JOURNAL

JOURNAL OF THE CENTER FOR FAMILIES, CHILDREN & THE COURTS

VOLUME 5 ❖ 2004

TRENDS & DEVELOPMENTS IN THE JUVENILE COURT

EFFECTIVE MANAGEMENT OF PARENTAL SUBSTANCE ABUSE IN DEPENDENCY CASES
Hon. James R. Milliken & Gina Rippel

JUDICIAL COUNCIL OF CALIFORNIA ❖ ADMINISTRATIVE OFFICE OF THE COURTS

Effective Management of Parental Substance Abuse in Dependency Cases

Hon. James R. Milliken (Ret.)
Superior Court of California, County of San Diego

Gina Rippel, J.D., M.S.W.
San Diego Office of the City Attorney

Child protection petitions present a particular challenge when there is parental drug and alcohol addiction. The vast majority of juvenile dependency cases involve parental substance abuse. This article argues that the majority of dependency cases involving substance-abusing parents are mismanaged to poor results, often leaving children in foster care until the age of majority. It also discusses the developmentally damaging nature of foster care, the very institution we rely on to alleviate child abuse. And, finally, it proposes that well-managed substance abuse treatment is a pragmatic approach to these problems. Effective assessment and enrollment in treatment coupled with accurate reporting of parental compliance allow courts to ensure permanent placement within the

Continued on page 96

The primary goal of the child protection and juvenile dependency system is to make sure that each child is placed in a safe, permanent home as quickly as possible. Children often come into the system because of their parents' drug or alcohol addiction The parents' substance abuse problems must be remedied before children can be reunified with the family. If this goal is not attainable, the court needs to determine that fact early enough in the processing of the case so that the child can actually be adopted while still young enough and psychologically healthy enough to ensure the likelihood of adoption.

Child protection statutes reflect this goal, but parental substance abuse is difficult to treat. A comprehensive management program to assist the court in complying with statutory timelines is essential. Parents must be given a structured approach to overcoming their substance abuse, and courts must be provided specific information about parental compliance with reunification orders. The court can then proceed with timely permanent placement: reunification for children with recovering parents and adoption for children of noncompliant parents.

THE CONNECTION BETWEEN PARENTAL SUBSTANCE ABUSE AND DEPENDENCY

"All children wake up in a world that is not of their own making, but children of alcoholics and other drug-addicted parents wake up in a world that doesn't take care of them."[1] Indisputably child abuse and drug abuse are intertwined: "Children whose parents abuse alcohol and other drugs are nearly three times as likely to be abused, and more than four times as likely to be neglected, than children whose parents are not substance abusers."[2] According to national surveys, 40 to 80 percent of children who come to the attention of the child welfare system live with a substance-abusing parent.[3] To deal with this epidemic, courts must order treatment for all substance-abusing parents.

Parents are entitled to a finite statutory time, usually one year, to remedy their substance abuse problems in order to have their children returned. But courts do not always have accurate information about parental compliance with reunification orders because of ineffective management of these cases,

© 2004 James R. Milliken & Gina Rippel

Continued from page 95

one-year federal- and state-mandated time frames. Well-managed dependency cases improve outcomes by increasing the numbers of children both reunified and adopted. The added costs of providing drug treatment and case management are offset by savings from significantly shortened stays in foster care, which can result in both improved outcomes and more effective allocation of resources. ■

which can lead to prolonged foster-care stays for children while courts and social workers attempt to determine whether parents are progressing in sobriety and complying with court orders.

Effectively dealing with this primary problem means that treatment must be regular and organized, with daily-scheduled outpatient sessions, not weekly, voluntary self-help meetings. This presents a serious challenge under the current juvenile dependency system. According to a 1997 Child Welfare League of America survey of state child welfare agencies, 67 percent of the parents whose children were in the child protection system required substance abuse treatment services, but the agencies were able to provide treatment to only 31 percent of the families who needed it.[4] The survey further revealed that in states where treatment was available, a parent often had to wait a year to receive it.[5] Parents must be able to access treatment immediately if they are to "get clean and sober" and successfully reunify with their children within statutory time limits. Ordering drug treatment is futile if drug treatment services are not available; in such cases, through no fault of their own, parents are effectively forced to disobey the court order because they cannot find treatment. And, because the unavailability of drug treatment services renders the reunification order ineffective and unenforceable, juvenile courts are, in effect, acting as institutional enablers, unwittingly assisting the parent in prolonging his or her addiction. Ultimately, the greatest harm is to the children in these cases, who continue to bounce from foster home to foster home, waiting for their parents to recover so they can go home. The current system prolongs and reinforces parent-child separations and undermines the dignity and authority of the court.

THE IMPACT OF FOSTER CARE ON A CHILD'S PSYCHOLOGICAL DEVELOPMENT

When a child is removed from his or her parent as a result of abuse or neglect, the child welfare system commonly turns to foster care as a temporary measure to ensure the child's safety. But, often, pre-permanency foster care is far from temporary. Despite the federal statutory timelines allowing up to 18 months for reunification,[6] in 2002 the average length of time a child remained in foster care was 32 months.[7]

DISRUPTION OF ATTACHMENT TO PRIMARY CAREGIVER

Reducing the amount of time children remain in foster care is critical, because inevitably children left adrift in the system end up with psychological problems caused by these disruptions. Substantive research confirms the developmental importance of the child's psychological attachment to a primary caregiver, "the deep and enduring connection established between a child and caregiver in the first several years of life."[8] For children, the primary function of attachment is to provide a safe environment that allows them to grow and develop as differentiated individuals.[9] A securely attached child has

a strong sense of trust, which will influence his or her future relationships. The early stage of attachment developed through physical contact between caregiver and infant enables the child to later feel capable of becoming autonomous from his or her primary caregiver.[10] The child can explore the environment with confidence because the attachment provides a "secure base" to which the child can return.[11] Without this base, a child lacks emotional stability and is not capable of taking the necessary risks for further cognitive and emotional development.[12]

If this attachment is broken, the child may face serious consequences throughout his or her development.[13] Disrupted attachment for children tends to manifest in antisocial behaviors; aggression; the inability to experience genuine trust, intimacy, and affection; and a lack of empathy and remorse.[14] This constellation of symptoms is considered a factor in the development of criminal behavior in other settings.[15] Research suggests a direct link between a person's level of empathy and the propensity to commit a crime.[16] Indeed, in 1995, 17 percent of this country's prison population consisted of former foster children.[17] It can be expected that many of those children suffered from problems characterized by a lack of empathy, resulting from foster-care experiences that were either too lengthy or included too many placement changes.

IMPAIRED ABILITY TO BOND OR CONNECT

Children also require stability and continuity in their care and relationships in order to grow and develop.[18] Foster care, however, is often characterized by frequent moves from placement to placement, which further impair the child's ability to attach to a caregiver and develop normally.[19] A child placed in a foster home naturally attempts to attach to the foster parent. But if the child experiences a series of broken attachments caused by moves from one placement to another, the child's attachments become "increasingly shallow and indiscriminate."[20] These children "tend to grow up as persons who lack sustained warmth in their relationships."[21]

When the juvenile dependency system fails to facilitate a child's need to form and maintain secure attachments, the child gradually becomes averse to forming attachments with people because he or she expects that these attachments inevitably will be broken.[22] This has profound implications when the child leaves the foster-care system with an inability to form bonds and care for others, not just for the developing individual but also for society.

CHILD'S DEVELOPMENTAL STAGE AND TIME IN PLACEMENT

To fully comprehend the developmental impact of foster care on abused and neglected children, those involved in making placement decisions must understand that a child's perception of time differs from an adult's.[23]

Children do not measure time by a calendar; they have, as Goldstein et al. have noted, "their own built-in time sense, based on the urgency of their instinctual and emotional needs and on the limits of their cognitive capacities."[24] "The younger the child, the shorter the time interval before a leave-taking will be experienced as a permanent loss accompanied by feelings of helplessness, abandonment, and profound deprivation."[25] An infant is not capable of anticipating the future and so has no way of knowing whether he or she has been abandoned when the caregiver is absent.[26] "Emotionally and intellectually, an infant or toddler cannot stretch her waiting more than a few days without feeling overwhelmed by the absence of her parents."[27] Only after the infant grows and learns that the caregiver will consistently return from brief absences does he or she become capable of anticipating the future and feel secure during short separations. And as children mature into adolescence, they are better able to tolerate separation from their parents because they have developed a greater capacity to retain memories and anticipate the future.[28]

It follows, then, that placement decisions need to reflect the child's sense of time and thereby protect the child's sense of security. This is most critical when the child is younger than 3 years old.[29] It

isn't just federal timelines that dictate how quickly a court needs to determine the child's long-term placement—it is also the need to protect the child's psychological well-being.

AVOIDING OR REDUCING THE USE OF FOSTER CARE

Because pre-permanency foster care may be developmentally damaging to children, it is essential to explore all other alternatives before resorting to the use of foster care. Alternatives include

- thorough searches for relatives and family group conferences to identify appropriate placements within the extended family, and provision of stipends for the child's care during the placement;[30]
- family preservation programs to strengthen placements within extended families; and
- drug treatment programs that focus on the needs of the entire family and include placement of mothers and children together in secure settings.

All these approaches serve to avoid the negative effects of nonrelative foster placements for children by developing placements within extended families. When programs incorporating these approaches exist in the community, they may provide a viable alternative to nonrelative care.

Substance abuse treatment models that focus on treatment of the entire family do exist, but in small numbers. One of the most promising alternatives to foster care for these families is SHIELDS for Families in Los Angeles. SHIELDS has achieved great success in providing comprehensive services to families dealing with substance abuse. The program targets not only the substance-abusing parent but also other family members affected by the abuse, including drug-exposed infants and other siblings. The success of this program is extremely encouraging.[31]

A critical component of other promising programs is that children of the substance-abusing parent live in the treatment facility with their recovering parent; obviously such placement must be consistent with a professional risk assessment for child safety. These models are highly beneficial because they allow the family to remain intact during drug treatment, thus promoting healthy parent-child attachment and avoiding the use of foster care. Parents attend parenting and child development classes to learn the skills they need to raise a healthy child. Additionally, the entire family receives structure and services to mitigate the damage of parental substance abuse.

THE SAN DIEGO COUNTY EXPERIENCE—A CASE STUDY

Although foster care is not a preferred placement option, sometimes it is unavoidable. When it is the only viable alternative, the juvenile courts should take steps to minimize the developmental damage caused by out-of-home placement. The experience of the San Diego County dependency court's Recovery Project may offer guidance.

Applying the proposed reforms, San Diego County has virtually eliminated long delays to permanent placement. The increased use of family group conferences,[32] thorough family investigations, and intensive, court-monitored drug and alcohol treatment has lessened children's exposure to the psychological trauma of nonrelative care and lengthy placement in long-term foster care.

Prior to April 1998, approximately 80 percent of dependency cases in San Diego County involved alcohol or drug abuse by one or both parents.[33] Immediate and effective treatment was not available for parents, so the court extended deadlines for compliance with reunification plans. As a consequence, rather than providing prompt and definitive intervention, the previous system allowed families to drift for unacceptably long periods, discouraging parental rehabilitation and aggravating parent-child separations. San Diego County also was far from compliant with statutory time frames; statistics indicate it took more than 34 months to close 50 percent of the dependency cases.[34] That meant children and adolescents spent years in foster care. More than 50 percent of the children in foster care

had three or more changes in placement, causing them further trauma and psychological problems.[35]

On April 13, 1998, San Diego County's juvenile court implemented the Dependency Court Recovery Project (DCRP).[36] The primary goal of the project was to provide coordinated, comprehensive, and timely drug and alcohol services as a means of facilitating either reunification or permanency planning for families. Central to the project was the concurrent implementation of the Substance Abuse Recovery Management System (SARMS).

SARMS: SUBSTANCE ABUSE RECOVERY MANAGEMENT SYSTEM

SARMS is an extensive case management system operated through the county's contract with an independent nonprofit agency that specializes in drug and alcohol case management. SARMS makes alcohol and drug treatment immediately available to all parents in the dependency system who need these services. The treatment plan, also called the "recovery services plan," is developed by a recovery-specialist caseworker. In each of the dependency departments, a judge is responsible for enforcing the SARMS orders unless and until the parent moves on to dependency drug court. Every two weeks, the judge receives a report indicating compliance with treatment regimens and the results of the last two weeks' drug tests. Every 30 days the court holds hearings to review the parent's progress in treatment.

In the SARMS program parents who relapse or fail to attend treatment as ordered are held in contempt of court for violation of their reunification plans. The first noncompliant event garners a judicial reprimand; subsequent noncompliance may result in a sanction of 24 to 36 hours in custody. These proximally administered, judiciously applied sanctions—consequences for relapse along with positive reinforcement for good behavior in the form of accelerated visitation opportunities with children—substantially increase parental sobriety and the probability of reunification. Those parents who have more than one relapse event are referred to drug court.

DEPENDENCY DRUG COURT

The dependency drug court is designed to help SARMS participants who are having difficulty meeting their substance abuse treatment goals. Reserved for multiple relapses, it provides greater judicial oversight and a supportive group atmosphere in a three-phase program that takes nine months to complete.[37] Participation is voluntary and subject to the drug court judge's approval. Participants must make a commitment to follow their treatment plans and appear at the dependency drug court sessions on a regular basis.

The dependency drug court's higher level of court supervision and peer support encourage substance-abusing parents to cooperate more fully with the program. Parents continue in the treatment program specified by their recovery services plan. Court reports, including drug test reports, are then made weekly. Parents receive praise for compliance and tokens for successive periods of continuous sobriety. As in SARMS, failure to comply with drug court orders results in sanctions. Examples of noncompliant events include a "dirty test," an unexcused absence, or failure to comply with SARMS or treatment program activities. But in fact, drug court participants often appear more frequently than their program requires because drug court offers them significant encouragement from each other, as well as from the drug court judge. A social worker is available at the sessions to answer questions about visitation, housing problems, or other issues regarding their reunification plans. A lawyer also attends to answer any legal questions the parents may have and to represent their legal interests, if necessary.[38]

THE GOOD NEWS FROM SAN DIEGO COUNTY

As of October 2003, after five years of operation, SARMS had 1,253 parents enrolled, and 80 percent of those parents were compliant with their recovery service plans.[39] A recent review of the dependency cases of 2,812 children whose parents participated in the SARMS program during the period between April 1998 and July 31, 2002, revealed that the average

amount of time from the assumption of jurisdiction to a permanent placement plan was 16.2 months; the average time from assumption of jurisdiction to reunification was 8.8 months.[40] This is a significant improvement from the 45.7 months it was taking prior to the implementation of SARMS.[41] These numbers strongly indicate that active court management of the drug and alcohol treatment portion of the reunification plan dramatically shortens pre-permanency foster-care stays.

Improved Child Outcomes

Formal statistics were not kept before the implementation of the Dependency Court Recovery Project, but five years into the project 56 percent of the children studied were reunified with their parents, 24 percent were adopted, and 8 percent were placed in guardianship.[42] The court used foster care as a permanent placement in only 12 percent of the cases during this time.[43] In short, the Dependency Court Recovery Project protected a significant number of children from the psychological damage attributable to prolonged nonrelative foster care. To date, San Diego County has experienced negligible recidivism in the cases where children were reunified with a parent who got clean and sober.[44]

The parents who are able to recover from addiction do so because treatment is available at the outset and alternatives to recovery are removed. When reunification is feasible, it occurs at the earliest possible time; when reunification fails, more children are adopted because permanent placement decisions are made at the earliest possible time. "Reasonable services" are provided in every case; families receive them in a timely manner, and the court has a record of those services. The prognosis for all children in San Diego County's dependency system is improved, and the costs of both long-term and short-term foster care are lowered.

Significant Cost Saving

The Center for Substance Abuse Treatment[45] (CSAT) contracted for a specific retrospective study of 50 dependency cases processed in the San Diego County juvenile court prior to the institution of the Dependency Court Recovery Project.[46] These 50 cases were compared to 50 cases processed in the DCRP using intensive case management.[47] The total cost of foster-care services for the 50 pre-DCRP cases was $2,730,806.[48] The total cost of all such similar services for the 50 DCRP cases was $1,150,384, for a cost saving of $1,580,502.[49] This amounted to a 58 percent reduction in foster-care costs for the managed cases as compared to the county's former method of doing business.

LESSONS LEARNED FROM SAN DIEGO COUNTY

Though federal and state legislatures mandate specific time frames in which courts must determine permanent placement for a child, juvenile courts must strive to further reduce the time children remain in unstable, out-of-home placements. Courts can shorten the period each family is under the court's jurisdiction by intensively managing parents' compliance with their reunification plans, especially those of substance-abusing parents.

The experience in the San Diego County program also showed that, to shorten the time a substance-abusing family is under the court's jurisdiction, the court must ensure

- thorough assessments;
- immediate treatment options;
- clear court orders;
- motivational substance abuse case management;
- a compliance reporting system; and
- sanctions for noncompliance.

THOROUGH ASSESSMENTS

Whenever substance abuse is an issue in a dependency case, the court must order a thorough assessment by a trained recovery specialist to be completed within a strict time frame. This enables recovery specialists to prescribe individualized treatment. If the assessment indicates a substance problem, the parent and recovery specialist develop a treatment plan to be

incorporated in the court-ordered reunification plan. The recovery specialist then makes sure the parent is enrolled in treatment. This has the practical effect of connecting the parent with the treatment program.

ENSURING IMMEDIATE TREATMENT OPTIONS—FINANCING THE PROGRAM

As discussed earlier, immediate availability of high-quality drug and alcohol treatment services is essential to limiting the time children spend in foster care. Lack of treatment has historically been the biggest impediment to parental success. Funding for both treatment and case management could be made available through savings generated by decreased stays in foster care. As a recent report released by the Pew Commission on Children in Foster Care noted,

> Simply put, current federal funding mechanisms for child welfare encourage an over-reliance on foster care at the expense of other services to keep families safely together and to move children swiftly and safely from foster care to permanent families, whether their birth families or a new adoptive family or legal guardian.[50]

In San Diego County, savings in the local share of foster-care expenditures have exceeded the amounts spent on treatment and case management.[51] Those savings convinced the San Diego County Board of Supervisors, beginning in 1998, to authorize an annual expenditure in excess of $2 million for case management of substance-abusing parents with children under juvenile court jurisdiction[52] and another $2 million annually for treatment.[53] This level of funding allowed the court to order more than 1,500 parents per year into the SARMS program.[54]

Consequently, the court could adhere to statutory timelines and shorten average stays in foster care for the children of these parents by more than 50 percent.[55] This resulted in a saving of more than $30,000 annually in Title IV-E[56] money per family from an expenditure of $3,400 per year for case management and treatment for each parent in the program.[57] Average time from detention to permanent placement was under 16 months.[58]

States are required to match federal IV-E dollars for foster care.[59] In California, over 30 percent of the foster-care match is local county general fund money, with the remainder coming from the state. The $4-million-plus in total treatment and case management money spent on SARMS was initially and continues to be from a combination of state and local funding sources controlled by the San Diego County Board of Supervisors, which has been willing to appropriate funds for the project because of the savings in foster-care costs and the improved permanent placement outcomes for children. The population of children in post-permanent-placement foster care—children who have not been reunified or adopted—has dropped in San Diego County from 2,500 in 1997 to fewer than 1,800 in 2003.[60]

Ultimately, large sums of federal foster-care money under Title IV-E can be saved with aggressive front-end loading of treatment services in dependency cases for addicted parents. Definitive placement decisions can be made within the one-year federal and state guidelines.[61] Currently, states that reduce their foster-care expenditures lose the federal match associated with the reduction, "even though keeping children out of foster care can require substantial investments in early intervention, treatment, and support once a child leaves foster care."[62] The Pew Commission on Children in Foster Care has recommended allowing states to "reinvest" those saved federal dollars in other child welfare services if they safely reduce the use of foster care.[63] Our goal should be to convince the U.S. Department of Health and Human Services to accept the commission's recommendation and offer financial incentives to states so that savings generated by shortened stays in foster care brought about by aggressive case management may be used to fund ongoing drug treatment and management. This would create a "win-win" situation where the courts can both improve outcomes for children and families and reduce the overall foster-care population.

CLEAR COURT ORDERS

A clear court order, written in simple, direct language that parents understand, is necessary for the success of this program. It should direct the parent to stay clean and sober and follow the treatment plan developed with the recovery specialist. It mandates drug testing in conformity with the recovery specialist's directions and explains that contempt proceedings and sanctions will follow noncompliance.

MOTIVATIONAL SUBSTANCE ABUSE CASE MANAGEMENT

A motivational case management approach is essential to maximizing the opportunity for reunification in each case involving parental substance abuse. The case manager acts as a coach to support parents through the treatment process. A systemic rather than a piecemeal approach is necessary. Every case needs this approach to make sure parents are connected to treatment and have an optimal chance for success. Parental substance abuse of epidemic proportions cannot be eradicated by selecting only a portion of the population of addicted parents to receive treatment. A comprehensive approach is required because it is impossible to tell in advance which parents will recover. Often, we are successful with someone who is a "repeat customer." Only an across-the-board mandate for participation by all addicted parents will maximize the number of those who actually succeed in recovery.

COMPLIANCE REPORTING SYSTEM

Timely and accurate reports of the parents' progress in their treatment programs, submitted by the agency providing case management services, are critical. San Diego County, as described earlier, contracts with a nonprofit agency specializing in alcohol and drug treatment to operate the SARMS program. This agency provides case management services for each client and biweekly reports on the parent's progress to the court and Children's Services; objective weekly drug tests are done in every case. The agency is separate from Health and Human Services and Children's Services. Social workers are not responsible for this aspect of the case. The social worker assigned to each case through Children's Services remains the principal case manager and is responsible for overall case management.

SANCTIONS FOR NONCOMPLIANCE

Further, there must be a simple, well-defined procedure for citing noncompliant parents for contempt of court. Legal counsel representing the government must thoroughly understand how to prove contempt on a declaration of noncompliance by the recovery specialist. A parent must receive immediate consequences for a noncompliant event, and the court must be able to swiftly incarcerate recalcitrant parents. In San Diego County cases where parents "admit" noncompliance, they serve no more than

System of Sanctions Challenged

A San Diego father, Otis J., who had been ordered to participate in the SARMS program as part of his reunification plan, challenged the juvenile court's authority to find him in contempt of the court's reunification order and incarcerate him after he failed to submit proof that he had attended a required 12-step program. In December 2004, the Court of Appeal, Fourth Appellate District, decided the case of *In re Olivia J.*, upholding the power of the juvenile court to sanction noncompliance with drug and alcohol abstinence orders under the court's ordinary contempt powers. The court held that a willful violation of such court orders could be punished by incarceration. But the validity of that holding is in question, as the California Supreme Court accepted the case for review on March 16, 2005.* A decision by the court had not issued at the time of this article's publication.

It is the position of the authors that if parental drug use lengthens dependent children's stays in foster care, the court has a legal obligation to use its authority to elicit compliance with such orders. A court's ability to take that position will be determined by the California Supreme Court.

* *In re* Olivia J., 108 P.3d 862 (Cal. 2005).

24 to 36 hours in local custody. Without these elements, the program cannot function efficiently or effectively.

Positive reinforcement for good behavior and provision of other supportive services in the form of job readiness and assistance with acquisition of housing and other services are important elements of the recovery plan; indeed, they are arguably more important in recovery than sanctions. This is particularly true as parents have success in maintaining sobriety. In practice, custody time is infrequently used and is necessary only occasionally. Sanctions are analogous to the "timeouts" used for disciplining children.

The sanctions for relapse should be nonjudgmental, brief, and not overly punitive. San Diego County's juvenile court imposes the following sanctions:

- First noncompliant event: Judicial reprimand
- Second noncompliant event: From three to five days in jail, a monetary fine, or both
- Third noncompliant event: From three to five days in jail and/or an offer of voluntary participation in dependency drug court

If noncompliance is determined at the next 6- or 12-month review hearing, a permanency planning hearing may be scheduled.

The goal of the court is not to punish parents but to make them realize the seriousness of the situation and motivate them to take the steps necessary to reunify with their children. This is an opportunity for the court to establish boundaries with these parents, often a foreign concept to drug abusers and alcoholics. To teach parents that there are consequences for their actions, the sanctions must be immediate and relate to the noncompliant behavior. In San Diego County, a special hearing is set immediately following notification to the juvenile court of the parent's noncompliance with the treatment plan. After the first finding of noncompliance, the court restates the order in simple and direct terms to ensure that the parent understands the order and the consequences of noncompliance. The court then verbally reprimands the parent for the noncompliant event.

SPECIAL CHALLENGES WITH YOUNG PARENTS

Working with substance-abusing parents differs significantly from working with other populations. Judges must be aware of these differences if they are to effectively reunify families. The court should work with these parents in accordance with their level of development, which recent research tells us lags behind their chronological age.[64]

The authors have seen many parents in dependency cases between the ages of 18 and 25 who finally address the issue of their alcohol or other drug abuse problems only to realize that they do not have the skills necessary to cope with the adult world. While their peers were progressing through normal adolescence—discovering talents, building relationships, taking on responsibility—these young people missed out because substance abuse narrowed their circle of friends, their level of involvement, their emotional and spiritual growth.

It is not effective for a court simply to include in the reunification plan an order requiring the parent to get clean and sober and remain so for six months. The parents need help and encouragement throughout the program because this is likely the first time in their lives that they have assumed responsibility for themselves. Just as teenagers are not developmentally capable of getting clean and staying sober by themselves, substance-abusing parents who are developmentally far behind their peers are likewise incapable of staying clean without support.[65] By holding such parents responsible for their actions, the judge acts as a person who cares enough to say no when they engage in behavior that endangers their children. Such intensive case management is needed for the parents to become capable of caring for themselves and their children.

If the parent is not serious about dealing with his or her addiction, the court must help the parent get serious. Children should not be left in foster care indefinitely while their parents violate court orders and the court fails to act. The court has the authority and responsibility to change what happens in these children's lives. Battling addiction is extremely

difficult. To do justice for the families under its jurisdiction, the juvenile court must fulfill its duty to help substance-abusing parents get clean and sober.

PROMISING NEW PROJECT IN BALTIMORE, MARYLAND

A program for early assessment, enrollment in treatment, and case management for addicted parents of children in foster care, similar to San Diego County's Dependency Court Recovery Program, is currently being developed in Baltimore, Maryland.[66]

In Maryland, foster-care funding under Title IV-E is 50 percent state money and 50 percent federal. The Maryland state government has agreed to invest savings in state foster-care expenditures created by shortened stays in foster care in ongoing treatment and case management for at-risk families.[67]

CONCLUSION

Based on current statistics, pre-permanency foster care continues to be utilized across the country as a temporary solution to child abuse and neglect. The national rate of children placed in foster care continues to be unacceptably high. In 2002, roughly 532,000 children were in foster care.[68] These numbers are particularly disturbing in light of the developmental damage that may result when a child is placed in foster care. Throughout the United States, nonrelative foster care frequently is poorly managed in terms of the length of time children remain in out-of-home placements. It is up to the courts to take an active role in minimizing the use of foster care through judicial management of reunification plans. Cost savings and better outcomes will follow for those jurisdictions that take this step.

Statistics also make it clear that to fulfill the purpose of child dependency systems, juvenile courts must aggressively address the substance abuse issues of the parents who come under their jurisdiction.[69] An analysis of San Diego County's approach to this problem shows that immediate access to individualized alcohol and drug treatment, in conjunction with strict court management of reunification plans, promises beneficial outcomes. Courts and policymakers must seek out and implement modalities that prevent or mitigate the negative effects of temporary and transient foster care. Any reduction in the amount of time it takes to make a permanent placement decision benefits the child by minimizing his or her time in foster care. When time in foster care is minimized, costs of foster care are reduced. Savings in foster-care costs make more funds available for treatment and case management.

The prevalence of parental drug and alcohol addiction and the preliminary success of the SARMS program suggest positive outcomes are possible for children and their families if courts strictly adhere to statutory time frames and enforce compliance with court-ordered reunification plans. The SARMS program and the dependency drug court shorten the length of time children remain in foster care and successfully reunify families. These programs offer a challenging and rewarding means to achieving the primary goal of the juvenile dependency process: to provide a timely and appropriate permanent placement for each child who enters juvenile court supervision. Juvenile courts are responsible for ensuring the safety and well-being of the children in their jurisdictions. They must honor this duty by taking an active role to achieve the ultimate systemic objective of protecting vulnerable children.

NOTES

1. Jeannette L. Johnson & Sis Wenger, *Why?*, 17 NACoA NETWORK 4 (Jan.–Feb. 2001), *available at* www.nacoa.org/pdf2/janfeb01.pdf.

2. Joseph A. Califano, Jr., *Foreword and Accompanying Statement* to JEANNE REID ET AL., NAT'L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA UNIV., NO SAFE HAVEN: CHILDREN OF SUBSTANCE-ABUSING PARENTS ii (Jan. 1999), *available at* www.casacolumbia.org/pdshopprov/shop/item.asp?itemid=24; *see also* Heather Banks & Steve Boehm, *Substance Abuse and Child Abuse,* CHILDREN'S VOICE (Sept. 2001), www.cwla.org/articles/cv0109sacm.htm.

3. NANCY YOUNG ET AL., RESPONDING TO ALCOHOL AND OTHER DRUG PROBLEMS IN CHILD WELFARE 2–3 (CWLA

NOTES

Press 1998), *available at* www.ncsacw.samhsa.gov/files/RespondingtoAODProblems.pdf.

4. Child Welfare League of Am., Alcohol and Other Drug Survey of State Child Welfare Agencies (Feb. 1997), *at* www.cwla.org/programs/bhd/1997stateaodsurvey.htm.

5. *Id.*

6. Adoption and Safe Families Act of 1997 (ASFA) § 302, 42 U.S.C. §§ 627(a)(2)(B), 672(d), 675(5)(C) (2000 & Supp. 2004); Cal. Welf. & Inst. Code § 361.5 (West 2004).

7. Children's Bureau, U.S. Dep't of Health & Human Servs., The AFCARS Report: Preliminary FY 2002 Estimates as of March 2004 (2004), *at* www.acf.hhs.gov/programs/cb/publications/afcars/report9.pdf.

8. Terry M. Levy & Michael Orlans, Attachment, Trauma, and Healing: Understanding and Treating Attachment Disorder in Children and Families 1 (CWLA Press 1998).

9. *Id.*

10. *Id.*

11. *See id. See generally* Elizabeth Meins, Security of Attachment and the Social Development of Cognition (Taylor & Francis Group 1997) (covering how infant-caregiver attachment relates to child development); John Bowlby, A Secure Base: Parent-Child Attachment and Healthy Human Development (Basic Books 1989) (series of lectures by a prominent British psychiatrist exploring the nature and importance of early child-caregiver bonds).

12. *See generally* Bowlby, *supra* note 11; Pat Sable, Attachment and Adult Psychotherapy 15 (Jason Aronson 2000) (citing Mary D. Salter Ainsworth, *Attachments Beyond Infancy,* 44 Am. Psychologist 709 (1989)); John Bowlby, *Separation Anxiety,* 41 Int'l J. Psychoanalysis 89 (1969); Robert Karen, *Becoming Attached,* The Atlantic, Feb. 1990, at 35.

13. There are methods to reduce this disruption and preserve the attachment even with the use of foster care. These will be discussed in a later section.

14. Levy & Orlans, *supra* note 8, at 3–4.

15. Dave Robinson et al., *A Review of the Literature on Personal/Emotional Need Factors* (Corr. Serv. of Can., Mar. 1998), *at* www.csc-scc.gc.ca/text/rsrch/reports/r76/r76e_e.shtml.

16. *Id.*

17. Levy & Orlans, *supra* note 8, at 214.

18. Paul D. Steinhauer, The Least Detrimental Alternative: A Systematic Guide to Case Planning and Decision Making for Children in Care 20 (Univ. of Toronto Press 1991).

19. Levy & Orlans, *supra* note 8, at 215.

20. Joseph Goldstein et al., The Best Interests of the Child: The Least Detrimental Alternative 19 (Free Press 1996).

21. *Id.*

22. Steinhauer, *supra* note 18, at 24.

23. Goldstein et al., *supra* note 20, at 41; *see also* David E. Arredondo, *Principles of Child Development and Juvenile Justice: Information for Decision-Makers,* 5 J. Center for Fam. Child. & Cts. 131 (2004) ("The reason that a year seems interminably long for a 4-year-old is that a year is, subjectively, one-fourth of his life").

24. Goldstein et al., *supra* note 20, at 9.

25. *Id.* at 42.

26. *Id.* at 41.

27. *Id.*

28. Everett M. Ressler, Unaccompanied Children: Care and Protection in Wars, Natural Disasters, and Refugee Movements 175 (Oxford Univ. Press 1988).

29. Goldstein et al., *supra* note 20, at 41.

30. Title IV-E of the Social Security Act offers federal funding for every income-eligible child who is placed in foster care. 42 U.S.C. § 674(a) (2000 & Supp. 2004). And there is a legislative preference for placement with an adult relative over a nonrelated caregiver "provided that the relative caregiver meets all State child protection standards." *Id.* § 671(a)(19). But foster-care maintenance payments under the federal statutes may be made only to state-licensed foster family homes, impeding the likelihood of placement with a relative. *See id.* § 672(b), (c). Oregon's non–Title IV-E state-funded foster-care program was challenged on the ground that the state denied foster-care benefits for kinship placements of children who were not eligible for foster-care assistance under Title IV-E. Lipscomb v. Simmons, 962 F.2d 1374 (9th Cir. 1992). The 9th Circuit Court of Appeal en banc held that Oregon's policy of restricting state-only foster-care funds to nonrelatives was rationally related to a legitimate policy decision: "to spend more money per child not placed with relatives while depriving some children of the option of

NOTES

living with relatives—instead of paying less money per child but enabling more children to live with relatives. . . ." *Id.* at 1380. The court concluded that Oregon, "finding itself in an imperfect budgetary environment, believed that it ha[d] allocated its limited resources in the best possible way in order to accomplish the goals of its foster care program." *Id.* at 1384. However, ensuring stipends to relatives who care for children who otherwise would be in foster care makes good sense and would benefit children.

31. In 1988, 1,200 children born at Martin Luther King Hospital in south-central Los Angeles were drug-exposed. By contrast, in 1994, only 300 children were born exposed to drugs. HEALTH PROJECT, EVALUATION SUMMARY (1997), *at* http://healthproject.stanford.edu/koop/shields/evaluation.html (discussing the SHIELDS for Families Project, which won the 1995 C. Everett Koop Award).

32. *See, e.g.,* Robert Victor Wolf, *Promoting Permanency: Family Group Conferencing at the Manhattan Family Treatment Court,* 4 J. CENTER FOR FAM. CHILD. & CTS. 133 (2003).

33. JAMES R. MILLIKEN, SUPERIOR COURT OF CAL., COUNTY OF SAN DIEGO, THE DEPENDENCY COURT RECOVERY PROJECT: PROJECT SUMMARY AND CURRENT HIGHLIGHTS 1 (Mar. 2001) (on file with the *Journal of the Center for Families, Children & the Courts*).

34. *Id.*

35. *Id.*

36. *Id.* at 2.

37. Each of the three phases is 90 days long. In phase 1, participants must appear in drug court once a week; in phase 2, once every two weeks; and in phase 3, once a month.

38. For example, when the parent first agrees to participate in dependency drug court or when a sanction is ordered for noncompliance.

39. JAMES R. MILLIKEN, SUPERIOR COURT OF CAL., COUNTY OF SAN DIEGO, THE DEPENDENCY COURT RECOVERY PROJECT: JUVENILE DEPENDENCY COURT REFORM 4 (Oct. 2003) (on file with the *Journal of the Center for Families, Children & the Courts*).

40. SUPERIOR COURT OF CAL., COUNTY OF SAN DIEGO, DEPENDENCY COURT RECOVERY PROJECT: SARMS DATA SUMMARY, APRIL 13, 1998, THROUGH July 31, 2002, at 1 (July 2002) (on file with the *Journal of the Center for Families, Children & the Courts*).

41. MILLIKEN, *supra* note 39, at 22.

42. DEPENDENCY COURT RECOVERY PROJECT, *supra* note 40, at 1.

43. *Id.*

44. A future goal of the Dependency Court Recovery Project in San Diego County is to follow up with these families to determine the long-term outcomes of this program.

45. A division of the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA).

46. DAVE CRUMPTON ET AL., NPC RESEARCH, INC., ANALYSIS OF FOSTER CARE COSTS FROM THE FAMILY TREATMENT DRUG COURT RETROSPECTIVE STUDY: SAN DIEGO COUNTY, CALIFORNIA 5 (2003) (on file with the *Journal of the Center for Families, Children & the Courts*).

47. *Id.*

48. *Id.* at 1.

49. *Id.*

50. PEW COMM'N ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE 13 (May 18, 2004), *available at* http://pewfostercare.org/research/docs/FinalReport.pdf; *see also* William C. Vickrey, *A Better Life for Foster Youth,* S.F. CHRON., May 18, 2005, at B9.

51. CRUMPTON ET AL., *supra* note 46, at 1.

52. Interview with Kimberly Bond, Chief Operating Officer, Mental Health Systems, Inc., in San Diego (June 23, 2004).

53. Interview with John Oldenkamp, Project Manager, San Diego County Drug and Alcohol Services, in San Diego (June 24, 2004).

54. Interview with Kimberly Bond, *supra* note 52.

55. NANCY K. YOUNG ET AL., CTR. FOR CHILDREN & FAMILY FUTURES, INC., FAMILY DRUG TREATMENT COURTS: SYNOPSIS OF PROCESS DOCUMENTATION AND RETROSPECTIVE OUTCOME EVALUATION FOR SAN DIEGO SUPERIOR COURT 12 (Oct. 2003) (on file with the *Journal of the Center for Families, Children & the Courts*).

56. Title IV-E of the Social Security Act is a permanently authorized, open-ended federal entitlement program that guarantees reimbursement to the states for a portion of the costs of maintaining children in foster care. *See* PEW COMM'N ON CHILDREN IN FOSTER CARE, *supra* note 50, at 13. Nationwide federal IV-E foster-care expenditures for fiscal year 2004 were estimated at $4.8 billion. *Id.*

NOTES

Title IV of the Social Security Act is administered by the Department of Health and Human Services. The Administration for Public Services, Office of Human Development Services, administers social services under Title IV, Parts B and E. Title IV appears in the United States Code as Title 42, chapter 7, subchapter IV, sections 601–687 (42 U.S.C. §§ 601–687 (2000 & Supp. 2004)). *See* SocialSecurityOnline, Compilation of the Social Security Laws, n.1, *at* www.ssa.gov/OP_Home/ssact/title04/0400.htm.

57. Crumpton et al., *supra* note 46, at 12 (for the $30,000-per-family annual savings figure); interview with John Oldenkamp, *supra* note 53 (provided the figure that treatment costs were $2,000 per parent annually); e-mail from Kimberly Bond, Chief Operating Officer, Mental Health Systems, Inc. (June 23, 2004) (provided information that case management costs were $1,400 per parent annually) (on file with the *Journal of the Center for Families, Children & the Courts*).

58. Young et al., *supra* note 55, at 13.

59. 42 U.S.C. § 674 (2000 & Supp. 2004); *see also* Pew Comm'n on Children in Foster Care, *supra* note 50, at 19.

60. Milliken, *supra* note 39, at 4.

61. *See* ASFA, § 302, 42 U.S.C. §§ 627(a)(2)(B), 672(d), 675(5)(C) (2000 & Supp. 2004); Cal. Welf. & Inst. Code § 361.5 (West 2004).

62. Pew Comm'n on Children in Foster Care, *supra* note 50, at 25.

63. *Id.*

64. Catherine Seward, *Substance Abuse Disrupts Maturing Process* (2001), *at* https://64.71.146.119/articles/topics/categories/subabuse/sub_abuse_disrupts.html (on file with the *Journal of the Center for Families, Children & the Courts*).

65. *Id.*

66. The Family Recovery Project is being launched by the Family League of Baltimore City, Inc. At the time this publication went to press, the Family League had issued a request for proposals seeking an entity to provide intensive and time-limited family preservation services to families with children at imminent risk of out-of-home placement. *See* www.flbcinc.org.

67. Interview with Stephanie Franklin, Family Recovery Program Director, at the Family League of Baltimore City, Inc. (Apr. 13, 2004).

68. Children's Bureau, *supra* note 7.

69. Banks & Boehm, *supra* note 2.