



Intake Decisions and the Juvenile Court System

By Judge Leonard Edwards (ret.)

Who decides which children's cases should proceed through the court system and which should be resolved less formally is an important, if rarely discussed, issue in our juvenile and family courts. Social workers, probation officers, and prosecutors make the decision on which cases will proceed through the formal court process, resolving most cases that come to their attention in the community with warnings, referrals to services, or agreements for participation in services. The terms of those agreements usually are that if the youth or family completes the services, no court action will be initiated.

The juvenile court judge may never learn of the resolutions reached in these cases unless subsequent problems bring them before the court.¹ Indeed, some juvenile and family court judges worry that many cases are resolved without formal judicial intervention, and that the children in these cases remain at high risk of future harm.

The juvenile court judge decides which cases are permitted through the juvenile courthouse door. These judges act as the gatekeepers and ultimately determine the extent to which the state intervenes in the lives of children and families. In both delinquency and abuse and neglect matters, the cases that the formal juvenile court system processes set the standard for decisions made throughout the community. Social workers and probation officers know what the judge ultimately decides in their cases, whether the judge dismisses the petition, refers the matter for informal services, or rules that the case will be formally processed through the court system.

This article discusses the judicial perspective regarding social worker and probation officer decisions to file formal legal actions or to resolve cases in the field without initiating legal proceedings. It concludes that it is important that the judge engage with social worker and probation department offices, as well as prosecutors, defense attorneys, and law enforcement representatives, concerning the intake process so that it operates fairly and is consistent with best practices. Consider the following scenarios:

In your role as a juvenile or family court judge you encounter the following situations:

1. In a delinquency case, you notice that while this is the first appearance for the youth, the probation report reveals that he has three prior arrests for being under the influence of methamphetamines, but each time was released by probation with minimal services without the initiation of legal proceedings.
2. The children's services agency files petitions on every baby born with a positive toxicology screen for drugs or alcohol.
3. The children's services agency informs the court that it has begun using a new protocol to determine whether to offer voluntary services or take formal action for cases social workers encounter in the community. You know very little about this new protocol. You believe that children may be at risk of harm because of this new procedure, and that some of these cases may need formal court intervention and oversight.

4. You learn that approximately 10% of all delinquency referrals arise in the local schools.
5. The data your court collects reveal a significant disparity in the number of African American, Latino, and Native American children who appear in both your delinquency and abuse and neglect calendars.

Should these issues concern you? Is there anything you should do

about any or all of them? The answer to these questions in all five situations is a resounding Yes! These matters should concern you because both the delinquency and abuse and neglect systems may not be operating effectively or fairly. You should do something about the issues raised in these situations because it is your job.

Not all state laws specifically mandate that juvenile court judges oversee the intake process, but some do. For example, California Rule of Court 5.514 states:

It is the duty of the presiding judge of the juvenile court to initiate meetings and cooperate with the probation department, welfare department, prosecuting attorney, law enforcement, and other persons and agencies, performing an intake function. The goal of the intake meetings is to establish and maintain a fair and efficient intake program designed to promote swift and objective evaluation of the circumstances of any referral and to pursue an appropriate course of action.

Whether state law mandates such meetings, it seems appropriate that the juvenile court judge convene these agencies concerning the intake process. National and other policy makers often urge juvenile and family court judges to convene stakeholders to discuss court improvement issues.² All of these situations offer opportunities to meet and discuss ways of improving the state response to important issues in juvenile court operations.

In the first hypothetical, you learned that, previous to the current petition, a youth had three prior arrests for being under the influence of methamphetamines. You may conclude that probation should have filed on the second or third offense, but realize that the decision is within the discretion of the probation department. You may also conclude that whatever informal services were offered were inadequate to address the youth's substance abuse issues. You should call a meeting with probation, the prosecuting attorney, and defense counsel to discuss intake policies. One of the purposes of the meeting is to examine the availability and

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effectiveness of substance abuse services in your community.

The provision of informal services to youth is the ideal way to handle a minor nonviolent offense such as being under the influence of alcohol or drugs. These services could include, for example, substance abuse awareness classes, preferably involving the youth and family. Good informal strategies should be encouraged. However, if you find that these services are no longer effective (as in this hypothetical situation), service providers may need to update their interventions, probation officers and other staff may require training about current remedies for assisting youth, and probation officers may have to examine whether the appropriate informal oversights are in place. These informal interventions should be age-appropriate and gender-informed. Probation must ensure that a youth involved in informal services has no bona fide obstacles preventing him or her from completing the case plan such as lack of transportation or parental support.

Probation should have a protocol that addresses problems that arise when informal services are ineffective. That protocol might include a Team Decision-Making process or a Multi-Disciplinary Team meeting.³ If a group decision-making process is employed, it must include a protocol to protect any victim of violence who may participate in the process.⁴ All of these options are appropriate discussion topics for the meeting you called pursuant to your authority as a juvenile court judge.

In the second hypothetical, you should call a meeting with the welfare department (children's services), and the attorneys representing the county, children, and parents. The purpose of the meeting is to discuss the policy of filing child abuse and neglect petitions in every case in which a baby was exposed to drugs in utero. Again, the discussion focuses on the department's intake policies, not on any particular case. You may point out that in some states the law does not mandate a filing in every case in which a baby has been exposed to alcohol or drugs in utero. In California, for example, Penal Code section 11165.13 states in part that "for purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect."⁵ In other words, you would discuss with the agency and the attorneys the value of discretion in these cases. You might mention that on occasion judges have dismissed some of these cases with informal services after filing because of insufficient evidence of present harm to the child. Thus, if the mother received prenatal care, has housing and a support system, the case can safely be handled informally. Additionally, some jurisdictions provide residential treatment for the mother and her baby where they can live together for up to six months and receive vital medical and mental health interventions to support the family.

Judges need to know about available services for substance-abusing mothers and their infants. This knowledge will inform the judge's decision regarding reasonable efforts in this type of case. The California Standard of Judicial Administration expresses what juvenile court judges in all states should be doing:

If we take no action when we see that a youth has three arrests prior to a case being filed in court, [probation] understands that the judge has sanctioned that approach, tacitly or otherwise.

[e]valuate the criteria established by child protection agencies for initial removal and reunification decisions and communicate the court's expectations of what constitutes "reasonable efforts" to prevent removal or hasten return of the child.⁶

Understanding the intake decision process will also inform your rulings regarding whether the agency exercised reasonable efforts to prevent removal from parental custody, a federal and state law requirement in every case in which a child has been removed from parental care.⁷

The third scenario presents you with the difficult situation in which you have no direct oversight of the decision made by child welfare to offer voluntary services to a family instead of filing a petition. The new procedure used by the department concerns you because you believe that some children may be left in a dangerous situation, but you question how best to review their decisions. One approach would

be to call a meeting regarding intake, and ask the director to bring copies of cases the department settled informally that demonstrate how the new protocol works and what standards the department uses. You could also examine carefully every new petition and social report to learn whether the department previously offered voluntary services to the family in order to discover "failed voluntary services" cases similar to the "failed informal supervision" cases discussed in the first scenario. In either of these approaches, you could examine the records and make further inquiries. You may find yourself satisfied as to the effectiveness of the department's approach and that cases are being safely resolved with informal services. You may also find their approach

unsatisfactory and express your concerns to the agency. Either option provides you with the opportunity to discuss meaningfully the intake standards used by the welfare agency.

Another method for judicial oversight of the intake process involves the power of citizens to bring situations involving harm to children to the attention of the court. For example, California law permits a citizen to petition the court to order that formal abuse and neglect proceedings be filed on behalf of a particular child when the children's services agency has declined to take formal action.⁸

In the fourth scenario, you learn of information you may not have known about—the number of petitioned delinquency cases that are originating in your local schools. Some counties have conducted research regarding this relationship. In Wake County, N.C., for example, Legal Aid of North Carolina, Inc. conducted an extensive research project on school suspensions and school conduct that resulted in referral to the juvenile and criminal justice systems.⁹ The research revealed a large number of referrals to court from one school district, a far greater number than in other school districts. The report makes numerous recommendations that derive from best practices in other school and juvenile court systems around the country.

The obvious starting point would be for you to convene a meeting with school leaders and include law enforcement, probation, prosecutors, the defense bar, and other professionals involved in the juvenile justice system. The topics of the meeting would be an examination of the local referral system, collecting data

on referrals, a review of best practices from around the country, and an investigation of practices and services that might provide meaningful interventions and prevent entry into the juvenile justice system.¹⁰ As the juvenile court judge, you are the logical and perhaps only person who can convene such a meeting and work to ensure that the participants focus on these issues.¹¹

The fifth scenario presents a judicial concern with the over-representation of certain minority populations in the abuse and neglect and delinquency systems. Your concern may be that the disparity is unfair and reflects bias in the system. However, your concern about over-representation also derives from the Code of Judicial Conduct which stresses the integrity of the judiciary (Canon 1) and the appearance of impropriety in the judge's activities and performing judicial duties impartially (Canon 2). Your concern is also reflected by the work of the National Council of Juvenile and Family Court Judges which recommends that "Judges—as the final arbiters of justice—must be leaders in their communities on the issue of disparity in the child welfare system."¹²

Some judges might respond that disparity is not their fault. Although that is true, as a juvenile court judge, your duties involve oversight of the intake process, and the actions you take may reduce racial disparities in the juvenile court. At the meetings you convene, your discussion and analysis might involve long-term structural and societal barriers faced by families. These barriers may force probation and children's services systems to respond in a more tailored manner to families of color that continue to be brought into the child welfare and delinquency systems at disparate rates. You should examine the petition language carefully for phrases and conclusions based on stereotypes rather than facts. Ask yourself and the social worker or probation officer representatives if cultural beliefs or traditions exist that may account for any of the allegations or contribute in a positive way to solutions to the current family crisis. Ask whether the probation department and children's service agency have "culture brokers," ethnic resource centers, or Team Decision Making, Family Group Conferencing models, or similar resources that would work with the family to design solutions that probation/children's services or the juvenile court can monitor and facilitate.

Convene the stakeholders and discuss whether culture-specific services for the over-represented populations exist, services that would facilitate informal case resolutions.¹³ Once you and the stakeholders identify those services, you might consider extending an invitation to the next meeting to a member of the board of supervisors or commissioners in your jurisdiction. Some county supervisors around the country have expressed an interest in the over-representation issue, and several have mandated the creation of services designed to address racial disparities.

Your intake meetings should include the obvious stakeholders such as probation, children's services, and the lawyers appearing in these cases, but you could be creative and invite drug and alcohol, domestic violence, and mental health service providers, schools, medical service providers, law enforcement, and group home providers. Building broad stakeholder collaborations serves families and children better, keeps communities informed, and all but ensures the use of best practices.

Just because a case is filed does not mean it should have been filed. It may have been appropriately settled out-of-court with services. On the other hand, some cases should be filed, particularly if informal services are inadequate to meet the needs of the child and family. Every juvenile court judge must understand the array of informal services for juvenile justice and juvenile dependency.

At your meetings, you should periodically discuss the effectiveness of these services. Are they evidence-based? Do they address the problems families struggle with? Is the community satisfied with their impact? Convening these meetings will assist you in these determinations.

These suggested meetings emphasize an important point. Probation departments and child protection agencies are experts in what they do. Their decisions to remove a child or settle a case absent a petition derive from careful analysis by experienced professionals. Nevertheless, the public perception is that all such decisions ultimately rest with the court. The judge sets the community's standards for whether a case will be resolved informally or proceed through the court process whether the judge realizes it or not. If we take no action when we see that a youth has three arrests prior to a case being filed in court, all those in the probation system understand that the judge has sanctioned that approach, tacitly or otherwise. If the judge hears every case involving a positive toxicology screen at birth, then that policy becomes the status quo, and if the judge ignores over-representation of minority youth and families, nothing changes.

The juvenile court judge occupies a role unlike any other judge.¹⁴ Perhaps nowhere is this unique role more evident than in the intake decision. We set the tone for family justice in our communities—we are the gatekeepers. In order to respond to our duty, we must become experts on the intake process.

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END NOTES

- ¹ These decisions have been referred to as "low visibility" determinations. See Goldstein, J. (1960). Police discretion not to invoke the criminal process: Low visibility decisions in the administration of justice. *Yale Law Journal*, 69, 543.
- ² NCJFCJ. (1995). *Resource guidelines: Improving court practice in child abuse & neglect cases*, at 18; Edwards, L. (1997). Improving juvenile dependency courts: 23 steps. *Juvenile and Family Court Journal*, 48(4), at 9.
- ³ For a discussion of different group decision-making processes that juvenile court systems use, see Edwards, L., & Sagatun, I. (2007). The transition to group decision making in child protection cases: Obtaining better results for children and families. *Juvenile and Family Court Journal*, 58(1), at 1-16.
- ⁴ NCJFCJ. (1999). *Effective intervention in domestic violence & child maltreatment cases: Guidelines for policy and practice*, Recommendation 4.8 at 101.
- ⁵ California Penal Code, West, 2011.
- ⁶ SJA 5.4.0(e)(8), West, St. Paul, 2010.
- ⁷ 42 U.S.C. § 671(a)(15); Calif. Welf. & Inst. Code § 319(d)(1); CRC 5.678(c).
- ⁸ Calif. Welf. & Inst. Code §§ 329 and 331, West, 2011.
- ⁹ Advocates for Children's Services, A Statewide Project of Legal Aid of North Carolina, Inc. (July 2010). *Research-based recommendations for improving school discipline in Wake County Public Schools*. A copy is available from the author.
- ¹⁰ That is exactly what Judges Steven Teske and J. Brian Huff did in Clayton County, Ga., and Jefferson County, Ala. See Teske, S., & Huff, J. (2011, Winter). The court's role in dismantling the school-to-prison pipeline. *Juvenile and Family Justice TODAY*, 14-17.
- ¹¹ Edwards, L. (1992). The juvenile court and the role of the juvenile court judge. *Juvenile and Family Court Journal*, 43(2), 1-45, at 25-32.
- ¹² NCJFCJ and Casey Family Programs. (2010). "Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care," National Agenda for Reducing Disproportionality and Disparities in the Dependency Court System, available at: <http://www.ncjfcj.org/images/stories/dept/ppcd/CCC/cc%20national%20agenda-revised7.10.pdf>.
- ¹³ *Id.* Other suggestions for judicial involvement in the reduction of racial disproportionality and disparity in the child welfare system are contained throughout this document.
- ¹⁴ See generally, Edwards, *op.cit.* note 11.