



The Growing Role for Courts in Working with At-Risk Families

Courts can have a positive impact on families affected by the opioid crisis, but traditionally that role has been reactive, occurring after a dependency petition is filed. Increasing reports of maltreatment due to substance use disorders in conjunction with more children entering an overburdened foster care system can produce poor outcomes for children and families. Formal systems are taxed with overbooked dockets for courts and heavy caseloads for attorneys and social workers. Children suffer exacerbated trauma from prolonged separations from their families and multiple placements. Historically, child welfare has been involved with families almost exclusively in response to a report of abuse or neglect. Serving the needs of children and families affected by substance use and misuse can be proactive. Preventative, upstream approaches can decrease the negative impacts on children, decrease the load on formalized systems, and help families stay together while they heal.

What Role Can Courts Play in Family Preservation and Before Removal

In working with families at risk for child welfare system involvement, there is a valuable judicial leadership role for the courts within the community. There is also an increasingly recognized role for courts and judges in working with individual at-risk families prior to petition and even prior to child welfare agency involvement.ⁱ Further, as courts are evaluating their old “business as usual” practices in light of the COVID-19 pandemic and taking a critical look at reengineering their roles, practices, and policies, there are opportunities for courts to strengthen their collaborative roles within their communities to help families at risk.

We believe very strongly that judges and attorneys play absolutely critical roles in prevention in and out of the courtroom and that judicial support for robust community-based prevention programs and enhanced attention to reasonable efforts will have a ripple effect across the justice system by helping children and families stay safe and healthy and avoid juvenile justice and child welfare involvement. Prevention is the work of the courts.ⁱⁱ

– Dr. Jerry Milner, Associate Commissioner, Children’s Bureau

A. Judicial Leadership Within the Community

In the community, judges and court leaders can encourage prevention efforts by building support and encouraging the other judges and court partners, including attorneys. Law enforcement, corrections, etc., to adopt a prevention mindset for sufficient treatment resources and programs in their communities.

They can ensure that existing programs and services are evidence based, have the capacity to serve the need, are trauma responsive, and lead to positive outcomes.

B. Courts Working Upstream with Individual Families

Courts are proactively working with families who are facing removal of their children due to abuse and neglect in two primary ways – through **court annexed programs** and through “**pre-petition dockets.**”

However, it should be noted that an increasing number of courts are beginning to treat families holistically, regardless of the case type that first brought them to court. For example, adult drug courts are beginning to offer trauma screenings and services to the entire family, not just the adult defendant and drug court participant.ⁱⁱⁱ Other courts are employing social workers who can help identify families in need of services (e.g., a family involved in a divorce and custody case who needs help accessing mental health treatment services) and work to make those linkages and referrals.

Court Annexed Programs

Court annexed programs have been developed in a growing number of courts to provide pre-petition services and legal alternatives to placing children in foster care. Two such programs have been launched in Arizona and are achieving significant success.

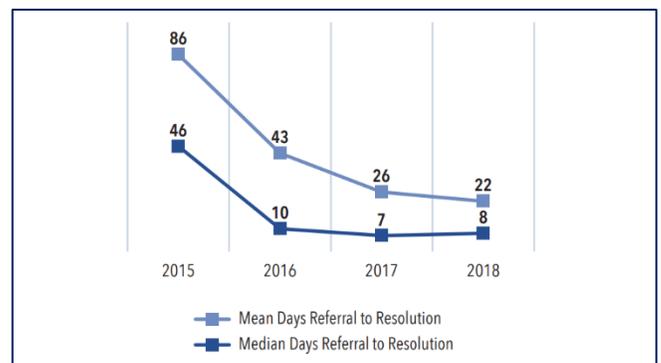
Program Snapshot: Arizona

Pima County’s Dependency Alternatives Program (DAP) began in 2015 and is a voluntary process which avoids the filing of a dependency petition through an agreement to an alternative plan for custody and services. The DAP process takes place in four stages:

- 1) Parents and older children meet with an advisory attorney who explains the process, legal options, and guides them through the rest of the process. The attorneys’ role is advisory only; with no formal attorney-client relationship.
- 2) The family, advisory attorney, court mediator, child welfare agency, and other interested parties participate in a settlement conference.
- 3) If an agreement is reached, the advisory attorney assists in preparing and filing any necessary legal documents.
- 4) A court hearing occurs in which the judge issues any orders necessary to implement the plan. The parties leave the courthouse with the written orders in hand.

The most common DAP resolutions involve a custody change to another parent or a guardian. Data show that the overwhelming majority of DAP referrals achieve the primary goals of avoiding the filing of a dependency petition and keeping the family from returning to the child welfare system for at least one year.

Dependency Alternative Program: Days from Referral to DAP Resolution^{iv}



Maricopa County’s Dependency Processing Staffings (DPS) began in 2019. The program began with a focus on children coming out of the probation/delinquency system. This program explores alternatives to dependency when parents were unwilling or unable to take custody. Following a site visit to Pima County’s DAP program by a Maricopa team, the Juvenile Court designed a pre-dependency petition process to fit its own resources and needs. Maricopa has hired a DPS coordinator to expand the program’s scope and capacity. In DPS, court mediators lead a staffing with parents, children, court staff, community partners, and others to develop a Family Action Plan. This plan includes actions and services to provide safety and permanency for the children in an effort to avoid the filing of a dependency petition.

Based on the successful experience with DAP in Pima County, and the start-up of DPS in Maricopa County, Arizona Supreme Court Chief Justice Robert Brutinel made expanding court-based dependency alternatives statewide a cornerstone of his strategic plan and budget request for the judicial branch in 2021.

Pre-Petition Dockets

For the past ten years, there have been a growing number of pre-petition family dependency treatment dockets. The goals of these dockets are generally the same: to achieve safe and permanent families for children, help parents recover from alcohol and substance use disorders through increased judicial accountability, a collaborative multidisciplinary team approach, and greater access to comprehensive, family-centered treatment services. However the features of these pre-petition dockets, such as entry criteria, voluntary or mandated by the child welfare agency, whether or not parents and children have access to legal representation, the referral source(s), and the role of the judicial officer varies across these relatively new programs.

It should be noted that there have been concerns raised by some about this pre-petition docket approach. Due process concerns, particularly around the lack of legal representation for parents and children, concerns about lack of judicial immunity if there is no court petition and statutory court jurisdiction, and general concerns raised that this is outside of the court's role and function. There is also a concern that this could even possibly be widening the net of families involved in the child welfare system. However, these pre-petition programs have been engaged in program evaluations and are showing promising outcomes.

Program Snapshot: Jefferson County, Alabama's Pre-Petition Family Wellness Court Track

In 2014, the [Jefferson County Family Wellness Court](#) (JCFWC) created a second track for parents with a mild or moderate substance use diagnosis. The pre-petition track spans 6-9 months compared to the traditional 18-month Family Wellness Court program. Due to the decreased severity of substance use among participants there is no requirement of dependency and a court case may or may not be open. Many of the parents retain custody of their child throughout the program duration. Issues of child safety and parental protective capacity are determined by child welfare and monitored throughout the program. Parents meet weekly for an outpatient substance use treatment group and informal interaction with team members (i.e. case manager, peer recovery support specialist, child welfare case manager, judge) during Phase I. During Phase 2, parents decrease to biweekly check-ins for the remainder of their participation. During FY2019, the program served 54 parents in Track 2. Of those exiting the program during the same year, 40% successfully completed the program.

Program Snapshot: Sacramento Early Intervention Family Drug Court

What is believed to be the country's first pre-petition family treatment court program began in Sacramento in 2010. Sacramento's Early Intervention Family Drug Court (EIFDC) was established as a collaboration between the Sacramento County's Department of Health and Human Services and Behavioral Health Services. It was created to protect the welfare of children while giving parents the opportunity and resources to access substance abuse treatment services. EIFDC is different from family treatment court in that it is a voluntary pre-petition court.^v

Participating parents and caregivers receive intensive case management, supervision by a hearing officer, parenting classes, intensive outpatient substance abuse treatment, drug testing, cognitive behavioral strategies, and mental health counseling for adults and children. Initially, EIFDC targeted mothers who had used substances during pregnancy or who had a newborn test positive for substances at the time of delivery. The program has now expanded to include fathers of infants who have been exposed to substances.

EIFDC was one of 53 Regional Partnership Grant sites awarded by the Children's Bureau, and its outcomes have been extensively tracked and analyzed through a quasi-experimental research design.^{vi} Outcomes have been positive, and the collaborative partners are dedicated to ensuring EIFDC's long-term viability and success. Key outcomes included EIFDC parents stayed in treatment longer than comparison parents when compared to families receiving services as usual (131.6 versus 102.7 days) and more EIFDC children remained at home after cases closed (92.1% versus 69.5%).

Program Snapshot: Tennessee's Safe Baby Courts

Tennessee is the first state to put a statewide emphasis on prevention cases (pre-removal) in its Safe Baby Courts. Since 2016, Tennessee Safe Baby Courts, like other problem-solving courts, have addressed the root causes of justice system involvement through specialized dockets, multidisciplinary teams, and a non-adversarial approach. Problem solving courts offer evidence-based, trauma-informed treatment, judicial supervision, and accountability.

They also provide individualized interventions for participants which can reduce recidivism and promote confidence and satisfaction with the justice system process. A unique tenet of Safe Baby Courts is the focus on community involvement in reestablishing familial supports for infants and toddlers. This approach ensures the most efficient use of court and community resources and promotes effective solutions to achieve long-term stability for families.

Cases in Tennessee Safe Baby Courts are treated as regular dependency and neglect cases but with a specialized approach to service delivery based in neuroscience research. This research supports that the most crucial developmental period is the first three years of a child's life. The first 1,000 days of life (0-36 months) constitute a critical window during which a child faces both the greatest risk of "hard wiring" for life-long adversity and the greatest opportunity to ensure long-term well-being. The Safe Baby Courts target families with children who are at a heightened risk for developmental, physical, and mental health issues. Increased vulnerability in these areas is associated with the intersection between the critical period of brain development at this young age and the trauma related to maltreatment. Services are identified by the team and tailored specifically to address the identified risk and needs of infants, toddlers, and families. The Safe Baby Courts include wraparound services not only for the infant or toddler, but also for siblings, parents, and caregivers. The Safe Baby Courts' aim is to expedite permanency and reduce repeat maltreatment as compared to traditional dependency proceedings.

Research tells us that children do best when they are at home with their families. Safe Baby Courts work to address children's relationships with their families through a focus on mental health, attachment and bonding, and creating healthy families. The family voice is an integral part of the approach of the Safe Baby Courts. Safe Baby Courts promote listening to the family and meeting them where they are. This holistic and unique approach promotes better outcomes for communities, parents, and most importantly, children.

As of August of 2020, Tennessee Safe Baby Courts have presided over 183 cases, serving 335 children. Ninety-five of those cases were non-custodial cases where the child welfare agency did not have custody of the child(ren).^{vii} There are currently twelve Safe Baby Courts operating across Tennessee.^{viii}

All of these innovative approaches seek to provide intervention to families that is proactive, meeting them upstream in an effort to preserve permanency within the family. They each take slightly different approach to their programming, but all recognize the importance of judicial leadership, evidence-based programming, collaborative teamwork, community engagement, and individualized responses to the specific needs of children and families. The data collection and evaluation of these programs helps determine the essential elements that help child welfare and courts partner together to decrease formal system involvement and strengthen families.

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ⁱ The Court's Role in Reshaping the Child Welfare System to Focus on Prevention. National Judicial Opioid Task Force (2019).
https://www.ncsc.org/data/assets/pdf_file/0030/18678/child-welfare-focus-on-prevention-final.pdf

ⁱⁱ *Id.*

ⁱⁱⁱ The Miami-Dade adult drug court is an example of this approach.

^{iv} Hon. Kathleen Quigley and Stacey Brady. Pima County's Dependency Alternative Program: Preserving Families and Promoting Access to Justice. Trends in State Courts. National Center for State Courts (2019).
<https://cdm16501.contentdm.oclc.org/digital/collection/ctadmin/id/2273/rec/1>

^v Regional Partnership Grant (RPG) Program: Final Synthesis and Report. National Center for Substance Use and Child Welfare (2013).
https://ncsacw.samhsa.gov/files/Final_SSR.pdf

^{vi} Early Intervention Family Drug Courts Website. National Center on Substance Abuse and Child Welfare.
<https://ncsacw.samhsa.gov/technical/rpg-i.aspx?id=80>

^{vii} Data from the Tennessee Administrative Office of the Courts.

^{viii} Tennessee Safe Baby Courts: Locations.
<https://tnsafebabycourts.org/locations/>

