LOUIS POST-DISPATCH, June 3, 2005, at A1 (quoting Marcia Wikenhauser, executive director of Madison County's Mental Health Board, "[MHCs] only make sense . . . . They get people into treatment, rather than letting them languish in jail."). Additionally, Judge Michael McLaughlin stated that, as to recidivism, MHC "participants have six times the success of defendants diagnosed with mental illnesses but who do not go through mental health court." Michael McLaughlin, *Mental Health Court Benefits Defendants, Our Community*, IDAHO STATESMAN, Oct. 6, 2005, at 6.

[148] *See* Timothy Dodson, *Face to Face: A Conversation with Ginger Lerner-Wren*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Jan. 30, 2005, at 5H. According to Judge Wren, the current recidivism rate for mentally ill offenders in Broward County's MHC is approximately 12%. *Id.* This is a significant decrease from the court's earlier recidivism percentage which was approximately 30%. Bergal, *supra* note 29. "It's awesome that seven out of 10 aren't re-offending . . . . It demonstrates that treatment works and recovery is possible. [This recidivism rate is] surprisingly low." *Id.*

[149] Bergal, *supra* note 29.

mitted a violent offense.[150] This reduced recidivism cleared Broward County's jail of an entire inmate class: the mentally ill non-violent misdemeanant.[151]

Additionally, King County, Washington, another "original" MHC,[152] slowed the revolving door, drastically reducing recidivism. Recidivism appreciably decreased, as 75% of King County MHC graduates committed no offenses in the year following their graduation, while 85% committed one offense or less in that time period.[153] Declining crime reduced violence, as the occurrence of violent criminal activity among MHC participants decreased by nearly 88%.[154] These reductions had noteworthy institutional effects, as jail time decreased by over 90%.[155]

Impressive recidivism reduction has not been limited to the founding MHCs. Rather, triumphs occurred nationwide. In Davidson County, Tennessee, mentally ill recidivism rates dropped by 50%, now down to 5.2%.[156] In Downtown Brooklyn, probation violations for MHC clients is 38% lower than for the general population.[157] In Alaska, the Jail Alternative Services Program significantly reduced arrests and prison stays.[158] In Clark County, Oregon, 54% of partici-

[150] Kondo, *supra* note 47, at 311 (citing Kim Barker, *New Court Tries Prevention*, SEATTLE TIMES, Feb. 21, 1999, at B1).

[151] *See id.* (citing Linda Wertheimer & Robert Siegel, Hour 2: *Broward County, Florida's Mental Health Court Helps Clear Out Some of the Jail Population by Dealing with the Mentally Ill Who've Committed Non-violent Misdemeanors* (National Public Radio broadcast, Mar. 12, 1999)).

[152] *See* Pub. L. No. 106-515, § 2, 114 Stat. 2399, 2399 (2000) (lauding the "positive results" of King County); GOLDKAMP & IRONS-GUYNN, *supra* note 42 (examining four of the founding MHCs already in existence prior to April 2000: Broward County, Florida; King County, Washington; Anchorage, Alaska; and San Bernardino, California. The King County MHC began operation in February 1999 and is thus one of the most established MHCs in the nation.).

[153] NEISWENDER, *supra* note 105, at 6.

[154] *Id.* at 4.

[155] *Id.* at 7.

[156] Castaneda, *supra* note 13 (noting recidivism rates were originally 56.3%, according to MHC Judge Andrei Lee).

[157] Bill Hughes, *Mental Health Court Offers Options for Many Defendants*, J. NEWS (Westchester County, N.Y.), April 14, 2004, at 6A. Judge Matthew D'Emic estimates that 50% of the general population violates probation, compared to only 12% of MHC clients. *Id.*

[158] Carns et al., *supra* note 114, at 29 (citing Christopher M. Hamilton & Steven L. Hamilton, Jail Alternative Service Program Evaluation 1, 8–14 (2000) (on file with the Alaska Judicial Council)). Arrests averaged 3.4 per participant in the twelve months prior to the JAS program and 1.4 during the program. *Id.* Additionally, the program's inception led to a reduction of the average jail stay from 30.2 days to 22.6 days during the same period. *Id.*

pants tracked were not rearrested within a year, total arrests among the group dropped 400%, and parole violations decreased 62%.[159]

In Tennessee's Metro Mental Health Court, after five years of operation, the recidivism rate is less than 10%.[160] Additionally, a Washoe County, Nevada case study found a crime rate reduced from 4.5 arrests per year, to only one arrest since enrolling.[161] Since the court's inception in 2001, jail and emergency services have been reduced by 85%.[162] Clark County, Nevada has also seen dramatic results. In the year prior to participation in MHC, the thirty-three clients amassed 3529 days in jail and were arrested 129 times.[163] However, since the court's creation in December 2003, the clients have spent 777 days in jail following only forty-nine arrests.[164] Another Nevada MHC, the Reno court, has also seen success. There, in the year prior to MHC participation, forty participants averaged 528 days in the hospital.[165] But since completing the court-mandated program, the same forty individuals collectively spent ninety-three days in the hospital.[166] In Clark County, Illinois, 85% of participants have not been arrested on new charges since participating in MHC.[167] St. Louis County Municipal MHC has dismissed the charges against 95% of participants, following successful completion of prescribed treatment.[168] Finally, 84% of people served by the Allegheny County,

[159] Holley Gilbert, *Mental Health Court Proves Its Value*, OREGONIAN, June 29, 2004, at B1.

[160] Burke, *supra* note 73.

[161] Voyles, *supra* note 10. Jail time fell from an average of fifty nights in jail in the year prior to enrollment to only twenty-two nights in jail after enrollment. *Id.*

[162] Zamna Avila, *Judge Hands Out Praise—or Stern Warnings—in Courtroom*, RENO GAZETTE-J., Oct. 28, 2005, at 1G. Judge Peter Breen referred to his ability to help people resurrect their lives as "intoxicating." *Id.*

[163] Whaley, *supra* note 146.

[164] *Id.*

[165] *Nevada Legislators Urged to Fund Mental-Health Housing*, MENTAL HEALTH WKLY. DIG., Mar. 14, 2005, at 10 (paraphrasing Harold Cook of the Reno MHC Mental Health Division).

[166] *Id.* Additionally, the same forty offenders were arrested a total of forty-five times in the year prior to court participation and since, they have been arrested eight times collectively. *Id.*

[167] Pessin, *supra* note 56, at 8. Additionally, in the year prior to joining the program, the average total of days spent in custody for the court's twenty-six participants was 102. *Id.* After nine months in the program, however, the participants have averaged six-and-a-half days per person in custody (and 60% of that time was served by just two offenders). *Id.*

[168] Barbour, *supra* note 147.

Pennsylvania, MHC have "stayed out of trouble with the law" while under the MHC's supervision.[169] And the list of successes goes on.[170]

II. THE PROBLEM—MHCS ESTABLISHED AS PILOT PROGRAMS

Since the 1997 birth of the nation's first MHC in Broward County, many MHCs have been established as pilot programs, including the "founding" MHCs in King County, San Bernardino, California,[171] and Anchorage.[172] The pilot model, however, relied upon in the MHC movement's formative years has remained popular.[173] Evidencing this short-sighted perspective is New Jersey's legislature, which considered four proposals in three legislative sessions for the establishment of a pilot MHC.[174] By advocating pilot programs, policymakers in the Garden State and across America continue envisioning MHCs as experimental.[175]

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[169] Joe Fahy, *Special Court Making Inroads Treating Mentally Ill Criminals*, PITTSBURGH POST-GAZETTE, Jan. 31, 2005, at B-3. According to a report by the Criminal Justice/Mental Health Consensus Project, the number of participants who had subsequent legal problems was "remarkably low." *Id.*

[170] These impressive results continue to occur in other MHCs throughout the nation. *See* Brutzman, *supra* note 73 (In Greenville County, South Carolina, forty-three offenders participated in the MHC in its inaugural year of 2002. In 2002, those individuals were arrested sixty-one times. Since entering the program, those individuals accounted for only twenty-six arrests.); Jeff Coen, *Mental Court Nets Stable Results; Only 1 of 35 Guilty of New Felony in Year*, CHI. TRIB., Aug. 17, 2005, at 3 (In Cook County's MHC, thirty-five individuals were processed in its first calendar year. Only one individual was convicted of a new felony, a stark contrast considering that the same group of individuals averaged four arrests and two convictions each in the previous year and spent a total of 4000 days in custody.); *Court Programs Save Lives and Money*, OLYMPIAN (Olympia, Wash.), Oct. 3, 2005, at 7A (In Thurston County, Washington, the eighteen people participating in the six-month trial MHC had been previously booked 35 times. Since entering the MHC, only two bookings have occurred for all eighteen).

[171] GOLDKAMP & IRONS-GUYNN, *supra* note 42 (discussing the creation of the nation's first MHCs).

[172] *See* Carns et al., *supra* note 114, at 23.

[173] *See, e.g.*, Ken Kobayashi, *Prisoners With Mental Problems Released For Care*, HONOLULU ADVERTISER, June 19, 2005, at 31A (noting the early accomplishments of the state's first MHC, which was part of a pilot program); Pessin, *supra* note 56, at 8 (noting that the Cook County, Illinois, MHC is a pilot program)

[174] Assemb. A1279, 211th Leg. (N.J. 2004) (proposing a "Mental Health Court Pilot Program" in Essex County); Assemb. A3867, 210th Leg. (N.J. 2003) (advocating for and appropriating $1.8 million to a "pilot program for mentally ill offenders"); Assemb. AR222, 210th Leg. (N.J. 2002) (memorializing the judiciary to establish a MHC pilot program); Assemb. A2355, 209th Leg. (N.J. 2000) (seeking to establish a "Mental Health Court Pilot Program").

[175] *See* Khurram Saeed, *Jail Study Finds 16% Mentally Ill*, J. NEWS (Westchester County, N.Y.), Oct. 8, 2004, at 1A. Specifically, MHC advocates in Rockland County, New York, advocated for a pilot MHC for the past three years. *Id.*

Despite the political palatability of pilot programs, this MHC establishment model has shortcomings, most notably inadequate funding. "Predictably, the greatest barrier to establishment of state [MHCs] is in obtaining adequate political and financial support for such programs. Ultimately, state legislators, policy-makers, and citizens hold the purse strings to authorize and permit creation of these specialty courts."[176] This abstract assertion's truth persists. For example, in Jackson County, Oregon, despite near unanimous support among county officials for an MHC, an obstacle remains: money.[177]

Beyond the difficulties of raising adequate start-up funds, MHCs must sustain ample funding. The anecdotal evidence depicting MHCs struggling to maintain sufficient funding abounds.[178] A paramount cause of the growing pains confronting existing MHCs is undue reliance on grant funding.[179] In the National Alliance of the Mentally Ill's February 2005 Survey of Mental Health Courts,[180] nearly 78% of responding courts utilized grant funding,[181] while 69% of those courts relied solely on grant money.[182] This inordinate reliance on grants led the Superior Court of California, County of Placer to state that the "[s]cope of future operations [is] to be determined,"[183] which is strikingly similar to the language directed at two past California MHCs that are no longer listed in the survey.[184] The negative results stemming from dependence upon grant funding generated unflattering analogies such as comparing the federal government to

[176] Kondo, *supra* note 47, at 302.

[177] Lemon, *supra* note 11 (noting the comments of Jim Adams, Circuit Court administrator for Jackson County, and Christine Herbert, a Medford criminal defense attorney); *see also* O'Neal, *supra* note 62. This problem extends to various MHCs. According to Hamilton County General Sessions Court Judge Bob Moon, "[p]sychiatric defendants would most likely benefit from an exclusive mental health court, as would the general public. . . . However . . . it appears to me that tax dollar appropriations at this time or such a court is unlikely." *Id.*

[178] *See supra* notes 1–12 and accompanying text.

[179] *See* Burke, *supra* note 73 ("It [the Metro MHC] barely survived a budget crunch this year after its federal grant expired.").

[180] SURVEY OF MENTAL HEALTH COURTS FEBRUARY 2005, *supra* note 8.

[181] *Id.* Fifty-four of the nation's then existing 107 MHCs reported funding information. *Id.* Forty-two MHCs relied to some extent on federal, state, and/or other grants for funding. *Id.*

[182] *See id.* Twenty-nine courts reported only grants as a source of funding. *Id.*

[183] SURVEY OF MENTAL HEALTH COURTS FEBRUARY 2005, *supra* note 8.

[184] *Id.* The July 2004 survey indicated that "[f]uture funding [is] uncertain" for the Superior Court of California, County of Santa Barbara, which relied upon a Board of Corrections grant. *See* SURVEY OF MENTAL HEALTH COURTS JULY 2004, *supra* note 8, at 10.

heroin dealers who "give these grants to start these programs and they then take them away."[185]

In short, planners establishing pilot courts relying purely on grant money are incorrectly conceptualizing MHCs. Such planners fail to recognize the challenges confronting existing MHCs and fail to adhere to the prevailing opinion that MHCs are no longer experimental, but rather are permanent components of American justice.[186] "[L]awyers generally agree that specialized courts are here to stay. The alternative is for courts to be the dumping grounds for individuals with psychological problems. The court system should acknowledge this reality and gear for it."[187]

The institutionalization[188] of MHCs continues, despite the funding crisis faced by this new breed of problem-solving courts. According to Professor John Goldkamp, of Temple University:

> [W]hat we have now is not a bunch of little hobbies that judges have in isolated jurisdictions, but rather a paradigm shift that larger court systems are trying to come to grips with. They're at your door step. The question isn't: Gosh, are courts supposed to be doing this? It's: What are you going to do about it? How does it fit in? It's no longer a question of whether this should have been invented. They're here.[189]

Questions abound and solutions are needed. How can MHCs garner community support from officials, the public, the media, and the legal community? How can MHCs secure adequate financial stability? How can MHCs ensure a sufficient employment pool to replenish judges and court officials? What types of infrastructure must MHCs implement to sustain growth, improve outcomes, and enhance the lives of mentally ill offenders and their communities?

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[185] Symposium, *The Changing Face of Justice: The Evolution of Problem Solving*, 29 FORDHAM URB. L.J. 1790, 1798 (2002) [hereinafter *The Evolution of Problem Solving*] (quoting comments of Judge Morris B. Hoffman, Denver District Court).

[186] *See* BERMAN & FEINBLATT, PROBLEM SOLVING, *supra* note 39, at 14 ("Problem-solving courts have achieved a kind of critical mass. They are no longer just a set of isolated experiments driven by entrepreneurial judges and administrators").

[187] Davis, *supra* note 85, at 37 (continuing on to quote John Feinblatt of the Center for Court Innovation, who said, "Problem-solving, focused courts ought to populate the landscape more densely.").

[188] Institutionalization has been defined as a process by which individualized courts "evolve from separate experimental entities to a statewide network that is stable, far-reaching, reliably funded and closely monitored." FOX & WOLF, *supra* note 99, at 3 (discussing the institutionalization of drug courts).

[189] Berman, *supra* note 17, at 85 (comments of John Goldkamp).

III. THE SOLUTION

Prospective action is needed from MHC advocates. The pilot model of MHC establishment should be abandoned in favor of strategies providing the resources, funding, and infrastructure necessary to maintain MHCs indefinitely. Planners must increase community support, secure long-term funding, provide for personnel replenishment, and create adequate infrastructure to mitigate and rectify the "growing pains" of MHCs.

A. Community Support

Community support is critical in establishing MHCs. "[W]e've learned that courts can't carry out this problem-solving role alone. Collaborations with government agencies and community groups are essential."[190] But, the acquisition of broad community support requires the articulation of a nuanced message to convince stakeholders of the importance, necessity, and viability of MHCs.[191]

Legislation is central to increase public support for MHCs, as court establishment requires political savvy.[192] Such orchestration requires maneuvering around "thorny political issues" including selecting an agency responsible for the courts, promoting MHCs despite alternative policy approaches, and convincing policymakers to continue funding during fiscal downturns.[193] In short, state legislators must be convinced, since they control appropriations.[194] Once policymakers are persuaded, the legislatures can enact three types of leg-

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[190] Kaye, *supra* note 97, at 13

[191] *Cf.* FOX & WOLF, *supra* note 99, at 9 (noting the successful "salesmanship" of drug court practioners by crafting a "nuanced message" that "appeals to a broad political spectrum").

[192] *Cf. id* at 10–11, 46 (discussing legislation's role in the proliferation of drug courts).

[193] *See id.* at 46.

[194] *See* Kondo, *supra* note 47, at 302. Persuasion of legislators will lead to MHC funding. For example, Nevada Assemblyman William Horne introduced Assembly Bill 41 to provide $1 million per year for a MHC. Whaley, *supra* note 146; *see also Nevada Legislators Urged to Fund Mental-Health Housing*, *supra* note 165 (stating that the legislation sponsored by Assemblyman Horne will allocate $2 million to the Clark County MHC, in addition to providing funding for the Reno and newly established Carson City MHCs). The great power state legislatures wield is also evident in Maine. There, the criminal justice community is closely watching the efficacy of the Kennebec County MHC. Judy Harrison, *New Maine Court Under Way; System Seeks to Reduce Incarceration of People with Mental Illness*, BANGOR DAILY NEWS, Sept. 19, 2005, at B1. Currently, the court is being funded by a three-year grant from the United States Department of Justice. *Id.* However, for MHC operations to continue after the grant money runs dry, the state legislature must fund the court. *Id.*

islation supporting MHCs and problem-solving justice.[195] First, the legislature can enact enabling legislation, which makes MHCs more politically palatable, attracts the legal community's attention, and garners public support via awareness campaigns.[196] Second, the legislature can enact indirect legislation, or legislation that does not specifically mention MHCs nor their development.[197] These legislative actions, such as resolutions creating task forces to examine mental health issues,[198] are an effective, historical impetus for MHC establishment.[199] Third, it can enact legislation requiring MHC establishment.[200] This coercive legislation, utilized in Texas to mandate problem-solving courts in seven, highly-populated, urban counties, is the most aggressive approach to court establishment.[201]

While support from policymakers is essential in MHC establishment, political approval will not coalesce without broad community support.[202] "[A] prominent challenge within the mental health court system is to educate the public and to provide a common understand-

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[195] FOX & WOLF, *supra* note 99, at 10–13.

[196] *Cf. id.* at 10–11 (discussing enabling legislation in the drug court context). An example of enabling legislation would be a legislatively approved study to determine the feasibility and beneficiality of MHC establishment. Such a study, involving a review of data related to mental health-related cases, has been proposed by Representative Jeannie McDaniel in the Oklahoma legislature. Marie Price, *Lawmaker Seeks Creation of Mental Health Court*, TULSA WORLD, July 3, 2005, at A12.

[197] *Cf.* FOX & WOLF, *supra* note 99, at 11–12 (discussing indirect legislation in the drug court context). For example, Ohio has no legislation prescribing drug court operation, yet numerous laws support their process. *Id.*

[198] New Jersey may also utilize indirect legislation to create a MHC, as after four failed MHC pilot program proposals, the legislature is considering a bill that will create a multi-disciplinary "Task Force to Improve the Treatment of Offenders with Mental Illness." Assemb. A2518, 211th Leg. (N.J. 2004) *available at* http://www.njleg.state.nj.us. The Assembly unanimously approved the bill (79-0). *Id.* Though the Senate has yet to vote, the Senate Law and Public Safety and Veteran's Affairs Committee reported favorably on the bill. Sen. S1509, 211th Leg. (N.J. 2004).

[199] Task force creation, a possibility that may arise through indirect legislation, has historically been a catalyst for MHC creation. The nation's first MHC in Broward County was the product of a task force, Lerner-Wren, *supra* note 106, at 2, as was the King County MHC. Watson et al., *supra* note 50, at 479 (citing James D. Cayce & Kare Burrell, *King County's Mental Health Court: An Innovative Approach for Coordinating Justice Services,* WASH. STATE B. NEWS, June 1999, at 19–23).

[200] *Cf.* FOX & WOLF, *supra* note 99, at 12–13 (discussing coercive legislation in the drug court context).

[201] *Id.* at 12.

[202] *See The Birth of a Problem Solving Court*, *supra* note 48, at 1760–61 (statement of Harlem Community Court's Rolando Acosta) ("[T]he planning team [of the problem-solving Harlem Justice Center] understood that the success of the Justice Center was going to be largely dependent upon the full support of the community in which the Center would be located. The community itself had to buy into the innovative community-based approach of dispensing justice.").

ing of the benefits and the costs of the program . . . ."[203] Positively, mobilizing community support may not be difficult, as a 2001 National Center for State Courts survey found strong support already existing for common problem-solving strategies.[204] A "solid majority of the public" supports the methods of problem-solving justice.[205] This sponsorship is particularly passionate among minority groups, as over 80% of African-Americans and Latinos support hiring counselors and social workers.[206] Additionally, support extends beyond minority groups and includes various organizations concerned with the mentally ill's plight, such as the Council of State Governments,[207] the American Jail Association, the American Correctional Association, the American Sheriff's Association, and the National Mental Health Association, all of which endorse MHC establishment.[208]

Despite this support, the community's endorsement can never be too strong. Thus, a communications strategy must be constructed to "spread the gospel" of MHCs and problem-solving justice.[209] Planners and advocates can employ various techniques, including direct pubic communication and media utilization. Additionally, planners should encourage judges to publicly advocate for MHC establishment and maintenance.

Direct communication campaigns can occur in various manners, all of which will be implemented by proficient MHC advocates. At the most democratic level, MHC advocates should conduct town meetings where MHCs' values are espoused, public questions are answered, and invaluable community input is received.[210] This intimate interaction leads to a more symbiotic and efficient court/community

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[203] Keele, *supra* note 36, at 203.

[204] BERMAN, *supra* note 119, at 6. The survey found support for the hiring of treatment staff and social workers, offenders reporting back to court on their treatment progress, coordinated work among local agencies to treat offenders, and utilizing relevant experts to assist courts in decision-making. *Id.*

[205] DAVID B. ROTTMAN & RANDALL M. HANSEN, HOW RECENT COURT USERS VIEW THE STATE COURTS: PERCEPTIONS OF WHITES, AFRICAN AMERICANS, AND LATINOS 3 (1999), *available at* http://www.ncsconline.org/WC/Publications/Res_AmtPTC_RecentCtUsersViewPTCPub.pdf.

[206] *Id.*

[207] Skeem & Petrila, *supra* note 120, at 8. The Council of State Government recognized MHCs as a "workable" option for communities with limited resources. CONSENSUS PROJECT, *supra* note 46, at 6.

[208] Kondo, *supra* note 47, at 309 (citing DeWine, CONGRESSIONAL PRESS RELEASE, *supra* note 68, at 2).

[209] BERMAN, *supra* note 119, at 5.

[210] *See* BERMAN & FEINBLATT, JUDGES, *supra* note 88, at 21.

relationship,[211] which, in turn, allows partnerships to forge, increases community involvement, and creates a more responsive court.[212] Additionally, Internet communication provides an efficient, cost-effective, and practical communications medium.[213] Notably, the King County MHC website publishes a fact sheet, task force recommendations, media coverage, downloadable court forms, frequently asked questions, statistics, and mental health resource links.[214]

Another strategy for increasing public support is the controlled use of media attention.[215] To increase public support, MHCs should capitalize upon free ink by exploiting media avenues, including creating public service announcements, encouraging op-ed submissions, and conducting public events designed, in part, to attract media coverage.[216] Such strategies are effectively implemented by numerous problem-solving courts (e.g., National Public Radio and Good Morn-

[211] *See id.* Judge John Leventhal, of the Brooklyn Domestic Violence Court, hosts monthly meetings in the courthouse. *Id.* Attendees include prosecutors, defenders, victim advocates, batterers-intervention programs, service providers, religious leaders, and community activists. *Id.* The meetings led to new protocols that allowed the court to improve efficacy. *Id.*

[212] *See* Randal B. Fritzler, *How One Misdemeanor Mental Health Court Incorporates Therapeutic Jurisprudence, Preventive Law, and Restorative Justice*, *in* MANAGEMENT AND ADMINISTRATION OF CORRECTIONAL HEALTH CARE: POLICY, PRACTICE, ADMINISTRATION at 17 (Jacqueline Moore ed., 2003).

[213] Kondo, *supra* note 47, at 315 (arguing for increased on-line interaction among MHC advocates, which would permit "mutual communication and sharing of 'best court practices'"). Notably, as of February 2005 at least forty-four MHCs had operating websites devoted to the problem-solving court. *See* SURVEY OF MENTAL HEALTH COURTS FEBRUARY 2005, *supra* note 8.

[214] Kondo, *supra* note 47, at 315; *see also* Mental Health Court Home Page, King County District Court, http://www.metrokc.gov/kcdc/mhindex.htm (last visited Feb. 15, 2006).

[215] This strategy has been employed by MHC's role model, drug courts. However, the success of drug courts in attracting positive media attention has been too great, as drug court success stories are often no longer newsworthy. FOX & WOLF, *supra* note 99, at 9.

> [D]rug courts have been successful at attracting press coverage of drug court graduations—in some cases, so successful that they can't get local newspapers to cover them any more. For example, the local press in Boone County, Missouri, had covered so many graduations that reporters were beginning to balk at going. "Once the governor came and our daily newspaper did not show up," said Judge Christine Carpenter. Their response was, "This isn't news, you're just using us for good PR," Carpenter said.

Id. Controlled use of the media can also lead to political pressure, as seen in upstate New York where *The Times Union* called upon Governor George Pataki and the state legislature to support the creation of more mental health courts. *When the Accused are Ill*, TIMES UNION (Albany, N.Y.), June 19, 2005, at E4.

[216] BERMAN, *supra* note 119, at 5; *see also* Dale Hall, *Twenty-One Monroe County Mental Health Court Graduates Honored*, DAILY REC. OF ROCHESTER, Oct. 31, 2005.

ing America have featured the nation's trailblazing MHC, Broward County).[217] Additionally, Judge Kaye called for the establishment of more "hands-on" courts in a widely cited[218] *Newsweek* commentary.[219]

Further, MHC stakeholders, especially judges, must be public advocates.[220] By advocating MHCs through speeches and community engagements, judges accomplish numerous goals, including: increasing comprehension of social contexts; building effective community partnerships; and improving public trust, confidence, and opinions of MHCs.[221] From their "bully pulpit,"[222] judges can effectively and significantly impact public attitudes and encourage problem-solving justice.[223] A judicial willingness to publicly advocate highlights MHCs' benefits, making these courts a public and political priority.[224] Such advocacy was recently seen in Idaho, where two MHC judges briefed the state's Senate Health and Welfare Committee on the importance of problem-solving courts, including MHCs.[225] The senate subsequently passed three bills aimed at expanding MHCs within the state and raising additional funds.[226] All three bills passed unanimously.[227]

Additionally, an active judiciary will impact other communications strategies. For example, a vocally active judiciary can garner positive media coverage, as MHC judges are visible advocates possessing unique and newsworthy opportunities to convey the need for MHCs.[228] Further, a politically savvy bench can pressure legislators and other policymakers to support MHCs. For example, Richard Guy, Chief Justice of the Washington State Supreme Court, encouraged voters to write their elected representatives expressing opinions

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[217] Lerner-Wren, *supra* note 106, at 4.

[218] The article has been cited by at least 13 American law review and law journal articles.

[219] Kaye, *supra* note 97, at 13.

[220] Rottman, *supra* note 95, at 23–24 ("The expertise of a specialized judge in a particular subject matter helps the court secure community-wide support for the court's programs.").

[221] BERMAN & FEINBLATT, JUDGES, *supra* note 88, at 19.

[222] BERMAN, *supra* note 119, at 4.

[223] *Id.*; *cf.* FOX & WOLF, *supra* note 99, at 46 (discussing the impact of judicial speeches, interviews, and media coverage in the drug court context).

[224] *Cf.* FOX & WOLF, *supra* note 99, at 45 (discussing judges actively advocating for drug courts).

[225] Wright, *supra* note 146.

[226] *Id.*

[227] *Id.*

[228] Kondo, *supra* note 47, at 314. For a further example of MHC judges utilizing the media to advance the policy goals of MHCs, see Dodson, *supra* note 148.

on the judiciary's future.[229] Such a grassroots effort could effectively motivate policy-makers.

A final strategy for garnering additional support for MHCs is an appeal to the legal community. Richard E. Redding, an associate professor of law at Villanova University, proposed a novel method.[230] Professor Redding encouraged requiring law student exposure to "mental illness, how to represent mentally ill clients, adjudicative competence, the mental health needs of various offender groups and how these unmet needs may contribute to criminal behavior . . . ."[231] Some law schools have exposed their students to therapeutic jurisprudence through classroom presentations.[232] But, outreach to the bar can extend beyond the classroom's Socratic method, to bar associations and continuing legal education seminars.[233] For example, Fordham University School of Law raised awareness among legal practitioners by hosting numerous symposiums concerning mental

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[229] Kondo, *supra* note 47, at 316 (citing Chief Justice Richard P. Guy, *Justice Denied in Washington's Clogged Courts: Supreme Court Justice Sees Resources Lagging Far Behind*, NEWS TRIB. (Tacoma, Wash.), Jan 23, 2000, at B8).

[230] *See* Redding, *supra* note 75.

> Forensic mental health issues should be an integral part of the criminal law curriculum, beginning with the first-year criminal law course. This Article presents recommendations for teaching mental health issues in first-year criminal law, presents empirical data indicating that first-year students have mixed,though generally positive, reactions to incorporating such non-traditional content into the course, and provides a syllabus for an upper-level course in criminal law and psychology. Incorporating mental health topics into the traditional criminal law curriculum is part of the ongoing trend in legal education towards expanding pedagogy beyond legal doctrine into relevant social science disciplines that can inform legal policy and students' understanding of the criminal justice system, perhaps more so than many of the doctrinal lessons we now teach.

Id. at 407–08.

[231] *Id.* at 407.

[232] Gregory Baker & Jennifer Zawid, *The Birth of a Therapeutic Courts Externship Program: Hard Labor but Worth the Effort*, 17 ST. THOMAS L. REV. 711, 728 (2005) (discussing classroom presentations made by attorneys practicing in MHCs).

[233] *See* BERMAN, *supra* note 119, at 4 (discussing education and training initiatives for judges, clerks, attorneys, court officers, and court administrators). Appropriate examples of such efforts are the Council of State Governments June 2005 conference titled "Mental Health Courts and Beyond: Improving the Response to People with Mental Illness in the Criminal Justice System," Bureau of Justice Assistance Mental Health Court Program, http://www.consensusproject.org/mhcourts/discussion/thread-c?msg_id=00002a (last visited Feb. 15, 2006), and the Bureau of Justice Assistance's "Mental Health Courts Program Newsletter." Bureau of Justice Assistance Mental Health Court Program, http://www.consensusproject.org/mhcourts/MHCP-April-newsletter.adp (last visited Feb. 15, 2006).

illness, MHCs, and problem-solving courts.[234] These efforts already encountered success, as the legal profession embraces MHCs. The Conference of Chief Justices, the Conference of State Court Administrators,[235] and all fifty state court chief judges (with all fifty state court administrators) support problem-solving justice and MHCs.[236] Additionally, the University of Maryland Survey Research Center found that the judiciary endorses problem-solving tools, with approximately 90% of respondents believing the judiciary should address social problems such as mental illness and that treatment is more effective than incarceration.[237] These innovative approaches to legal education will increase the bar's awareness of mental illness, the problems it creates, and available solutions.

B. Adequate Funding

Public support for MHCs is a means to an end: money. MHCs need money to be established, to operate, and to sustain growth. Unfortunately, MHCs generally require more funding than traditional courts due to the additional costs of corresponding community health treatment.[238] These costs could be harmful, as "[t]he (usually)

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[234] *See, e.g.*, *The Birth of a Problem Solving Court*, *supra* note 48; *The Evolution of Problem Solving*, *supra* note 185.

[235] BERMAN & FEINBLATT, PROBLEM SOLVING, *supra* note 39, at 14. The Conference of Chief Justices and Conference of State Court Administrators passed a joint resolution pledging to "encourage the broad integration . . . of the principles and methods employed in problem solving courts into the administration of justice." *Id.*

[236] Aubrey Fox & Greg Berman, *Going to Scale: A Conversation About the Future of Drug Courts*, 39 CT. REV. 4, 10 (2002) (according to Kevin Burke, Chief Judge of Hennepin County, Minnesota, "[t]he fact of the matter is that the Conference of Chief Justices is a pretty conservative group. This may be the first time they've passed an endorsement that is pro-active in nature, and it has been a great help in getting people's attention.").

[237] Berman & Feinblatt. *A Quiet Revolution*, *supra* note 93, at 213 (highlighting a research study surveying over five hundred criminal court judges).

[238] *See* Keele, *supra* note 36, at 203. Keele states:

> As in every new political venture, the majority of the pubic is concerned with funding and long-term financial support. The mental health court system uniquely requires financial support at the court level, as well as within the community treatment arena for a comprehensive and successful program to be administered. Therefore, a prominent challenge within the mental health court system is to educate the public and to provide a common understanding of the benefits and the costs of the program to those who implement public policy and provide funding to justice programs.

Id.; see also Fahy, *supra* note 169. According to Christy Visher, a principal researcher associated at the Urban Institute in Washington, MHCs generally cost more to operate than traditional courts, due to the length of hearings and numerous court appearances by offenders. *Id.*

higher costs associated with specialized courts may prove fatal during an economic downturn."[239] Since funding is the major concern when establishing MHCs, a variety of adequate funding streams must be entrenched to sustain indefinite viability.

Anecdotal evidence indicates that MHCs cannot rely solely on grants. Currently, MHCs in eight states face severe budgetary constraints, mostly due to over-reliance upon grant money,[240] while courts in the formative stages continue to wander down the same dangerous path.[241] Rather than exist at the mercy of grants, revocable in any fiscal year, MHCs need permanent funding sources.[242] Creative and innovative fund-raising is required. Morris Hoffman, of the Denver Drug Court's fund-raising efforts, said, "[w]e have tried to do creative things with our general funding." Morris Hoffman continued, "I told everybody the other day that we need Arthur Andersen to come in and set up some offshore limited partnerships."[243] MHC advocates and planners must adopt and integrate strategies, choosing from a plethora of effective fund-raising approaches already implemented by courts nationwide.

The first strategy MHC planners should adopt is to create multiple funding streams.[244] By diversifying revenue sources,[245] MHCs will not detrimentally rely on any single mechanism, thereby increasing the court's financial stability. Second, MHCs can implement a nominal surcharge to participants.[246] For example, the Wellness Court in

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[239] Rottman, *supra* note 95, at 24. It is also important to note that problem-solving courts in general, and specifically MHCs, "proliferated in an era of particularly generous funding," due in large part to a robust economy. *Id.*

[240] *See supra* notes 1–12 and accompanying text.

[241] Two Greenville County, South Carolina Probate Court Judges, Ted Sauvain and Debra Faulkner, are spearheading a drive to create a MHC. Brutzman, *supra* note 73. In anticipation of a $150,000 operating budget, Judges Sauvain and Faulkner applied for a $110,000 grant (equal to over 73% of the operating budget) from the state's Department of Public Safety. *Id.*

[242] *See* Voyles, *supra* note 10.

[243] *The Evolution of Problem Solving*, *supra* note 185, at 1798.

[244] *Cf. id.* at 1808 (discussing funding for drug courts). Multiple funding streams are critical. Marilyn Robers of the Department of Justice said: "I want to emphasize reallocation of resources, I want to emphasize multiple funding streams, because drug courts cannot exist on a federal grant. They cannot exist on any one funding stream. There are multiple resources that have to be brought to bear to make a drug court work. " *Id.*

[245] Clark County, Nevada is a prime example of fund diversification. Juliet V. Casey, *Court Wins Its Case*, LAS VEGAS REV.-J., June 13, 2005, at 1B. During its first year of operation, the court relied upon a federal grant of $150,000. *Id.* However, thanks to new appropriations by the state legislature, the MHC will receive approximately two million dollars in the next biennium. *Id.*

[246] *See* Carns et al., *supra* note 114, at 18–19.

Alaska, a problem-solving court that treats alcohol-addicted offenders,[247] emphasizes participants' economic self-sufficiency and, therefore, requires participants to contribute towards monitoring and treatment costs.[248] This strategy may soon be adopted in Idaho, as legislation passed the Senate, 35-0, requiring offenders admitted into the MHC to pay $300 per month to participate.[249]

Third, MHCs can raise revenue through court instituted surcharges or fines. Several MHCs utilize this strategy. Nevada courts implemented this strategy, as the Reno pilot MHC employs a five dollar surcharge on local misdemeanor fines,[250] while the Washoe County MHC requires a fifteen dollar fee of all convicted misdemeanor offenders.[251] The Board in Cook County, Illinois, in an effort to generate an estimated $300,000 per year and decrease reliance on grant money by creating a more permanent funding stream, approved a ten-dollar fee to be charged to all defendants found guilty of felonies or misdemeanors in the county's circuit court.[252] Whereas a nominal fine imposed upon criminal offenders is unlikely to spark public outrage, the fourth strategy for MHC fund-raising is the least politically palatable: a tax increase.[253] However, the tax surcharge has been explored by some MHCs, specifically in Fairfield County, Ohio,[254] Jackson County, Oregon,[255] and Dane County, Wisconsin.[256] A

[247] *Id.* at 29.

[248] *Id.* at 18–19. Wellness Court participants may be required to pay for their electronic monitoring program which costs up to fifteen dollars per day and the cost of certain medications which may cost $150 per month. *Id.*

[249] Wright, *supra* note 146. The MHC, however, would have the power to exempt offenders from the fee under certain circumstances. *Id.*

[250] Nowlen, *supra* note 9.

[251] Voyles, *supra* note 10.

[252] Mickey Ciokajlo, *Mental Health Court fee OKd*, CHI. TRIB., Feb. 2, 2005, Metro, at 3; Pessin, *supra* note 56, at 8. *See also* Lisa Smith, *Mental Health Court in the Works*, CHI. D. HERALD, Jan. 6, 2006, at 3 (discussing a ten dollar fee, earmarked to support the creation of a MHC in Kane County, Illinois, to be paid by all defendants found guilty or granted court supervision); Editorial, *A Court of First Resort*, ST. LOUIS POST-DISPATCH, Dec. 30, 2005, at C12 (discussing the creation of a MHC in St. Clair County, Missouri, which shall be funded by a $10 fee charged to people convicted of felonies and misdemeanors in the county).

[253] Tim Kelly, Editorial, *Use Prop. 63 Funds to Create Juvenile Court of Second Chances*, SAN GABRIEL VALLEY TRIB. (San Gabriel, Cal.), Dec. 23, 2004 (calling for the use of tax funds to finance the creation of a juvenile mental health court).

[254] Mary Beth Lane, *Fairfield County Plans to Add Mental-Health Court Next Year*, COLUMBUS DISPATCH (Columbus, Ohio), Oct. 27, 2004, at 5B. Planners hope to utilize money from a county Alcohol Drug Addiction and Mental Health Services levy, placed on the November 2, 2004 ballot. *Id.*

[255] Lemon, *supra* note 11. According to Jim Adams, Circuit Court Administrator for Jackson County, the state court system cannot maintain existing programs without a tax surcharge. *Id.*

tax should be the last resort, as tax increases will detrimentally impact public support.

Other strategies to ensure adequate funding are not revenue-raising initiatives, but cost-reducing enterprises. MHCs should seek the gratuitous service of judges, attorneys, and other MHC stakeholders.[257] While such an endeavor may conflict with ensuring adequate personnel and would be unrealistic on a broad scope, voluntary services could help reduce MHC expenditures.[258] For example, college, pre-med, and law students could assist MHCs in exchange for academic credit. The Anchorage MHC utilizes interns from the University of Alaska-Anchorage for staff support,[259] and the Broward County MHC allows doctoral students from Nova Southeastern University, under the supervision of the public defender's mental health staff, to screen clients for program participation.[260]

Further, MHCs are long-term cost savers.[261] The MHCs' effectiveness[262] will reduce recidivism, reduce unnecessary incarceration, and more appropriately allocate expensive correctional facility

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[256] Nowlen, *supra* note 9. Dane County Executive Kathleen Falk believes a tax-funded MHC may be justified. *Id.*

[257] *See* Shoaf, *supra* note 31, at 978 (noting the Akron MHC's use of reassignment of and expansion of job duties to obtain adequate resources for the court); *see also* Carns et al., *supra* note 114, at 17.

> Even the projects that have functioned for some period of time without outside funding have managed only by using substantial time volunteered by judges, attorneys and other persons and organizations in the community . . . . [T]he judges, treatment providers and attorneys involved in these projects contributed all of the time needed to plan and bring the courts into operation.

Id. at 17–18. Voluntary services were used effectively in Kennebec County, Maine, where a judge, prosecutor, case manager, crisis counselor, and numerous others volunteered their time to launch the county's MHC. Harrison, *supra* note 194.

[258] Libby Sander, *Mental Health Court Thriving: Prosecutor*, CHI. DAILY L. BULL., Oct. 19, 2004, at 3. The DuPage County Mental Health Court originally operated solely on the gratuitous efforts of prosecutors, public defenders, law enforcement officials, probation officers, and mental health staff. *Id.*

[259] Carns et al., *supra* note 114, at 17.

[260] Petrila et al., *supra* note 54, at 18.

[261] MHCs may even be short-term cost savers. For example, in Oklahoma County, the cost per day to incarcerate a mentally ill offender is $175, while the community mental health treatment required for an MHC participant is only $20 per day. Jeff Packham, *Advocates Sing Praises of Oklahoma's Mental Health Courts*, J. REC. (Oklahoma City, Okla.), Oct. 5, 2005. Similar results exist in Ada County, Idaho, where the cost per person for the MHC is approximately one-third of the cost of housing a defendant in the penitentiary or county jail. McLaughlin, *supra* note 147.

[262] *See supra* notes 147–69 and accompanying text.

beds.[263] Public funds allocated today by state and federal legislators to fund permanent MHCs "will be repaid many times over through lower public costs" via "reductions in expensive long term health care, diminished need for welfare benefits, and less costly judicial processes," as well as increases in "educational achievement, employment opportunities, improved development of communities and the enhancement of family life."[264] Thus, while in the short term, permanent MHCs may require significant funding, their long-term benefits will more than cover the initial sticker-shock.

C. Personnel

In addition to cultivating community support and ensuring continued financial viability, MHC planners must ensure a constant source of personnel, most importantly judges. Advocates must adopt strategies and replenishment mechanisms to ensure long-term staffing, which are most critical when looking at the bench. MHCs confront a quandary in depending upon a particular judge (usually the judge who spearheaded the court's founding). Thus, upon the judge's retirement, death, or term expiration, MHCs face succession problems.[265]

MHCs present a unique judicial appointment problem, as judges are disinclined to preside over these new problem-solving courts. For many judges, problem-solving court assignments are undesirable, injected with high risks and low benefits.[266] From a professional perspective, current and prospective judges view problem-solving court appointments as less prestigious, with fewer career advancement opportunities.[267] From an institutional perspective, judges are reluctant to embrace MHCs' deviations from the precedential orientation of traditional jurisprudence.[268]

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[263] *See* Patrick Geary, Note, *Juvenile Mental Health Courts and Therapeutic Jurisprudence: Facing the Challenges Posed by Youth with Mental Disabilities in the Juvenile Justice System*, 5 YALE J. HEALTH POL'Y L. & ETHICS 671, 705 (2005) (discussing the cost-saving nature of juvenile MHCs).

[264] Gail B. Nayowith, *A Window of Opportunity for Children Who Stay Too Long*, *in* CHILDREN'S LAW INSTITUTE 2000, 383 (PLI Litig. & Admin. Practice Series, Criminal Law & Urban Problems Course Handbook Series No. C-185, 2000) (discussing cost-benefits in juvenile context); *see also* Geary, *supra* note 263, at 705 (discussing cost-saving nature of juvenile MHCs).

[265] Rottman, *supra* note 95, at 24.

[266] *Cf.* BERMAN & FEINBLATT, JUDGES, *supra* note 88, at 9 (referencing the negatives associated with a specialized domestic violence court).

[267] Rottman & Casey, *supra* note 125, at 16.

[268] BERMAN & FEINBLATT, JUDGES, *supra* note 88, at 9–10. MHCs are novel and comparatively unknown when juxtaposed with the precedent and traditions of tradi-

These drawbacks, however, are surmountable, as MHC planners, advocates, and administrators have ample carrots to dangle before judges to encourage MHC participation. The most attractive enticement is the overwhelming professional satisfaction that problem-solving judges experience, as opposed to their traditional court peers.[269] Such satisfaction was evidenced in MHCs' older brother, drug courts. For example, Judge Truman Morrison discussed a senior, stereotypical "traditional judge" who confided that the "single most meaningful experience" in over two decades on the bench was twelve months serving on a drug court.[270] But the anecdotal proof extends from the courtroom to the family room. A recent study by Deborah Chase and Peggy Fulton Hora, *The Implications of Therapeutic Jurisprudence for Judicial Satisfaction*,[271] "stemmed from two judges . . . who discovered their own alcoholism" after drug court appointment, as well as the author's increased happiness due to her assignment to a problem-solving court.[272] In addition to finding increased professional pride and a "brighter outlook," the study found drug court judges and officials stopped smoking, drinking alcohol, realized their own addictions, lost weight, and exercised more.[273]

Chase and Fulton Hora's study presents compelling statistical evidence corroborating the anecdote of increased judicial satisfaction for problem-solving jurists. First, drug court officials have significantly more appreciation for the court's role than their traditional counterparts, as drug court officers were more likely to sense that the court aided litigants and made "significant improvements in [liti-

tional jurisprudence. *Id.* Thus, the informal, future-oriented, and innovative MHC structure appears foreign to judges trained as neutral arbiters focused on procedures and penalties. *Id.* According to some, such as the District of Columbia Superior Court's Judge Tony Morrison III, the round peg of social change may not be a good institutional fit in the square hole of American jurisprudence. *Id.; see also* Munetz & Teller, *supra* note 40, at 949 (discussing the Akron Municipal Court's three-year history and noting that the first MHC team was "uncomfortable with non-traditional methods of case management").

[269] *Cf.* Deborah J. Chase & Peggy Fulton Hora, *The Implications of Therapeutic Jurisprudence for Judicial Satisfaction*, 37 CT. REV. 12 (Spring 2000) (informally surveying 194 judicial officers and 123 non-judicial officers from both drug treatment courts and family law courts).

[270] BERMAN & FEINBLATT, JUDGES, *supra* note 88, at 23.

[271] Chase & Fulton Hora, *supra* note 269, at 12.

[272] *Id.* at 13. ("Personal observation makes it clear that the drug treatment court not only can have a therapeutic effect on the recovering participant but also on the other criminal justice players in the courtroom as well.").

[273] *Id.*

gants'] lives."[274] Similar results were evident in officials' attitudes towards litigants, as drug court officials felt respected by court participants,[275] while also witnessing increased gratefulness among litigants.[276] These positive effects altered personal lives, as more drug court officials enjoyed discussing their work, were professionally satisfied, and were less likely to desire transfers than their family court colleagues.[277] Ultimately, 91% of drug court respondents felt their assignment "affected them in a positive way emotionally."[278] In conclusion, the study found that "the enthusiasm of drug treatment court professionals for their work is not only infectious but is almost unheard of in a profession which experiences a high degree of 'burnout' and job dissatisfaction."[279]

However, planners and advocates cannot rely solely on the intangible benefits of problem-solving justice to recruit competent jurists. Tangible incentives must exist. Therefore, MHC judges should be eligible for salary increases, future promotions, travel opportunities, and prime office space.[280] Tangible enticements can counteract the potential pitfalls of judicial assignments to novel courts. Further, MHC advocates should encourage and create avenues for public recognition of MHC judges.[281] Such public acknowledgment will serve both as an enticement to jurists to participate in MHCs and as a tool to increase community awareness.

While a pipeline supplying judges to MHCs is important, so is a pipeline for all players on the MHC stage, no matter how small the

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[274] *Id.* at 15. In all, 92% of drug treatment court judicial officers saw improvement in the defendants appearing before them. *Id.*; *see also* Jennifer Batchelor, *Mental Health Court Offers Alternative to Criminal Defendants*, DEL. L. WEEKLY, Dec. 15, 2004, at D1.

> "I have been very impressed by the positive feedback that I have gotten from participants," [Judge Joseph F.] Flickering [III] said. According to the judge, numerous offenders have said that the Mental Health Court made a "dramatic difference" in their lives. "There is a noticeable difference even to a layperson as to their outlook on life, their attitude, their self-confidence [and] their increased ability to . . . deal with their issues on a daily basis. It's significant."

Id.

[275] Chase & Fulton Hora, *supra* note 269, at 16. Of the participants in the drug treatment group, 92% reported feeling respected by litigants, compared to only 72% of the family law court group. *Id.*

[276] *Id.* The drug treatment group perceived litigants as grateful 81% of the time, compared to 33% of the time reported by the family law court group. *Id.*

[277] *Id.* at 16–17.

[278] *Id.* at 17.

[279] *Id.* at 18.

[280] BERMAN, *supra* note 119, at 4–5.

[281] *Id.*; *see also* Rottman & Casey, *supra* note 125, at 17.

part. As such, all court officials and law enforcement personnel should be provided with appropriate training to ensure continued staff replenishment.[282] Training is critical, as it will accustom stakeholders with MHC practices, promote MHC goals, and ensure succession in various MHC positions. Currently, however, training is inadequate.[283] "[T]he problem is that there isn't enough education or training of the lawyers who are working in these courts about how to do it a little bit differently . . . ."[284] But, inept training extends beyond legal education, as, for example, law enforcement personnel in 84% of the nation's jails have less than three hours training on mental illness.[285] Therefore, advocates must increase stakeholder training.

Numerous strategies exist for increased training. The simplest strategy is to provide stakeholders with educational programs, symposiums, lectures, and other similar events to increase MHC stakeholder interaction and disseminate information.[286] Second, at the state level, clearinghouse creation will facilitate the transfer of practical knowledge.[287] Third, law enforcement entities can adopt intervention strategies.[288] The most well known example is the Crisis Intervention Team of Memphis, Tennessee.[289] The program provides forty hours of voluntary training in psychiatric and substance use disorders to police officers.[290] Fourth, the cost-saving use of legal interns[291] will pro-

[282] *See, e.g.*, BERMAN, *supra* note 119, at 4; Kondo, *supra* note 47, at 284–85 (calling for judicial expertise); Winick, *supra* note 32, at 1066, 1069 (calling for judicial expertise); Winick, *supra* note 115, at 127 (calling for increased training of police officers). Judges should also be included in training programs because, as Dee Kifowit, director of the Texas Council on Offenders with Mental Impairments suggests, "A lot of judges have no clue about mental illness." Andrew Tilghman, *A More Sensitive System: Justice for the Mentally Ill; County Judges Consider a Court Where Offenders with Medical Conditions Get Specialized Treatment*, HOUSTON CHRON., February 8, 2005, at B1.

[283] Wolff, *supra* note 65, at 144 (noting that most jail staffs receive less than three hours of training on issues concerning mental illness).

[284] Feinblatt & Denckla, *supra* note 92, at 212 (quoting Judge Harris Kluger, Administrative Judge, New York City Criminal Court).

[285] Kondo, *supra* note 47, at 309.

[286] *See* Rottman & Casey, *supra* note 125, at 17.

[287] *Id.*

[288] *See* Lamberti, *supra* note 43, at 33.

[289] *Id.* Other similar programs include the Psychiatric Emergency Response Team in San Diego, California, and the Community Service Officer Unit in Birmingham, Alabama. *Id.*

[290] *Id.* The voluntary program includes the study of crisis de-escalation techniques. *Id.*

[291] *See* Baker & Zawid, *supra* note 232, at 730–34. The University of Miami is currently exploring a therapeutic court externship in conjunction with the Broward County MHC. *Id.*; *see also, e.g.*, N.J. CT. R. 1:21-3(b) (providing for the appearance of third year law students and graduates of American Bar Association-approved schools

vide training and cultivate future stakeholders.[292] By encouraging internship opportunities,[293] symbiotic relationships can be formed, where students gain experiential education and MHCs receive inexpensive labor.

D. Infrastructure

In addition to creating an infrastructure providing for the indefinite replenishment of MHC personnel, planners must increase MHC research. Reliable data can be compiled by creating information management systems (IMS) which will provide invaluable statistics and permit MHCs to improve their practice through heightened accountability and transparency.[294]

Current MHC research has been highly criticized, as advocates and critics recognize the overall lack of empirical and credible evidence supporting MHCs.[295] One vocal critic stated: "[T]here is no reliable data, in my view, that [problem-solving courts] accomplish anything other than making judges feel warm and fuzzy . . . ."[296] Such criticisms have sparked an equally loud clamor for increased research.[297] However, the financial support for such empirical research

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before a trial court or agency in accordance with programs approved by the New Jersey Supreme Court).

[292] *See supra* notes 215–16 and accompanying text.

[293] *See supra* notes 195–98 and accompanying text.

[294] *See* Shoaf, *supra* note 31, at 975. While IMS is a recommended mechanism for compiling information, MHC planners should be willing to think creatively and utilize numerous forms of research. *Id.* For example, the Ohio Office of Criminal Justice Services funded a project to address the court's impact on recidivism and other criminal justice measures. *Id.* These moneys led to a case study of the Akron Mental Health Court, authored by Lisa Shoaf. *Id.* Such studies, regardless of scale, can provide MHC planners and advocates valuable information regarding the experiences of other MHCs and provide strategies to avoid past mistakes. *Id.*

[295] *See, e.g.*, Winick, *supra* note 32, at 1062. "These programs appear to be successful, although the empirical research on their efficacy remains preliminary and often methodologically flawed." STEVEN BELENKO, NAT'L CTR. ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIV., RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE 26–33 (2001); Greg Berman & Anne Gulick, *Just the (Unwieldy, Hard to Gather But Nonetheless Essential) Facts, Ma'am: What We Know and Don't Now About Problem-Solving Courts*, 30 FORDHAM URB. L.J. 1027, 1036 (2003); Keele, *supra* note 36, at 199 ("To date, there has been very little empirical data collected regarding the effectiveness of the current mental health court system.").

[296] *The Evolution of Problem Solving*, *supra* note 185, at 1795 (quoting Morris Hoffman). This position, however, is extreme, as numerous studies have recognized the success of the founding problem-solving courts (i.e., drug courts) in reducing recidivism. *See, e.g.*, Berman & Gulick, *supra* note 295, at 1030–35 (citing BELENKO, *supra* note 295, at 26–33) (acknowledging that drug courts result in higher retention rates, improve outcomes, and reduce recidivism).

[297] *See* Carns et al., *supra* note 114, at 54.

lags.[298] The Marion County, Indiana, Psychiatric Assertive Identification Referral/Response Program is a fitting example as, despite a long history, the program has no statistics on recidivism due to insufficient funds.[299]

At the core of MHCs is a reliance on information to recognize problems, improve operations, increase accountability, and verify outcomes.[300] Thus, MHCs need information to survive, but "[i]t takes time and money to track recidivism over the long term, to meaningfully weigh program costs and benefits, and to compare new practices to one another, as well as business as usual."[301] Therefore, rather than relying on research to be conducted and funded after MHC establishment, such research should be integrated into the court's infrastructure. The mechanism: Information Management Systems.[302]

Louisiana drug courts have already adopted and implemented IMS statewide,[303] and a similar program could significantly assist MHCs. IMS permits advocates to collect reliable, standardized data about outcomes,[304] allowing policymakers to prove the government's fiscal responsibility by collecting and reporting information to the public.[305] The results of this extensive research will inform taxpayers, stakeholders, and policymakers, attracting MHC community support and positive media coverage and strengthening the persuasive efforts of MHC advocates.[306] Additionally, information permits court officials to recognize areas needing improvement within their own procedures, while standardized statistics across jurisdictional boundaries will encourage MHC officials to implement successful practices from other jurisdictions practices.

However, information accumulation is not enough. Information must be shared among the numerous individuals and agencies in-

[298] Berman & Gulick, *supra* note 295, at 1029 (citing LAWRENCE W. SHERMAN ET AL., NATIONAL INSTITUTE OF JUSTICE, PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING 1 (Lawrence W. Sherman et al. eds., 1998), *available at* http://www.ncjrs.gov/pdffiles/171676.pdf.

[299] Leonard Post, *Courts Mix Justice with Social Work; "Problem Solving" Programs Flourish*, NAT'L L. J., June 7, 2004, at 1.

[300] BERMAN, *supra* note 119, at 4.

[301] Berman & Gulick, *supra* note 295, at 1029.

[302] BERMAN, *supra* note 119, at 4; *cf.* FOX & WOLF, *supra* note 99, at 36 (examining IMS in the drug court context).

[303] FOX & WOLF, *supra* note 99, at 36.

[304] *See* Kondo, *supra* note 47, at 285. Objective factors capable of measurement for MHCs include the court's docket clearing efficiency and the percentage of offenders selecting MHC participation over other tribunals. *Id.*

[305] FOX & WOLF, *supra* note 99, at 36–37.

[306] *See id.* at 9.

volved in a MHC to create a successful collaboration.[307] In its formative days, the Akron Mental Health Court experienced difficulties as information was not being shared among the treatment and criminal justice systems, frustrating all stakeholders.[308] To correct the problem, the MHC created a database[309] to incorporate the disparate, and often duplicative, information, allowing stakeholders to access accurate and updated information concerning participants and their MHC interactions.[310] The creation of a similar system, combined with IMS, will increase operating efficiency, while staving off future problems associated with MHC establishment.

IV. CONCLUSION

The pilot model of MHC establishment has failed. Until planners recognize and accept this failure, newly created MHCs such as those in California, Florida, Nevada, Oregon, Pennsylvania, Tennessee, Utah, and Washington will continue experiencing detrimental and existence-threatening growing pains.

Since 1997, MHCs have proven their desirability, adaptability, feasibility, and viability. The influx of mentally-ill offenders into the criminal justice system created a dynamic necessitating new solutions. The plight created by the "revolving door" of criminal justice combined with increased judicial dissatisfaction produced an environment where MHCs can thrive. This environment, combined with the flexible notions of problem-solving justice and MHCs' initial success in reducing recidivism, allowed MHCs to populate jurisdictions nationwide.

Despite the positives, planners continue utilizing the pilot model of MHC creation, refusing to recognize MHC viability. Planners should abandon the pilot model and instead implement strategies that will provide for MHCs' continued success. First, to secure future success, community support is essential. Communication of a nuanced message through varied mediums will convince citizens, community groups, and policymakers of the importance and benefits of MHCs. Second, numerous innovative and creative funding strategies must be implemented to ensure adequate funding. Third, employ-

[307] Shoaf, *supra* note 31, at 993.

[308] *Id.* at 988. This lack of communication created a clash in regard to participant privacy rights and confidentiality. *Id.* The courts were frustrated by an inability to obtain information on a participant's history and treatment from mental health treatment providers. *Id.*

[309] The database was known as a management information system. *Id.* at 989.

[310] *Id.*

ment incentives and adequate training are necessary to maintain and replenish personnel for uninterrupted MHC operation. Finally, MHCs must adopt IMS to compute and coordinate data and research. Such information will improve the MHC operation and produce concrete data to be exploited in garnering media attention, securing funding, and encouraging stakeholder participation.

By adopting and implementing these four strategies, advocates and planners will ensure MHCs' continued success. More importantly, such strategies will ensure the community's safety and the criminal justice system's efficacy, while helping those with mental illness conquer their diseases and contribute positively to society.