

# PROBLEM-SOLVING COURTS IN ALABAMA AND THEIR POTENTIAL ROLE IN THE ALLEVIATION OF POVERTY

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## Introduction

Problem-solving courts are non-traditional courts that focus on “one type of offense or offender.”<sup>1</sup> Within the context of these specialized courts, generally, a judge oversees the collaboration of criminal justice entities and social service agencies in developing case plans and sanctions for alleged offenders.<sup>2</sup> Typically, the aim of the case plan is rehabilitative or “therapeutic” in nature.<sup>3</sup> The ultimate goal of problem-solving courts is to “address the underlying . . . problems contributing to certain criminal offenses.”<sup>4</sup> The first iteration of the modern-day problem-solving court was a drug court.<sup>5</sup>

Begun in 1989 in Dade County, Florida, the drug court was conceived in response to the consequences of the War on Drugs—particularly the rapid increase in incarceration and subsequent recidivism of people suffering from substance abuse.<sup>6</sup> After all, the drug prosecutions of the 1980s caused a severe spike in drug-related imprisonment.<sup>7</sup> In that decade, drug-related imprisonment increased by 110% among whites and 465% among African-Americans.<sup>8</sup> The first conceived drug courts also sought to improve the

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<sup>1</sup> *Problem-Solving Courts*, NAT’L INST. OF JUST. (Feb. 20, 2020), <https://nij.ojp.gov/topics/articles/problem-solving-courts> [https://perma.cc/2RUX-LXJS].

<sup>2</sup> *Id.*

<sup>3</sup> Bruce J. Winick, *Therapeutic Jurisprudence and Problem Solving Courts*, 30 FORDHAM URB. L.J. 1055, 1062 (2003).

<sup>4</sup> Andrea Kupfer Schneider & Cynthia Alkon, *Our Criminal Legal System: Plagued by Problems and Ripe for Reform*, A.B.A. DISP. RESOL. MAG., Jan. 29, 2020, [https://www.americanbar.org/groups/dispute\\_resolution/publications/dispute\\_resolution\\_magazine/2020/dr-magazine-criminal-justice-reform/our-criminal-legal-system/](https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2020/dr-magazine-criminal-justice-reform/our-criminal-legal-system/) [https://perma.cc/Q8HD-SWCJ].

<sup>5</sup> Eric J. Miller, *Drugs, Courts, and the New Penology*, 20 STAN. L. & POL’Y REV. 417, 421–22 (2009).

<sup>6</sup> E. Michelle Tupper, *Children Lost in the Drug War: A Call for Drug Policy Reform to Address the Comprehensive Needs of Family*, 12 GEO. J. POVERTY L. & POL’Y 325, 338–39 (2005).

<sup>7</sup> *Id.* at 338.

<sup>8</sup> Miller, *supra* note 5, at 421.

societal conditions caused by a number of ills plaguing vulnerable communities, including factory closings, rising unemployment, residential segregation, and drug addiction.<sup>9</sup> Steadily, persons addicted to drugs made repeat appearances in courts.<sup>10</sup> As a result, the overwhelming number of new inmates made prison populations unmanageable.<sup>11</sup> Therefore, the early drug courts sought to stem the tide of incarceration by requiring those suffering from addiction to take part in therapeutic programs, thus steering them away from the traditional criminal court process.<sup>12</sup> The positive effects were apparent.<sup>13</sup> As a result, drug courts proliferated throughout the United States,<sup>14</sup> including the establishment of several in Alabama. In turn, the successes of Alabama drug courts led to the establishment of several other problem-solving courts that sought to address a number of societal issues that overlap with poverty in the state, including homelessness, mental health, and substance abuse.

In order to examine the successes and criticisms of specialty courts in Alabama, this article will describe various types of such courts. Part I will provide a brief overview of some of the specialty courts present in Alabama today, both in state and municipal courthouses. Part II will discuss how specialty courts can have a positive impact in the alleviation of poverty. Part III will detail the successes associated with some of Alabama's specialty courts. Finally, Part IV will detail criticisms various specialty courts have faced, along with proposed solutions commentators have posited.

## I. Examples of Problem-Solving Courts in Alabama

### A. Drug Courts

Drug courts were established in Alabama to address the steep increase in the state's drug-related arrests and subsequent high recidivism rate among those addicted to drugs.<sup>15</sup> While not the state's first specialty court,<sup>16</sup> this

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<sup>9</sup> *Id.* at 420–21.

<sup>10</sup> Tupper, *supra* note 6, at 338.

<sup>11</sup> Miller, *supra* note 5, at 421–22.

<sup>12</sup> Tupper, *supra* note 6, at 339.

<sup>13</sup> Arthur J. Lurigio, *The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact*, 72 FED. PROB. 13, 16 (2009).

<sup>14</sup> *Id.*

<sup>15</sup> See Susan Pace Hamill, *An Argument for Providing Drug Courts in All Alabama Counties Based on Judeo-Christian Ethics*, 59 ALA. L. REV. 1305, 1316 (2007).

<sup>16</sup> This distinction belongs to Accountability Courts, which were initially established in 1985. See *Accountability Courts: Educational Programs*, ALA. ADMIN. OFF. OF CTS., <https://www.alacourt.gov/EducationalPrograms.aspx> (last visited April 28, 2020).

type of problem-solving court has steadily become the most prevalent.<sup>17</sup> In fact, as of 2018, drug courts exist in all but eight Alabama counties.<sup>18</sup> Other non-county jurisdictions operate their own drug court programs, such as Birmingham City, the University of Alabama, and the Poarch Creek tribal court.<sup>19</sup> In addition, thirteen counties have instituted courts that seek to treat and counsel juveniles and their families when introduced to the criminal justice system as a result of substance dependency.<sup>20</sup>

### B. Mental Health Courts

Mental health courts are distinct from Alabama's probate courts, which handle cases involving civil commitments.<sup>21</sup> Instead, Alabama's mental health courts are diversion programs that allow for "qualifying nonviolent offenders who have a history of mental illness to avoid jail" by participating in court-ordered treatment programs.<sup>22</sup> Modeled after a similar program in Broward County, Florida, these courts accept mentally ill defendants who have been charged with both misdemeanors and felonies.<sup>23</sup> Once pre-screened for diagnosis by state officials, defendants suffering from mental illness are connected to drug and mental health treatment.<sup>24</sup> Defendants are ordered to adhere to a regimen of prescriptions and

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<sup>17</sup> See *Adult Drug Courts*, ALA. ADMIN. OFF. OF CTS. (May 2018), <https://www.alacourt.gov/docs/Adult%20Drug%20Courts.pdf> [https://perma.cc/V7NJ-RHDZ].

<sup>18</sup> *Id.* (showing that Talladega County never established a drug court program, while drug court programs in Colbert, Conecuh, Dale, Franklin, Henry, Houston, and Monroe Counties have all closed).

<sup>19</sup> *Id.*

<sup>20</sup> See *Alabama's Family and Juvenile Drug Courts*, ALA. ADMIN. OFF. OF CTS., [https://www.alacourt.gov/docs/Family\\_and\\_Juvenile\\_Drug\\_Court\\_Map.pdf](https://www.alacourt.gov/docs/Family_and_Juvenile_Drug_Court_Map.pdf) [https://perma.cc/LJ9Q-9E59] (last visited Mar. 29, 2021) (showing that Calhoun, Clay, Coosa, Dale, Escambia, Geneva, Jefferson, Lauderdale, Madison, Mobile, Morgan, Russell, and Shelby Counties have established such family and juvenile drug courts).

<sup>21</sup> See ALA. CODE § 22-52-37 (1975).

<sup>22</sup> See *Montgomery County Expands Mental Health Court*, ALA. PUB. RADIO (2008), <https://www.apr.org/post/montgomery-county-expands-mental-health-court> [https://perma.cc/7NN4-4M6J].

<sup>23</sup> Samira Jafari, *Different Approach: State's Mental Health Courts an Alternative to Jail Sentence*, DECATUR DAILY NEWS (Apr. 25, 2005), <http://legacy.decadurdaily.com/decadurdaily/news/050425/mental.shtml> [https://perma.cc/7DP8-4YNR].

<sup>24</sup> See Amy Yurkanin, *For Mentally Ill Offenders, This Courtroom Offers a Lifeline Instead of Jail*, AL.COM (Jan. 13, 2019), [https://www.al.com/news/birmingham/2016/10/for\\_mentally\\_ill\\_offenders\\_one.html](https://www.al.com/news/birmingham/2016/10/for_mentally_ill_offenders_one.html) [https://perma.cc/FJ8H-8FEZ].

counseling.<sup>25</sup> Ultimately, the programs allow those suffering from mental illness to avoid the traditional criminal justice system and, in turn, prisons.<sup>26</sup> There are eleven mental health courts in nine counties in Alabama, including one county that houses a mental health court specifically for juveniles.<sup>27</sup>

### C. Veterans Courts

The U.S. Department of Justice has reported that roughly ten percent of incarcerated adults are former military servicemembers.<sup>28</sup> In light of this statistic, the Alabama veterans court system was intended to divert veterans from the traditional criminal justice system and instead focus on treatment of alcoholism, drug abuse, and anger management—all conditions resulting from disorders born in war, like depression and post-traumatic stress disorder.<sup>29</sup> As a result, the veterans courts are essentially an amalgam of drug and mental health courts. In practice, the courts oversee mental health and substance abuse treatments, assign “volunteer ‘mentors’” to supervise the veteran’s progress, and link the affected veteran with state and federal benefits.<sup>30</sup> In all, there are twenty-eight veterans courts in Alabama in twenty-six county courts and two municipal courts.<sup>31</sup>

### D. Homeless Courts

Perhaps most novel within the Alabama problem-solving court landscape are the homeless courts. These courts are problem-solving courts aimed at the resolution of minor offenses that may adversely affect a person

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<sup>25</sup> Jafari, *supra* note 23.

<sup>26</sup> *Id.*

<sup>27</sup> *Mental Health Courts*, ALA. ADMIN. OFF. OF CTS. (July 2, 2018), <https://www.alacourt.gov/docs/Mental%20Health%20Courts.pdf> (showing Calhoun, Etowah, Jefferson, Madison, Montgomery, St. Clair, Shelby, Sumter, and Tuscaloosa counties all have mental health courts, and Madison County also has a juvenile mental health court).

<sup>28</sup> *Veterans Treatment Courts*, ALA. DEP'T OF VETERANS AFFS., <https://va.alabama.gov/vtc/> [<https://perma.cc/8XP7-8SX9>] (last visited Apr. 23, 2020).

<sup>29</sup> Jeremiah M. Glassford, “*In War, There Are No Unwounded Soldiers*”: The Emergence of Veterans Treatment Courts in Alabama, 65 ALA. L. REV. 239, 248–49 (2013).

<sup>30</sup> *Id.* at 239.

<sup>31</sup> *AOC – Veterans Courts*, ALA. ADMIN. OFF. OF CTS. (July 2019), <https://www.alacourt.gov/docs/Veterans%20Courts.pdf> (showing that Autauga, Baldwin, Barbour, Calhoun, Chilton, Coffee, Covington, Cullman, Dallas, Elmore, Etowah, Geneva, Jefferson, Lauderdale, Lee, Macon, Madison, Marengo, Marshall, Mobile, Montgomery, Russell, St. Clair, Shelby, Tuscaloosa, and Walker Counties operate county veterans courts, and Birmingham and Tuscaloosa operate municipal veterans courts).

seeking to overcome homelessness.<sup>32</sup> Despite its innovation and need, only one jurisdiction has adopted such a specialty program—the City of Birmingham.<sup>33</sup> Birmingham’s Turning Point Court is a special docket that allows people experiencing homelessness to appear before a judge to discuss unresolved legal issues such as “tickets and warrants for offenses such as minor traffic violations and misdemeanors.”<sup>34</sup> The specialty court aids defendants in resolving their legal issues by connecting them with volunteer attorneys, determining root causes of both their alleged wrongdoing and their homelessness, and then placing them in contact with social service agencies such as homeless shelters and mental health assistance organizations.<sup>35</sup> Oftentimes, financial penalties for minor infractions are forgiven in this court and replaced with community service.<sup>36</sup> According to the City of Birmingham, “when [people experiencing homelessness] work with agency representatives to identify and overcome the causes of their homelessness, they are in a stronger position to successfully comply with [c]ourt [o]rders.”<sup>37</sup>

## II. Specialty Courts’ Purported Role in the Alleviation of Poverty

The leading public policy rationale behind specialty courts is their aim to involve as few people as possible with the traditional criminal justice system while simultaneously seeking to “address the root causes of problems that contribute” to such involvement.<sup>38</sup> Indeed, research abounds on how incarceration and burdensome fines create cycles of insurmountable poverty. Research has shown that a worker’s chance of being hired diminishes by fifteen to thirty percent merely by having a criminal conviction.<sup>39</sup> Furthermore, criminal histories can result in the reduction of six to eleven weeks worked per year when compared to the average worker.<sup>40</sup> The

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<sup>32</sup> *Specialty Courts*, CITY OF BIRMINGHAM, <https://www.birminghamal.gov/municipal-court/specialty-courts/> [https://perma.cc/4M43-BJSM] (last visited Apr. 23, 2020).

<sup>33</sup> Beth Shelburne, *Helping People Turn the Corner on Homelessness*, WBRC (Feb. 15, 2019, 11:33 AM), <https://www.wbrc.com/2019/02/15/helping-people-turn-corner-homelessness/>.

<sup>34</sup> *Specialty Courts*, *supra* note 32; see also *Volunteer Lawyers Birmingham Turning Point Court Event*, ALA. STATE BAR, <https://www.alabar.org/event/volunteer-lawyers-birmingham-turning-point-court/> [https://perma.cc/N5SH-2RPU] (last visited Apr. 23, 2020).

<sup>35</sup> See *Specialty Courts*, *supra* note 32.

<sup>36</sup> See Shelburne, *supra* note 33.

<sup>37</sup> See *Specialty Courts*, *supra* note 32.

<sup>38</sup> See *id.*

<sup>39</sup> See Tim Planert, *Mass Incarceration and Poverty in America*, WM. & MARY POL’Y REV. (Apr. 6, 2016), <https://www.wmpolicyreview.com/people-society/mass-incarceration-and-poverty-in-america> [https://perma.cc/729Z-3REG].

<sup>40</sup> *Id.*

employment burdens on those with criminal convictions are gargantuan in scale when viewed from a macro-level. For instance, it has been shown that the loss in work among persons convicted of felonies reduces the nation's gross domestic product by between \$57 billion and \$65 billion per year.<sup>41</sup> Importantly, defendants who complete court ordered treatment programs can have their criminal convictions expunged from their records.<sup>42</sup>

In addition, a criminal conviction—particularly a drug-related conviction—can adversely affect one's eligibility for federal assistance.<sup>43</sup> For example, those convicted of drug-related crimes are barred from receiving Pell Grants—“federal subsid[ies] for low-income students”—or student loans.<sup>44</sup> Also, people who have been convicted of drug-related crimes are prohibited from receiving Supplemental Nutrition Assistance Program (“SNAP”) and Temporary Assistance for Needy Families (“TANF”) benefits.<sup>45</sup> Such unfortunate facts can have harmful effects on both earning potential and the ability to support one's family.

In fact, families of incarcerated persons are acutely affected and often experience the ravages of poverty from outside the prison walls. Invariably, families are required to pay costs associated with incarceration.<sup>46</sup> These costs include phone calls to prisons, essential goods for the incarcerated family member, and “sentencing and prison fees and fines.”<sup>47</sup> Charlene Hamilton experienced these hardships as the wife of a man formerly incarcerated on federal drug-related convictions.<sup>48</sup> After her husband’s conviction, Hamilton resolved to visit her husband regularly.<sup>49</sup> Despite his transfers to prisons in Tennessee, Texas, Arizona, and New Mexico, she made the trips.<sup>50</sup> She “went on welfare” and relied on relatives to house and care for their young children.<sup>51</sup> Hamilton recounted that she “wanted to work, but . . . couldn’t

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<sup>41</sup> *Id.*

<sup>42</sup> *What Are Drug Courts?*, NAT’L DRUG CT. RES. CTR., <https://ndcrc.org/what-are-drug-courts/> [https://perma.cc/6HEU-WUAJ] (last visited Apr. 28, 2020).

<sup>43</sup> *Mass Incarceration and the Cycle of Poverty*, FRIENDS COMM. ON NAT’L LEGIS. (May 2, 2017), <https://www.fcnl.org/documents/335> [https://perma.cc/WE9L-HPYY].

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *The Relationship Between Poverty & Mass Incarceration*, CTR. FOR CMTY. CHANGE, [https://www.masslegalservices.org/system/files/library/The\\_Relationship\\_between\\_Poverty\\_and\\_Mass\\_Incarceration.pdf](https://www.masslegalservices.org/system/files/library/The_Relationship_between_Poverty_and_Mass_Incarceration.pdf) [https://perma.cc/64LD-JJ34] (last visited April 28, 2020).

<sup>47</sup> *See id.*

<sup>48</sup> John Tierney, *Prison and the Poverty Trap*, N.Y. TIMES (Feb. 18, 2013), <https://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html> [https://perma.cc/U7GG-X6AB].

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

have a job and go visit him.”<sup>52</sup> In the months and years that ensued, she and her daughters battled homelessness, cramped living conditions with relatives, and food insecurity.<sup>53</sup> Only after her husband’s release and years of toiling could the family save enough to inch above the poverty line.<sup>54</sup> Indeed, avoiding incarceration and a permanent blemish on one’s criminal record can positively impact families as well.

Problem-solving courts also seek to address the underlying causes of imprisonment. This aim is also worthy of discussion in the effort against poverty and its effects. In an interview regarding a study he authored on poverty and incarceration, Harvard sociologist Bruce Western was asked about the researched links between incarceration and poverty, and whether his sociological research shed new light on the topic.<sup>55</sup> Western responded:

One of the most striking things is that when we looked closely at the texture of people’s lives, poverty in the narrow sense, having a very low income, was only one part of what they were dealing with. It was the things that accompanied poverty, like untreated addiction and mental illness, very severe housing insecurity, chronic unemployment, and often a very, very complicated web of family relationships. It was these things as much as having a very low income that people were really struggling with. And the nature of their disadvantage, I think, can’t be reduced to having a very low income. It’s the confluence of a whole variety of largely untreated, unaddressed problems, some of which have accumulated over a lifetime, that we need to be thinking about as a social-policy problem.<sup>56</sup>

In sum, if effectively and equitably implemented in the state, specialty courts that expressly aim to reduce prison populations can yield positive results in the effort to eliminate poverty. In fact, some courts have proven effective.

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Tierney, *supra* note 48.

<sup>55</sup> Colleen Walsh, *From Prison to Poverty*, HARV. GAZETTE (Feb. 24, 2015), <https://news.harvard.edu/gazette/story/2015/02/from-prison-to-poverty/> [https://perma.cc/C3BG-UA69].

<sup>56</sup> *Id.*

### III. Successes

On the whole, problem-solving courts have generated positive outcomes for both defendants and society at large.<sup>57</sup> Judges across the state have attested to the fact that drug court participants “far[e] much better than those who were arrested, went to court, were adjudicated guilty, fined, sanctioned, and released without having to attend a program.”<sup>58</sup> In fact, studies show that periodic interaction of as little as three minutes with a judge regarding progress has resulted in decreased recidivism.<sup>59</sup> Separately, mental health court programs have resulted in a sixty-two percent decrease in probation violations.<sup>60</sup> Additionally, graduates of mental health court diversion programs are 3.7 times less likely to commit additional offenses.<sup>61</sup>

Successes can also be found in the stories of those who have successfully completed the various diversion programs ordered in problem-solving courts throughout the state. Kimberly Hudson was diagnosed with bipolar disorder at sixteen but was not medicated because of her age.<sup>62</sup> Instead of receiving jail time for drug and theft charges, she participated in a type of “mental health court” and was ordered to participate in regular counseling, take proper medications, and check in weekly with a judge.<sup>63</sup> Within two years of the court order, she was a thriving college student.<sup>64</sup>

Jessica Kilpatrick became addicted to drugs as a result of a high school volleyball injury.<sup>65</sup> She was prescribed oxycodone and shortly thereafter developed an addiction.<sup>66</sup> Her years-long battle with addiction resulted in eighteen felony convictions, including fraud, forgery, and theft.<sup>67</sup> She applied to participate in Walker County’s drug court program and was

<sup>57</sup> See generally Suzanne M. Strong et al., *Census of Problem-Solving Courts, 2012*, U.S. DEP’T OF JUST., OFF. OF JUST. PROGRAMS (Oct. 12, 2016), <https://www.bjs.gov/content/pub/pdf/cpsc12.pdf> [<https://perma.cc/LJ99-YKVT>].

<sup>58</sup> Glassford, *supra* note 29, at 250–51 (quoting MARTIN A. RAMSAY, ALA. ADMIN. OFFICE OF COURTS, SUBSTANCE ABUSE AND CRIMINAL JUSTICE: ALABAMA’S COURT REFERRAL PROGRAMS, A SUCCESSFUL MODEL FOR REHABILITATING OFFENDERS 17, 25, 34 (2000), <http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/criminal/id/79/rec/9>).

<sup>59</sup> *Id.* at 250.

<sup>60</sup> *Id.* at 251.

<sup>61</sup> *Id.*

<sup>62</sup> Jafari, *supra* note 23.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Beth Shelburne, *Drug Court Offers Second Chance for Some in Walker County*, WBRC (Sept. 29, 2016, 10:00 PM), <https://www.wbrc.com/story/33275311/drug-court-offers-second-chance-for-some-in-walker-county/>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

eventually accepted.<sup>68</sup> Through the program, she was able to receive counseling and treatment and avoid a hefty prison sentence.<sup>69</sup> Recently, she landed a job at a local Burger King and also cleans houses.<sup>70</sup>

Finally, Timothy Jackson struggled with homelessness and addiction for years.<sup>71</sup> One night, a Birmingham police officer cited him for public intoxication.<sup>72</sup> Over time, he violated the terms of his probation and failed to appear in court.<sup>73</sup> He spent months avoiding police and “living the life of a transient.”<sup>74</sup> This fear of arrest is all too common among people experiencing homelessness, as “cycle[s] of fines and fees” are untenable for those experiencing poverty.<sup>75</sup> After all, this population often lacks reliable communication and transportation.<sup>76</sup> After turning to Birmingham’s Turning Point Court, Jackson was paired with a volunteer attorney and connected to several social service organizations.<sup>77</sup> Although sentenced to forty-two hours of community service, Jackson was also linked with a housing organization and was counseled through the job interview process.<sup>78</sup> Both Jackson and the municipal judge supervising his case agreed that the outcome was a “victory.”<sup>79</sup>

#### IV. Criticisms

Despite the sound rationale for problem-solving courts, these institutions are not without significant and justified criticisms. Criticisms fall into three main categories. First, commentators point to the lack of access to such courts between jurisdictions.<sup>80</sup> Another common critique has been leveled at the so-called “preferential treatment” some classes of people receive over others through the formation of specialty courts.<sup>81</sup> Finally, and perhaps most germane to specialty courts’ aim to address systemic poverty, critics have indicated the presence of general unintended consequences that

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Shelburne, *supra* note 33.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Shelburne, *supra* note 33.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> See Hamill, *supra* note 15, at 1316.

<sup>81</sup> See Glassford, *supra* note 29, at 263.

have stemmed from the establishment of these courts.<sup>82</sup> Due to their prevalence throughout the state and nation, drug courts have received the heaviest amount of criticism. A sampling of commentators' works, along with the stories of victims of the unintended consequences of such courts, will be discussed in turn.

In her article, *An Argument for Providing Drug Courts in All Alabama Counties Based on Judeo-Christian Ethics*, Susan Pace Hamill argued that it was just and prudent to have a drug court program in every county of Alabama.<sup>83</sup> Furthermore, she argued that not doing so was tantamount to denying certain classes of Alabamians the same measure of justice as others and was thus unethical.<sup>84</sup> As drug courts (and other problem-solving courts) are mostly established and funded at the local level, many citizens in rural and poorer counties are left without the benefit of a diversion program.<sup>85</sup> Further, many of those counties without resources to sustain diversion programs have higher percentages of African-American citizens.<sup>86</sup> This, in turn, exacerbates the racial and economic disparities between those who are incarcerated and those who are not.<sup>87</sup> Until problem-solving courts are available statewide, their positive effects cannot be fully realized.<sup>88</sup> Universal availability can only occur when the state government appropriates funds to establish and manage problem-solving courts in every circuit.<sup>89</sup>

Some problem-solving courts—particularly veterans courts—have been criticized for providing preferential treatment to certain classes of citizens that is otherwise denied to the population at large.<sup>90</sup> Some critics have even stated that veterans courts provide servicemembers with “get out of jail free” cards by considering them a part of a “special class” of defendants.<sup>91</sup> In response, Jeremiah Glassford wrote that civilians suffering from substance abuse and mental health issues are also afforded courts that

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<sup>82</sup> *In Trouble: How the Promise of Diversion Clashes with the Reality of Poverty, Addiction, and Structural Racism in Alabama’s Justice System*, ALA. APPLESEED CTR. FOR L. & JUST. 5 (2020), <https://www.alabamaappleseed.org/wp-content/uploads/2020/02/Alabama-Appleseed-Diversion-Report-2020-web.pdf> [https://perma.cc/KHJ4-JSQB].

<sup>83</sup> See Hamill, *supra* note 15, at 1316.

<sup>84</sup> *Id.* at 1317–19. Hamill noted in a footnote that “[t]he issue of whether this form of race discrimination unconstitutionally violates the Equal Protection Clause of the 14th Amendment is beyond the scope of this Article.” *Id.* at 1314 n.37. Despite this proposition, it could nonetheless be intimated by the reader. *Id.* at 1313–14.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Hamill, *supra* note 15, at 1313–14.

<sup>88</sup> *See id.*

<sup>89</sup> *See id.* at 1322.

<sup>90</sup> See Glassford, *supra* note 29, at 263.

<sup>91</sup> *Id.*

can provide specialized assistance.<sup>92</sup> Furthermore, current and former servicemembers have highly particular needs based on their training and experiences that need to be addressed by a specialized court.<sup>93</sup>

Critics also point to unintended effects of many diversion programs that negate their intended purpose. In a comprehensive study, the Alabama Appleseed Center for Law & Justice examined how defendants' financial and time constraints can adversely impact their access to the fruits of many diversion programs.<sup>94</sup> While emphasizing the organization's support of such courts from a conceptual standpoint, the study pointed to several deficiencies in their implementation.<sup>95</sup>

For example, despite such courts' aim to address root causes of crime, the study found that four in ten Alabama diversion program participants committed a crime in order to cover the costs of the program.<sup>96</sup> Additionally, more than one in eight were fired from a job as a result of absences due to mandated court appearances in conjunction with the diversion programs.<sup>97</sup> More than eight in ten gave up a necessary expenses, like food or rent, in order to make diversion program payments.<sup>98</sup> Nearly half had to take out a payday loan in order to cover the programs' costs.<sup>99</sup> Twenty percent of participants were denied access to a diversion program because they could not afford it.<sup>100</sup> Roughly the same amount were expelled from a program due to a lack of finances to continue paying for the program.<sup>101</sup> More than one in five had to turn down an opportunity to take part in a diversion program due to "work, childcare, or school obligations."<sup>102</sup> Finally, almost a quarter of participants withdrew from problem-solving court programs due to lack of transportation.<sup>103</sup> As a result, many of these otherwise non-violent defendants have been locked away in state prisons that the U.S. Department of Justice deemed an affront to basic human rights.<sup>104</sup>

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<sup>92</sup> *Id.* at 263–64.

<sup>93</sup> *Id.* at 264 (citing *Porter v. McCollum*, 558 U.S. 30, 30–31 (2009); Craig Logsdon & Michelle Keogh, *Homeland Justice for Veterans: Why Veterans Need Their Own Court: Uncommon Criminals*, 47 ARIZ. ATT'Y 14, 20 (2010) ("Another reason that veterans deserve special treatment is that while they are sick, most of them are not bad people. . . . [They] literally put [their] li[ves] on the line for fellow soldiers and complete strangers.")).

<sup>94</sup> ALA. APPLESEED CTR. FOR LAW & JUST., *supra* note 82, at 5.

<sup>95</sup> *Id.* at 5–6.

<sup>96</sup> *Id.* at 5.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 6.

<sup>100</sup> ALA. APPLESEED CTR. FOR LAW & JUST., *supra* note 82, at 6.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

In response, the Alabama Appleseed Center for Law & Justice laid out a list of policy proposals for both legislative and judicial implementation.<sup>105</sup> The organization recommended that lawmakers establish uniform standards for state diversion programs, allow the programs to become portable, fully fund programs, end the suspension of drivers licenses for anything other than dangerous driving, and allow for the scaling of sanctions to fit the circumstances of diversion program participants.<sup>106</sup> The organization recommended that judges reduce or waive fees and costs for participants who cannot afford them, avoid using the benefits of diversion programs as a means of requiring people to pay fees, avoid sanctions such as community service for nonpayment of fees, and avoid compelling court appearances as a sanction for nonpayment of fees.<sup>107</sup> Only by responding to the unintended deficiencies in problem-solving court programs can outcomes be improved for the populations that desperately need assistance.

### Conclusion

Problem-solving courts offer state and municipal judiciaries an invaluable opportunity to leverage the power of the law and social policy in the name of aiding vulnerable populations. Alabama, in particular, suffers from extreme prison overcrowding and high rates of poverty. Therefore, programs that seek to divert defendants away from prisons, treat substance abuse, address mental illness, and connect vulnerable populations with needed social services are laudable. However, criticisms of the implementation of these specialized courts have been warranted. In order to be effective and just, these courts must be accessible, affordable, lenient, compassionate, and ultimately supported by judges and policymakers. Though work is yet to be done, reforming traditional notions of criminal justice in Alabama must be embraced.

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<sup>105</sup> *Id.* at 7.

<sup>106</sup> ALA. APPLESEED CTR. FOR LAW & JUST., *supra* note 82, at 7.

<sup>107</sup> *Id.*