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FUND FOR JUSTICE

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About Chicago Appleseed

Chicago Appleseed Fund for Justice is a policy research and advocacy organization. We identify problems, research solutions, and recommend practical and systemic reforms.

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ILLINOIS SUPREME COURT PROPOSAL

Going to Scale: Coordinating Criminal Justice Reform
in Cook County
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The Need for Coordinated Criminal Justice Reform in Cook County

The Cook County jail houses nearly 10,000 inmates awaiting trial¹ and the courtrooms hear more than 28,000 cases per year—half of which are non-violent, drug-related charges.² In response to the influx of non-violent drug offenders and overcrowded jails, Cook County created a Drug court in 1997 followed by a Mental Health court in 2004 to reduce the jail population and provide defendants with access to treatment. While we applaud the stakeholders in the Cook County Criminal Justice System for embracing the concept of diversion, the reality is that these specialty courts hear too few cases and leave the manner in which the grand majority of cases through the court system unaffected.³

In order to truly impact criminal justice in Cook County, all aspects of court management need to be addressed in a coordinated way so that diversion, differentiated case management, and early assessment are expanded and thousands of defendants—not tens or hundreds—have access to them. While most stakeholders agree that diversion programs and differentiated case management are good policy, they have expressed nearly unanimous frustration with the way the current diversion programs operate.⁴ A convening to discuss reengineering all aspects of case management would coordinate current ad-hoc diversion programs into a formal, efficient and unified system that will accommodate more individuals and allow for easier stakeholder access.

Chicago Appleseed believes that a directive from the Illinois Supreme Court will engender a coordinated effort to design and implement such a system as well as provide a forum in which to convene stakeholders and overcome the communication barrier impeding implementation of a better system. To assist the court, this proposal will address the following issues: (1) the barriers to implementation of a coordinated system in Cook County; (2) the action taken by other state supreme courts when faced with similar concerns; (3) a proposal of

¹ *A Report on Chicago's Felony Courts*, Chicago Appleseed Fund For Justice, December 2007 at 6.

² *Id.*

³ *Id.* at 27. Specifically, the Drug and Mental Health courts graduate only 90 and 70 defendants, respectively, each year.

⁴ *A Report on Chicago's Felony Court*, Chicago Appleseed Fund For Justice at 103.

the action this Court should take—namely, a simultaneous public conference and private commission on the matter; and (4) critical issues in Cook County that such a conference or commission should address.

Barriers to Implementation

Special diversion programs (like drug courts) reduce recidivism, reduce the cost of incarceration, and help individuals obtain treatment.⁵ However, up until now, diversion efforts emerged as and remain isolated, patch-work programs operating out of specialty courts. The decisions being made by states today—and the decision facing the court in this proposal—will decide whether these programs are seen as “a noble but unsustainable experiment or an enduring part of the criminal justice system’s response to the problems of crime stemming from drug addiction and mental health issues.”⁶ The answer is not the proliferation of specialty courts, but a coordinated attempt at improving the management of the average case that passes through the court.

The following stakeholders are essential to implementing such a system: (1) the Circuit Court of Cook County, including its First Municipal District, which houses Bond Court, and the Criminal Division, which processes 32,000 felony cases a year making it one of the busiest courts in the country;⁷ (2) the State’s Attorney’s Office, which exercises significant power over current diversion programs and assessment and entry into those programs, including some of which they operate on their own; (3) the public defenders, who are critical for getting information about and opportunities for defendants to enter into diversion programs, adjust bond amounts, and argue for dismissals; (4) the Sheriff’s Office, which manages Cook County jail, providing many services and forms of detention for those awaiting trial; (5) the Adult Probation Department, which arguably has the most important role in the process of ensuring that defendants receive treatment and monitor their compliance; (6) the Pre-trial Services Department, which conducts pre-bond interviews and oversees pre-trial compliance with conditions; (7) Treatment Alternatives for Safer Communities (TASC), which, by statute, is the only agency to provide substance abuse assessments and other specified services to the courts; and (8) the Cook County Board of Commissioners, which controls the budget.

These agencies currently operate a patch-work of several diversion programs in Cook County, mostly for drug and mental health treatment. (*See Table 1*). Despite these efforts, when members of the Judiciary, Public Defender’s Office, State’s Attorney’s Office, and the private bar are asked whether drug cases are being handled effectively by the criminal justice system, only 1 in 10 respondents say “yes.”⁸ And while stakeholders have convened on several occasions to discuss improving diversion in Cook County, there has yet to be any consensus on how to bring to scale diversion programs or a

⁵ *Kansas Drug Court Feasibility Study*, National Center for State Courts, February 2011, pg. 1, available at: http://www.sji.gov/PDF/KS_Drug_Court_Feasibility_Study.pdf.

⁶ *The Future of Drug Courts: How States are Mainstreaming the Drug Court Model*, Center for Court Innovation, 2004, pg. 2, available at: <http://www.courtinnovation.org/sites/default/files/futureofdrugcourts.pdf#page=5&zoom=auto,0,374>.

⁷ *Cook County Diversion Court, Proposal and Implementation Plan*, Chicago Appleseed Fund for Justice and Chicago Council of Lawyers at 8.

⁸ *Id.* at 79.

coordinated effort to undergo implementation. The delay in implementation can be attributed to three barriers: cooperation, communication, and resources.

- (1) **Cooperation:** While institutionalization of diversion practices is difficult, it is particularly hard for state courts, such as Cook County, that have highly decentralized decision-making power. Many judges are elected and thus not directly answerable to court administrators. In addition, other stakeholders within the court system, such as prosecutors, defense attorneys and clerks all hold different professional values and answer to their own institutional hierarchies.⁹
- (2) **Communication:** Due to the ad-hoc nature of current programs, each is largely operated by individual agencies. Due to this, most diversion programs do not have an independent review process or third party access to information. It is not uncommon for stakeholders to have little to no knowledge of a diversion program operated by another stakeholder. This communication barrier severely limits the effectiveness of diversion programs and delays the point at which assessment and entry into programs can occur, as the stakeholders are collectively responsible for identifying eligible defendants for these programs. Designing and implementing a coordinated system would resolve the communication issues by formalizing a structure for diversion that would be utilized by all stakeholders.
- (3) **Resources:** The third and greatest barrier to implementing a coordinated system with robust treatment options and alternatives to incarceration has always been the lack of resources for mental health, substance abuse treatment and medical care in the community. However, resources for the treatment of substance abuse are becoming available through the federal Affordable Care Act and through Cook County's Medicaid expansion waiver. Incarcerated, low-income, single adults qualifying for Medicaid could safely and effectively be treated by community-based providers, which were not previously available to them due to lack of resources. A TASC analysis indicates that as many as 500,000 new Medicaid enrollees in Illinois are likely to be involved in the criminal justice system.¹⁰ Of these new enrollees, 35,000 will have Serious Mental Illnesses, 74,500 will have Severe Psychological Distress, and 71,000 will have Substance Abuse disorders.¹¹

⁹ *Id.* at 2.

¹⁰ The National Center on Addiction and Substance Abuse at Columbia University (CASA). (2010). *Behind Bars II: Substance Abuse and America's Prison Population*. New York; Steadman HJ, Osher FC, Robbins PC, et al. "Prevalence of Serious Mental Illness Among Jail Inmates." *Psychiatric Services*, 60(6): 761–765, 2009.

¹¹ *Id.*

The Action Taken by Other State Supreme Courts

Several other states attempting to expand and integrate their diversion programs have encountered similar implementation barriers. While these states used different methods of achieving implementation, all have required some action from either the state legislature or state supreme court for a concerted effort. The following state supreme courts have played an active role in implementing a large-scale reform: Pennsylvania, New York, Kansas, Ohio and Missouri.

- The Pennsylvania Supreme Court established the First Judicial District Reform Initiative following a series of articles published by The Philadelphia Inquirer in December 2009 that portrayed the Philadelphia criminal justice system as being in “disarray”.¹² In January 2010, Chief Justice Castille, assigned Supreme Court Justice McCaffery to initiate a comprehensive review of Philadelphia’s criminal courts and established an Advisory Board comprised of judges, attorneys, and criminal justice experts with diverse backgrounds to represent the many perspectives that exist within their criminal justice system.
- Chief Judge Kaye appointed The New York State Commission on Drugs and the Courts.¹³ The Commission was composed of judges, prosecutors, defense attorneys, researchers and experts in treatment and probation. The Commission studied the impact of drug cases on the court system. The resulting report, *Confronting the Cycle of Addiction and Recidivism*, strongly endorsed drug courts and the broader concept of judicially ordered and monitored drug treatment for non-violent addicted offenders.
- The Kansas Supreme Court contracted with the National Center for State Courts (NCSC) to research the feasibility and practicality of instituting statewide management over drug courts within the state.¹⁴ The Court commissioned the NCSC report to determine how other states have institutionalized drug courts on a statewide basis and what infrastructure Kansas would need to institutionalize drug courts.
- In 1993, the Ohio Supreme Court, led by Chief Justice Moyer, co-sponsored with the Department of Alcohol and Drug Addiction Services a statewide conference on drug courts with about 80 participants.¹⁵ And since 1992 the court has had staff assigned to support the development of drug courts and, more recently, domestic violence and mental health courts.
- Missouri also benefitted from a strong push from court leadership.¹⁶ In 1996, Judge Price organized a judicial conference on addiction and created a multi-

¹² *The Reform Initiative: First Judicial District Criminal Courts Commonwealth of Pennsylvania Interim Report* at 1.

¹³ *The Future of Drug Courts: How States are Mainstreaming the Drug Court Model*, Center for Court Innovation at 16.

¹⁴ *Kansas Drug Court Feasibility Study*, National Center for State Courts at 1.

¹⁵ *The Future of Drug Courts: How States are Mainstreaming the Drug Court Model*, Center for Court Innovation at 23.

¹⁶ *Id.* at 31.

agency Drug Court Commission to oversee drug courts statewide. The Commission was composed of 48 members including judges, prosecutors, defense attorneys and representatives from probation and parole, drug treatment, job training and educational programs. As of 2003, Missouri had 35 drug courts in operation, with 13 more planned, and a total of 2,201 drug court graduates.¹⁷

Chicago Appleseed believes Cook County would benefit from such a convening of stakeholders and the next section is devoted to examining and weighing the benefits of different formats.

Choosing Between Commissions, Conferences, and Hybrid Models

(1) Commission – (Pennsylvania, New York, and Kansas, e.g.)

A commission is composed of the major stakeholders. This ensures the buy-in of the individuals and departments that are essential for implementing a large-scale reform. Also, a commission is a private forum where representative stakeholders may be more candid and open about the issues and challenges of implementation. Finally, a commission that is appointed by the state supreme court is accountable to the supreme court, and is a more definite and structured forum that will ensure a final product will result from the commission. However, due to the private nature of a commission, not all stakeholders can participate in the dialogue, and usually one person speaks for and represents an entire department. Furthermore, a commission may deny the public much voice or input regarding a highly important public concern.

(2) Conference – (Ohio, e.g.)

A conference is a public forum where all stakeholders can be present and engage in a dialogue. The departments are not limited to representation by one person, and the public can have a voice in the matter as well as access to information regarding proposed reforms. The public nature of a conference can place additional pressure, from the public and media, on stakeholders to produce and implement reforms. However, a public forum could inhibit open discussion because stakeholders will be more cautious when speaking “on the record.” Also, consensus is more difficult to arrive at in a large forum, and extraneous issues, conversations, or ideas may sidetrack the discussion.

(3) Hybrid Commission/Conference (Missouri, e.g.)

A hybrid forum aims to get the benefits of both public and private forum while minimizing the disadvantages. This option gives the public structured access to the project, while ensuring the commission is accountable to the state supreme court for a specific product. Ideally this would strike a balance between creativity, productivity, and focus. However, two forums could result in delaying implementation due to the additional time needed to convene both a commission and a conference.

¹⁷ *Id.* at 20.

Also, a hybrid option will be more expensive than any single option and risks a diffusion of responsibility.

Recommendations as to the Format

Chicago Appleseed recommends the Court select the hybrid model of a conference and a commission. While this method may generate more cost, the added expense could be borne—in part—by grants, donations or co-sponsors (e.g., the Ohio supreme court co-sponsoring with the Department of Alcohol and Drug Addiction Services). A hybrid method would satisfy the concerns of stakeholders who greatly value private discussions “off the record” and the public who have a desire to be informed and involved. Most of all, a hybrid method would be most likely to put forward comprehensive scheme for diversion in Cook County.

Critical Issues for the Commission or Conference to Address

Once a commission or conference is established, it will need to address the following matters in order to design and implement a coordinated system in Cook County:

- (1) **The ACT Court Model.** For some, the notion of “institutionalization means re-orienting entire court and treatment systems according to drug court principles. In their view, drug courts will be institutionalized only when their key elements— intensive judicial monitoring, referrals to treatment, graduated sanctions and rewards—become a part of every state court’s approach to drug addiction.”¹⁸ Dan Becker, Utah Court Administrator, said “I’d like to see less emphasis on drug courts per se, and more emphasis placed on making treatment a mainstream enterprise”¹⁹

Subscribing to the view of Becker, Chicago Appleseed recommends going to scale with diversion principles by coordinating case management, early assessment, and treatment options across the stakeholders, rather than simply creating more specialty courts. For example, currently Chicago Appleseed is working with the Circuit Court to develop a model for such growth: the Access to Community-Based Treatment (ACT) Model Court.

The ACT Court is a proposed problem-solving court to be piloted at the George N. Leighton Criminal Courthouse.²⁰ The ACT Court aims: to divert non-violent offenders from the Illinois Department of Corrections and the Cook County Jail; to promote access to community-based treatment; to optimize the Affordable Care Act expansion (CountyCare) for a justice population; to achieve differentiated case management goals; and to ultimately reduce future recidivism. However, unlike specialty courts the

¹⁸ *The Future of Drug Courts: How States are Mainstreaming the Drug Court Model*, Center for Court Innovation at 3.

¹⁹ *Id.*

²⁰ Paul P. Biebel, Jr. Presiding Judge, *Planning Grant Proposal, Developing Access to Community-based Treatment*, Submission to Adult Redeploy Illinois, March 21, 2013.

model will be expanded to other courtrooms at the Leighton Criminal Courthouse—to the extent the ACT Court is successful—such that every court will have the training and capability to be a diversion court. The ACT Court will operate alongside of specialty drug and mental health courts through a tandem-court model which will give the ACT Court judge the option of transferring cases to a specialty court.

The following are major components of the ACT Court and may be considered as models for larger, more comprehensive system:

- Early identification of individuals that demonstrate the potential to respond to court intervention and have the motivation to avoid incarceration.
- Incorporation of Differentiated Case Management (DCM) strategies and an emphasis on meeting the 90 day time standard (from arraignment to disposition) set down by the Criminal Division for Class 4 felonies.²¹
- A focus on the early enrollment of defendants in Medicaid to insure access to substance abuse treatment resources.
- A tandem-court model in which the judge in the ACT Court would have the option of transferring cases to a drug court judge as another option of reaching disposition short of incarceration at the Illinois Department of Corrections.
- The ACT Court will be based on best-practices in criminal justice and the Ten Key Components of Drug Courts developed by the National Association for Drug Court Professionals (NADCP).
- An evaluation component in which results measure itself against similar defendants in more traditional or restrictive courts, with an aim toward reducing IDOC commitments from the target population.

(2) **Early Assessment and the role of Pre-Trial Services.** Under 725 ILCS 5/109-3.1, any individual charged with a felony must receive a preliminary hearing 30 days from the date of arrest if in custody or 60 days from the date of arrest if released on bail or recognizance. Only after the preliminary hearing does the prosecutor begin to consider whether the defendant is eligible and appropriate for pre-plea diversion programs.²² Allowing 30 days between arrest and a preliminary hearing hinders the overall diversion effort; defendants who are eligible for diversion remain in jail rather than receive treatment immediately. Such lengthy delays not only impede diversion, but also increase the cost of incarceration and jail population.

²¹ *Differentiated Case Management* is a case management technique that provides a mechanism for processing each case in accordance with the timeframe and judicial system resources required to move each case as expeditiously as possible towards disposition (Bureau of Justice Assistance, DCM Fact Sheet, 1995).

²² *A Report on Chicago's Felony Court*, Chicago Appleseed Fund For Justice at 84.

Early assessment is needed in order to divert defendants sooner. Chicago Appleseed recommends lobbying to reduce the maximum length of time between arrest and preliminary hearing to 10 days. Another way to achieve a more timely and efficient diversion system is to incorporate station house adjustment to deal with possession of small amounts of controlled substances.

Finally, in any diversion structure, pre-trial services will have a role in identifying potential defendants eligible for diversion. Pre-trial service staff members should receive in-depth training on drug and mental health issues to better assess and identify defendants who are suitable for diversion.

- (3) **The Role of Probation.** Successful outcomes will require probation caseworkers to provide defendants with information on community-based treatment options and other support. With such a substantial reliance on probation, the committee/convention should review the current structure of the Adult Probation Department to determine whether it is the most effective and efficient structure to incorporate into a better coordinated system. In Cook County, the Adult Probation Department is under the supervision of the Office of the Chief Judge; however in 30 states, a state or local level agency in the executive branch of government provides adult probation service.²³

The National Advisory Commission on Criminal Justice Standards and Goals classified five major organization models for adult probation in the United States and recommended that “probation administration be centralized within a state executive branch agency to provide opportunities for better coordination with institutional corrections and other social service.”²⁴

Finally, with regard to probation, the commission/convention must address reporting. In Chicago Appleseed’s 2007 Report on Chicago’s Felony Courts, one judge mentioned that he did not receive enough feedback on treatment programs. According to one probation officer, many offenders fail probation because the system does not provide the supervision and rehabilitation needed to return these people to productive society.²⁵ In order for the criminal justice system to function properly, judges need more information about a defendant’s progress in treatment and compliance with conditions of probation.

Conclusion

Chicago Appleseed proposes that the Illinois Supreme Court take action to coordinate the criminal justice system in Cook County. All aspects of court management need to be addressed so that diversion, differentiated case management, and early assessment are expanded and thousands of defendants have access to them. The Court has several

²³ Barbara Krauth and Larry Linke, *State Organization Structure For Delivering Adult Probation Services*, National Institute of Corrections, June 1999, pg 3, available at: <http://static.nicic.gov/Library/015249.pdf>.

²⁴ *Id.* at 1.

²⁵ *Id.* at 104

methods to achieve such a coordinated system, including establishing a committee, holding a convention, or a hybrid of the two methods. Chicago Appleseed recommends the hybrid method because it minimizes the disadvantages of the other methods while achieving a balance between private and public forums.

There are several issues that the committee/convention will need to address. Chicago Appleseed recommends implementing a large scale system alongside current diversion programs, taking into account the training model of the ACT Court and working to expand early assessment and optimize the use of probation.

Chicago Appleseed urges the court to consider the following proposal and to take an active role in the effort to expand diversion for the benefit of Cook County, its residents, stakeholders, and troubled defendants.

Table 1. Cook County Diversion Programs as of June, 2013

Name	Controlling Legislation	Eligible Population	Requirements for Completion	Outcome Upon Completion
<i>Pre-Plea*</i>				
Drug School	Cook County State's Attorney's Office Policy	Adult "low-level, nonviolent" misdemeanor and felony defendants with "limited and nonviolent criminal history."	Attend educational sessions on weekend. One or two court appearances.	Charges are dismissed by motion of the state.
Deferred Prosecution	Cook County State's Attorney's Office Policy	Adult felony defendants with no prior felony convictions. Disqualifying current offenses: delivery of illegal drugs or intent to deliver or manufacture certain drugs. Most common current offenses include: retail theft (24%), PCS/Cannabis (20%), burglary (17%), theft (14%), and more.	Attend quarterly status meetings at "Branch 9" (Courtroom 102). May include: community service (40%), TASC assessment (32%), academic activities (13%), drug education/treatment (12%) and other.	Same as above.
Pre-Release Center (PRC)	Cook County Sheriff's Office	PRC is a secure residential drug treatment program for pre-trial inmates. The Pre-Release staff of the Department of Corrections reviews jail records on a daily basis to find eligible inmates.	Defendants participate in a 12-step program providing the necessary education to remove chemical dependency and associated criminality from their lives. The program enrolls participants in self-help groups, personal living skills classes, adult education/GED classes and Virtual High School Computer Classes for 17-21 year olds.	
<i>Post-plea**</i>				
Women's Justice Programs	Cook County Sheriff's Office	Department of Corrections reviews jail records on a daily basis to find eligible inmates.	Women's Residential Program (WRP), a 160 bed intensive in-patient treatment program offered in a modified therapeutic community setting within the Cook County Jail. A second program is the Sheriff's Female Furlough Program (SFFP), an outpatient day-reporting program where women are required to report daily for treatment and case management services, returning home in the evening to care for their families while on electronic monitoring	Probation sentence is terminated successfully.
Boot Camp	Cook County Sheriff's Office	Young men ages 17-35 convicted of a non-violent criminal charge, most often drug-related.	The first phase of the program is a 4 month residential program based on strict, military-style detention with participants housed in barracks overseen by drill sergeants. In addition to basic discipline, the program offers opportunities to gain a GED and receive behavioral, substance abuse and anger management counseling. Graduates then advance to an 8 month post-release phase, which includes continued counseling, drug testing and assistance with job readiness and placement. Participants begin this phase on house arrest with electronic monitoring and must report to the boot camp daily, which later extends	Same as above.

			to weekly reporting.	
TASC Probation	Illinois Alcoholism and Other Drug Dependency Act (20 ILCS 301/40)	Drug-involved offenders who meet TASC's criteria for acceptability. Disqualifying factors: current or contemporaneous violent charge, two or more prior violent convictions, two prior failures to complete TASC probation within past 2 years, current charge is related to methamphetamines, current charge is manufacturing, delivery, or intent thereof.	Satisfactorily complete all treatment requirements, maintain a substance-free status for a minimum of the final four months of probation, secure a stable living environment upon discharge from treatment, and secure a legitimate, stable source of income or have full-time student status.	If no prior felony conviction, court shall vacate judgment on motion of the court. If prior felony conviction, then court will vacate judgment.
Mental Health Court	Mental Health Court Treatment Act (730 ILCS 168/)	Adult felony defendants with diagnosable mental illness, typically with an established history of mental health treatment. Disqualifying factors: current charge is violent, current charge involves a civilian victim, or violent conviction within past 10 years,	24 months of probation during which participant must successfully complete multi-phased, jail- and community-based treatment, educational, and vocational services.	Court may dismiss charges, successfully terminate defendant's probation, or otherwise discharge from any further proceedings in the original prosecution.
Veterans Court	Veterans and Service members Court Treatment Act (730 ILCS 167/)	Adult felony defendants who are service members or veterans. Disqualifying factors: current charge is violent, violent conviction within past 10 years.	24 months of probation during which participant must successfully complete multi-phased, jail- and community-based treatment, educational, and vocational services.	Same as above.
Women In Need of Gender-Specific Services (WINGS) and Feathers Court		All defendants charged with felony prostitution are sent to WINGS, unless a pre-trial screening determines that the individual is better suited for a different specialty court. By agreement of the state and the defense, defendant is sentenced to two-year probation.	24 months of probation during which participant must successfully complete multi-phased, jail- and community-based treatment, educational, and vocational services.	Same as above.
Adult Redeploy Probation	Crime Control Act	Probationers convicted of non-violent Class 1-4 felony offenses who have at least six months left on their probation sentences. Disqualifying factors: violent convictions within past 10 years.	Probationer's supervision is transferred to ARI judge. Probationer must submit to frequent, random drug testing, and possibly other jail or community-based services.	Probation sentence is terminated successfully.
Rehabilitation Alternative Probation (RAP) & Women's RAP (WRAP) Drug Court	Drug Court Treatment Act (730 ILCS 166/)	Adult felony probationers who are arrested for possession of a controlled substance and found to be in violation of their probation. Disqualifying factors: current charge is violent, violent conviction within past 10 years, denial of addiction, unwillingness to participate, or past participation in drug court.	24 months of probation during which participant must successfully complete multi-phased, jail- and community-based treatment, educational, and vocational services.	Court may dismiss charges, successfully terminate defendant's probation, or otherwise discharge from any further proceedings in the original prosecution.

*A program is considered to be "pre-plea" when it expedites the defendants criminal case *before* conviction, or before filing of a criminal case.

**A program is considered to "post-plea" when the defendant must admit guilt or have been found guilty before agreeing to enter the program as part of his or her sentence.