



National Judicial Opioid Task Force

The Court's Role in Reshaping the Child Welfare System to Focus on Prevention

There is a need to reshape Child Welfare in the United States to focus on strengthening families to prevent child maltreatment. Currently, child welfare is a reactive system that works almost exclusively with families in response to a report of abuse or neglect. We are seeing increasing reports of maltreatment and increasing numbers of children entering foster care but doing very little to prevent maltreatment and the need for foster care. This is leading to increased trauma to children and families as a result of family separation, increasing dockets for courts, increasing caseloads for attorneys and social workers, and typically poor outcomes.

While foster care will always be necessary for some children, that need can be reduced. A better solution would be to offer families support to help them care for their children in safe and healthy ways so that there is less maltreatment and less need for court intervention and foster care. When faced with a crisis like the current opioid epidemic, effects of child welfare system reactivity are seen more clearly. Outlined below are ways the judiciary can help support this new vision of strengthening families, taken from a National Judicial Opioid Task Force webinar featuring Jerry Milner and David Kelly from the Children's Bureau (CB) of the Administration for Children and Families, a division of the U.S. Department of Health and Human Services.

The Vision of Strengthening Families

To implement the vision of strengthening families and move beyond the current paradigm of reactivity, five key priorities have been identified by the CB. The **first priority** is to focus on preventing child abuse and neglect from happening in the first place. A prevention focus needs to have the funding, flexibility, policies, program, and commitment to support families upstream in the communities where they live. The **second priority** involves striking a balance between preventing child abuse and neglect and taking care of abused and neglected children through the more formal child welfare system. Currently, the role of primary prevention is small compared to attention given to foster care, and the legal

community can play a crucial role in encouraging parent and child interaction. The **third priority** focuses on the overall well-being of a child and not just physical safety. Although the foster care system has done a good job of protecting kids, it does not adequately address essential aspects like psychological, social, and emotional well-being. The **fourth priority** involves primary prevention happening at the community level. Serious efforts of prevention will have resources located in families' communities. The **final priority** involves having a healthy and resilient child welfare workforce. This workforce includes court personnel, parents, and agencies that collectively impact children's lives.

The Role of the Judiciary

In prevention, there is the role of the judge within the community, and within the courtroom. In the community, judges can encourage primary prevention in the community by building support and encouraging other judges and attorneys to adopt a prevention mindset. Judges can support and give credibility to child welfare agencies and partners when prevention is the right path to take to help provide support to children and families.

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.

— Jerry Milner

The strategies that occur in the courtroom require that tools held in the judicial community be used more consistently to be as effective as statutorily intended. These tools include reasonable efforts to prevent removal and reasonable efforts to finalize permanency goals. CFSR and court data reveals that reasonable efforts to remove is not being treated with the seriousness the statute requires. There is also fear that reasonable efforts to finalize permanency goals is also not treated as seriously as it should be. Where necessary to remove a child, removal should be an option of last resort, with an urgency to get the child back home or somewhere appropriate. Both of these tools have been used as a means of compliance instead of seriously questioning removal and looking at evidence or creative ways of keeping families together safely. Judges play absolutely critical roles in preventing unnecessary removals of children from their parents and preventing additional or compounding trauma as a result of unnecessarily long stays in foster care. Judges also play a critical role in ensuring the child welfare agency is attentive to the social, emotional and psychological needs of children while in care.

Family First Prevention Services Act (FFPSA) A Tool to Promote Prevention

The Family First Prevention Services Act includes a number of provisions that are important for judges to be aware of and one new requirement for a judicial determination. The provision that is receiving the most attention will make federal Title IV-E funds available for certain evidence-based prevention services to be provided to parents of children who are at imminent risk of entering foster care.

There is no question that legal representation and judicial decision-making are directly linked to child welfare outcomes. Agencies and courts must jointly own the outcomes the larger child welfare system is achieving and commit to improving them. Agencies, courts, and attorneys must ensure that only those children who truly must enter foster care are placed, that kin are always looked to for placement first, that children are only in care for as long as it is absolutely necessary, and that maximum attention is given to the well-being needs of children and parents at all times.

– David Kelly

In order for states to access federal funds to provide these evidence-based services, the state must elect to develop a prevention plan under the Act. States that elect to develop a prevention plan will have the ability to begin receiving federal funding to support the services included in an approved plan in the fall of 2019. The types of prevention services that can be funded include mental health, substance use disorder treatment, and in-home parenting services that are listed in an evidence-based clearinghouse CB has been instructed to create. It is important for judges to know if their state or territory has an approved prevention plan, and if so, what services are included in that plan. Provision of such services could be evidence of a state agency's efforts to make reasonable efforts to prevent removal of a child from the home.

The second major provision includes limits on the use of federal Title IV-E dollars for congregate care. Under the Act, before a child goes into congregate care, child welfare must conduct an assessment looking at the child's needs. The court must also do an assessment and review of agency documentation to approve or disapprove the congregate care setting prior to placement. Also, as long as a child is in congregate care, at every subsequent case review or permanency hearing, the court assessment and approval will need to be repeated.

The Opportunity and Need for Judicial Leadership

In adopting a prevention mindset, understanding the role of courts in preventing unnecessary removal of children from their homes and preventing compounding trauma while children are in foster care, and being aware of new requirements of FFPSA, judges can have a tremendous impact on the lives of children and families and help promote child and family well-being and self-sufficiency. This will help promote better outcomes for children and families and enhance judicial economy.

Webinar Recording

The NJOTF
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webinar with
Jerry Milner and
David Kelly from the
Children's Bureau is
available at:



<https://player.vimeo.com/video/313243190>.

