

## Drug Treatment Courts: Evolution, Evaluation, and Future Directions

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# DRUG TREATMENT COURTS: EVOLUTION, EVALUATION, AND FUTURE DIRECTIONS<sup>1</sup>

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## INTRODUCTION

Throughout U.S. history, “the family” has held a revered place of stability and importance: it provides the foundation for American values; it lies at the core of religious, educational, and community institutions; it is the standard by which we measure and sustain cultural and political change. In the last few years, however, there have been developments—gun violence, escalating juvenile crime, plummeting literacy and skill levels—which have forced us to question that very stability. Substance abuse has been consistently identified as inextricably linked to all these problems, with profound implications for the health and well-being of American families.<sup>2</sup>

In particular, there is recognition that in early to middle adolescence, many young people begin to use illegal drugs and alcohol.<sup>3</sup> For many different reasons, their families are unable to prevent or stop these early problems.<sup>4</sup> Indeed, in many cases, these problems characterize entire families. As one source points out, “Many justice system practitioners now recognize that, insofar as substance abuse problems are at issue, the ‘juvenile,’ ‘family’ and ‘criminal’ dockets

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1. This Article is based in part on Jeffrey A. Kuhn, *A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium*, 32 FAM. L.Q. 77 (1998).

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2. See generally OFFICE OF JUSTICE PROGRAMS, OFFICE OF NAT’L DRUG CONTROL POLICY, NAT’L DRUG CONTROL STRATEGY: PERFORMANCE MEASURES OF EFFECTIVENESS: IMPLEMENTATIONS AND FINDINGS 19 (1999) (discussing drug use, including drug use among youths, and the consequences it has on the drug user’s family, the economic losses resulting from reduced job productivity or lost earnings, and costs to society such as crime and violence) [hereinafter OFFICE OF JUSTICE PROGRAMS, NAT’L DRUG CONTROL STRATEGY].

3. See *id.* at 14-15.

4. See *How to Effectively Engage the Family* (last modified Oct. 6, 1999) <<http://www.drugcourt.org/pubs/highjuv.htm>>.

are increasingly handling the same type of situations, and often the same litigants.”<sup>5</sup>

The justice system has made major efforts in the past ten years to address the complicated, multigenerational, family, and personal aspects of substance abuse and addiction. This Article will examine several of the recent court models at the forefront of this attempt.

As the nation moved from the 1980s—with its explosion of cocaine use<sup>6</sup>—to the 1990s, two major national trends emerged within the justice system: the “war on drugs” and the use of intermediate sanctions.<sup>7</sup> In fact, it was the drug war that led directly to the interest in intermediate sanctions at the state and local levels.<sup>8</sup> Sanctions, less restrictive than incarceration but more restrictive than probation, have been viewed as an effective response to the increased volume of drug-related cases flooding the justice system.<sup>9</sup>

While there was nothing inherently new about intermediate sanctions,<sup>10</sup> judges, prosecutors, probation officers, and defense attorneys increasingly expressed frustration during the 1980s at the ineffectiveness of a “punish and control” approach with alcohol and other drug (AOD) offenders.<sup>11</sup> They supported, and often led, the demand for a range of sanctioning options that would provide for AOD abuse treatment as a component of a sentence or sanction, and would enable them to respond to relapse without sending the offender to jail or prison.<sup>12</sup>

There is, however, an inherent tension between the goals of the criminal justice system and those of treatment providers. As two researchers note, the criminal justice system’s focus on public safety requires supervision and surveillance; the treatment system, by contrast, is designed to influence or modify clients’ behavior in the least restric-

5. OFFICE OF JUSTICE PROGRAMS DRUG COURT CLEARINGHOUSE AND TECHNICAL ASSISTANCE PROJECT, AMER. UNIV., JUVENILE AND FAMILY DRUG COURTS: AN OVERVIEW 1 (1998) [hereinafter OFFICE OF JUSTICE PROGRAMS, JUVENILE AND FAMILY DRUG COURTS].

6. See OFFICE OF JUSTICE PROGRAMS, NAT’L DRUG CONTROL STRATEGY, *supra* note 2, at 3, 5.

7. See ROBERT B. AUKERMAN & PEGGY MCGARRY, U.S. DEP’T OF HEALTH AND HUMAN SERVICES, COMBINING SUBSTANCE ABUSE TREATMENT WITH INTERMEDIATE SANCTIONS FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM 1 (1994).

8. See *id.*

9. See *id.*

10. See *id.* at 3. Work release centers, halfway houses, intensive supervision, supervised furloughs, community services, and community treatment programs have been used for decades by community corrections agencies. See *id.*

11. See *id.* at 5.

12. See *id.*

tive manner possible, consistent with treatment needs.<sup>13</sup> The treatment system:

[D]epends on engaging the client psychologically and developing a therapeutic alliance between the treatment provider and the client. The criminal justice system's interaction with the offender is bifurcated: On the one hand, this individual must be watched as a potential threat to others; on the other, he or she is a human being in need of help. The criminal justice system, by making treatment part of the offender's sentence, makes treatment part of sanctioning his or her prior behavior. To the treatment system, treatment is not punishment, but exists to serve the best interests of the client. These differences in responsibility and intent can obscure and impede the abilities of the two systems to work together toward common goals.<sup>14</sup>

With the advent of drug court programs,<sup>15</sup> however, there was an attempt to reconcile, perhaps even to merge, these goals.<sup>16</sup> While there are many styles and forms of drug court programs, most appear to include several essential elements:

(1) intervention is immediate; (2) the adjudication process is nonadversarial in nature; (3) the judge takes a hands-on approach to the defendant's treatment program; (4) the treatment programs contain clearly defined rules and structures goals for the participants; and (5) the concept of the drug

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13. See AUKERMAN & MCGARRY, *supra* note 7, at 37.

14. *Id.*

15. The first drug court program was established in Miami, Florida in 1989 by an administrative order from the then-Chief Judge Gerald Weatherington of Florida's eleventh judicial circuit. See Peter Finn and Andrea K. Newlyn, *Dade County Diverts Drug Defendants to Court-Run Rehabilitation Program*, PROGRAM FOCUS (U.S. Dep't of Justice National Institute of Justice, Washington, D.C.), June 1993, at 3. Then Associate Chief Judge Herbert Klein explains that the reason for the court's establishment was that an approach guided by incarceration and probation serves to perpetuate the problem. See DRUG STRATEGIES, DRUG COURTS: A REVOLUTION IN CRIMINAL JUSTICE 8 (1999) [hereinafter DRUG STRATEGIES: DRUG COURTS].

16. See generally, CRIMINAL JUSTICE SECTION, A.B.A., RESPONDING TO THE PROBLEM OF DRUG ABUSE: STRATEGIES FOR THE CRIMINAL JUSTICE SYSTEM (1992); KEVIN B. SHERIN & BARRY MAHONEY, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, TREATMENT DRUG COURTS: INTEGRATING SUBSTANCE ABUSE TREATMENT WITH LEGAL CASE PROCESSING (1996); Ricardo S. Martin, *Drug Courts: An Innovative Approach to Drug-related Crime*, WASHINGTON STATE BAR NEWS, (Washington State Bar Ass'n., Seattle, Wash.), Nov. 1997, at 26-27; OFFICE OF JUSTICE PROGRAMS, NAT'L DRUG CONTROL STRATEGY, *supra* note 2, at 64.

court "team"—judge, prosecutor, defense counsel, treatment provider and corrections personnel—is important.<sup>17</sup>

In a seminal article on the drug court movement, The Honorable Peggy Fulton Hora, the Honorable William G. Schma, and John T.A. Rosenthal examine the genesis of this reform effort based on the "understanding that substance abuse is a chronic, progressive, relapsing disorder *that can be successfully treated*."<sup>18</sup> Their conclusion is that drug courts have successfully integrated the methodologies of the drug treatment community in a judicial setting.<sup>19</sup> What is more, with the growing popularity of these models, the judicial and legal communities have developed specialized drug courts—courts that treat special populations within the treatment-oriented context of drug court programs. In the following sections, we will look at implementation and evaluation issues relating to the various types of drug courts. The second half of this Article will be devoted to examining these issues from a very different perspective—the civil justice system and unified family courts—and to the argument that the future of drug courts lies in extending and strengthening the drug court treatment approach to non-criminal jurisdiction.

## I. THE IMPLEMENTATION OF DRUG COURTS

### A. *The Role of the Judge*

Judicial supervision lies at the core of any drug court program. The drug court model incorporates a more proactive role for the judge than had hitherto been the case in criminal court, positing a judge who, in addition to presiding over the legal and procedural issues of the case, acts as a reinforcer (and often catalyst) of positive client behavior.<sup>20</sup> While the team approach is often touted as an integral part of drug court programs, the judge remains the central figure in this process, with his/her direct involvement in the treatment and supervision of the defendant.<sup>21</sup> In fact, many observers and judges themselves have ascribed the success of drug courts to the commit-

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17. Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 453 (1999).

18. *Id.* at 463 (quoting SHERIN & MAHONEY, *supra* note 16, at 1).

19. *See id.* at 536.

20. *See* U.S. GEN. ACCOUNTING OFFICE, DRUG COURTS: INFORMATION ON A NEW APPROACH TO ADDRESS DRUG-RELATED CRIME 15 (1995).

21. *See id.* at 14-15.

ment of the drug court judge and his/her relationship with the defendants.<sup>22</sup>

The depth of the drug court judge's involvement with the defendant and the process cannot be underestimated. He/she becomes, in effect, a primary authority figure in a defendant's life. In the first ever analysis of the role of the drug court judge, Dr. Sally Satel analyzes courtroom environments of fifteen drug courts.<sup>23</sup> Dr. Satel explains, "The drug court model creates a very healthy and transparent system of authority. The actions of the judge depend directly on the patient's own performance; it's all observable: the urine screens, the attendance, how the patient relates to staff and other patients."<sup>24</sup>

In one reported survey, Satel finds that "eighty percent of participants indicated they would not have remained if they did not appear before a judge as part of the process."<sup>25</sup> Another study shows reductions of over fifty percent in dropout rate, dropout recidivism, and graduate recidivism rates after a Stillwater, Oklahoma court changed from a district attorney-run treatment program to a drug court format, with a single judge dedicated to drug court cases and the imposition of intermediate sanctions.<sup>26</sup>

It is interesting that, although there are many different varieties of drug court programs, drug court judges do tend to see their roles similarly. An informal questionnaire given to twelve judges of the National Association of Drug Court Professionals found the following listed as the six most important characteristics, in descending frequency, of a drug court judge: the ability to be empathic or to show genuine concern; knowledge about drug addiction and pharmacology; team leadership; acceptance of an unconventional role; consistency in applying sanctions; and knowledge of the addict, community, and street life in your jurisdiction.<sup>27</sup> Dr. Satel, on the other hand, found in informal interviews that no judge mentioned knowledge of addiction or pharmacology as a particularly important attribute.<sup>28</sup>

In short, both the drug court judges themselves and the drug court participants view the judge's role as inextricably linked to the

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22. See Hora et al., *supra* note 17, at 453, 476.

23. See Sally L. Satel, *Observational Study of Courtroom Dynamics in Selected Drug Courts*, 1 NAT'L DRUG COURT INST. REV. 43-72 (Summer, 1998).

24. *Id.* at 47.

25. *Id.* (quoting CAROLINE S. COOPER, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, DRUG COURT SURVEY REPORT 68 (1997)).

26. See *id.* at 49.

27. See *id.* at 51.

28. See *id.* at 51-52.

imposition of sanctions. Drug courts depend on the relationship between the judge and the participant to create accountability for the offender's day-to-day behavior.<sup>29</sup>

The judge's role in the different versions of drug courts—whether it is juvenile drug courts,<sup>30</sup> family drug courts,<sup>31</sup> or DUI treatment courts<sup>32</sup>—remains the same. In juvenile drug courts, for example, the judge oversees not only the child's performance and progress but also works with the family and community resources to support the child.<sup>33</sup> As the Drug Court Clearinghouse and Technical Assistance Project discusses,

Like adult drug courts, sanctions must be structured to promote each juvenile's ability to take responsibility for his/her actions. Positive rewards and incentives for compliance with program conditions are as important as negative sanctions for program noncompliance. . . . [J]uvenile drug courts commonly impose sentences of detention that can be stayed pending participation in the drug court but can still be maintained for leverage with a non-compliant drug court participant.<sup>34</sup>

A key issue for juvenile drug court judges in particular is how to constructively respond to noncompliance by parents of juvenile drug court participants. Even if incarceration or other sanctions are within the power of the court to impose on non-complying parents, the dilemma remains whether such action will be beneficial or detrimental

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29. In an American University 1997 Drug Court Survey Report, 82% of respondents said that "the possibility of sanctions (being) imposed if you didn't comply with the program" was "very important;" 75% responded that it was "very important" that "a judge monitors my progress." See Satel, *supra* note 23, at 57.

30. Juvenile drug courts aim to end alcohol and other drug use and reduce delinquent activity among juvenile offenders. See OFFICE OF JUSTICE PROGRAMS, JUVENILE AND FAMILY DRUG COURTS, *supra* note 5, at 5.

31. Family drug courts are designed to help abused and neglected children by addressing parental substance abuse. These courts handle cases (1) involving parental rights in which an adult is the respondent; (2) which come before the court through a civil or criminal process; and (3) which arise out of the substance abuse of the parent. Such cases may deal with custody and visitation disputes, abuse, neglect and dependency matters, petitions to terminate parental rights, guardianship proceedings, or other laws, restrictions, or limitations of parental rights. See *id.* at 3.

32. See DRUG STRATEGIES: DRUG COURTS, *supra* note 15, at 33; see also JEFF TAUBER & C. WEST HUDDLESTON, NAT'L DRUG COURT INST., DUI/DRUG COURTS: DEFINING A NATIONAL STRATEGY 4-9 (1999).

33. See OFFICE OF JUSTICE PROGRAMS, JUVENILE AND FAMILY DRUG COURTS, *supra* note 5, at 9.

34. *Id.* at 11.

to the relationships between the parent and the child or the court and the child.

A number of juvenile drug court programs do require parents to participate in special parent groups that provide both support and parenting skills; failure to comply can, in some states, result in loss of visitation rights or custody of their children.<sup>35</sup> The underlying belief supporting such sanctions is that juvenile and family drug courts should provide immediate and continuous intervention<sup>36</sup> that includes requiring both the child and the family to participate in treatment, submit to frequent drug testing, appear at regular and frequent court status hearings, and comply with other court conditions geared to accountability and rehabilitation.

### *B. Structural and Procedural Aspects of Drug Courts*

Given the characterization of substance abuse as a chronic, relapsing condition,<sup>37</sup> drug court programs—notably family and juvenile drug courts—must grapple with questions such as defining the target population (i.e., eligibility requirements), time spent in treatment, and sanctions for relapse.<sup>38</sup>

Driven by both resource limitations and public policy concerns, drug court planners have concentrated on reaching that population of drug offenders which has the best chance for recovery and represents the least risk to public safety.<sup>39</sup> Within that definition, however, eligibility criteria vary considerably from jurisdiction to jurisdiction. Some of the more specialized drug court programs, such as juvenile drug courts and family drug courts, are narrowly drawn to allow only a specific class of participants. As Judge Hora explains,

By contrast, the Portland, Oregon Sanctions-Treatment-Opportunity-Progress (S.T.O.P.) program allows defendants charged with drug possession to enter the program if they

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35. DRUG STRATEGIES: DRUG COURTS, *supra* note 15, at 32.

36. *See generally* OFFICE OF JUSTICE PROGRAMS, JUVENILE AND FAMILY DRUG COURTS, *supra* note 5, at 11.

37. *See, e.g.*, NATIONAL INST. ON DRUG ABUSE, NAT'L INST. OF HEALTH, PRINCIPLES OF DRUG ADDICTION TREATMENT, A RESEARCH-BASED GUIDE (1999) [hereinafter NATIONAL INST. ON DRUG ABUSE, PRINCIPLES OF DRUG ADDICTION TREATMENT]; Alan Leshner, *Science-Based Views of Drug Addiction and Its Treatment*, 282 JAMA 1314 (1999); COLLEGE ON PROBLEMS OF DRUG DEPENDENCE, STATEMENT ON NATIONAL DRUG POLICY 3 (1997).

38. *See generally* OFFICE OF JUSTICE PROGRAMS, JUVENILE AND FAMILY DRUG COURTS, *supra* note 5, at 11. These are three of the components of the program's design discussed in the overview.

39. *See generally* JOHN S. GOLDKAMP, U.S. DEP'T OF JUSTICE, JUSTICE AND TREATMENT INNOVATIONS: THE DRUG COURT MOVEMENT, A WORKING PAPER OF THE FIRST NATIONAL DRUG COURT CONFERENCE 17 (1994).

have no other felony or Class A misdemeanor cases pending or charged, have no warrants from other jurisdictions, have not been charged with 'driving under the influence' in the same charging instrument, and have not participated in, or are presently participating in a S.T.O.P. program. The criteria are deliberately vague because they are designed to allow a broad spectrum of people with drug problems and with criminal justice problems to enter into supervised drug treatment.<sup>40</sup>

Family drug courts—tailored to new laws that require speeding up permanency decisions for abused or neglected children—rather narrowly target neglect cases that meet selection criteria.<sup>41</sup>

Whether narrowly or broadly drawn, however, eligibility for drug court programs is dependent on the nature of a potential participant's involvement with illegal drugs coupled with the perceived risk that a participant would pose to public safety. The chronic, relapsing nature of substance abuse makes the latter particularly important, with every decision about eligibility necessarily taking into account the offender's history of drug use as well as a host of related questions, such as family and employment history. The vast majority of drug courts send offenders for treatment that lasts for at least one year.<sup>42</sup> Drug courts rely on incentives and/or sanctions to maintain an individual's participation in a treatment program, while recognizing that relapse is a part of the treatment process.<sup>43</sup> These courts issue criteria which allow a judge to continue the treatment phase during and after relapse, despite the possibility that this can extend the length of time an individual remains in treatment, ultimately resulting in overcrowding of treatment facilities. The demands on resources of long-term treatment can, in fact, be overwhelming. In family drug courts, in particular, the need for services is extensive and expensive. Moreover, the implementation of these programs—including planning, monitoring, and court review—is labor intensive.

The bottom line, at least according to most treatment professionals, is that different types of alcohol and other drug abusers require different durations and intensities of treatment. Treatment should be determined by the client's category of abuse rather than by offender

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40. Hora et al., *supra* note 17, at 508.

41. The Escambia County Family Drug Court (Pensacola, Florida), by contrast, is a quasi-criminal docket established to run a drug court in tandem with family court processing and accepts substance abusing parents in most abuse and neglect cases. *See generally id.* at 500-01.

42. *See id.* at 508.

43. *See id.* at 508-09.

type.<sup>44</sup> This expectation may lead to new compromises in both the treatment community and drug court programs. While most drug courts use outpatient or residential counseling and regular drug testing as their preferred mode of treatment, many treatment providers have had to develop new ways to get the longer-term or more intensive treatment needed by many drug abusers. This is noticeably the case with family drug courts which are limited by state funding eligibility rules, but which must add components such as parenting and job skills training to their treatment programs.

Because, in the last analysis, the judge is the critical decision-maker in the drug court context, the person must be knowledgeable about the different types and durations of treatment. Without this expertise, there remains the strong possibility that offenders not only will receive too little treatment, but also the opposite—an offender who is a casual user of illegal drugs may be ordered to a long-term residential program because the court wants to place the offender in a structured environment away from the street. In this case, an offender-client will become frustrated and may fail to complete the sanction—and thus be classified as an even more serious offender by the criminal justice system.

Yet sanctions remain the cornerstone of drug court programs, inextricably connected to offenders' motivation and commitment to treatment, as well as their accountability for their behavior in the treatment program.<sup>45</sup> A major part of the drug court judge's role is to communicate and demonstrate that behaviors have consequences and that he/she believes that the drug court participant can change his/her behavior as a result.<sup>46</sup>

As a result, many drug court judges develop courts and procedures designed to have a particular psychological impact. For example, a judge can order cases in a particular way so that he/she deals with those in custody first.<sup>47</sup>

By dealing with those in custody first (often absconders) everyone sees that the judge will indeed set limits and penalize individuals. "Those who are doing well can't afford to get cocky. They have to know that I will give out sanctions when

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44. See AUKERMAN & MCGARRY, *supra* note 7, at 37.

45. See Douglas B. Marlowe & Kimberly C. Kirby, *Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research*, 2 NAT'L DRUG COURT INST. REV., 1, 1-39 (Summer 1999). See also JEFF TAUBER & C. WEST HUDDLESTON, NATIONAL DRUG COURT INST., DEVELOPMENT AND IMPLEMENTATION OF DRUG COURT SYSTEMS, 1 (1999) [hereinafter TAUBER & HUDDLESTON, DEVELOPMENT AND IMPLEMENTATION OF DRUG COURT SYSTEMS].

46. See Satel, *supra* note 23, at 65.

47. See *id.* at 66.

they are called for," said one judge. Clearly, the judge who rarely sanctions, violates participant expectations and thereby erodes trust in the relationship and in the drug court mission overall. Calling sanctions cases first enhances the aversiveness – the shaming quality – of sanctions. A stable audience is present and the message that "bad behavior results in bad consequences" is reiterated to all.<sup>48</sup>

Family drug courts diverge somewhat from this model. Although they have the right theoretically to charge clients who fail to comply with court orders with contempt, and to impose sanctions which can include arrest and incarceration, at least two of them—Manhattan and Suffolk County—do not regularly use these mechanisms.<sup>49</sup> On the other hand, the Pensacola family drug court will impose a sentence or begin criminal prosecution if a client repeatedly fails during a treatment program.<sup>50</sup>

The inherent tension between, on the one hand, the criminal justice system's use of the power of the State to coerce and, on the other hand, the treatment community's emphasis on individual empowerment through recovery and rehabilitation is evident in varying degrees throughout the drug court movement.<sup>51</sup> By coercing treatment, we are imposing our judgment of what is in the best interests of a substance abusing individual onto that individual, regardless of his/her own judgment. While it is difficult to dispute that treatment and recovery are "better" than addiction, there are many intermediate and inevitable stages of the recovery process<sup>52</sup>—denials, resistance, re-

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48. *Id.*

49. The blueprint for family drug courts is similarly based on the presence of sanctions. See TAUBER & HUDDLESTON, DEVELOPMENT AND IMPLEMENTATION OF DRUG COURT SYSTEMS, *supra* note 45, at 16-17; DRUG STRATEGIES, DRUG COURTS, *supra* note 15, at 32-33. The first Family treatment program opened in Reno, Nevada in 1994. *Id.* at 32.

50. Family drug court judges are empowered to impose drug treatment as a requirement of reunification in juvenile dependency cases where a parent or parents have a substance abuse problem. See TAUBER & HUDDLESTON, DEVELOPMENT AND IMPLEMENTATION OF DRUG COURT SYSTEMS, *supra* note 45, at 16. San Diego County implemented a Dependency Drug Court in which participants enter into treatment for substance abuse, with sanction for non-compliance. See *id.* In Kansas City, Missouri, the family drug court can bring child endangerment charges against a mother if she has been convicted two or three times for illegal drug use while she was pregnant. See DRUG STRATEGIES: DRUG COURTS, *supra* note 15, at 32-33. The arrest warrant is suspended if the mother agrees to follow a treatment program. See *id.* at 33.

51. See generally Hora et al., *supra* note 17, at 526-27 (discussing the question of whether coerced treatment works); SALLY L. SATEL, DRUG TREATMENT: THE CASE FOR COERCION 31-33 (1999).

52. See TERENCE T. GORSKI & JOHN M. KELLY, U.S. DEP'T OF HEALTH & HUMAN SERVICES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN., COUNSELOR'S MANUAL FOR RELAPSE PREVENTION WITH CHEMICALLY DEPENDENT CRIMINAL OFFENDERS 5-9 (1996); see also

lapse—which may have deleterious consequences to the participant's progress.<sup>53</sup> In the next section, we examine the unified family court as an alternative treatment model, one that delivers social services in a more comprehensive and preventative way.<sup>54</sup>

## II. UNIFIED FAMILY COURTS: A SOCIAL SERVICES DELIVERY SYSTEM FOR SUBSTANCE ABUSE

Family courts, plagued by the panoply of moral and spiritual problems reflected in the majority of families who find themselves in these courts, have stretched their resources and staff to their limits addressing just the immediate issues before them—abuse and neglect, family dissolution, family violence, and juvenile delinquency. While substance abuse is often recognized by juvenile and family court judges as a primary factor in a great many of these cases, there have been few resources available to meet the need for drug treatment by those involved in family courts.<sup>55</sup>

With the growing popularity of the unified family court model,<sup>56</sup> however, there has been renewed interest in the potential for judicial intervention into a family's problems with substance abuse. At best, this intervention can occur during a child's early exposure to substance abuse, when steps can be taken to provide treatment for the primary caretaker and thus prevent (or, at least, delay) addiction from affecting a child's home life.<sup>57</sup>

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NATIONAL INST. ON DRUG ABUSE, PRINCIPLES OF DRUG ADDICTION TREATMENT, *supra* note 37, at 14-15; SHERIN & MAHONEY, TREATMENT DRUG COURTS, *supra* note 16, at 8-9; VICKIE KROPENSKA ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVICES, PROTECTING CHILDREN IN SUBSTANCE-ABUSING FAMILIES 9 (1994).

53. See GORSKI & KELLY, *supra* note 52 at 7-9; JOIN TOGETHER POLICY PANEL ON TREATMENT AND RECOVERY, TREATMENT FOR ADDICTION: ADVANCING THE COMMON GOOD 2-3 (1998); MARK A.R. KLEIMAN, AGAINST EXCESS: DRUG POLICY FOR RESULTS 31-35 (1992).

54. See generally Barbara A. Babb, *Where We Stand: An Analysis of America's Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts*, 32 FAM. L.Q. 32-33 (1998).

55. The conclusions drawn by a Baltimore Family Court Review Committee illustrates the broad scope and considerable depth of the problems in the family court system today. Noting the fragmented jurisdiction over family issues in Maryland, the report concludes that not enough attention is given by the courts to child-related issues, which are being allowed to fester as part of other aspects of a family law dispute. Equally disturbing, the report indicates that, in some instances, judges sitting on family law cases display either a lack of interest, lack of temperament, or a lack of understanding with respect to these cases. See *id.* at 48.

56. See Catherine J. Ross, *The Failure of Fragmentation: The Promise of a System of Unified Family Courts*, 32 FAM. L.Q. 3, 13 (1998).

57. See June R. Wyman, *Multifaceted Prevention Programs Reach At-Risk Children Through Their Families*, 12 NIDA NOTES, 1, 5-7 (May/June 1997). See generally CENTER FOR SUBSTANCE ABUSE PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVICES, KEEPING CHILDREN DRUG

The unified family court system can establish a powerful mechanism for detecting and treating early substance abuse, both among parents and children. In sharp contrast to the various types of drug courts, parental or juvenile substance abuse often surfaces in family courts well before it becomes a criminal problem.<sup>58</sup> By exerting leadership to assure that effective substance abuse programs are developed and sustained, unified family court judges offer tremendous potential for reforming the justice system to address and remedy substance abuse as a public health problem.

### A. *Unified Family Courts: An Overview*

To suggest there is a standard, "stock-in-trade" definition of a unified family court would be unfair to the many states and court jurisdictions that have struggled with and ultimately developed a unified family court system over the last four decades.<sup>59</sup> No unified family court mirrors another. Each of these systems may have a slightly different base of subject matter jurisdiction,<sup>60</sup> a different array of services

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FREE: USING FAMILY-CENTERED APPROACHES: A PARENT & COMMUNITY GUIDE (1999). The National Institute on Drug Abuse funded a study which found that a three-part intervention combining parent training, children's skill training and family skills training resulted in significant reduction of the use of tobacco, drugs, and alcohol by children. In another NIDA study, a program for methadone treatment patients resulted in less marijuana use by children of those patients and lower rates of alcohol initiation by children nine years and older. In addition to providing treatment for parents of at-risk youth, there are a number of programs which intervene early in an at-risk child's or adolescent's life in order to prevent later substance abuse. See Laura Burney Nissen, Promising Systemic and Programmatic Approaches for Working with Substance-Abusing Juvenile Offenders, Paper presented at the Juvenile Justice and Substance Abuse National Planning Meeting, (Nov. 3-6, 1998); DAVID HUIZINGA, ET AL., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, URBAN DELINQUENCY AND SUBSTANCE ABUSE: INITIAL FINDINGS 22-24 (1995).

For a discussion of the various risk factors involved in a child's life, which make it more of less likely that he/she will engage in substance abuse, see PRAKASH L. GROVER, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN., PREVENTING SUBSTANCE ABUSE AMONG CHILDREN AND ADOLESCENTS: FAMILY-CENTERED APPROACHES § 2-3, § 2-23 (1998).

58. "The problem of substance abuse is so pervasive among court referred juveniles and adults, and so closely associated with dysfunctional families who come before courts . . ." *Drugs—The American Family in Crisis: A Judicial Response 43 Recommendations*, 46 JUV. & FAM. CT. J. 51 (1995) [hereinafter *Drugs—The American Family in Crisis*]. For example in recent years substance abuse by parents has come to be seen as a major cause of child abuse and neglect; in addition, many instances of family violence occur in families where parents have a history of substance abuse. See GROVER, *supra* note 57, at § 1-21, § 1-22; KROPENSKA, *supra* note 52, at 8-9, 49-53.

59. The first modern unified family court was created in 1962 in the state of Rhode Island. Many states and court jurisdictions have followed since then. See Frank Sullivan, Jr., *Unified Family Court Structure Recommended*, 42 DEC RES GESTAE 28, 28 (1998).

60. See generally Babb, *supra* note 54, at 46-49 (discussing subject matter jurisdiction and case assignment procedures in unified family courts).

available through the court, a different case management system, or a different method for staffing the court with judges and service providers. What *is* common among each of these courts is the mission, however said, to resolve family disputes and problems that are brought to its attention fairly, in a timely manner, and in accordance with the rule of law. In resolving these family disputes and problems, the unified family court has the additional responsibility to seek to strengthen families by fashioning dispositions and providing services that focus on the dynamic family unit. All unified family courts work to empower family members with the tools to enable them to become responsible and productive members of their communities.

In striving to accomplish this mission, existing unified family courts have relied on four critical components: (1) comprehensive jurisdiction; (2) efficient case management and processing practices; (3) careful selection and training for all court personnel; and (4) a comprehensive services component.<sup>61</sup> Accordingly, a brief discussion of each of these component parts of the unified family court will help focus on this innovative court system as an effective means to deliver substance abuse treatment and prevention services for all family members.

### 1. *Comprehensive Jurisdiction*

The American Bar Association has recognized the necessity of a broad base of jurisdiction for unified family courts as follows:

[j]uvenile law violations; case(s) of abuse and neglect; cases involving the need for emergency medical treatment; voluntary and involuntary termination of parental rights proceedings; appointment of legal guardians for juveniles; intra-family criminal offenses [including all forms of domestic violence]; proceedings in regard to divorce, separation, annulment, alimony, custody, visitation, and support of juveniles; proceedings to establish paternity and to enforce [child] support. . . .<sup>62</sup>

Other unified family courts have included adult civil commitments, adult guardianships, elder abuse, and minors' estates within their jurisdictions.<sup>63</sup>

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61. See Ross, *supra* note 56, at 15.

62. *Id.* (quoting INSTITUTE OF JUDICIAL ADMINISTRATION/AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS RELATING TO COURT ORGANIZATION, Standard 1.1 Part 1, 5 (1980)).

63. Family courts in the states of Hawaii and New Jersey include these jurisdictions in their courts. See Babb, *supra* note 54, at 38-39.

Broad jurisdiction promises a coordinated, integrated approach to multiple legal matters that arise within the same dynamic family. By structuring a court in which all the legal problems of one family are addressed within one system, the potential for the continuity of service provision is increased. Moreover, the incidence of conflicting orders issuing between different courts and the number of court appearances necessitated by family members may be decreased.<sup>64</sup>

## 2. *Efficient Case Management and Processing Practices*

Many unified family courts aspire to linking all matters involving parties with a significant domestic relationship to one family court judge. Those parties might include nuclear family, unmarried cohabitants, stepchildren and parents, foster children and parents, guardians and custodians, or parties with a significant sexual relationship who are not cohabiting and their children.<sup>65</sup> While the prospect of accepting the “dynamic” family for case management purposes may seem foreboding, there is less need for a precise, stable definition of a family than might first appear because the purpose of the definition is based in case management function.

Aside from family relationships, unified family courts that conform to the “one family-one judge” principle abide by several other principles to be successful. Those include: (1) the factual and legal issues of the cases should be similar; (2) cases should be at similar stages of development or they can be conveniently calendared; (3) case familiarity will assist and not bias the family court judge; and (4) considerable potential for conflicting orders exist unless all matters are assigned to one judge.

In larger unified family court jurisdictions, the implementation of a one family to one team case management approach has proven effective. These case management teams are typically composed of professional court staff with backgrounds in court administration and management, family and juvenile law, family counseling, assessment and screening function, and crisis intervention expertise. Team members cross-train so that they might fill in for one another, as needed. The teams are responsible for not only managing family court cases, but for providing services and assuring family members receive appropriate outside services when needed. These persons are skilled not

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64. See NEW JERSEY ADMIN. OFFICE OF THE COURTS, NEW JERSEY JUDICIARY: SUPERIOR COURT CASELOAD REFERENCE GUIDE: 1994-1998, 115 (1998) (citing data that indicates a four-year downturn in time to termination of family court cases and a decrease in family court backlog based on consolidated jurisdiction).

65. See Kuhn, *supra* note 1, at 77.

only in substantive areas of the family court, but are skilled in understanding people so that social and personal problems are identified early in the process of court involvement and appropriate diversion or treatment interventions are made.<sup>66</sup>

### 3. *Careful Selection and Training for All Court Personnel*

Children and family matters that come to the unified family court are the most difficult, emotional, and volatile of all the courts' business. Because of the ever-increasing complexities of the law that addresses family protection and relationships, as well as the imprecise nature of decision-making that must be applied to those relationships, the unified family court is a breeding ground for high stress, frustration, feelings of helplessness, and burnout among judges and court staff. Judges must be legal experts, collegial yet firm, conversant in social work, psychology, child development, group dynamics, mediation, taxation, science, and mathematics.<sup>67</sup> They must therefore have the character, desire, experience and expertise to serve in this court. Judicial training for the unified family court occurs frequently beginning with intensive orientation training and training in additional areas such as child development, bonding and attachment, psychological report reading, interviewing techniques, and, of course, substance abuse dynamics including treatment and prevention modalities.

Where much of the emphasis in drug court programs goes to the judge's compassion as an authority figure, in unified family courts, judges do not necessarily deal directly with an individual's substance abuse problem. Instead, it is frequently the social service team and case managers who bear responsibility to identify and deal with substance abuse.

Consequently, there is substantial emphasis on training of professional staff as well as judges. As stated in the National Council on Juvenile and Family Court Judges report:

Judicial personnel need to understand both the demand and supply sides of substance abuse issues in the United States and how those forces affect youth, the family unit, and the community. Court systems need to develop sufficient knowledge to identify and assess the presence of chemical substances in the lives of referred juveniles and adults and to

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66. See Kuhn, *supra* note 1, at 77-78 (discussing team-based case management in the unified family court).

67. See Michael A. Town of the Hawaii Family Court, Address at the Chicago Bar Association (Mar. 11, 1994).

determine when treatment and rehabilitation should be recognized . . . as part of the treatment plan.<sup>68</sup>

#### 4. *Comprehensive Services Component*

Unfettered entry into the unified family court for all families in crisis is a cornerstone of this justice system. This entry is characterized by the availability of pre-adjudication services such as crisis counseling, emergency shelter, substance abuse treatment, prevention and educational services, assessment, evaluation, and intake services either directly through the court or via direct referral to a contract or agency service provider.<sup>69</sup> It includes as well a litany of services to assist families with the more formal court process including *pro se* assistance, mediation services, psychological evaluation, substance abuse testing, and treatment services.<sup>70</sup> In effect, the unified family court is often referred to as a "single portal of entry for services"<sup>71</sup> or a "one-stop shopping center" for social services.<sup>72</sup>

#### B. *Rationale of the Unified Family Court as a Focal Point for Substance Abuse Treatment and Prevention Services*

Unified family courts are in a unique position to involve the entire family in the process of substance abuse assessment, treatment and prevention based on a series of value determinations that are embraced by these courts. These value determinations bear some similarity to the critical components discussion previously. However, they shed more focused light on the effective use of a broad base of court jurisdiction and service provision as a particularly effective combination in addressing the problems associated with substance abuse in families.

For instance, the development of a court of coordinated, broad-based jurisdiction provides the court system with the opportunity to address substance abuse issues within the context of all legal matters relating to families. Where juvenile or family drug courts limit their jurisdiction to juvenile justice and child dependency adjudication, the

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68. *Drugs—The American Family in Crisis*, *supra* note 58, at 51.

69. See Kuhn, *supra* note 1, at 78; see also Judith S. Kay & Jonathan Lippman, *New York State Unified Court System: Family Justice Program*, 36 FAM. AND CONCILIATION CTS. REV. 144, 158 (1998).

70. See *American Bar Association Policy on Unified Family Courts*, 32 FAM. L.Q. 1, 1 (1994).

71. See *id.*

72. This terminology is used frequently by unified family court advocates to describe a family court as a triage organization in which all of a family's legal and emotional problems can be addressed in one, central location. *Id.* at 87.

unified family court is in the position to identify substance abuse problems within families where divorce, custody, visitation, or domestic violence matters are pending. Risk factors such as communication difficulties between parents, children witnessing domestic violence, and parental or sibling use of substances may not come to light in courts where jurisdiction is limited exclusively to children.<sup>73</sup> In this manner, prevention services such as specific educational services, parent skills training and therapeutic counseling can be utilized on a pre-adjudication level in order to facilitate the earliest possible interventions.

Other key values of the unified family court that promote a family-centered approach to substance abuse treatment and prevention include: developing judicial leadership;<sup>74</sup> the practice of therapeutic and preventative justice;<sup>75</sup> the building of strong linkages with system stakeholders; increased opportunities to engage in alternative dispute resolution practices;<sup>76</sup> and the utilization of the team-based case management concept. Each of these concepts requires discussion in more detail.

### 1. *Developing Judicial Leadership*

The National Council of Juvenile and Family Court Judges recommends that family court judges should engage themselves in two levels of planning to promote the development of comprehensive, community based programs to address substance abuse issues:

- Immediate provision for prevention and intervention programs and resources.
- Development of long-term, multigenerational strategies to reduce substance use and abuse within society as a whole.<sup>77</sup>

Judges of the family court are in a unique position to provide the vision and inspire the system reform necessary to develop these programs, resources, and strategies. While they are not expected to be managers of the treatment and prevention services that are available through the unified family court,<sup>78</sup> they are expected to assume a

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73. Unified family courts, based on comprehensive intake and assessment activities, are better positioned to discover these matters.

74. See Ross, *supra* note 56, at 13-14.

75. See Michael A. Town, *Court as Convener and Provider of Therapeutic Justice*, 67 REVISTA JURIDICA DE LA UNIVERSIDAD DE PUERTO RICO 671, 671 (1998).

76. See *American Bar Association Policy on Unified Family Courts*, 32 FAM. L.Q. 1, 1 (1994).

77. See *Drugs—The American Family in Crisis*, *supra* note 58, at 42-43.

78. Unified Family Court service management is assumed through a case management team, family court coordinator, or administrator.

leadership role to create the impetus for these efforts.<sup>79</sup> Their efforts are particularly important based on community perceptions and expectations with respect to the traditional role of authority for which courts are generally responsible. That authority can be used to strengthen the system and lead reform efforts when reform is called for.

## 2. *Therapeutic and Preventative Justice*

Therapeutic justice is that concept of justice "that heals a family by addressing the personal and social problems that result in family law cases."<sup>80</sup> It relies on compassionate human contact to change the personalities of the members of the family in crisis.<sup>81</sup> It does not merely promote a change of behavior through the threat of penal or other sanctions. It may be said that primary therapeutic activity of the unified family court is to orchestrate the connection of compassionate people with those who need the benefit of a compassionate response to their human situation.<sup>82</sup> Implicit in this concept of therapeutic justice is the understanding that people do, from time to time, fail.<sup>83</sup> More so, in experiencing failure, people often reject opportunities to address their failure.<sup>84</sup> The unified family court recognizes the individual dignity of all persons and does not settle for simply forcing change in a family member's behavior by threatening with the power of the judicial system.<sup>85</sup> Instead, this system invites its users, time after time, to walk through the doorways that offer situations in which they might learn to make better choices about the quality of their lives.

Despite the terminology, therapeutic justice is not a "feel-good" concept without specific definition. It can be defined by a set of specific practices and performance measures that directly relate to the

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79. See NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, METROPOLITAN COURT JUDGES COMMITTEE REPORT, DEPRIVED CHILDREN: A JUDICIAL RESPONSE 73 RECOMMENDATIONS, at Recommendation 1 (1987).

80. Stephen J. Cribari, *Unified Family Courts: Therapeutic Power and Judicial Authority*, 1 UNIFIED FAMILY CHRONICLE 7 (Spring, 1999).

81. See *id.* at 7.

82. The term "therapeutic justice" was first coined by then Senior Family Court Judge Michael A. Town of Hawaii's family court in a paper delivered to the Chicago Bar Association in March, 1994. The term has its origins in "therapeutic jurisprudence," first used by Professor David Wexler at the University of Arizona and later by Professor Barbara Babb at University of Baltimore School of Law during the mid-1990s. See generally David B. Wexler, *Putting the Mental Health in to Mental Health Law*, 16 LAW AND HUM. BEH. 1, 27 (1992); see Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 75 (1997).

83. See Cribari, *supra* note 80, at 7.

84. See *id.*

85. See *id.*

vision for a unified family court. It is a particularly useful concept in the context of providing substance abuse treatment and prevention services for families. Consider the following objective performance criteria:

- *Assures prompt resolution of issues, including legal questions and the delivery of services to families in need.* Recognizing that family members who are abusing substances or are at risk to do so requires the earliest possible interventions, the unified family court works to remove barriers such as information-sharing between agencies and the ability to deliver pre-adjudication services. Protocols for sharing of confidential information that will be used to assist in developing and delivering treatment interventions are frequently created between the court and service delivery organizations. De-emphasis on adversarial solutions and re-emphasis on providing immediate assistance to family members without the need for formal court intervention are tantamount to the practice of therapeutic justice within the unified family court.
- *Assists and protects those at risk and endeavors to prevent future harms.* Identification of at-risk characteristics as a portion of early assessment and intervention practices within the unified family court allows the system to identify appropriate service interventions and assure that family members will receive those services on a timely basis in the most secure setting possible. Frequently, that setting may be within the client's community so the network of service availability exists beyond initial short-term intervention.
- *Practices the least dramatic intervention necessary, assuring a full complement of options for alternative dispute resolution.* Important to the practice of therapeutic justice is the recognition that the authority to intervene in the life of a family in crisis is an awesome responsibility. While that authority can be a powerful tool in coercing participation in service programs, it should be used to help empower families by providing them tools that will build on the quality of their lives, generally. Therefore, providing options to family members that do not require full adversarial involvement in the family justice system should be a value to be embraced by the unified family court that practices therapeutic justice.
- *Controls costs and stresses for its clients.* Effective treatment and prevention services for substance abusing families are dependent on financial support. Courts that assess fees for these services, even on a sliding scale based on client income, should be careful not to exclude these services from families in need based on inability to pay. Unified family courts that pursue the practice of therapeutic justice recognize as part of their mission, equal treatment of all clients/

litigants. Use of fee schedules that create barriers to the delivery of substance abuse treatment and prevention services remains questionable constitutionally. Fee schedules rarely make good court management sense based on costs incurred for collection of fees and the possibility that collected fees may not accrue back to the program, itself.

Therapeutic justice practice also recognizes that families involved with the justice system, faced with the prospect of dramatic life changes, are often at their emotional limits. To this end, the unified family court works to minimize the additional stresses a public agency can so easily and frequently create for families by stressing civility and courtesy among its workers and eliminating barriers to service delivery.

### 3. *Building Strong Links with Stakeholders*

The roles that stakeholders occupy in a unified family court are to a great extent determined according to the services they provide to clients of the system. Because the structure and operations philosophy of this court rely heavily on its ability to deliver appropriate services to family members as quickly and efficiently as possible, substance abuse treatment providers are important stakeholders in the process of building a family-centered approach to substance abuse issues in the system. Important to this process is the ability to build a network of service providers who are in the community and available to family members beyond initial intervention.

Judicial leadership within the unified family court typically reaches out to the community of service providers to invite their participation in the formation of policies, practices and procedures for the court system that will define or effect their respective roles.<sup>86</sup> In this manner, those providers who represent potential barriers to fulfilling the mission and the vision for the unified family court have an opportunity to develop strategies for working collaboratively.

Development of these strategies typically results in a cooperative and productive relationship that not only ensures treatment and prevention resources beyond initial family interventions, but also results in the development of information-sharing agreements so the building of "glass walls" that are based on traditional notions of confidentiality are minimized.

Unified family courts recognize the community as a valuable stakeholder in the effort to establish family-centered treatment and

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86. See generally Hora et al., *supra* note 17, at 476-77 (discussing the role of the judge in drug treatment courts).

prevention efforts. Community involvement maximizes potential for successful treatment interventions and for continuing prevention efforts. As with direct service providers, effective judicial leadership understands the need to engage in "participatory planning" in order to provide the community with a continuing opportunity to voice concerns and priorities and to help understand its potential as a valuable provider of substance abuse treatment and prevention services.<sup>87</sup> Community-based, volunteer service programs have provided valuable mentoring, supervision, early childhood prevention education, and transportation services for court-referred family members with substance abuse issues.<sup>88</sup>

#### 4. *Increased Opportunities to Engage in ADR Practices*

Alternative dispute resolution practice has expanded in dramatic proportions in recent years. Virtually all unified family courts either mandate or strongly urge some level of participation in the mediation process by family court litigants. The philosophy of pursuing the least adversarial alternative as a means to resolve family disputes has had a positive effect on the ability of the unified family court to provide effective substance abuse treatment and prevention service to families. ADR has facilitated earlier treatment interventions by encouraging diversion away from formal litigation, as well as providing an opportunity to "front-load" the court system with services. While traditional courts of juvenile and family jurisdiction may have in the past required formal adjudication before services could be provided to families in need, the emphasis on ADR has promoted the delivery of needed services at the pre-adjudication level of court involvement. Moreover, because the court maintains authority over the delivery of these substance abuse treatment and prevention services, it has slowly become an information provider and resource expert for family members that require these services.

While emphasis within the family court framework on ADR facilitates earlier interventions, it does however, present the court with an additional challenge. Unlike drug court programs, unified family court judges and service providers must practice interventions without

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87. See Margo Lindsay, Participatory Planning, Address to the Multnomah County, Oregon Courts (Apr. 1998) (on file with the author).

88. The New Jersey Family Court boasts a compliment of 4,000 community volunteers who provide a variety of services to the families in the system. Substance abuse treatment and prevention services have included transportation, community supervision of treatment-ordered persons and conducting of local prevention education programs at child-care facilities and public schools.

many of the sanctions available to drug court judges. According to the National Council of Juvenile and Family Court Judges, “[family] courts must be prepared to exercise contempt powers to ensure that court-ordered participation in treatment programs actually occurs.”<sup>89</sup> This rationale is consistent with the responsibility of the court to society, generally for the “exercise of inherent and statutory authority to issue and enforce orders to protect, treat and rehabilitate.”<sup>90</sup>

Development of an effective ADR component that includes substance abuse prevention and treatment services has required unified family courts to work closely with a variety of treatment providers in the community. Frequently, treatment approaches and philosophies have differed dramatically between the court and service organizations. A variety of efforts have been utilized successfully in order to bring the court and the treatment community together for the ultimate benefit of families in need. Among those efforts have been:

- Conducting regular meetings between family court judges, case processing teams, and service providers to discuss common issues and problems and to build trust in the process;
- Development of standardized procedures for assessment and referral where such procedures do not exist in order to stabilize the process;
- Providing service providers with written materials, guides, or manuals concerning court operations;
- Commitment on the part of the court and the service providers to work together to develop an appropriate intake and screening mechanism to assess families for substance abuse issues;
- Assessment and modification of the court management information system to support delivery of substance abuse treatment and prevention services;
- Establishment of an advisory committee composed of judges, court professionals, and appropriate service agencies for the purpose of providing oversight to substance abuse treatment and prevention service programs;
- Conducting training and orientation activities on the dynamics of substance abuse and treatment and prevention modalities for the judges and staff of the unified family court; and

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89. *Drugs—The American Family in Crisis*, *supra* note 58, at 42-43.

90. *Id.*

- Conduct in partnership educational activities within the community to create interest and support for the substance abuse treatment and prevention component of the court.<sup>91</sup>

These cooperative efforts have tended to engender confidence in the quality and usefulness of the substance abuse programs and have proven beneficial by the process of including all relevant stakeholders in the program development process.

#### 5. *Utilization of Team-Based Case Management*

The one team to one family case management approach in the unified family court has created an opportunity for increased effectiveness of substance abuse treatment and prevention services programs. This approach involves the concept of self-directed work teams of professional court staff to manage all cases connected to the same family. Private sector experience has demonstrated that companies effectively organized in teams have improved quality of services, reduced operating costs, responded faster to technological advances, and increased staff commitment to the organization.<sup>92</sup>

Unified family court teams are typically composed of professional court staff with backgrounds as previously described. The team receives initial case management and processing education as well as education concerning the dynamics of adult education and cross training. Team members work together closely to become competent in a variety of functions so that they might fill in for one another, as necessary.

The responsibility of the team is to aggressively manage each family court case by providing intake, screening, assessment, calendar coordination, and case monitoring services to the parties and to the family court judges. Judges, as well, are assigned to individual teams to assist with calendar coordination and case monitoring. When successful, this approach means that the family court team coordinates all matters related to the same family unit, which is familiar with the case history of the entire family.

There are several proven advantages to the one team to one family case management function. Team members work together to improve their operations, handle day-to-day problems, and plan and

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91. See Kuhn, *supra* note 1, at 74-75. The majority of these activities occurred in the family court in the state of New Jersey, although many of the same or similar efforts have been undertaken within family court systems in Hawaii, Santa Clara County, California, Nevada, Baltimore, and Atlanta.

92. See generally, STEVE BUCKHOLZ & THOMAS ROTH, CREATING THE HIGH PERFORMANCE TEAM (1987).

control their work. Parties to family court proceedings receive the benefit of case coordination and familiarity with family dynamics to aid in their decision making without limiting their ability to try cases continuously without interruption.

The team-based case management system also creates at least three separate advantages to providing substance abuse treatment and prevention services within the framework of a unified family court. Because team members are skilled and trained in providing crisis intervention services for families in need, they are in a position to conduct particularly effective assessment and screening exercises that are more likely to identify family members at risk for substance abuse. Moreover, team members are competent in family skills training, in-home support service provision, and family therapy, thereby providing a mechanism for more immediate service interventions. The case management team is also familiar with the family and their resource needs. This familiarity provides maximum opportunity to align family members with the service intervention that is most appropriate for them, individually, and as a family. Finally, team members are experts on treatment resources and information and are able to make inroads to service providers that might otherwise be unavailable to the public, generally.

#### CONCLUSION

Because unified family courts involve the entire family in justice system intervention, the judges and staff that work within these courts have learned they are the natural environment to act as a vehicle for the effective delivery of substance abuse treatment and prevention services to children and families. The delivery of these services within the court or in partnership with the court results in an effective link between family members and community treatment resources to reduce offender rates of alcohol and drug abusing children, to maximize delivery of therapeutic justice to children and families in court, and to maximize rehabilitative efforts by the treatment community.

The unified family court is a particularly well-suited location for substance abuse treatment and prevention interventions because the involvement of the entire family is crucial to successful interventions. Regardless of how dysfunctional a family may appear, the family remains the primary attachment for most children. Effective parenting and family support are important influences to the substance-abusing child.

Essential elements of a family-centered substance abuse treatment and prevention program, within a unified family court include:

- Initial screening for potential participants by the family court case management team;
- Assessment and evaluation by treatment provider resources as referred by the case management team;
- Scheduling of orientation and status conferences between the family members and the family court judge;
- Preparation of contracts with family members in consultation with the treatment provider;
- Family court tracking of the family members through the treatment and prevention process;
- Case management team preparation and presentation of progress reports to the family court judge; and
- Data gathering and analysis.<sup>93</sup>

It is the responsibility of the family court to monitor the progress of children and family members who participate in the program. To the extent that family members are formally involved with the family court, regular status conferences should occur with a family court judge. Most family courts are prepared to monitor progress for at least three months beyond direct service delivery through periodic, on-site drug testing and progress report interviews with all family members.

Whether or not unified family courts are able to ensure timely delivery of quality substance abuse treatment and prevention services to families, the most important focus of this court is to prevent family involvement in the justice system at any level. By recognizing the key role the system might play in breaking cycles of substance abuse in successive generations through the provision of these services, the unified family court will have fulfilled its mission and its vision.

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93. See Kuhn, *supra* note 1, at 90-91.