NCJFCJ est. 1937
NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

SJI State Justice Institute

Judicial Leadership and Key Tenets for Improving Outcomes for Families Impacted by Substance Use Disorders

When families arrive before a judge in dependency court, there have likely been many distressing events leading to this critical moment. For many, interpersonal and intergenerational trauma affects families, communities, and cultural, racial, ethnic, and other populations cumulatively, and can create barriers to effective parenting. These implications are compounded for parents experiencing Substance Use Disorders/Opioid Use Disorders (SUD/OUD). Over a third of all removals in 2020 were due to parental substance use.[1] Judicial leadership and oversight are crucial for disrupting historical and individual trauma patterns and ensuring that families impacted by substance use receive the support and services they need. The opioid crisis in the United States continues to burden communities and courts. For example, from April 2020 to April 2021, there were 100,306 drug overdose deaths, a 28.5% increase from the previous year.[2] In addition, SUD and OUD treatment availability has been impacted by the current global health crisis (i.e., COVID-19 pandemic), which means juvenile and family court judges are forced to adapt and innovate in their jurisdictions to effectively supervise youth and families impacted by substance misuse. Juvenile and family court judges often rely on peer-to-peer learning to gain new information and assistance on how to use judicial leadership to implement new practices and approaches.

To better understand the rapid innovations made throughout the pandemic and the next steps for courts in responding to the opioid crisis, the National Council of Juvenile and Family Court Judges (NCJFCJ), with funding from the State Justice Institute, convened a group of judges from around the country in June 2022 to discuss the innovative practices and policies they have been utilizing to meet the needs of families impacted by substance use in their courts. Throughout the convening, the judges identified the core role of judicial leadership in the following key aspects: addressing the dichotomy between adoption and Safe Families Act timelines and recovery timelines; making drug testing meaningful; utilizing a harm reduction approach to meet families' needs when the neglect ends and the use continues; and undoing racial and ethnic disparities. The following guidance is based on the experiences and practices being implemented by some of these courts.

"This work is important because we have to look at the underlying issues, and addiction is a chronic illness. The courts must continue to evolve and provide holistic support to address mental, behavioral, and physical health."
Judge Kim McGinnis

OUD is characterized as the chronic use of opioids (heroin, morphine, codeine, fentanyl, and synthetic opioids such as oxycodone)[3] that causes clinically significant distress or impairment. According to the 2019 National Survey on Drug Use and Health (NSDUH), among young adults aged 18 to 25, 7.5 percent (or 2.5 million people) had a substance use disorder in the past year, and an estimated 10.1 million people 12 years of age and older misused opioids in the past year.[4]

Addressing the Dichotomy Between Adoption and Safe Families Act Timelines and Recovery Timelines

The relatively short time span to determine a child's level of risk and safety, as stipulated by the 1997 Adoption and Safe Families Act (ASFA), poses unique challenges for parents experiencing SUD/OUD.[5] According to ASFA, family reunification services must be provided if the child has been in foster care for 15 of the previous 22 months; however, it takes 14 months or longer for the brain to return to normal after substance use.[6] During those 14 months, relapse is a typical aspect of the recovery journey, and if case plans do not properly anticipate the possibility of a relapse parents could unnecessarily face termination of parental rights. Judicial leaders, child welfare agencies, and the community can work collaboratively to devise concrete strategies to improve case outcomes while supporting parents in recovery.

Judges should work with support staff[7] to:

- Provide multiple referrals to treatment services, including but not limited to Medication Assisted Treatment.
    - ◊ Treatment should be determined by the individual and their physician based on a complete assessment of their needs, including mental health assessments.

"We are not doctors—the doctor and patient can make the decision together."
Judge Kim McGinnis

7. Support staff can include child welfare caseworkers, court coordinators, advocates, peer supports, treatment providers, and other stakeholders.

- Connect families to services and supports that meet the needs of parents and children, while addressing parental stress, behavioral health, and family resilience to build upon and further develop existing strengths and protective factors.
- Conduct pre-hearing conferencing and team meetings. There are better outcomes for children and families when parents are allowed to participate in case planning and are engaged by the judge.
- Address bias on a systemic level so that families aren't treated differently based on gender, race and ethnicity, or socioeconomic status.
- Ask the following questions at the initial hearing:
    - ◊ What was done to keep the family together? Are the parents present? What supports do parents have? What resources are available to treat substance use disorder? Are the available resources culturally and linguistically appropriate?
- Assist parents in attaining timely entry into treatment and supplementary services. Early entry into treatment is correlated with increased time in treatment, an increased likelihood of completing treatment, and an increased likelihood of family reunification.[8]

"Active efforts and reasonable efforts need to be made to ensure that families dealing with SUD/OUD have every opportunity, in spite of timelines, to reunify and retain their rights."
Judge John J. Romero, Jr. (ret.)

Making Drug Testing Meaningful

Drug testing is a critical aspect of holding parents accountable to their own sobriety goals. However, daily drug testing by multiple different agencies could be cumbersome and demoralizing to parents working to reunify with their children. Drug testing should be conducted in such a way that it is meaningful to parents and provides useful information to decision makers and support staff.

Judges should work with community partners and support staff to:

- Share drug testing results across agencies to reduce duplicative and unnecessary testing.
- Integrate drug testing as a part of the treatment plan. Parents should be informed of when and how testing will be performed as a deterrent to using and as an accountability tool.
- Provide training and education on what different types of testing can and cannot tell you about an individual's patterns of use and service needs.
- Pair the drug testing method with the desired goal of the testing.
- Conduct drug testing in a trauma-responsive manner, which includes but is not limited to: being minimally intrusive, conducted in privacy, and conducted at a time that is scheduled and appropriate for the family.
- Ensure families are not holding the burden of paying for drug testing.

"Judges have to consider what does safety look like for a child? Parents can be safe parents while using, with the proper supports."
Judge Kim McGinnis

Utilizing a Harm Reduction Approach to Meet Families' Needs When the Neglect Ends and the Use Continues

While each substance varies in its effects on the brain, for all substances, as use increases the brain is rewired so that the substance no longer produces a euphoric high, but rather, the substance becomes requisite to feel normal.[9] Recall that the brain can take 14 months or more to repair itself and to allow the person to feel normal without the substance. In the interim, parents can provide safe, supportive, and loving homes even if they are continuing to use or have relapsed if they are connected with the appropriate supports and services, including harm reduction services. Harm reduction services can prevent unnecessary death, harm, and illness, and they can provide continuous support to families in their recovery journey. Ultimately, court teams must assess what poses the greatest risk to the child, and remaining in the family may be the most beneficial option for a child.

Judges should:

- Review the petition and the language to ensure that there is no language of drug use. Substance use alone, a positive drug test alone, is not sufficient cause for removal.
- Ask, on the record, what specific safety concerns are preventing the child from returning home today, and what specific steps have been taken to address those safety concerns.
- Ask each family what their definition of success is and what they think of their case plans; and determine if the family is able to meet their own needs independent of system assistance.
- Challenge each challenge. Each hearing should end with possible solutions and action steps.
- Not move the bar for parents. The expectations and commitments expected of parents should not be changed each time they meet a benchmark.
- Understand that ongoing medication-assisted treatment is congruent with full recovery. Using a clinically approved medication to manage a substance use disorder is consistent with SMASHA's four dimensions of recovery: health, home, purpose, and community.[10]
- Provide naloxone and fentanyl testing strips to families recovering from OUD.

"Families need to be allowed to see one another. They need to be able to engage physically during family time."
Judge John J. Romero, Jr. (ret.)

Judges should work with support staff and stakeholders to:

- Provide training to professionals to accept appropriate levels of risk regarding substance use and its impact on the family.
- Provide training and education to ensure non-stigmatizing language is used to describe substance use.
- Consider, when appropriate, not requiring a negative drug test prior to family time.
- Allow families to physically engage during family time.
- Develop safety plans that identify and use harm-reduction approaches. Safety plans can include identifying an alternative caregiver where children can stay in the event of parental substance use or relapse.
    - ◊ Connect families to harm reduction services such as syringe exchanges and safe injection sites.

Undoing Racial and Ethnic Disparities

Nationally, Black and Indigenous children are disproportionately involved in the child welfare system. In some state and local contexts, Latinx and some Asian groups are also over-represented.[11] [12] [13] The impacts of structural racism (policies that have systematically caused higher poverty and lower wealth in communities of color), institutional racism (policies within the child welfare system that disproportionately place children of specific racial groups into specific placement types), racial bias, and discrimination also contribute to the child welfare outcomes experienced by families with substance use disorders.[14] For example, laws that require pregnant people be reported to the child welfare system if they have a positive drug test are not equally applied, Black women are disproportionately tested and reported for substance use in pregnancy.[15] [16] Once in the system, this disproportionately will continue to be seen across decision points.[17] To address racial and ethnic disparities in the child welfare outcomes of families impacted by OUD/SUD, judicial leaders must be aware of the dynamics within their own communities and examine their own biases.

Judges should:

- Work with support staff and community stakeholders to analyze and review court outcome data disaggregated by race.
- Hold conversations with staff, community stakeholders, and directly impacted people to directly address racial disparities and identify steps that can be taken to mitigate disparities using culturally appropriate practices.
- Devise strategies for more comprehensive case planning that include efforts to prevent overdoses, reduce barriers to accessing treatment and recovery, and engage in harm reduction responses for all families equitably.
- Ensure that all aspects of a case plan are culturally responsive, trauma responsive, and gender specific.
- Devise strategies for engagement that remove barriers, such as housing assistance, transportation assistance, and childcare to mitigate the impact of structural barriers to treatment and recovery.
- Reflect on the cultural expectations that they carry and contemplate how those might impact their judicial decision making.

"What are we currently doing wrong [as judicial leaders]? What are all of the things that we are currently doing that make the system completely broken and bad and inefficient? How can we disrupt the pattern to keep the same families from coming into court, one generation after another?"
Judge John J. Romero, Jr. (ret.)

Conclusion

Coordination, communication, and consultation between child welfare, SUD/OUD treatment providers, and other service providers are crucial to assessing safety and family needs, developing comprehensive case plans, and supporting families throughout their child welfare involvement. First, judges should work across systems and with service providers to consider how ASFA timelines can unintentionally harm youth and parents with substance use disorders. Second, judges should review current drug testing policies to ensure that the process is trauma informed and used to support parents, rather than punish them. Third, judges can research and identify harm reduction strategies that can be implemented in their system. Finally, judges have a responsibility to ensure that services and supervision are equitable across all youth and families.

This advanced level of collaboration leads to effective and informed decision making by all stakeholders. Effective partnership allows all entities to gather and share information and adjust services and supports over time. Judicial leadership is needed to ensure that this high level of coordination is provided to each and every family impacted by substance use, regardless of their race, ethnicity, gender, or socio-economic status. Furthermore, judges must get off the bench and into the community. Judges need to know what resources are available and what the needs are in their community to ensure that families are receiving the supports they need to thrive. For every child to thrive, judges must look at every aspect of substance use disorders and lead the conversation on implementing changes.

Special thanks to Judge Trey Anderson, Judge Sheila Calloway, Dr. Tyler Livingston, Judge Katherine Lucero, Judge Kim McGinnis, Magistrate Mary O'Donnell, Judge John J. Romero Jr. (ret.), and Judge Dwayne D. Woodruff

APPENDIX

Definitions:

Harm Reduction – "Harm reduction is a set of practical strategies and ideas aimed at reducing negative consequences associated with drug use. Harm reduction incorporates a spectrum of strategies that includes safer use, managed use, abstinence, meeting people who use drugs "where they are", and addressing conditions of use along with the use itself."[18]

Medication Assisted Treatment (MAT) – The use of medication, in combination with counseling and behavioral therapies, to provide a "whole-patient" approach to the treatment of substance use disorders. Medications used in MAT are clinically proven to help sustain recovery.[19]

Opioid Use Disorder (OUD) – The recurrent use of opioids that causes clinically significant impairment including health problems and a failure to meet major responsibilities at work, school, or home.

Recovery – A highly individualized process of change through which individuals improve their health and wellness.

Four Domains of Recovery:

- Health: overcoming or managing one's disease(s) or symptoms, and making informed, healthy choices that support physical and emotional well-being
- Home: having a stable and safe place to live
- Purpose: conducting meaningful daily activities, such as a job, school volunteerism, family caretaking, or creative endeavors, and the independence, income, and resources to participate in society
- Community: having relationships and social networks that provide support, friendship, love, and hope[20]

Relapse – A return to drug use after an attempt to stop. Relapse can be a normal part of the recovery process and does not mean that treatment has failed.[21]

Substance Use Disorder (SUD) – "The recurrent use of alcohol and/or drugs causes clinically significant impairment, including health problems, disability, and a failure to meet major responsibilities at work, school, or home."[22] SUD is a chronic illness; it can be treated or controlled, but not cured.

Endnotes

1. U.S Department of Health and Human Services. (2021). The AFCARS Report https://www.acf.hhs.gov/cb/report/afcars-report-28.

2. Centers for Disease Control and Prevention. (2021). Drug overdose deaths in the U.S. top 100,000 annually. https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.html.

3. Dydyk, A. M., Jain, N. K., & Gupta, M. (2022). Opioid use disorder. StatPearls.

4. U.S. Department of Health and Human Services. (2021). Opioid crisis statistics. Centers for Disease Control and Prevention. (2021). Drug overdose. https://www.hhs.gov/opioids/about-the-epidemic/opioid-crisis-statistics/index.html#:~:text=In%202019%2C%20an%20estimated%2010.1,and%20745%2C000%20people%20used%20heroin.&text=Appropriate%20prescribing%20of%20opioids%20is,and%20safety%20of%20Medicare%20beneficiaries.

5. Rockhill, A., Green, B. L., & Furrer, C. (2007). Is the Adoption and Safe Families Act influencing child welfare outcomes for families with substance abuse issues? Child Maltreatment, 12(1), 7-19. https://www.ojp.gov/ncjrs/virtual-library/abstracts/adoption-and-safe-families-act-influencing-child-welfare-outcomes.

6. Volkow, N. D., Chang, L., Wang, G., Fowler, J. S., Franceschi, D., Sedler, M., Gatley, S. J., Miller, E., Hitzemann, R., Ding, Y., & Logan, J. (2001). Loss of dopamine transporters in methamphetamine abusers recovers with protracted abstinence. Journal of Neuroscience, 21(23), 9414-9418. https://doi.org/10.1523/JNEUROSCI.21-23-09414.2001.

7. Support staff can include child welfare caseworkers, court coordinators, advocates, peer supports, treatment providers, and other stakeholders.

8. Van Wormer, J., Hsieh, M. (2016). Healing families: Outcomes from a family drug treatment court. Juvenile & Family Court Journal, 67(2), 49-65. https://doi.org/10.1111/jfcj.12057.

9. U.S. Department of Health and Human Services. (2016). The neurobiology of substance use, misuse, and addiction. In Facing addiction in America (pp. 2-1 – 2-31).

10. Substance Abuse and Mental Health Services Administration. (2022). Recovery and recovery support. https://www.samhsa.gov/find-help/recovery.

11. Child Welfare Information Gateway. (2021). Child welfare practice to address racial disproportionality and disparity. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/.

12. Puzzanchera, C., & Taylor, M. (2020). Disproportionality rates for children of color in foster care dashboard. National Center for Juvenile Justice. https://www.ncjj.org/AFCARS/Disproportionality_Dashboard.asp.

13. National Center on Substance Abuse and Child Welfare. (n.d.). Spotlight on disproportionality and disparities among families in child welfare and substance use treatment. https://ncsacw.acf.hhs.gov/topics/disproportionality-and-disparities.aspx.

Endnotes

14. Rhode Island KIDS COUNT. (2020) Child Welfare Fact Sheet: Achieving Race Equity in the Child Welfare System. https://www.rikidscount.org/Portals/0/Uploads/Documents/Fact%20Sheets/7.20%20RE.pdf?ver=2020-07-15-131144-813.

15. Kerker BD, Horwitz SM, Leventhal JM. Patients' characteristics and providers' attitudes: Predictors of screening pregnant women for illicit substance use. Child Abuse Negl. 2004; 28:209.

16. Kunins HV, Bellin E, Chazotte C, Du E, Arnsten JH. The effect of race on provider decisions to test for illicit drug use in the peripartum setting. J Womens Health (Larchmt). 2007 Mar;16(2):245-55. doi: 10.1089/jwh.2006.0070. PMID: 17388741; PMCID: PMC2859171.

17. Rhode Island KIDS COUNT.

18. National Harm Reduction Coalition. (2020). Principles of harm reduction. https://harmreduction.org/about-us/principles-of-harm-reduction/.

19. Substance Abuse and Mental Health Services Administration. (2022). Medication-assisted treatment (MAT). https://www.samhsa.gov/medication-assisted-treatment.

20. Substance Abuse and Mental Health Services Administration. (2022). Recovery and recovery support. https://www.samhsa.gov/find-help/recovery.

21. National Institute on Drug Abuse. (2022). Treatment and Recovery. https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery.

22. Substance Abuse and Mental Health Services Administration. (2022). Mental health and substance use disorders. https://www.samhsa.gov/find-help/disorders.

Developed By:

Lauren Beal
Senior Program Manager
National Council of Juvenile and Family Court Judges

Brittany Hunter
Senior Policy Analyst
National Council of Juvenile and Family Court Judges

Acknowledgements:

This project is supported by Grant No. SJI-19-P-051 awarded by the State Justice Institute (SJI). The State Justice Institute is a non-profit corporation governed by an 11-member board of directors appointed by the President and confirmed by the Senate. The State Justice Institute remains the only source of federal or private funding dedicated exclusively to improving the quality of justice in the state courts. Points of view or opinions are those of the authors, contributors, or presenters and do not necessarily represent the official position or policies of the State Justice Institute.

NCJFCJ est. 1937
NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

SJI
State Justice Institute