MJC
Michigan Judicial Council

Expanding Problem Resolution Approaches Work Group

Report and Recommendations

OCTOBER 2024

Notice of Disclaimer

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Letter from the Chair

Being a litigant in our justice system is oftentimes confusing, expensive, and frustrating. Many of the features of the traditional court process are well designed to reach true and just outcomes through the fires of the adversarial system—features like the rules of evidence, discovery, trials, and cross-examination. But this approach is not easy on those experiencing it, whether plaintiff or defendant, accused or victim. Any attorney who has had to testify has learned the hard way that it is far easier to take a deposition than to give one.

Problem solving is a different approach. When it can be safely and responsibly applied, problem solving commonly achieves better outcomes, with input and "buy in" from those participating in the process. Problem solving usually involves a collaborative, rather than adversarial, approach and is concerned with more than case disposition; instead, it tries to address the underlying issues that led to the court case in the first place. As the presiding judge of a treatment court program, I have seen firsthand the benefits of a problem solving, rather than a traditional approach, to drug and alcohol-related crimes.

Some problem-solving approaches have been around in our courts for a long time, like mediation. Others, such as restorative justice and peacemaking circles, are more recent innovations (at least from the perspective of our Anglo-American justice system). But they share some common features, and they work best when applied early in the life cycle of a case.

I was privileged to help facilitate a discussion about these practices with the members of this workgroup, each of whom brought unique expertise, experience, and perspective to problem solving within our courts. It is my hope that this report will be a resource to anyone in our justice system interested in implementing or improving problem solving approaches, and that the recommendations put forward here will help to improve both the experiences of our court users and the public trust in our courts.

Hon. Aaron Gauthier
Chief Judge Cheboygan/Presque Isle
MJC – Expanding Problem Resolution Approaches Workgroup Chair

Letter from the Project Director

As a retired Judge, I cherished the opportunities I had as a Problem-Solving Court Judge. This is a role that allowed me to make a meaningful difference for individuals and families and to positively affect the community. I know that prosecutors, defense attorneys, social workers, probation officers, and treatment providers who participated in PSCs feel the same as they have stated the same.

One of the most important elements of problem-solving methods is the collaborative approach that brings together different disciplines to seek a better resolution by addressing the underlying issue that brought the matter to court. It is through this collaborative decision making that a resolution is reached that effectuates change.

Litigation will always be an important way of resolving disputes. There are cases that cry out to be litigated and factfinding is critical in many situations in the courts. Problem solving methods become important when preserving relationships after the dispute is resolved. Problem solving approaches can make the victim a central part of the process and provide healing to the victim and accountability to the individual causing the harm. The victim is often forgotten and is not central in the traditional process. In cases that are often considered victim-less such as cases involving substance use disorders, mental illness, or both, treatment is far more effective than punishment.

This workgroup focused on listing the common themes that are involved in problem solving. There is more work that needs to be done and a deeper dive on the common elements and why the elements are important to problem solving. A focus on what might not be helpful and is perhaps harmful that courts use in problem solving courts is also helpful. I would like to thank the members of this workgroup for their passion. Passionate people bring energy, drive and creativity and make great impacts on the social issues that face the courts. I would like to thank Judge Gauthier for his leadership and guidance in bringing the passion of the members of this workgroup forward.

Hon. Susan Dobrich (ret.)
MJC – Project Director

Executive Summary

In the 2022-2025 Strategic Agenda the Michigan Judicial Council (MJC) prioritized making improvements to the Public's Experience and Effective problem resolution by making it one of five strategic goals for improving the judiciary statewide. In the 2024 Operational Plan, the MJC established the Expanding Problem Resolution Approaches workgroup to identify types of cases and the points within a case where problem resolution strategies could be employed or should not be employed and identify areas of training and strategies to help build capacity for courts to implement problem resolution thinking and approaches.

The workgroup met regularly to examine existing practices and where they have been successful, focusing on four specific approaches:

1. Alternative Dispute Resolution (ADR)
2. Restorative Justice (RJ)
3. Peacemaking
4. Problem-Solving Courts

The workgroup looked at the basic concepts of each of these approaches, identified common elements, and the current use of these approaches throughout Michigan. The workgroup arrived at the following recommendations for expanding awareness and education on problem solving approaches:

1. **Expand training and education on various problem resolution approaches for judges and court staff.**

2. **The MJC should prioritize further study of problem resolution approaches in its strategic planning.**

Background

In the 2022-2025 Strategic Agenda, the Michigan Judicial Council (MJC) identified the Public's Experience and Effective Problem Resolution as one of its five strategic goal areas for making statewide improvements to the judiciary. In the 2023 Operational Plan, the MJC prioritized this goal by creating the Behavioral Health Improvements workgroup and partnering with the Justice for All Commission (JFAC) to enhance work on access to justice issues. In its 2024 Operational Plan, the MJC went a step further and established a workgroup to look at expanding the use of problem resolution approaches to improve justice.

The MJC recognized that traditional court practices are designed to resolve cases, rather than address the underlying issues that cause individuals to interact with the courts in the first place. Making use of innovative strategies to address underlying issues may lead to more effective problem resolution, eliminate the revolving door for some individuals, and lead to better individual outcomes. To dive further into these concepts, the MJC charged the Expanding Problem Resolution Approaches workgroup with identifying types of cases and the points within a case where problem resolution strategies could be employed or should not be employed. Additionally, the workgroup was asked to identify areas of training and strategies to help build capacity for courts to implement problem resolution thinking and approaches.

Workgroup Activities

The Expanding Problem Resolution Approaches workgroup began meeting in February of 2024 to examine existing innovative problem resolution practices that could be expanded. The workgroup quickly identified a need to have a working definition of what problem resolution approaches are and arrived at the following:

> *Problem Resolution approaches creatively look beyond the disposition of a case to address underlying issues and prevent future harm through collaboration with willing parties, in a way that is respectful to all.*

The workgroup identified the following four problem resolution concepts for further examination:

1. Alternative Dispute Resolution
2. Restorative Justice Practices
3. Peacemaking Circles
4. Problem-Solving Courts

The workgroup received presentations from experts and/or practitioners in each of the four areas to assist in identifying key concepts and answer research questions developed by the group. Those research questions were as follows:

1. What cases or situations does this approach fit and why is it preferred over a traditional court model for that case or situation?
2. How can we educate and train judges, prosecutors, lawyers, and other stakeholders about this approach?
3. How can we build capacity for courts to integrate this approach into their dockets?
4. Who should we enlist to help implement this approach (e.g. Supreme Court for a court rule, SCAO for a pilot project, MJI for training or a "toolkit" for courts)?

The workgroup divided into four subcommittees to begin working through the research questions specific to their area of focus. The following information is meant to bring awareness to the identified problem resolution approaches and to serve as a starting place for those interested in learning more or implementing one or more of these practices at their court.

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) refers to any method that attempts to resolve a dispute between parties without resorting to litigation.[1] ADR processes, including restorative justice (RJ) and Peacemaking, are designed to assist litigants with resolving disputes through consensus and avoid the adjudicative process. The benefits of ADR practices include participants having greater control over their case, higher levels of confidentiality, and faster resolutions, all while reaching a voluntary agreement that is legally binding. ADR offers an opportunity to foster better communication and can assist in

> *"The courts of this country should not be the place where resolution of disputes begins. They should be the place where disputes end after alternative methods of resolving disputes have been considered and tried."*
>
> - *Justice Sandra Day O'Connor*
> *United States Supreme Court*

[1] Legal Dictionary, https://legaldictionary.net/alternative-dispute-resolution/ (accessed October 30, 2024)

preserving and improving relationships between involved parties.

ADR processes are now an integral component of many trial courts' case management systems, and litigants are increasingly exploring how ADR techniques can help achieve timelier, cost effective, and mutually satisfactory settlements earlier in the litigation life cycle. The most widely utilized types of ADR are mediation, arbitration, and negotiation. Regardless of method, ADR practices differ from traditional court practices in both their processes and outcomes. While courts follow strict procedures and are bound by statute and court rules, ADR practices are more flexible in nature and allow parties to tailor the processes and outcomes to fit their individual needs. ADR processes help participants to develop more creative solutions than the outcomes they would have in a traditional court setting.

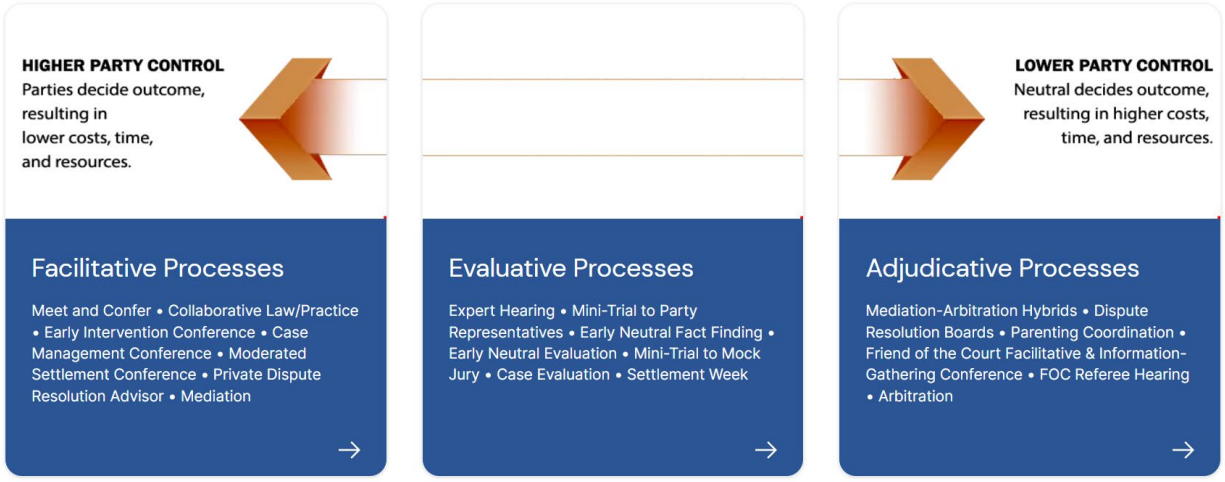

Figure 1 - SCAO Office of Dispute Resolution Services - Guide to ADR Processes[2]

MCR 2.410 provides that "[a]ll civil cases are subject to alternative dispute resolution processes unless otherwise provided by statute or court rule" and that "[e]ach trial court that submits cases to ADR processes...shall adopt an ADR plan by local administrative order." This court rule became effective more than 20 years ago, and ADR has since become an integral part of our court system. However, in keeping with the MJC Strategic Goal #2, there are many ways to improve and expand effective dispute resolution practices.

[2] SCAO, *Guide to ADR Processes*, https://www.courts.michigan.gov/administration/offices/office-of-dispute-resolution/guide-to-adr-processes/ (accessed October 30, 2024).

Most cases are not resolved by trial,[3] yet most courts and attorneys prepare cases as if they will go to trial. Instead, encouraging courts and parties to consider the use of ADR earlier will help streamline cases, clear dockets, and save parties time, stress, and money. Using ADR early in a case allows parties to begin talking and reach a better understanding of each other's points of view before positions harden.

Courts can play a key role in leveraging ADR early in the process to attempt to resolve the disputes brought before them. As noted in SCAO's Caseflow Management Guide:

> "Timely and appropriate referrals can best be achieved through early court intervention and case screening. Given the focus of ADR and diversion on expediting disposition, the referral of cases to these options should be considered at appropriate points throughout the court process. Integrating these procedures at each stage, from case screening to the pretrial conference, is an essential component of an effective case management program."[4]

The court rules currently allow for early ADR and at multiple stages of a case. Under MCR 2.401, the court may direct the parties to appear for a pretrial scheduling conference "[a]t any time after the commencement of the action…"[5] at which the court may address whether to refer the case to ADR.[6] ADR may also be used later in the life of a case. Late-stage ADR has become the traditional method of court-connected mediation, and many judges and attorneys use ADR as a one-time event rather than a process.

However, that means clients are expected to settle the case after they have been essentially at war with one another for many months. Not only has animosity increased by that point, but the legal bills and stress are so great that oftentimes, parties just want to settle to get things over with rather than crafting agreements that are in their best interest or are truly going to work for them. There is a better way. A paradigm shift towards early ADR, staged throughout the process as appropriate, is the best way to significantly improve the public's experience and provide more effective problem resolution in our courts. The court rules already allow this.

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[3] See disposition statistics for Michigan trial courts available at https://www.courts.michigan.gov/publications/statistics-and-reports/interactive-court-data-dashboard/ [click "Outgoing Caseload"].

[4] SCAO, *Caseflow Management Guide,* https://www.courts.michigan.gov/4acb2e/siteassets/publications/manuals/casefile/cfmg.pdf, p 41 (accessed October 30, 2024).

[5] MCR 2.401(A).

[6] MCR 2.401(B)(1)(b).

For additional information regarding ADR programs in Michigan, please see the following resources:

- SCAO Office of Dispute Resolution
- ADR Section of the State Bar of Michigan
- Community Dispute Resolution Mediation Centers
- MI-Resolve (online dispute resolution)

Restorative Justice

Restorative justice (RJ) is an approach to justice that focuses on repairing the harm caused by criminal behavior and lesser forms of misconduct through inclusive processes that engage victims, offenders, and the community.[7] Its focus on healing, active accountability, and community involvement makes restorative justice a powerful tool for addressing harm in a more holistic and inclusive manner than traditional justice.

Thirty years of studies on diversion and RJ reveal that many restorative justice efforts are accomplishing outstanding results. For example, several studies found that youth who participate in restorative justice diversion were less likely to recidivate than minors who participate in the traditional juvenile justice process.[8] Those recidivism rates decreased even further when RJ was combined with treatment or services to address the offender's underlying needs.[9] Further, many studies show victims are significantly more satisfied with RJ approach than traditional.[10] Both victims and offenders report a

[7] Wilson, Olaghere, and Kimbrell, *Effectiveness of Restorative justice Principles in Juvenile Justice: A Meta-Analysis* (May 17, 2017) p 2, available at https://www.ojp.gov/pdffiles1/ojjdp/grants/250872.pdf (accessed October 29, 2024)

[8] De Beus & Rodriguez, *Restorative justice practice: An examination of program completion and recidivism*, Journal of Criminal Justice, Volume 35, Issue 3 (2007), p 337-347 available at https://www.sciencedirect.com/science/article/abs/pii/S0047235207000414?via%3Dihub (accessed October 29, 2024); See also McGarrell & Hipple, *Family Group Conferencing and Re-Offending Among First-Time Juvenile Offenders: The Indianapolis Experiment*, *Justice Quarterly*, Volume *24,* Issue 2 (2007), p 221–246 available at https://doi.org/10.1080/07418820701294789 (accessed October 29, 2024).

[9] Bona, Wallace-Capretta, Rooney, & McAnoy (2002) cited by Gregory Paul and Ian Borton, *Creating Restorative Justice: A Communication Perspective of Justice, Restoration, and Community* (Rowman & Littlefield, 2021).

[10] Sherman et al., *Restorative justice: the evidence* (The Smith Institute, 2007) available at https://research.tees.ac.uk/en/publications/restorative-justice-the-evidence (accessed October 29, 2024).

greater sense of procedural fairness.[11] Lastly, victims who participate in restorative interventions report lower levels of Post-Traumatic Stress symptoms.[12]

RJ offers a valuable alternative or complement to the traditional justice system for every level of crime and misconduct. It can be especially effective where offenders are still developing, relationships can be repaired, and positive community connections can be built and/or restored. These can include:

- Juvenile Offenses, addressed with programs such as Make-it-Right programs, Youth Aid Panels, Community Restorative Boards, Court Diversion Boards, and similar options;
- Family Courts on the Reunification Docket;
- Minor Crimes and Non-Violent Offenses, which have been evaluated in studies done by Equal Justice USA, Restorative Justice Council UK, US Department of Justice OJJDP, Annie E. Casey Foundation, and more;
- Community-Based Disputes

Restorative interventions are evidence-based processes designed to encourage the offender to accept responsibility, to delve into the underlying causes of their conduct, to recognize their victims' pain by allowing the victim to express themselves, and to heal and find closure. Below is a breakdown in how RJ practices compare to traditional court practices:

[11] Van Camp & Wemmers, *Victim satisfaction with restorative justice: More than simply procedural justice*, International Review of Victimology, Volume 19, Issue 2 (2013), p 117-143 available at https://doi.org/10.1177/0269758012472764 (accessed October 29, 2024).

[12] Angel et al., *Short-Term Effects of Restorative Justice Conferences on Post-Traumatic Stress Symptoms among Robbery and Burglary Victims: A Randomized Controlled Trial*, Journal of Experimental Criminology, Volume 10, Issue 3 (2014), p 291–307.

Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Oxford, 2002; online edn, Oxford Academic, 31 Oct. 2023), https://doi.org/10.1093/oso/9780199251643.001.0001 (accessed 4 Sept. 2024).

Restorative Justice	Traditional Approach
Focuses on healing and rehabilitation for all those affected	Emphasizes punishment without addressing underlying issues and promoting rehabilitation
Victims have a direct voice and opportunity to express their needs and perspectives	Systems often leave victims feeling sidelined and powerless
Offenders take direct responsibility for their actions and understand the impact of their behavior from those they have hurt	Offenders often gain an abstract sense of responsibility (if they don't see themselves as a victim of the system) with court-imposed punishment and labeling or shaming
By focusing on understanding and resolving the root causes of criminal behavior, RJ can help prevent future offenses	Traditional punitive approaches may not address these root causes effectively, potentially leading to repeat offenses
Restorative justice processes can be less expensive to run and they avert incarceration costs	Traditional court proceedings often involve prolonged trials and incarceration—expensive for involved individuals and society
Strengthens community-engagement and social bonds by engaging people directly in healing the harm	Traditional punitive models typically isolate offenders and victims from each other and from the support of their communities
Respects and empowers all those affected by a crime to be part of healing from it	Often stigmatizes and isolates offenders from taking any positive action while ignoring those affected by the crime
Gives all offenders the option to stay in their communities as full, contributing members	Locks away generations of black and brown citizens depriving their families of their economic and emotional support and often destroying their future opportunities

Restorative Justice Efforts in Michigan

The following are example of some successful restorative justice efforts currently underway in Michigan's courts.

- **Berrien County Trial Court**
  In Berrien County, the Trial Court Family Court Division operates its own restorative diversionary program for youth called the Community Restorative Board. They have created a pilot option that can guide other courts toward creating and operating a similar program based on their model. In Berrien County alone, RJ interventions led to a 7.5% reduction in cases being handled formally in 2023. Cass County Circuit Court is currently working to replicate this program in their family division.

- **Muskegon County Prosecutor's Office**
  The Muskegon County Prosecutor works closely with Mediation and Restorative Services, a long-standing community-based organization, to provide restorative justice options for system-involved youth using trained volunteers.

- **Washtenaw County Prosecutor's Office**
  The Dispute Resolution Center of Washtenaw County partners with the Washtenaw County Prosecutor to provide ongoing restorative justice interventions that keep offenders of all ages out of jail and in the community.

For additional information on restorative justice resources, see appendix A.

Peacemaking Circles

Long before the Europeans came to America, Native Americans resolved conflicts through a concept called peacemaking. Peacemaking is about healing and is similar in many ways to restorative justice. The Indigenous Peacemaking Initiative through the Native American Rights Fund (NARF) describes peacemaking as:

> …a process where people can talk together to resolve conflict. It is a community-based process that addresses the concerns of all interested parties. While it has been adapted to other circumstances, in indigenous communities the process uses traditional values and sometimes ceremonial practices. Frequent examples include the group orienting itself in a circle, the use of prayer and purification, and attention to Clan relationships. A circle can involve supporters, elders, and interested family and community members. Within the circle, people are encouraged

to speak from the heart, and together to identify and agree upon the steps necessary for healing the relationships harmed by the conflict.[13]

Peacemaking is about using culture to heal. Peacemaking has evolved and "continues to evolve in many forms as each tribe or community established programs that is true to its cultural beliefs."[14] This outcome-based practice looks at healing rather than furthering the harm that caused an individual case to come before a court. The goal of peacemaking is to foster conversations and understanding among individuals engaged in conflict rather than determine a winning side of a case.

Michigan has twelve certified tribes, and each tribe may use a variation of peacemaking because of differences in cultural beliefs. Each tribe uses peacemaking as a community-directed conflict resolution process that addresses the concerns of interested parties. The peacemaking process uses traditional rituals such as circles to bring all parties to a conflict or dispute together along with support, elders, and interested community members. While every tribe may have a different nuance, the depth of a circle is important. It signifies that common ground is reached and that there is equality in the circle.

Peacemaking efforts in Michigan

Michigan is particularly fortunate to have Judge Michael Petoskey who is the current Chief Judge of the Pokagon Band of Potawatomi Indians. Judge Petoskey is a member of the Grand Traverse Band of Ottawa and Chippewa Indians. An award-winning Judge, Judge Petoskey, has participated in some meaningful ways with all the tribal

[13] https://peacemaking.narf.org/about-peacemaking/ [navigate to Frequently Asked Questions, click "What is Indigenous Peacemaking?"] (accessed October 29, 2024).

[14] Robert Yazzie, Chief Justice Emeritus of Navajo Nation, https://youtu.be/eE_0OPp6z0o?si=mle1H7C2EWUxwVHd

courts in Michigan and many across the Country. Judge Petoskey is a trainer and lectures throughout the country and tribal courts on peacemaking and work with newly reaffirmed tribes to plan, implement, and develop tribal courts. Judge Petoskey was profiled in "Our Cause Will Ultimately Triumph-Profile in American Indian Sovereignty"[15] for raising the stature of tribal courts and promoting tribal sovereignty by helping to build strong relationships with the Michigan's state courts and tribal courts.

Washtenaw County Circuit Court Judge Timothy Connors has served by appointment as judge pro tempore for the Little Traverse Bay Bands of Odawa Indians and presiding Judge of the Washtenaw County Peacemaking Court. Judge Connors has incorporated peacemaking principles, philosophies, and procedures shared by the tribal courts into Washtenaw County Peacemaking court. Judge Connors has had successful outcomes in wrongful death suits, elder guardianships, estate distribution issues, custody and parenting time, and neglect and abuse cases through the use of peacemaking and has authored various articles on peacemaking including *Why Peacemaking Makes Sense in State Court Justice Systems*.[16]

For additional information on peacemaking resources, see appendix B.

Problem-Solving Courts

Problem-solving courts are specialized dockets designed to address underlying issues that contribute to an individual having court involvement such as substance use or abuse, and mental health challenges. Problem-solving courts differ from traditional court practices in the sense that the focus is placed primarily on rehabilitation of the offender with the emphasis on providing services within the community in lieu of jailtime or other forms of punishment. All Rise[17] describes problem solving courts as:

> …a public health approach to justice reform in which treatment providers ensure individuals before the courts receive personalized, evidence-based treatment, and they work as a team with law

[15] Garrison, *Our Cause Will Ultimately Triumph: Profiles in American Indian Sovereignty* (Carolina Academic Press, 2014).

[16] Connors, *Why Peacemaking Makes Sense in State Court Justice Systems*, The Judges Journal, Volume 55, Issue 4 (2016) available at https://turtletalk.blog/wp-content/uploads/2016/11/exit-pursued-by-a-bear-pdf-from-publisher.pdf (accessed October 29, 2024).

[17] All Rise was founded in 1994 as the National Association of Drug Court Professionals and is a 501(c)3 non-profit and provides training, membership, and advocacy for justice system innovation addressing substance use and mental health at every intercept point.

enforcement, community supervision, defense, prosecution, and the judge to provide ongoing support and recovery services.[18]

Problem-solving courts involve collaborative approaches, and a team that supports the individual through the life of the case, including but not limited to judges, social workers, treatment providers, and other community resources. The goal of problem-solving courts is to reduce recidivism and promote positive outcomes for the offender which in turn reduces recidivism and promotes public safety. Participants are put on intensive probation and are frequently drug/alcohol tested throughout the duration of the program. Participants must engage in counseling services and pro-social activities that promote recovery. Progress and compliance with requirements are monitored throughout the life of the case and participants are required to appear in court for monitoring more frequently than those ordered to traditional probation.

There are currently over 200 certified problem-solving courts in Michigan, including 141 drug/sobriety courts, 42 mental health courts, and 27 veterans' treatment courts.[19] Each of these courts are governed by specific statutes in the Michigan Compiled Laws[20] and adhere to key concepts that have been proven to reduce recidivism and increase the likelihood of participant success when adhered to. Below is an example of the 10 key components for drug courts:[21]

1. Integrate drug/alcohol testing with justice system case processing
2. Non-adversarial; promote public safety; protect due process
3. Prompt placement in the program
4. Access to treatment
5. Drug/alcohol testing
6. Sanctions and incentives
7. Ongoing close judicial interaction and supervision of progress with each participant
8. Monitor and evaluate program effectiveness

[18] All Rise, *About Treatment Courts,* https://allrise.org/about/treatment-courts/ (accessed October 30, 2024).

[19] SCAO, *Current Number of Problem Solving Courts,* https://www.courts.michigan.gov/administration/court-programs/problem-solving-courts/ (accessed October 30, 2024).

[20] MCL 600.1060 to 600.1084 (drug and dwi courts); MCL 600.1200 to 600.1212 (veterans treatment courts); MCL 600.1090 to 600.1099a (adult mental health courts); MCL 600.1099b to 600.1099m (juvenile mental health courts); MCL 600.1099aa to 600.1099ll (family treatment courts).

[21] U.S Dept. of Justice, Bureau of Justice Assistance, *Defining Drug Courts: The Key Components* (2004) available at https://www.ojp.gov/pdffiles1/bja/205621.pdf (accessed October 30, 2024).

9. Continued education
10. Partnering with public agencies and the community

For additional information on problem-solving courts please see the SCAO's website and the FY23 Problem-Solving Courts Annual Report, Solving Problems, Saving Lives.

While not yet formal problem-solving courts, courts are beginning to apply a similar collaborative and supportive frame to address issues of truancy and domestic violence.

Truancy

Cases involving minors, such as truancy, are less conducive to an adversarial process, and a facilitative approach starts from a place which is less accusatory. There may be numerous reasons why a child is not attending school. Involving the necessary stakeholders in a collaborative approach can help identify underlying reasons children are not getting to school and identify ways to remove those barriers. A solution to the problem causing truancy may also prevent potential problems in the future that are more likely if a child isn't regularly attending school. Courts around the country and here in Michigan have established specialty dockets or programs to help address truancy, which could be evaluated for potential expansion or formalization. A few examples of existing Michigan truancy court programs include:[22]

- 29th Circuit Court (Gratiot County), Truancy Intervention Program
- 30th Circuit Court (Ingham County), Truancy Court
- Third Circuit Court (Wayne County), Truancy Intervention Project

Domestic Violence

Many domestic violence cases are being dismissed because the victim is not appearing for court, so earlier intervention is necessary. If the parties are still in a relationship, prosecution of the defendant can have negative effects on the entire family, and the victim suffers more. The goal of domestic violence specialty court programs would be to increase survivor participation, stability and safety, while increasing offender accountability. Some Michigan courts have established specialty dockets to address domestic violence in their communities. A few examples of existing programs include:

- 10th District Court (Calhoun County), Domestic Violence Intervention Court
- 12th District Court (Jackson County), Aggression Court
- 61st District Court (City of Grand Rapids) / 62B District Court (City of Kentwood)

[22] See appendix C for information on compelling models from other states on truancy courts.

Recommendations for Further Consideration

1. **Expand training and education on various problem resolution approaches for judges and court staff.**

   Stakeholders should note that many innovative problem resolution approaches are successfully used across the country. The following are opportunities for expanding education on problem resolution approaches identified by the workgroup:

   - Use regularly scheduled educational conferences to teach judges, prosecutors, lawyers, and other stakeholders about innovative problem resolution approaches and how they differ from traditional court practices. Problem resolution approaches could be offered during plenary sessions where most attend, so all have some exposure to the content.
   - Supplement plenary sessions with breakouts of panel discussion including: victims, offenders, lawyers, mediators, and judges. Tribal Court Judges and State Judges who have either initiated problem resolution approaches in their courts and/or experienced successful outcomes should moderate the panels.
   - Offer one-hour webinars around some related topics so attendees can expand their learning and access resources.
   - Provide continuing education credits for judges who engage in additional trainings on problem resolution approaches.

2. **The MJC should prioritize further study of problem resolution approaches in its strategic planning.**

   Throughout their examination of these problem resolution approaches, the workgroup identified common elements. These common elements include:

   1. Early intervention
   2. Collaborative, respectful approach to decision making
   3. Community stakeholder participation
   4. Better data collection
   5. Better sharing of information between courts, to allow for more uniformity in providing problem solving approaches to the public

6. Accountability
7. Personalized programming
8. Effectuating change or innovative solutions
9. Judicial monitoring
10. People centered and respect-based
11. Direct engagement of participants
12. Reduction of harm
13. Healing for all parties involved

Problem-solving courts and dispute resolution have significant programs and services at SCAO. Peacemaking and restorative justice are newer to the world of trial courts but are significant game changers for individual outcomes. The workgroup urges support for expansion of those programs and recommends the MJC continues to examine expanding problem resolution approaches more in depth throughout their strategic planning process. This workgroup was only able to scratch the surface on a limited number of approaches – and there are many others out there that need to be examined on a deeper level. To continue working toward providing the best outcomes for all Michigan trial court users, the MJC should also continue to examine various innovative approaches to addressing the underlying needs that cause individuals to have court involvement.

Acknowledgements and Work Group Membership

Acknowledgements

The workgroup would like to acknowledge the efforts of trial court judges, court administrators, prosecutors, attorneys, practitioners, other stakeholders, and all of those across the state who continue to prioritize innovative approaches to resolving cases in ways that enhance outcomes for Michigan's court users. The workgroup would like to thank Thomas Myers from the SCAO Problem-Solving Courts Team for presenting to the workgroup on problem-solving court concepts and to Jackie Hallberg, Executive Director of Mediate West Michigan, Marie Robinson, Community Restorative Board Coordinator/Juvenile Probation Officer for Berrien County Trial Court-Family Division, and Belinda Dulin, Executive Director of the Washtenaw County Dispute Resolution Center for their presentations to workgroup members on restorative justice practices currently being utilized in Michigan.

Workgroup Membership

Hon. T.J. Ackert
Kent County Probate Court

Hon. Martha Anderson
6th Circuit Court

Hon. Demetria Brue
36th District Court

Charity Burke
Oakland Mediation Center

Thomas Cranmer
Miller, Canfield, Paddock and Stone, PLC

Hon. Timothy Connors
22nd Circuit Court

Hon. Helal Farhat
3rd Circuit Court

Anne Bachle Fifer
State Bar of Michigan - ADR Section

Hon. Carrie Lynn Fuca
41B District Court

Hon. Aaron Gauthier (Chair)
53rd Circuit Court

Elvin Gonzalez
2nd Circuit Court - Family Division

Allison Gorine
Wayne State University - Center for Behavioral Health and Justice

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Muskegon County Prosecutor's Office

Dr. Sheryl Kubiak
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Hon. Michael Petoskey
Grand Traverse Band of Ottawa and Chippewa Indians

Nora Ryan
Michigan Legal Help

Nancy Schertzing
University of Maryland Law

Lori Shemka
National Center for State Courts

Lisa Taylor
State Bar of Michigan - ADR Section

Carmen Wargel
Lakeshore Legal Aid

RESTORATIVE JUSTICE PRACTICES

Michigan Judicial Council

What is Restorative Justice?

Restorative justice (RJ) is an approach to justice that focuses on repairing the harm caused by criminal behavior through inclusive processes that engage victims, offenders, and the community. Instead of viewing crime solely as a violation of law, restorative justice sees it as a harm to people and relationships. Its focus on healing, active accountability, and community involvement makes restorative justice a powerful tool for addressing harm in a more holistic and inclusive manner than traditional justice.

RESTORATIVE JUSTICE V. TRADITIONAL COURT APPROACHES

Restorative justice (RJ) is a three- pronged approach that focuses on the victim, the offender and members of the community. By focusing on understanding and resolving the root causes of criminal behavior, RJ can help prevent future offenses.

Restorative Justice	**Traditional Approach**
Focuses on healing and rehabilitation for all those affected	Emphasizes punishment without addressing underlying issues and promoting rehabilitation
Victims have a direct voice and opportunity express their needs and perspectives	Systems often leave victims feeling sidelined and powerless
Offenders take direct responsibility for their actions and understand the impact of their behavior from those they have hurt	Offenders often gain an abstract sense of responsibility (if they don't see themselves as a victim of the system) with court-imposed punishment and labeling or shaming
By focusing on understanding and resolving the root causes of criminal behavior, RJ can help prevent future offenses	Traditional punitive approaches may not address these root causes effectively, potentially leading to repeat offenses
Restorative justice processes can be less expensive to run and avert incarceration costs	Traditional court proceedings often involve prolonged trials and incarceration—expensive for involved individuals and society
Strengthens community-engagement and social bonds by engaging people directly in healing the harm	Traditional punitive models typically isolate offenders and victims from each other and from the support of their communities
Respects and empowers all those affected by a crime to be part of healing from it	Often stigmatizes and isolates offenders from taking any positive action while ignoring those affected by the crime

Gives all offenders the option to stay in their communities as full, contributing members	Locks away generations of black and brown citizens depriving their families of their economic and emotional support and often destroying their future opportunities

RESOURCES AND CONTACTS

For more information on Restorative Justice Practices please visit:

Restorative Justice – Washtenaw County

Step 5 – Muskegon County

Benefits of Restorative Justice – Berrien County

Office of Juvenile Justice and Delinquency Prevention

The Impacts of Make-It Right Program on Recidivism

Restorative Justice Council

The Annie E. Casey Foundation

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PEACEMAKING CIRCLES

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Peacemaking is a process where people can talk together to resolve conflict. It is a community-based process that addresses the concerns of all interested parties. While it has been adapted to other circumstances, in indigenous communities the process uses traditional values and sometimes ceremonial practices. Frequent examples include the group orienting itself in a circle, the use of prayer and purification, and attention to Clan relationships. A circle can involve supporters, elders, and interested family and community members. Within the circle, people are encouraged to speak from the heart, and together to identify and agree upon the steps necessary for healing the relationships harmed by the conflict.[1]

STAGES OF PEACEMAKING

Peacemaking is about using culture to heal. Peacemaking has evolved and "continues to evolve in many forms as each tribe or community establishes and develops a program that is true to its cultural beliefs."[2] This outcome-based practice looks at healing rather than furthering the harm that caused an individual case to come before a court. The goal of peacemaking is to foster conversations and understanding among individuals engaged in conflict rather than determine a winning side of a case.

Michigan has twelve certified tribes, and each tribe may use a variation of peacemaking because of differences in cultural beliefs. Each tribe uses peacemaking as a community-directed conflict resolution process that addresses the concerns of interested parties. The peacemaking process uses traditional rituals such as circles to bring all parties to a conflict or dispute together along with support, elders, and interested community members.

[1] https://peacemaking.narf.org/about-peacemaking/ *[navigate to Frequently Asked Questions, click "What is Indigenous Peacemaking?"] (accessed October 29, 2024).*

[2] *Robert Yazzie, Chief Justice Emeritus of Navajo Nation,* https://youtu.be/eE_0OPp6z0o?si=mle1H7C2EWUxwVHd

For more information on Peacemaking Circles please visit:

About Peacemaking - Indigenous Peacemaking Initiative

About Peacemaking - Robert Yazzie

Why Peacemaking Makes Sense in State Court Justice Systems

https://www.washtenaw.org/1168/Peacemaking

https://ltbbodawa-nsn.gov/judicial-branch/peacemaking/

https://lrboi-nsn.gov/government/tribal-judicial/peacemaking

https://www.innovatingjustice.org/programs/peacemaking-program

https://livingjusticepress.org/kay-pranis/

Peacemaking Contacts:

Judge Timothy Connors – Washtenaw County Circuit Court
https://www.washtenaw.org/991/Trial-Court

Judge Michael Petoskey –Chief Judge, Pokagon Band of Potawatomi
https://www.pokagonband-nsn.gov/government/tribal-courts/

State Bar of Michigan – American Indian Law Section
https://connect.michbar.org/amerindian/home#:~:text=The%20American%20Indian%20Law%20Section,the%20State%20Bar%20of%20Michigan

Appendix C – Compelling Models in other States on Truancy Courts

Ohio - The program is administered by the Ohio Commission on Dispute Resolution and Conflict Management and the Ohio Supreme Court's Office of Dispute Resolution (just elementary and middle school). Involves a mediator, the school representative (usually the teacher), and the student's family. If an agreement is violated, the case may be referred to court. The program has resulted in a drastic drop in absences.

Minnesota - Truancy Intervention Program --- This involves meetings with school staff, assistant county attorney, parents, and the student, to come up with an attendance contract. There may be a referral to social services agencies and counsel -- if attendance does not improve, they can file a truancy petition in court. Truancy petitions have fallen by 47%, 82% students improved attendance.

California - Youth and Family Services (through DHS) get involved from a referral from police. The SRO picks up the kid and brings them to the YFS clinic. Parents are called and there is intervention and assessment. A counselor leads it and half of the students are signed up for counseling. There is a verbal contract. If the contract is unsuccessful, they can refer the case to the DA.

Arizona - There is a diversion hearing at the school involving school reps, parents, and the child. The child is linked to services such as counseling, education classes, and substance abuse treatment. If they fail to comply, they are referred to court. 74% of students completed assignments and 97% of students regularly attended school after enrollment in the program and 4-year graduation rates increased by 14%; less than 5% are referred to court.

Colorado - The involvement starts with a truancy petition. People can opt into a Truancy Reduction Project. If they participate, they are assigned a truancy case manager. The case manager designs a family treatment plan through meeting with family, service agencies, and the school. The petition is dismissed upon successful completion. The successful completion rate is 85%.