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# Transformation in child welfare

By Judge Mary Tabor,  
Iowa Court of Appeals

## Iowa courts' pilot project on juvenile justice shows reduction in termination of parental rights cases

The Iowa Court of Appeals set a record last year — unfortunately, not one we can celebrate. In 2019, we decided 330 child-welfare appeals — mostly brought by mothers and fathers challenging the termination of their parental rights. Those appeals constituted about one quarter of our total caseload. This record high eclipsed our previous annual tallies by about 60 cases.

Numbers aside, the issues in our child-welfare appeals are heartbreaking, repetitive and heartbreaking in their repetition. Over and over we see parents struggle with substance abuse (in Iowa still mostly methamphetamine addictions), untreated mental-health conditions and the scourge of domestic violence. And poverty is a constant thread. Most families whose children are removed lack adequate housing, employment and transportation.

But we have cause for hope. That hope stems from another set of numbers: 4 Questions, 7 Judges. The Iowa Department of Human Services (DHS) and Iowa Children's Justice, a division of the state judicial branch, conducted this pilot project across the state from December 2019 through March 2020. As the title suggests, seven judges—Judge

Linnea Nelson Nicol, Judge Stephanie Forker Parry, Judge Ann M. Gales, Judge Scott D. Strait, Judge Romonda D. Belcher, Judge Cheryl E. Traum and Judge William S. Owens—participated. Before approving a request to remove a child from his or her home, those judges asked social workers these four questions:

- 1 What can we do to remove the danger instead of the child?
- 2 Can someone the child or family knows move into the home to remove the danger?
- 3 Can the caregiver and the child go live with a relative or fictive kin?
- 4 Could the child move temporarily to live with a relative or fictive kin?

The four questions were drafted by Judge Owens and Judge Nicol with help from Dr. Amelia Franck-Meyer of Alia Innovations, a Minnesota-based nonprofit focused on transforming child-welfare systems. The point of the exercise was to prevent the unnecessary removal of children from their parents.

And, if the danger indeed required removal, to minimize the children's trauma by finding relatives or family friends (sometimes called "fictive kin") to be temporary caregivers.

Before sharing the promising results of the 4 Questions, 7 Judges, it may help to digress for a moment. Let's consider why it's important to avoid removing children from their homes if possible.

Here's how an Alia publication describes the trauma of family separation: "The story we tell ourselves is that we are heroes, saving children from their parents who hurt them. In a few cases, this is true; but more often than not separation isn't the answer to a tough situation, and can make things far worse."

To that point, in *The Harm of Child Removal*, published last year in the NYU Review of Law and Social Change, family law clinician Shanti Trivedi, points to studies showing the damage caused by removal from parents may be worse for a child than neglect. Trivedi cites grief experts who believe a single act of removal is often a "significant turning point" for children that they "will relive over and over again in their minds."

But the goal of avoiding removal sometimes faces headwinds. For example, two decades ago, our governor urged the DHS to follow a "remove-first" philosophy—adopting the mantra: "When in doubt, take the children out." That watch phrase followed public outcry over a high-profile tragedy in Spirit Lake. Toddler Shelby Duis died from child abuse. Her daycare had repeatedly reported injuries to the DHS, which declined to remove her from the home.

Our state's understandably risk-averse reaction was to encourage social workers to err on the side of removal. Now we know defaulting to removal can bring even greater harm to a large number of children needlessly separated from their parents. And once



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on that path, many families cannot reunify and end up in court facing an action to terminate parental rights.

Which brings us back to 4 Questions, 7 Judges. Over the four-month pilot, those seven judges received 83 requests for removal—some involving multiple children in one home. After asking the four questions, the judges granted 44 requests, just over half. And of those 44 approved requests, 24 of the children (or sibling groups) were placed with family members. Another five were placed with family friends. Only 15 children (or sibling groups) went to foster families with whom they had no previous relationship.

Foster families provide a wonderful service in our communities. But research shows children generally do better when placed with adults whom they already know and trust. A review of cases in the four months preceding the pilot show the same judges approved 99 removals. While not a controlled study, this data showing a significant reduction in removals gives both the DHS and the court system reason for optimism.

And this data is only part of the story. The judges involved in the pilot found child protective workers asked for removals less often because they reflected on the four questions in advance. Many times the workers sought new solutions to protect children short of removal. Or if the children's safety required separation from their parents, the DHS looked harder for relatives or fictive kin to provide respite care.

DHS division administrator Janee Harvey believes the four questions form “an effective tool to support critical thinking.” The seven piloting judges also shared the four questions with their colleagues. So this more thoughtful practice is spreading.

The emphasis on reducing removals to foster care is likewise spreading across the country. Iowa's 4 Questions, 7 Judges is a

fitting prequel to a bigger structural change on the horizon. In the words of Judge Owens—who is consistently on the front lines of improving children's justice—this pilot project “dovetails perfectly” with new federal legislation known as the Family First Prevention Services Act. Enacted in 2018, Family First transforms the way that the federal government funds child-welfare services. The Iowa DHS has contracted for prevention services to start in July. Technical implementation begins on Oct. 1. Starting then, federal funds will be available for services to prevent children from entering foster care. Before Family First, these federal dollars contributed only to foster care and adoption assistance for children removed from their parents' care because of maltreatment. By contrast, the new act aims to avoid unnecessary removals of children from their families by

allowing federal dollars to pay for prevention services.

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The Iowa DHS will offer these prevention services to families whose children are “at imminent risk of placement in foster care.” These families are called “candidates for foster care.” The prevention services fall into three main categories:

1

MENTAL-HEALTH AND SUBSTANCE-ABUSE TREATMENT;

2

IN-HOME SKILL-BASED PARENTING PROGRAMS, AS WELL AS INDIVIDUAL AND FAMILY COUNSELING; AND

3

“KINSHIP NAVIGATOR PROGRAMS” TO GUIDE GRANDPARENTS, OTHER RELATIVES, AND FICTIVE KIN WHO TAKE PRIMARY RESPONSIBILITY FOR THE CARE OF CHILDREN IN NEED OF A SAFE AND STABLE PLACEMENT.

The service models must be evidence-based (which means showing a clear benefit) and follow a “trauma-informed” approach. For families whose children are candidates for foster care, prevention services will be available for up to one year.

In another exciting development, the Children’s Bureau at the U.S. Department of Health and Human Services recently decided to allow states to receive reimbursement for the costs of legal representation for families in the child-welfare system. The American Bar Association praised this action, predicting it would “produce better outcomes for countless children.” The ABA cited several studies showing high quality parent representation—especially as part of legal teams with a social worker and parent peer—often resolves a family’s underlying legal issues that would otherwise lead to a child-in-need-of-assistance petition.

In Iowa, we have a stellar example of that team approach in the work of Michelle Jungers, managing attorney at Iowa Legal Aid in Waterloo. Iowa Legal Aid—in collaboration with Iowa Children’s Justice, the DHS and the State Public Defender—started handling pre-petition child-welfare cases in 2014. Last year, the project closed 62

pre-filing cases, helping 118 children avoid court involvement. Looking to build on the success of the Waterloo model, Iowa State Public Defender Jeff Wright is working closely with the DHS to draw down the new federal dollars and roll out pilot projects across the state.

Another important goal of Family First is to ensure that children who are placed outside their homes stay in the least restrictive environment possible. To achieve that goal, the act creates an incentive for states to stop the misuse of group homes for children in the foster care or juvenile justice systems. The new limited placements in qualified residential treatment programs (QRTPs) come with court supervision. The role of Iowa’s juvenile court judges in ensuring appropriate placement in QRTPs is a topic of ongoing training in the judicial branch. Attorneys for parents and children, as well as guardians ad litem, must also understand the criteria for QRTPs.

Overall, the sweeping reforms under Family First emphasize the importance of children growing up in families or, when dangers in the home do require removal, in the most family-like setting possible. Under the leadership of the late Chief Justice Mark Cady and our new Chief Justice Susan Christensen, the Iowa Judicial Branch has embraced the hope of these reforms. Chief Justice Christensen chaired a task force addressing the courts’ role in the Family First implementation. The initial report of that task force is available on the Iowa Judicial Branch website—thanks to the work of Iowa Children’s Justice Director Kathy Thompson and her staff. My colleague, Judge Julie Schumacher, and I are serving as the new co-chairs for the task force, helping shepherd the ongoing work of the Family First rollout for the courts. We invite you to read the report and let us know if you have any questions or concerns.

If prevention services—including quality legal representation—keep children with their families, fewer cases will move to termination of parental rights. And the Iowa Court of Appeals will happily close the record books on 2019.

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**Mary Tabor** has been a judge on the Iowa Court of Appeals since 2010. She serves as co-chair of the Iowa Children’s Justice Advisory Committee, along with Judge William Owens.