# Breaking the Habit: Assessing the Need for a Family Drug Treatment Court in South Africa to Reunify Families, with Reference to the Experience in the USA, UK and Australia

**ME Gedye*, W Holness** and J Parker*****

Online ISSN
1727-3781

P·E·R
Pioneer in peer-reviewed,
open access online law publications

**Authors**

Megan Gedye
Willene Holness
Judy Parker

**Affiliation**

University of KwaZulu-Natal
South Africa

**Email**

Meg.gedye@gmail.com
Holnessw@ukzn.ac.za
Parker@ukzn.ac.za

**Date Submitted**

6 February 2025

**Date Revised**

18 November 2024

**Date Accepted**

18 November 2024

**Date Published**

19 January 2026

**Editor**

Prof Natasha Ravyse

**Journal Editor**

Prof Wian Erlank

**How to cite this contribution**

Gedye ME, Holness W, Parker J, "Breaking the Habit: Assessing the Need for a Family Drug Treatment Court in South Africa to Reunify Families, with Reference to the Experience in the USA, UK and Australia" *PER / PELJ* 2026(29) - DOI http://dx.doi.org/10.17159/1727-3781/2026/v29i0a21219



**DOI** http://dx.doi.org/10.17159/1727-3781/2026/v29i0a21219

## Abstract

This article examines the viability of establishing Family Drug Treatment Courts (FDTCs) in South Africa as a targeted intervention to address the intersection of parental substance use disorder (SUD) and child neglect within the foster care system. Drawing on comparative practices from the United States of America, the United Kingdom and Australia, the article discusses the therapeutic jurisprudence which underpins FDTCs and their potential to promote family reunification and permanency planning in a resource-constrained welfare system. It highlights systemic challenges in South Africa, including under-resourced Children's Courts, limited access to SUD treatment, and the inconsistent implementation of reunification services. The analysis highlights the compatibility of FDTCs with South Africa's constitutional and legislative commitment to the best interests of the child, while acknowledging the need for a context-sensitive adaptation of the model. The authors argue for the repurposing of existing Children's Courts to incorporate FDTCs, offering a multidisciplinary, non-adversarial approach that prioritises rehabilitation and family preservation over punitive measures.

## Keywords

Substance abuse; Family Drug Treatment Court; family preservation; Children's Courts.

.....

# 1 Introduction

In an attempt to find a solution for the lack of targeted reunification and family preservation services for children in foster care as a result of parents who abuse substances, this article considers the possible efficacy of the establishment of a Family Drug Treatment Court (FDTC).[1] It also considers the link between substance use disorder (SUD) and child neglect, and the lack of reunification services available to these parents. A potential solution is then discussed in consideration of the success of FDTCs in other jurisdictions, specifically the United States of America (USA), the United Kingdom (UK), and Australia. The article also explores therapeutic jurisprudence as a comprehensive concept, particularly in South Africa (SA).

The countries that use the FDTC model are useful to this discussion because of the similarity of the best interests of the child standard in these jurisdictions and South Africa's approach. The goal is to find what aspects of the FDTC contribute to its achieving successful reunification rates between parents and their fostered children, so that these aspects could be extended to construct an FDTC suitable for South Africa. To this end, the FDTC best practices are discussed. As the SA Children's Court model and the proposed FDTC model are very different, this article considers the operation of the Children's Courts in terms of the *Children's Act*[2] to provide the relevant context.

---

* Megan Elizabeth Gedye. BA, LLB, LLM, Admitted Attorney of the High Court. Faculty of Law, IIE Varsity College. Meg.gedye@gmail.com. ORCiD: https://orcid.org/0009-0007-9696-235X.

** Willene Holness. BA, LLB (Rhodes), LLM (UKZN), LLD (UP), Admitted Attorney of the High Court. School of Law, University of KwaZulu-Natal and Navi Pillay Research Group. Holnessw@ukzn.ac.za. ORCiD: https://orcid.org/0000-0002-8232-2702.

*** Judy Parker. BA, LLB. School of Law, University of KwaZulu-Natal. Parker@ukzn.ac.za. ORCiD: https://orcid.org/0000-0001-8075-6083. This article is based partly on the LLM dissertation of the first author, which was supervised by the second and third authors, and on a paper presented at the Family Law Colloquium at the University of Cape Town in September 2024. Many thanks to Dr David Barraclough for his technical editing. All errors are our own.

1 These problems are numerous. For example, the literature identifies over-worked, under-resourced and uninformed social workers, a shortage of Children's Courts and commissioners of child welfare and limited and unequal access to SUD treatment, as the greatest challenges faced by child welfare and the legal system. This is in terms of ensuring reunification services, permanency planning, family preservation, family-focussed intervention and securing stability for children in foster care as a result of neglect, abuse and maltreatment by parents who abuse substances. See Lebuso *Family Reunification Support to Inpatient Parents*; Swann and Sylvester 2006 *Demography* 309; Mohasoa and Mokoena 2019 *International Journal of Social Sciences and Humanity Studies* 37-38; Myers, Louw and Pasche 2010 *Substance Abuse Treatment, Prevention and Policy* 1, respectively.

2 *Children's Act* 38 of 2005 (hereafter the *Children's Act*).

The precise proposed structure of the FDTC in SA is beyond the scope of this article. There are many different aspects, processes, hearings, plans and role players in each jurisdiction, and, over time, each jurisdiction has adapted the FDTC to suit its needs. South Africa would need to do the same should it adopt this model. What is discussed are those features common to each successful FDTC that would be a necessary starting point for constructing an FDTC suitable for South Africa.

The main aim of this article is to consider whether the creation of an FDTC in each magistrate's court, to operate alongside the Children's Court and be relied on when SUD has been identified as the cause for statutory intervention, may be feasible. The goal would be to repurpose and recapacitate the existing Children's Courts to operate as FDTCs. We need to define "drugs" and do so by referring to an appropriate dictionary definition of drugs as "substances taken for their psychoactive effects, often illegally".[3] The word "substances", therefore, in the context of SUDs, includes drugs, as defined here.[4]

The point of departure is the therapeutic approach of FDTCs.

## 2 Therapeutic Jurisprudence

The FDTC model encompasses the idea of therapeutic jurisprudence, a concept that focuses on "improving how the law operates and is directed towards law reform",[5] for example, by changing the approach in child protection matters from adjudication, or resolving the disputed issues of fact, to a more collective effort by the court and participants to mutually determine the individual needs of parents with SUD.[6] Therapeutic jurisprudence also attempts to address, understand and resolve the variety of human problems that are responsible for bringing matters to court.[7]

Given the complicated family dynamics involved in child protection matters, such as the need to ensure that the family relationships are nurtured and supported, a power struggle between the state and the parent would be inappropriate.[8] This is especially so given that many child protection cases involve economically disadvantaged parents who cannot afford legal

3 Oxford Living Dictionary 2016 https://en.oxforddictionaries.com/definition/drug.

4 Given the definition provided here, marijuana is not considered a "drug", having been recently decriminalised. See *Minister of Justice and Constitutional Development v Prince* 2018 6 SA 393 (CC). See also S *v L M* 2020 4 All SA 249 (GJ), the case on decriminalising the possession and use of cannabis by children (confirmed by the Constitutional Court in *Centre for Child Law v Director of Public Prosecutions, Johannesburg* 2022 12 BCLR 1440 (CC)).

5 King 2008 *MULR* 1113.

6 Edwards and Ray 2005 *Juv & Fam Court J* 1.

7 Winick 2003 *Fordham Urb LJ* 1055.

8 Kierstead 2011 *Barry Law Review* 33.

representation.[9] McKellar[10] argues that the *Constitution* and the *Children's Act* make therapeutic jurisprudence in the family court possible. In addition, Fourie and Coetzee[11] have argued that integrating therapeutic jurisprudence throughout the law students' studies and teaching the students through a therapeutic lens would achieve a therapeutic outcome and "contribute to the national goal of improving access to justice".

South Africa's most notable preference for a more therapeutic legal approach, however, was evident in the Truth and Reconciliation Commission, which captured the "new political order – truth, catharsis, healing and reconciliation",[12] and reminds us that the African understanding of justice seeks more to restore than it does to punish.[13] This restorative justice, like therapeutic jurisprudence, values the processes that empower participants and, in doing so, promotes restoration. The restoration sought would then be a therapeutic consequence.[14] Viewed like this, therapeutic jurisprudence is already embodied in the *Child Justice Act*,[15] where restorative justice is the cornerstone philosophy.[16] So, while SA's movement towards problem-solving courts, such as the FDTCs, has been slow, it has at least been consistent.[17]

Therapeutic jurisprudence is not without its critics. Since there may be a correlation between SUD and psychosocial illness or disability, it is necessary to consider that therapeutic jurisprudence may, despite its good intentions, affect the rights of parents with SUD who also have psychosocial illnesses or disabilities, as when the decision-making of the professionals involved in the FDTC is prioritised over that of the parent involved. In such a case, a parent's legal capacity and agency may be negated.[18] It is therefore necessary to critically engage with the balance in decision-making in a particular model of the FDTC.

A discussion on the link between SUD and child neglect, and the lack of reunification services for parents suffering from SUD, is considered next.

---

9 Boning and Ferreira 2013 *Journal of Social Work* 539.

10 McKellar 2018 https://mainstreamtj.com/2018/06/11/restorative-practices-to-further-therapeutic-jurisprudence-in-family-courts-an-amicus-justitia-brief/. McKellar has been a Family Court magistrate in Cape Town since 2014.

11 Fourie and Coetzee 2012 *PELJ* 368.

12 Moon 2009 *Journal of Human Rights* 71.

13 Bishop Desmond Tutu, as cited in Skelton 2002 *Brit J Criminol* 498.

14 King 2008 *MULR* 1115.

15 *Child Justice Act* 75 of 2008.

16 Gxubane *Prospects of Family Group Conferencing* 2.

17 Nolan and James "Problem Solving Courts" 156.

18 Arstein-Kerslake and Black 2020 *Int'l J L & Psychiatry* 3.

## 3 Neglect and SUD in a resource-constrained welfare system

In 2008, the Human Sciences Research Council was tasked by the Western Cape Provincial Department of Social Development (DSD) to conduct a study analysing "the factors that place children at risk of maltreatment (neglect and abuse), and the factors that contribute to statutory removal of children"[19] in four of the province's magisterial districts. Across the five courts analysed in the study, alcohol and substance abuse by the child's primary caregiver was linked to severe neglect and multidimensional maltreatment. Furthermore, of the four circumstances that emerged from the court files and interviews with practitioners as placing children at risk of maltreatment and leading to the child's removal into statutory care, parental alcohol and substance abuse was the foremost reason.[20] No comparable study in relation to factors in other provinces has been conducted. In South Africa (as in other countries).[21] SUD and child neglect are closely connected.

In relation to statutory care, when a child is found "to be in need of care and protection", the Children's Court makes an order placing that child in alternative care, which may include foster care.[22] Any person "acting in the public interest" or in the child's best interests may bring this matter before the "clerk of the Children's Court for referral to court".[23] Davel and Skelton[24] argue that the Children's Courts effectively have "carte blanche" to formulate and specifically adapt the wording of care and protection orders, including foster care orders, in the best interests of children, which must include documented permanency plans for the child "aimed at achieving stability in the child's life".[25] Securing this stability is a vital principle for the court to consider when ordering the removal of the child.[26]

Section 157(2)(*a*) and (*b*) (which must be read together with section 187(1))[27] of the *Children's Act*, requires a social worker to investigate the reasons the child was removed from the family home, to take action to prevent these from recurring, and to counsel both the child and the family before and after reunification. The actions the social worker takes are known

19 Makoae *et al Children's Court Inquiries in the Western Cape* 10.
20 Makoae *et al Children's Court Inquiries in the Western Cape* 22, 23.
21 The American Psychological Association notes that there is "ample empirical evidence to suggest that parental substance abuse leads to an increased risk of child abuse and neglect". Magura and Laudet 1996 *Child and Youth Services Review* 193.
22 Section 150(1)*(a)-(i)* and 180(1)*(a)* of the *Children's Act*.
23 Section 53 of the *Children's Act*.
24 Davel and Skelton *Commentary on the Children's Act* 24.
25 Section 157(1)*(a)*(iii) of the *Children's Act*.
26 Davel and Skelton *Commentary on the Children's Act* 32.
27 Davel and Skelton *Commentary on the Children's Act* 25.

collectively as reunification services, and are the "primary permanency goal for the majority of children placed in temporary care".[28] These services require a "multi-disciplinary approach to strengthen and support families".[29] They include, where applicable, providing substance-abuse rehabilitation services to the biological family to enable it to "ultimately resume care of the child and linking the child, the foster family and the biological family with appropriate services in the community".[30]

A treatment centre in South Africa is defined as providing "specialised social, psychological and medical services to persons affected by substance abuse with a view to addressing the social and health consequences associated therewith";[31] "treatment centre" means a private or public treatment centre.[32] Research reveals that while the treatment models used in these centres may be effective in treating the individual, they do not prioritise children and families.[33] The best time, however, to initiate the process of family reunification and for parents to fulfil their expected parental role and learn to communicate effectively with their children is during this period of sobriety in the treatment programme.[34] Interaction with their children during this period has also shown an increase in parents' relapse prevention skills.[35] This makes this interaction not only effective for the initial reunification but also ensures a more sustainable reunion with parents, who will then be better equipped to prevent a relapse.

In 2019, Lebuso[36] attempted to address the gap in the literature on guidelines for reunification at substance-abuse treatment centres, noting that "little is known about how the South African Guidelines for Reunification Services (2012) are implemented" and that the empirical research in this area is limited. In fact, Lebuso went on to note that social workers, who are the catalysts in rendering the necessary reunification services,[37] may not

28 Sauls 2015 https://www.westerncape.gov.za/assets/departments/social development/an_evaluation_of_family_reunification_services_in_the_western_cape_final_report_26_1 1_2015 pdf 6.

29 Sauls 2015 https://www.westerncape.gov.za/assets/departments/social development/an_evaluation_of_family_reunification_services_in_the_western_cape_final_report_26_1 1_2015 pdf.

30 National Welfare, Social Service and Development Forum date unknown https://ci.uct.ac.za/sites/default/files/content_migration/health_uct_ac_za/533/files/nwssdf%2520discuss%2520doc%2520fc4.pdf 5, cited in Davel and Skelton *Commentary on the Children's Act* 24.

31 Lebuso *Family Reunification Support to Inpatient Parents* 53.

32 *Prevention and Treatment of Substance Abuse Act* 70 of 2008, definition.

33 Lebuso *Family Reunification Support to Inpatient Parents* 59.

34 Gainey *et al Social Work Research* 185-190, as cited in Lebuso *Family Reunification Support to Inpatient Parents* 59.

35 Panchanadeswaran and Jayasundara 2012 *Journal of Human Behavior in the Social Environment* 986.

36 Lebuso *Family Reunification Support to Inpatient Parents* 131.

37 De Villiers *Role of the Social Worker* 81.

even be aware of these guidelines and may therefore not be implementing them.[38] Not surprisingly, then, Boning and Ferreira[39] found that the "rehabilitation of parents and reuniting of the biological family" occurred in only a minority of the cases involved in that study.

After inpatient treatment, social workers are tasked with helping parents receive community-based support services, family support and self-help groups to help them remain sober, but these aftercare support services are also limited.[40] An investigation in the Western Cape revealed that because social workers "lack sufficient resources, like time, and there are too few of them, these services are not delivered properly".[41] Other factors contributing to poor service delivery include the ever-growing number of cases social workers are required to manage, and a shortage of "children's courts and commissioners of child welfare".[42] Compounding the problem of under-resourced and uninformed social workers is the limited number of substance-abuse treatment centres and the lack of access to those that do exist for rural and poor communities[43] where substance abuse is prevalent.[44] Treatment services for parents suffering from SUD are notably lacking, as are reunification services for these parents and their children.

These resource and capacity constraints would affect the practical provision of the proposed FDTC system which is discussed later in the article. These constraints do point to a court system that is currently underserving the rights of families of parents who abuse substances.

Next, the concept of the court is outlined.

## 4 The concept of a Family Drug Treatment Court (FDTC)

An FDTC is a court designed for cases of child neglect or abuse to which parental SUD is a contributing factor, that provides a policy option to treat the underlying condition of parental SUD and "promote family preservation".[45] Here,

> judges, court personnel, attorneys, child protective services, treatment professionals, and other community partners collaborate on and coordinate services with the goal of ensuring that children have safe, nurturing, and

38 Lebuso *Family Reunification Support to Inpatient Parents* 131.
39 Boning and Ferreira 2013 *Journal of Social Work* 539.
40 Mahlangu and Geyer 2018 *Social Work* 327.
41 Mahlangu and Geyer 2018 *Social Work* 327.
42 Swann and Sylvester 2006 *Demography* 309.
43 Mohasoa and Mokoena 2019 *International Journal of Social Sciences and Humanity* 37, 38.
44 Myers, Louw and Pasche 2010 *Substance Abuse Treatment, Prevention, and Policy* 1.
45 Gifford *et al* 2014 *Child Abuse and Neglect* 1659.

> permanent homes within mandatory permanency time frames, parents achieve stable recovery.[46]

Each family member involved receives the support and services s/he needs. As FDTCs require "judicial leadership and collaborative work between attorneys, social service providers, and child welfare agencies",[47] they are multidisciplinary and, accordingly, require input from a number of role players. Procedurally, FDTCs provide intense judicial monitoring, and use regaining the care of one's child as an incentive for participants to enrol in and complete the programme.[48] An important part of the FDTC's success, research reveals, is the improved information sharing between child welfare, treatment providers and the courts and the "regular contact between judges and participants".[49]

As a starting point, however, it is important to note that FDTCs cannot be fully described as courts in the "traditional sense because they do not adjudicate".[50] This distinction is important when understanding the role of therapeutic jurisprudence in the FDTC model, which, as discussed above, prefers rehabilitation to punishment and considers "the helping relationship between treatment, courts, and corrections".[51]

Research reveals widespread agreement that the traditional family litigation process used in child protection matters "only serves to exacerbate stress and conflict among family members".[52] Accordingly, the FDTC movement was driven in part by the realisation that the therapeutic goal of promoting collaboration among professionals, families and children, instead of the adversarial relationships common in traditional litigation, would better "help children leave the foster care system and find permanency in a timely manner".[53] The FDTC could therefore simply be defined as the setting for a "collaborative effort by the court and all the participants in the child protection system to come together in a non-adversarial setting"[54] to establish the specific treatment needs of parents who abuse substances, together with the statutory placement decisions, including reunification and

---

46 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf, cited in Center for Children and Family Futures and National Association of Drug Court Professionals 2019 https://www.cffutures.org/files/OJJDP/FDCTTA/FTC_Standards.pdf 2.

47 Folkman 2005 *Child Leg Rts J* 15.

48 Gifford *et al* 2014 *Child Abuse and Neglect* 1660.

49 Gifford *et al* 2014 *Child Abuse and Neglect* 1660.

50 Edwards and Ray 2005 *Juv & Fam Court J* 1.

51 Moreno and Curti 2012 *Social & Cultural Geography* 163.

52 Kierstead 2011 *Barry Law Review* 33.

53 Kierstead 2011 *Barry Law Review* 34.

54 Edwards and Ray 2005 *Juv & Fam Court J* 1.

permanency planning decisions, to be made in the best interests of these children.[55]

FDTCs first emerged in the USA, with the UK and Australia following shortly thereafter. In all three jurisdictions, research on the use of the FDTC model revealed successful results, such as an increased likelihood of reunification between parents who abuse substances and their fostered children,[56] and parental abstinence from alcohol and drugs.[57]

In 2008, the first large-scale outcome study of American FDTCs revealed that the cases involved in this model are nearly twice as likely to result in reunification as comparative cases.[58] In addition, a four-site national study in the USA using a person-focused analysis considered whether FDTCs were effective in assisting parents to succeed in SUD treatment and, if they were, whether this resulted in improved child welfare outcomes.[59] First, the authors noted that earlier research had confirmed that generally the successful SUD treatment of parents involved in the child welfare system for this reason was "positively associated with the likelihood of reunification".[60] Second, the research found that participants in the FDTC were both more likely to stay in treatment longer and more likely to successfully complete it, even with considerable risks factored in.[61] Notably, though, participants were more likely to be reunified with their children.[62]

In Australia, studies conducted in 2017 and 2018 concluded that, among participants who engaged with the FDTC for at least six months, 72.2 per cent achieved reunification with their children.[63] In the UK, Brunel University published two evaluations showing that the Family Drug and Alcohol Court (the British version of the FDTC)[64] produced a range of positive outcomes, such as an increased likelihood of parents abstaining from drugs and

55 Section 28(2) of the *Constitution of the Republic of South Africa*, 1996 (the *Constitution*) and s 9 of the *Children's Act*.

56 Children's Court of Victoria date unknown https://www.childrenscourt.vic.gov.au/family-division/family-drug-treatment-court.

57 Harwin *et al* 2011 https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf 11; Harwin *et al* 2014 https://fdac.org.uk/wp-content/uploads/2020/03/Changing-Lifestyles-Keeping-Children-Safe-an-evaluation-of-the-first-Family-Drug-and-Alcohol-Court-FDAC-in-care-proceedings-May-2014.pdf.

58 Worcel *et al* 2008 *Child Abuse Review* 440.

59 Green *et al* 2007*Child Maltreatment* 44.

60 Green *et al* 2007*Child Maltreatment* 44.

61 Green *et al* 2007*Child Maltreatment* 56.

62 Green *et al* 2007*Child Maltreatment* 56.

63 Children's Court of Victoria date unknown https://www.childrenscourt.vic.gov.au/family-division/family-drug-treatment-court.

64 Despite the differences, similar results have been observed with the United States and United Kingdom models.

alcohol and reuniting with their children at the end of proceedings.[65] Ultimately, there is a growing international trend towards therapeutic jurisprudence and an enormous body of literature on FDTCs from which to draw.[66] This article considers some of these aspects later on.

Some drawbacks, however, are identified by Fay and Eggins,[67] who argue that while evidence reveals successful results in the FDTC in terms of reunification rates and a general reduction in parental SUD, the FDTC reviews have been too heavily focused on child outcomes and not enough on parent-level factors, such as their legal and psychosocial outcomes. To this end, the authors contend that a future review of these courts is necessary to "update and enhance the existing body of review" and provide a less biased assessment of the overall success of the FDTCs.[68]

## 5 The best interests standard in SA and all three jurisdictions

As noted earlier, this article considers certain countries that use the FDTC model because of the similarity of the best interests of the child standard in these jurisdictions and ours.

The South African *Children's Act*, which echoes the best interests' standard in both international law and the *Constitution*, necessitates observance of this standard "in all matters concerning the care, protection and well-being of the child".[69] In addition, section 7 provides a list of factors that must be considered whenever a provision of the *Children's Act* requires application of the best interests standard. Examples of these provisions, therefore, include any section under the Act that obliges the state to ensure family preservation and support, for example, early intervention services that help families build their self-reliance and capacity.[70] It also includes the provisions under section 156 dealing with court orders for children found to be in need of care, in particular foster care orders;[71] section 157 court orders "aimed at securing stability in a child's life", which includes a documented

65 Harwin *et al* 2011 https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf 11; Harwin *et al* 2014 https://fdac.org.uk/wp-content/uploads/2020/03/Changing-Lifestyles-Keeping-Children-Safe-an-evaluation-of-the-first-Family-Drug-and-Alcohol-Court-FDAC-in-care-proceedings-May-2014.pdf.

66 The problems associated with the rise in foster care cases and substance abuse are not, it seems, uniquely South African.

67 Fay and Eggins 2019 *Campbell Systematic Reviews*.

68 Fay and Eggins 2019 *Campbell Systematic Reviews* 5.

69 Section 9 of the *Children's Act*.

70 Section 144(2) of the *Children's Act*.

71 Section 156(1)(e) of the *Children's Act*.

permanency plan;[72] section 159, which deals with the duration of orders made under section 156; and all of chapter 12, which is dedicated to foster care, notably section 187, dealing with reunification of a child with her/his biological parent(s). Ultimately, although determining what is in the best interests of each child may be a flexible process,[73] the requirement to protect these interests in the *Children's Act* is undeniable.[74]

In the USA, every state has a statute that requires that a "child's best interests be considered whenever decisions regarding a child's placement are made".[75] While there is no standard definition for what the best interests entail, the application of the standard to decisions relating to children is similar to South Africa's, namely that in all decisions relating to children, the well-being and safety of the child is the paramount concern,[76] including decisions relating to "who is best suited to take care of the child".[77] For 28 of the US states, the preference of avoiding removing the child from the home is one of the guiding principles for a best interest determination, and in 19 of the states, timely permanency decisions are also a guiding principle.[78] In 1997, the *Adoption and Safe Families Act* of 1997, however, revised the wide range of policies established under the *Adoption Assistance and Child Welfare Act* of 1980. This is a federal law promoting "placement prevention and permanency planning, preferably with the child's own family".[79] It created a much-needed shift in focus from the preservation and reunification of the biological family to an "emphasis on the health and safety of children and accelerated permanent placements".[80] Essentially, the new Act reaffirmed the mandate to preserve families, but the health and safety of children took precedence over the parents' right to care for the child.[81] The new Act's policy further noted that the former Act's focus on family preservation saw children returned to unsafe environments or an increasing number of children languishing in foster care while prolonged efforts were made to rehabilitate their biological families.[82] This shift in focus is significant, as it highlights that although reunification remains the goal, it

---

72 Section 157(1)(*a*)(iii) and, in particular, s 157(1)(*b*)(ii) of the *Children's Act*, which aims to achieve stability in a child's life by placing the child in alternative care for a limited period and allowing for the reunification of the child and the parent.

73 Ndlovu and Khangala "Anatomization of the Best Interest of a Minor Child" 164.

74 Couzens 2019 *CCR* 363, 364.

75 Kohm 2008 *Journal of Law & Family Studies* 34.

76 Child Welfare Information Gateway 2023 https://www.childwelfare.gov/pubPDFs/best_interest.pdf.

77 Child Welfare Information Gateway 2023 https://www.childwelfare.gov/pubPDFs/best_interest.pdf.

78 Child Welfare Information Gateway 2023 https://www.childwelfare.gov/pubPDFs/best_interest.pdf.

79 Maluccio, Abramczyk and Thomlison 1996 *Children and Youth Services Review* 290.

80 Whitt-Woosley and Sprang 2014 *Child Welfare* 111.

81 Talbot 2006 *Illinois Child Welfare* 103.

82 Whitt-Woosley and Sprang 2014 *Child Welfare* 112.

does not supersede the child's health, safety and best interests. To this end, family preservation time frames were reduced, between the two Acts, from 18 months to 12 months.[83]

Similarly, Australia's fundamental principle in its State and Territory Acts for the "care and protection of children and young people"[84] is that decisions regarding children must be undertaken in their best interests. The *Children, Youth and Families Act*[85] specifies that when considering the "best interests" principles for children, regard must be had to the "need to give the widest possible protection and assistance to the parent and child",[86] "the desirability of continuity and permanency in the child's care"[87] and the "desirability, when the child is removed from the care of his or her parent, to plan the reunification of the child with his or her parent".[88]

In the UK, legislation stresses the "best interest of the child and the paramountcy of the child's wellbeing, family preservation and stability".[89] The key principle for decisions regarding children is the "paramount nature of the child's welfare".[90] Accordingly, local authorities may make an application to take children into care[91] if they have been abused or neglected because of parental substance abuse, and have a general duty to ensure that placement is the most appropriate way to safeguard and promote the child's welfare.[92] The core objective of the care planning, placement and case review guidance and regulations under the *Children Act* is permanence planning to ensure that children have a secure, stable and loving family.[93] These regulations highlight that for many children, permanence is achieved through a successful return to their birth family. Notably, however, the guidelines acknowledge that this permanency option

83 Talbot 2006 *Illinois Child Welfare* 103.

84 Australian Government 2020 https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones business?HTML.

85 *Children, Youth and Families Act* 96 of 2005 (hereafter the *Children, Youth and Families Act*).

86 Section 10(3)(*a*) of the *Children, Youth and Families Act*.

87 Section 10(3)(*f*) of the *Children, Youth and Families Act*.

88 Section 10(3)(*i*) of the *Children, Youth and Families Act*.

89 Skivenes and Thoburn 2016 *Children and Youth Services Review* 152.

90 The *Children Act* 1989.

91 *The Children Act* 1989 places a duty on local authorities "to safeguard and promote the welfare of children within their area who are in need; and so far as it is consistent with that duty, to promote the up-bringing of such children by their families, by providing a range and level of services appropriate to those children's needs". Skivenes and Thoburn 2016 *Children and Youth Services Review* 152.

92 Section 22(3) of the *Children Act* 1989.

93 Department of Education 2021 https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review 19.

is suitable only "where it has been possible to address the factors in family life which led to the child becoming looked-after".[94]

In all three jurisdictions, then, as with South Africa, the best interests of the child are paramount when making decisions about the child, particularly in relation to child protection. This would include how best to ensure stability in a child's life through governmental decisions that ensure the provision of sufficient reunification and rehabilitation services to parents who abuse substances and their children. This will allow children to remain with their parents, in accordance with the child's right to parental and family care in South Africa, as long as it is in their best interests.

## 6 The South African Children's Court and procedures

Zaal and Matthias[95] note that because commissioners' decisions in the Children's Courts, classified under the *Children's Act* as magistrate's courts, are not reported, there is a scarcity of data on what procedures these courts follow.[96] For this reason, among others, these courts are the "least studied and least understood of all South Africa's courts",[97] despite being specialised. Very little recent research therefore exists on these procedures.

According to an example provided by the Department of Justice and Constitutional Development, the process is roughly as follows: an allegation of child abuse will be reported to the clerk of the Children's Court.[98] This leads to the opening of a Children's Court inquiry at which the child will briefly appear, and the commissioner will make a decision about whether to set a date for the actual inquiry, as well as what should happen with the child in the interim.[99] Either social workers initiate and complete an investigation while the child remains at home, or the child is removed by the social worker, and the police if necessary, to a temporary safe place, by court order.[100] This second option can also be done without a court order, depending on whether the child's safety warrants immediate placement in "temporary safe care".[101] At this stage, a social worker is appointed to represent the child's interests, ensure the child's temporary safety and

94 Department of Education 2021 https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review 20.
95 Matthias and Zaal 1996 *Acta Juridica* 51.
96 Matthias and Zaal 1996 *Acta Juridica* 51.
97 Matthias and Zaal 1996 *Acta Juridica* 51.
98 By anyone, but a specific duty to report suspected child abuse rests *inter alia* on medical practitioners, dentists, teachers, social workers, lawyers, ministers of religion, nurses and traditional leaders. This is known as mandatory reporting under s 110 of the *Children's Act*.
99 Matthias and Zaal 1996 *Acta Juridica* 52.
100 De Villiers *Role of the Social Worker* 27.
101 Sections 151 and 152 of the *Children's Act*.

investigate the merits of the reported case,[102] including investigating the circumstances of the child and parents, and carry out any specific instructions from the court.[103]

The social worker will then investigate the child's circumstances with a view to filing a report (at a prearranged date prior to the actual inquiry),[104] upon which the court will make a finding on whether the "child needs care and protection"[105] and make an appropriate order,[106] including a foster care order. The report itself is formulated as an "authoritative opinion"[107] on the child's and parents' circumstances. At the time of the Zaal study, some commissioners would give social workers 8 weeks and others up to 16 weeks to investigate and file a report, with the former commissioners focussing more on due process and insisting on strict adherence to the timelines and the latter allowing conscientious social workers the time they (rightfully) needed to try to reconstruct the family, instead of simply reporting on the family circumstances.[108]

Once a child is in alternative care, social workers should immediately begin reunification services, starting with a documented plan for the court on how to achieve stability for the child and reunify the family, and the time frame proposed for this. These services, also provided after actual reunification,[109] are essentially designed to address the reasons why children were removed from their homes and to take action to prevent this from recurring. The standard premise on which these plans operate is that children must be returned to their parents, as the preferred alternative, as soon as possible. Research reveals, however, that heavy administrative burdens on social workers often prevent them from "adhering to the stipulated time frames as formulated in the plan"[110] and many children are placed in foster care with "little planning for their future",[111] and left there longer than they should be. In addition, a decision about whether it is in the best interests of a child to be placed in foster care is in the hands of the social worker and the magistrate only.[112] The problem with this is discussed below.

---

102 De Villiers *Role of the Social Worker* 27.
103 De Villiers *Role of the Social Worker* 29 and s 51 of the *Children's Act*.
104 De Villiers *Role of the Social Worker* 30.
105 Section 151(1) of the *Children's Act*.
106 Section 156 orders.
107 De Villiers *Role of the Social Worker* 30.
108 De Villiers *Role of the Social Worker* 55.
109 Section 157 of the *Children's Act*.
110 De Villiers *Role of the Social Worker* 33.
111 Puleng *Substitute Care*, as cited in De Villiers *Role of the Social Worker* 33.
112 Centre for Child Law 2016 https://centreforchildlaw.co.za/wordpress21/wpcontent/uploads/2019/03/2016_Guidelines_for_Legal_Reps_of_Children_web.pdf 12.

Little is lacking in terms of what social workers are tasked with doing.[113] As the primary facilitator in the foster care process, the social worker is required, in seven phases, to deliver services during foster care "to identify, address and change the parents' dysfunction and deliver reconstruction services".[114] For example, the phase for contracting with children and their families requires a contract to be drawn up stipulating specific time frames to complete explicitly defined tasks necessary to correct the behaviour that led to the family's initial disintegration, and serves to constantly remind everyone involved of what is expected. Social workers have the responsibility to address the fundamental causes of the family's disintegration, to enhance both the children and their parents' chances of being reunited,[115] while delivering reconstruction and intervention services, including rehabilitation services, that foster self-reliance and capacity building. In this context, social workers must actively ensure, when substance abuse is the cause of the family's disintegration, that these parents are empowered and encouraged to recover and are given a meaningful opportunity to do so. What is absent then is not the legal framework but the practice of it, as social workers lack resources and capacity, and there are too few of them to deliver "intensive, therapeutic, specialised and effective reconstruction and supervision services".[116] Social workers, therefore, need help in ensuring that these services are carried out.

Zaal's[117] discussion on the court services offered for the child in need of alternative care highlights the increase in the *Children's Act* of "dispositive remedies" available in the Children's Court care cases. A dispositive hearing is one in which "the judicial authority, after considering the social" or predispositional report and all of the child's circumstances, orders any action that is in the "best interest of the child and where applicable, the community".[118] The implication of the sections referring to these remedies, Zaal argues, is that magistrates are required to be more proactive in ensuring children are removed from their parents only as a very last resort.

The list of potential orders that a Children's Court may make is generous.[119] These remedies are further broadened, and sometimes duplicated, by the list of orders that can be made when "a child is found to be in need of care

113 The policy and legislative framework consists of services rendered in terms of *the Prevention of and Treatment for Substance Abuse Act* 70 of 2008 (the *PTSA*), *Mental Health Care Act* 17 of 2002, and DSD *Service Delivery Model*.

114 De Villiers *Role of the Social Worker* 62.

115 De Villiers *Role of the Social Worker* 64.

116 De Villiers *Role of the Social Worker* 127.

117 Zaal *Court Services for the Child in Need of Alternative Care* 322.

118 COLP "Definitions Applicable to Proceedings on Juvenile Matters", as cited in Zaal *Court Services for the Child in Need of Alternative Care* 321.

119 Section 46(1) of the *Children's Act*.

and protection",[120] which includes section 46 orders.[121] While this overlap is potentially confusing, some commentators argue that it at least equips "children's courts with a wide range of choices",[122] the most valuable of these being the choice to prevent the removal of children in the first place, or, if they are removed, to be reunited with their family with the use of court-ordered family preservation, early intervention, parental skills or rehabilitation services.[123] As discussed next, the court's ability to order these services, upon which social workers must act, is important, but yet seldom relied upon.

One aspect common to both the FDTC and the South African Children's Courts is the ability to make binding court orders in childcare matters. It is accordingly important to highlight the advantages of this ability before discussing other aspects of the FDTC. Zaal notes that the capability of a court to impose compulsory measures or orders will protect children from harm.[124] So, while the FDTC is therapeutic and informal in nature, it is still a court, like our Children's Courts, and therefore still capable of imposing formal court orders rightly entrusted to judicial officers trained and experienced in "weighing up evidence objectively".[125] Zaal argues that both children and families are better served by legally binding determinations, for example, a determination made on the interpretation of section 28(1)(*b*) ("every child's right to family care or parental care, or to appropriate alternative care when removed from the family environment") of the *Constitution*.[126]

The ability and mandate of a court to monitor overburdened social workers is also necessary to ensure a degree of accountability for them, and to ensure the correct balance between family protection and family care,[127] in particular, in relation to ensuring that family-tailored rehabilitation services are ordered for substance-abuse parents who social workers tend to side-line because they are perceived to be difficult.[128] This ability of the court to issue orders relating to early intervention, rehabilitation services and family preservation[129] is vital.

---

120 Section 156(1) of the *Children's Act*.
121 Section 156(1)(*a*) of the *Children's Act*.
122 Waldfogel 2000 *Fam LQ* 311, as cited in Zaal *Court Services for the Child in Need of Alternative Care* 345.
123 Section 46(1)(*g*) and (*h*)(vi) and 156(3)(*a*)(ii) of the *Children's Act*, read together.
124 Zaal *Court Services for the Child in Need of Alternative Care* 100.
125 Zaal *Court Services for the Child in Need of Alternative Care* 101.
126 Zaal *Court Services for the Child in Need of Alternative Care* 102.
127 Zaal *Court Services for the Child in Need of Alternative Care* 104.
128 Stein 2000 *Families in Society* 591, as cited in Zaal *Court Services for the Child in Need of Alternative Care* 350.
129 Section 46(1)(*g*) and (*h*)(vi) of the *Children's Act.* Known as "family services" collectively.

Despite this ability, unfortunately, the current practice neglects to include enough court-ordered family services or, if they are ordered, the failure by social workers to carry them out timeously or even at all is not monitored. A study of Children's Court records in KwaZulu-Natal identified that measures of prevention and early intervention, as well as therapeutic measures to support families, were not adequately implemented and monitored before or after statutory interventions.[130]

In conclusion, despite the existence of the provisions in the *Children's Act* for various court-ordered services to help the family, the reality is that the focus is still on child protection at the expense of family organisation, and the current situation reflects this. The creation of a South African FDTC would be possible then only if it is agreed that a paradigm shift in both professional and public perception is necessary, to ensure that the existing provisions of the *Children's Act* are in fact relied upon to assist parents who abuse substances and to restore the family. One London lawyer puts it simply: there is a need for a shared understanding that "the whole FDAC philosophy *can* work, and [that] parents get this message early on, instead of feeling that everyone has given up on them".[131]

## 7 The disadvantages of the SA court process in childcare matters

These disadvantages cannot be overlooked, particularly given the proposed reliance in the FDTC on therapeutic remedies and collaborative solutions. The most obvious of these is the current use of the adversarial system in childcare matters, because it presupposes, wrongfully, that the interests of child welfare, children and parents are opposed.[132] The use of the adversarial approach will naturally hinder the opportunities for the collaborative problem-solving necessary for the FDTC model to succeed, particularly in the light of the fact that presiding officers[133] use this approach as an excuse to remain above the fray and, in so doing, fail to prevent harmful adversarialism.[134] The FDTC, however, does not place the child's needs in opposition to those of the parents, but rather seeks to find a plan for rehabilitating the parents and addressing their substance abuse while simultaneously developing a plan for the child, with the goal of reunification being the foremost consideration in both plans.[135]

130 Holness 2023 *African Disability Rights Yearbook* 36.
131 Harwin *et al* 2019 *International Journal of Drug Policy* 106.
132 Zaal *Court Services for the Child in Need of Alternative Care* 108.
133 Formerly known as commissioners of child welfare, a title that has now been removed. See s 42(2) of the *Children's Act.*
134 Zaal *Court Services for the Child in Need of Alternative Care* 179.
135 Harwin *et al* 2019 *International Journal of Drug Policy* 102.

In addition, Zaal[136] argues that unrepresented caregivers are often steamrollered by social workers whose qualifications and court experience render their evidence more plausible, especially when the presiding officer has failed to intervene to establish otherwise. In essence, then, the court defers to the recommendation of a social worker,[137] who, as noted above, is potentially uninformed and often overworked.[138] This approach is both ineffective and disjunctive.

The FDTC proposes to repurpose the adversarial court process to a process of support and collaboration.[139] On this aspect, section 60(3) of the *Children's Act* would be useful. This section indicates that "Children's Court proceedings must be conducted in a relaxed and non-adversarial atmosphere which is conducive to attaining the co-operation of everyone involved in the proceedings".[140] The requirement for non-adversarialism in this section will not, however, be sufficient to actually ensure that the whole foster care process, when parental SUD is involved, is therapeutic and non-adversarial. Therefore more regulation will be necessary to guarantee this.

## 8 The FDTC in the USA, UK and Australia – a comparison

Given the length of time the FDTC has operated in the USA, the wealth of literature on the FDTC in this jurisdiction, and the fact that there has been only one evaluation of the Australian pilot,[141] most of the comparison will focus on the US FDTC model, with only brief mention of Australia and the UK.

Research indicates that the creation of the FDTC model in all three jurisdictions and, most recently, in Northern Ireland,[142] represents the "most radical international developments in family justice in the last two decades".[143] Promisingly, this radical development has revealed consistently higher reunification rates between parents who abuse substances and their children, in the USA, England and Australia.[144] The "contribution of parental substance misuse to child abuse and neglect" was the foremost reason in the three jurisdictions for finding innovative ways to treat parents who abuse substances and prevent recidivism,[145] followed

136 Zaal *Court Services for the Child in Need of Alternative Care* 232.
137 Holness *Access to Justice for Mothers with Intellectual Disabilities* 158.
138 Van Westrhenen *et al* 2017 *Child Abuse Research in South Africa* 2.
139 Harwin *et al* 2019 *International Journal of Drug Policy* 103.
140 Section 60(3) of the *Children's Act*. See also s 50(1) and s 60(1)(*a*)-(*b*).
141 De Bortoli *et al* 2018 https://www.childrenscourt.vic.gov.au/sites/default/files/2020-09/The-Family-Drug-Treatment-Court-An-Evaluation-Report_1.pdf.
142 Harwin *et al* 2019 *International Journal of Drug Policy* 101.
143 Harwin *et al* 2019 *International Journal of Drug Policy* 101.
144 Harwin *et al* 2019 *International Journal of Drug Policy* 102.
145 Harwin *et al* 2019 *International Journal of Drug Policy* 102.

closely by a mutual recognition that the system in each jurisdiction was also dysfunctional.[146]

The FDTC in all three is a problem-solving court, which means that it is designed to address the underlying problems, such as substance abuse, that contribute to child neglect and abuse, and to help reduce these.[147] As discussed, because the FDTC is a model of therapeutic jurisprudence, it proposes as a core tenet that parents who abuse substances are sick and need healing and not punishment. These parents have an inherent right to dignity[148] and deserve a meaningful second chance. Ultimately, the FDTC therefore serves two purposes: as a model of therapeutic jurisprudence, it seeks to treat, but as a court, it seeks to adjudicate.

Three models are discussed in the FDTC literature, but this article focuses on the integrated model as being the more appropriate one for SA. This model involves one family and one judge, where the same judge will manage both the drug treatment process and the child welfare case. This model is followed in Melbourne, London and some US states. In this model, magistrates, lawyers, social services and health practitioners all "join forces to systematically target parental drug use to improve social outcomes for children and families".[149] Ultimately, as noted earlier, the FDTCs are collaborative courts that operate under a different philosophy and different rules by bringing together a multidisciplinary team of professionals, with the FDTC magistrate at the fore, social welfare professionals, substance abuse and recovery professionals, and attorneys. Sadly, however, multidisciplinary and multisectoral approaches do involve a cost, which is not currently budgeted for in Children's Courts in South Africa.[150] Harwin notes a similar problem in the USA and England, where an argument to invest public money for highly skilled professionals towards initiatives assisting families making "poor lifestyle choices" often does not find fertile ground.[151]

In South Africa, two aspects are worth mentioning on this argument. First, the new National Drug Master Plan has driven a significant shift in thinking and acknowledges that addiction is a disease that should be treated therapeutically.[152] This shift emphasises that substance abusers should not be punished but rather healed, and so acknowledges that a multidisciplinary

146 Harwin *et al* 2019 *International Journal of Drug Policy* 103.
147 Harwin *et al* 2019 *International Journal of Drug Policy* 103.
148 Section 10 of *Constitution*.
149 Center for Children and Family Futures and National Association of Drug Court Professionals 2019 https://www.cffutures.org/files/OJJDP/FDCTTA/FTC_Standards.pdf 19.
150 Matthias 2014 *Social Work/Maatskaplike Werk* 177.
151 Harwin *et al* 2019 *International Journal of Drug Policy* 105.
152 DSD *National Drug Master Plan*.

approach would be necessary to treat substance abusers with children in foster care. This is an important step towards more effective harm reduction strategies, at least in theory. Second, a definite move towards a greater dedication in SA's Social Development budget (R753 835 000 of the total 2019/20 budget of R1 375 324 000,[153] approximately 55 per cent) to Children and Families Programmes is required.[154] This adjustment of funds in the public purse signifies the DSD's commitment to family-focused interventions and to a preventative rather than a reactive child protection approach.[155]

Despite the promising results on reunification and parental rehabilitation, research has shown that the FDTCs are not without challenges. Notable among these is the difficulty of uniting the traditionally separate justice system and the child welfare system, a challenge that South Africa will undoubtedly also face. Not only are these agencies separated operationally and in terms of funding, but their approaches are also different, as are their mechanisms for achieving the required goal of reunification[156] – although it is a goal that they share.

Attempting to balance a child's need for permanence with the time parents need to recover has also proven difficult, and in this respect, all three jurisdictions have different timelines. The time frame for permanency decisions is 15 months in the USA,[157] Australia's programme lasts 12 months,[158] and England has "introduced a statutory requirement to complete the case within 26 weeks", unless there are exceptional circumstances.[159] International research has found that reunification is particularly hard when parental substance misuse is involved,[160] arguing that SUD recovery is so uncertain that any attempt to obtain it is merely delaying the inevitable - recidivism.

The *Children's Act*, however, necessitates observance of the best interests standard "in all matters concerning the care, protection and well-being of

153 DSD date unknown https://vulekamali.gov.za/2019-20/national/departments/social-development.

154 DSD date unknown https://vulekamali.gov.za/2019-20/national/departments/social-development.

155 DSD date unknown https://vulekamali.gov.za/2019-20/national/departments/social-development.

156 Harwin *et al* 2019 *International Journal of Drug Policy* 103.

157 Known as the 15/22 rule, states are required to initiate termination of parental rights proceedings, or document an exception, for children who have been in foster care for at least 15 of the most recent 22 months. Section 475(5)(E) of the *Social Security Act* of 1935.

158 Family Drug Treatment Court date unknown https://www.cpmanual.vic.gov.au/advice-and-protocols/advice/court/family-drug-treatment-court-advice.

159 Section 14(2) of the *Children and Families Act* 2014

160 Thoburn 2012 *British Journal of Social Work*, as cited in Harwin *et al* 2019 *International Journal of Drug Policy* 104.

the child".[161] In addition, section 7 provides a list of factors that must be considered whenever a provision of the *Children's Act* requires application of the best interests standard.[162] Therefore, the constitutional and domestic mandates in South Africa make it clear that attempts to reunify and preserve the family are among the actions that must be taken when acting in the best interests of children.[163] Accordingly, the focus must also be, despite these challenges, on the recovery of parents. It is also worth noting that in the USA national FDTC evaluation, the improved reunification rates were predominantly *because* parental SUDs had been successfully addressed.[164] You cannot, in other words, have one without the other.

## 9 Time frames and the requirement of appropriate SUD treatment

At the outset, referring to the FDTC as the US model is a misnomer. There are 50 states, and while there are many similarities among the states that utilise the FDTC model, their procedures and staffing differ.[165] Despite these differences, there is a set of recommendations for developing FDTC guidelines or standards which allows states to monitor these courts and for local jurisdictions to implement the recommendations.[166] The more successful state models where these guidelines and standards have been applied are highlighted.

One aspect that is common to all states is the time frame established by the *Adoption and Safe Families Act* (the *ASFA*). As a federal law, it binds every state to ensure that a permanency plan is developed for a child removed from their home as a result of parental abuse and neglect, within fifteen months after removal.[167] Every state must therefore ensure that the process is completed in a maximum of 15 months, although fewer months are possible, and states have considerable room to self-organise and develop their own procedures in child neglect and abuse cases. This ability to self-organise is important, for it would not be possible to cater for the individual

---

161 Section 9 of the *Children's Act*.

162 This list is noted above and includes ss 156, 157, 159 and ch 12, notably ch 12 of the *Children's Act*.

163 Section 157(2)(*a*) and (*b*), read together with s 187(1) of the *Children's Act*.

164 Harwin *et al* 2019 *International Journal of Drug Policy* 106.

165 Harwin *et al* note that "no national model for family drug courts had been developed". Harwin *et al* 2019 *International Journal of Drug Policy* 103. In 2019, there were approximately 500 FDTCs operating in 48 states.

166 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf.

167 As noted above, the requirement which mandates child welfare agencies to file a petition to terminate parental rights within 15 months of a child entering foster care was established by the *Adoption and Safe Families Act* (ASFA) but is set out in Section 475(5)(E) of the *Social Security Act.*

needs of each family without a considerable degree of flexibility in these procedures.

Despite this requirement, many children, much as in the South African condition, remain in foster care without ever finding a permanent home or being reunited with their parents.[168] An evaluation of the FDTC model in Santa Clara County, however, showed that because SUD parents were able to start treatment on the first day, or at least within the first week that the child appeared for the first hearing, the time frame established under *ASFA* was achievable.[169] In particular, the courts' immediate access to substance-abuse experts allowed it to order a treatment plan right at inception. If the time frame of 15 months is to be followed, which is the optimal length of time for SUD recovery and therefore the time frame proposed,[170] this ability is important.

From the outset of the proceedings, both magistrates and lawyers must ensure that they have familiarised themselves with the resources available in the substance-abuse treatment provider community. Unfortunately, access to information on these resources is scarce, as many treatment providers are unregistered. Arguably, the reason for this is that these services fall under the definition of healthcare services,[171] which include "at least one treatment centre" for the rehabilitation of substance abusers per province,[172] or the provision of state funding for service providers,[173] community-based services[174] and public halfway houses.[175] A "service" is defined under the *Prevention of and Treatment for Substance Abuse Act* as "prevention, early intervention, treatment, reintegration and after care and any other interventions"[176] and, by extension, any institution providing these

168 The Administration for Children and Families date unknown https://www.acf.hhs.gov/programs/cb/publications/afcars/report8.htm, as cited in Edwards and Ray 2005 *Juv & Fam Court J* 3.

169 Edwards and Ray 2005 *Juv & Fam Court J* 3.

170 Many traditional programmes consider the optimal length of treatment to be at least 15 months. Rosenthal 1984 *Journal of Substance Abuse Treatment* 57.

171 As defined in s 27(1) and (2) of the *Constitution.*

172 Sections 1 and 17(1) of the *PTSA*, read together.

173 Section 7(1) of the *PTSA.*

174 Section 12 of the *PTSA*. "Community-based services means services provided to persons who abuse or are dependent on substances and to persons affected by substance abuse while remaining within their families and communities." See the definition in s 1 of the *PTSA*.

175 Section 20 of the PTSA. "Halfway house means a public or private halfway house that has been established or registered to provide a sober living environment for service users who have completed a formal treatment programme for substance abuse and require a protected living environment in order to prepare them for reintegration into society." See the definition in s 1 of the *PTSA*.

176 Section 1 of the *PTSA*.

services is eligible for state funding. And, therein lies the rub. State funding for these services is insufficient.[177]

Facilities to treat substance abuse must, however, be understood broadly to include both state-funded treatment centres for the rehabilitation of substance abusers[178] as well as non-governmental organisations (NGOs), because research conducted by Falkier and Myers in 2007 and 2008, respectively, revealed that for Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, North West and Northern Cape, most substance-abuse treatment facilities are private NGOs.[179] This fact is also acknowledged in the National Drug Master Plan, which has specifically called for improvement in the capacity of NGOs so that they may "provide quality substance abuse prevention and treatment programmes" to improve the "well-being of children, families and communities".[180] Therefore, the South African government's undertaking to improve the capacity of NGOs so that they can provide quality substance-abuse treatment, as well as to supply state-funded family preservation services,[181] is some light at the end of this tunnel.

The parliamentary monitoring group recently revealed the following stats on substance-abuse treatment facilities: 25 state-funded NGOs with a combined capacity of 1 059 people, 4 funded state facilities with a combined capacity of 586 people, 3 private facilities receiving state funding with room for 149 people and, finally, 39 additional state-funded NGOs with an undefined capacity.[182] The South African National Council on Alcoholism and Drug Dependence's (SANCA's) records also reveal that there "are 29 SANCA organisations in most of the larger centres around the country – at least 1 in all 9 provinces", and 182 registered alcohol and substance-abuse organisations.[183] These are the ones we know about. There will be others,

177 Burnhams, Myers and Parry 2009 *African Journal of Drug and Alcohol Studies*. See also Myers, Louw and Pasche 2010 *Substance Abuse Treatment, Prevention, and Policy*; Paul date unknown https://www.civilsocietyacademy.org/post/shadow-report-an-important-tool-for-advocacy, which reveals the lack of funding for reunification services.

178 Sections 1 and 17(1) of the *PTSA*, read together.

179 Fakier and Myers 2007 http://www.mrc.ac.za/adarg/audit.pdf; Fakier and Myers 2008 https://www.yumpu.com/en/document/view/40685555/audit-of-substance-abuse-treatment-facilities-in-sa-healthinfo, cited in Mawoyo *Assessment of the Sustainability of Substance Abuse Organisations* 3.

180 DSD *National Drug Master Plan* 46.

181 DSD *National Drug Master Plan* 46.

182 PMG date unknown https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fstatic.pmg.org.za%2FRNW1576A-150506.doc&wdOrigin=BROWSELINK.

183 Saferspaces date unknown https://www.saferspaces.org.za/organisation/entry/sanca-national.

although we know nothing about them without quantitative research in this area.

South Africa recently experienced a growing number of unregistered treatment provider facilities. The establishment of these facilities "is not a problem per se if it is done within the confines of the law".[184] The DSD's main concern, however, is that because these facilities are not registered, they are not regulated. However, the fact that a treatment provider is unregulated (or unfunded) does not mean the provider is not useful or that the FDTC cannot rely on it in their programme. Part of the legal profession's requirement to familiarise itself with the SUD treatment provider community will entail knowing which ones are legitimate and reliable, and, with time, reliance on these facilities can be established. Therefore, the court and treatment provider community will (and must) share important core values and principles, and this shared vision will positively assist with collaboration.[185]

So, while the court will order and closely monitor parental participation in substance-abuse treatment services, it is ultimately these centres and the skill set they offer, for example, psychological, mental, physical and spiritual health specialists, that will help ensure successful parental recovery. The role of the NGOs in the FDTC, whether state-funded or not, will be substantial, as it is predominantly these organisations that will monitor the implementation of the substance-abuse prevention and treatment programmes that are necessary to improve the well-being of foster children and their families. The need for early access to and ongoing effective communication and collaboration with this community in the FDTC is therefore obvious.

The above model, which has been adopted in both Santa Clara and Washoe counties, is often referred to as the "traditional" FDTC model, and research has noted its success in comparison with that of other models. The focus in this model on parents who have had their children removed from their care, and who are receiving timely access to quality SUD treatment services, attending frequent meetings with treatment counsellors[186] and regular court

184 GN 4058 in GG 49658 of 10 November 2023, 41.

185 National Center on Substance Abuse and Child Welfare 2006 https://attcppwtools.org/ResourceMaterials/SAFERR.pdf 14. To name a few: the safety of children is to be ensured, families are to be empowered, parents must be held accountable while at the same time being treated with dignity, and services must be family-focussed because parents and children best respond to such services (National Center on Substance Abuse and Child Welfare 2006 https://attcppwtools.org/ResourceMaterials/SAFERR.pdf 15).

186 The research noted that the more frequent the meetings with treatment counsellors, the more likely the reunification between parents and children; Administration for Children and Families date unknown https://www.acf.hhs.gov/programs/

appearances, reveals significantly higher percentages of participants remaining in treatment, completing treatment and, notably, being reunited with their children.[187] Arguably, the most telling gauge of success in a particular FDTC model is the feedback provided by those who actually participated in it. In the above national study, which compared four FDTCs that used different models, participants noted the value of having a team of people around them to support their recovery, notably the judge, whom they saw as invested in their well-being and not just someone who ordered the removal of their children from their care.[188] The research concluded that improved information sharing between "treatment, child welfare, and the courts and the regular contact between judges and participants" was an important part of the FDTC's successful reunification rates.[189] Recently, in 2019, an enormous national collaboration of experts prepared a "best practice" guide for Family Treatment Courts that summarises the FDTC standards applied across the FDTC partners.[190] These best practices are considered next and confirm what has been expressed above.

## 10 Basic principles for an FDTC in South Africa

A fundamental minimum starting point is the pursuit among FDTC partners of a shared mission and vision based on principles that are held in common, so that everyone can work together to best ensure the "safety, permanency, and well-being of children and parents in recovery".[191] The proposed South African FDTC partners must therefore agree that the legal mandate to reunify foster children with their parents and restore the family by ensuring access to and completion of SUD recovery programmes will form the core of this vision.

Second, the research confirms the critical role of the judge (here, the magistrate). The FDTC magistrate's valuable contribution involves galvanising the FDTC team into developing and implementing an effective plan and forming a relationship with these parents.[192] To ensure this

cb/publications/afcars/report8.htm, as cited in Edwards and Ray 2005 *Juv & Fam Court J* 3.

187 Worcel *et al* 2007 https://npcresearch.com/wp-content/uploads/FTDC_Evaluation_Final_Report.pdf V. This article refers to the courts as FTDCs instead of FDTCs, but they are effectively the same thing.

188 Worcel *et al* 2007 https://npcresearch.com/wp-content/uploads/FTDC_Evaluation_Final_Report.pdf 61.

189 Green *et al* 2007*Child Maltreatment* 56.

190 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf. Here the court is referred to simply as a Family Treatment Court (FTC), but again, it is the same as the FDTC.

191 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf 8.

192 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf iii.

relationship is maintained and continuity created, the recommendation is that the length of the judicial assignment to the FDTC also be 15 months,[193] and there should be no rotation of magistrates during this period. There will also need to be enough magistrates operating in the FDTC at any given time to ensure the continuity of the 15-month cycle for each family.

Next, the early identification of SUD as the underlying cause for abuse or neglect and the early referral of these cases to the right facilities are vital.[194] In turn, these facilities must provide appropriate SUD treatment that demonstrates the importance of family services, especially the need for child permanency, and then incorporate this into the family treatment plan.[195] Research has suggested "that promising collaborative models between the child welfare system and the SUD treatment system" characteristically include cross-training.[196] For example, studies that documented parents' SUDs confirmed "the need for cross-training and skills in interdisciplinary work between child welfare and the SUD treatment fields".[197] In fact, consistently effective practice involved knowledge and experience with SUD issues among child welfare, treatment providers, the court and the attorneys.

### *10.1 Comparing comparative models*

The Family Drug and Alcohol Courts (FDAC), which are equivalent in many respects to the FDTC, operate from 12 courts across the UK.[198] Despite some differences between the US and UK models, the evaluation results were similar, namely:

> higher reunification rates, higher rates of permanency placement, and lower rates of recurrent drug use among families who participated in the FDAC compared with families heard in the mainstream court setting.[199]

---

193 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf 35.

194 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf iv.

195 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf v.

196 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf 19.

197 Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf 19.

198 Harwin *et al* 2011 https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf; Harwin *et al* 2014 https://fdac.org.uk/wp-content/uploads/2020/03/Changing-Lifestyles-Keeping-Children-Safe-an-evaluation-of-the-first-Family-Drug-and-Alcohol-Court-FDAC-in-care-proceedings-May-2014.pdf.

199 Harwin *et al* 2011 https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf; Harwin *et al* 2014 https://fdac.org.uk/wp-content/uploads/2020/03/Changing-Lifestyles-Keeping-Children-Safe-an-evaluation-of-the-first-Family-Drug-and-Alcohol-Court-FDAC-in-care-proceedings-May-2014.pdf.

In Australia, too, participants who properly engaged with the FDTC were significantly more likely to achieve reunification compared to those who failed to complete it, "with 6-12 months of FDTC engagement showing the most efficacy".[200] Of the research considered for this article, the pilot project review of the English FDAC provided the most practical but broadly defined process for this court. For example, an assessment of the parent's trajectory through the FDAC involves the following:

> the assessment and intervention work is about preparing and discussing assessments, co-ordinating intervention plans, solving problems that arise, helping parents to engage and remain engaged with substance misuse and parenting services, getting feedback from services, and providing regular reports on parental progress to the court and all others involved in the case. The overall aim is to assess what needs to change for parents, provide them with every opportunity to make those changes, and measure how well they have succeeded.[201]

Once an intervention plan has been agreed with parents, important features of this assessment process include regular reviews by the court of the progress being made and the "direct therapeutic work with parents" by SUD treatment and other services.[202] The ability of the team to adapt as the FDAC progresses is an important feature. This adaptability requirement is one that is held in common in both the Australian and American models.

The team in both the FDAC and the FDTC is extensive and varied. In the FDAC, for example, there is a general manager, a child psychiatrist, a service manager, a nurse, a team administrator and social workers, all full-time members, and then a substance misuse specialist, a parental substance misuse specialist, and a volunteer parent mentor, who are part-time.[203]

A consideration of the extent to which each of these role players can be involved in the South African FDTC, in particular, given the scarcity of skills in some of these sectors,[204] is beyond the scope of this article. What must be established and agreed upon, however, is that at a minimum, the FDTC should have the following role players (although their titles may differ, their

---

200 De Bortoli *et al* 2018 https://www.childrenscourt.vic.gov.au/sites/default/files/2020-09/The-Family-Drug-Treatment-Court-An-Evaluation-Report_1.pdf 61, 62.

201 Harwin *et al* 2011 https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf 28.

202 Harwin *et al* 2011 https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf 28.

203 Harwin *et al* 2011 https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf 27.

204 Reluctance to address the fact that child and adolescent mental health services and interventions remain underdeveloped is due, in part, to the many reasons causing the problem. Babatunde *et al's* list is extensive: "lack of policies, low political priority, low financial investment, shortage of human resources and infrastructure, lack of adequate coordination and intersectoral collaboration". Babatunde *et al* 2022 *Child and Adolescent Psychiatry and Mental Health* 2.

role remains the same): first, the FDTC magistrate, who makes the final decision about the court-ordered response;[205] second, a legal practitioner; third, a social worker; and fourth, a SUD treatment provider.[206]

It must further be agreed that the following factors are in place. First, FDTCs cannot function in isolation and must understand how they relate to the larger child welfare and SUD treatment population in their jurisdiction.[207] Second, the FDTC is multidisciplinary and requires input from a number of role players. Third, frequent drug testing, for example, urine tests, is necessary to ensure compliance.[208]

The specifics on how to structure this input is something that should be left to the individual FDTC in a particular jurisdiction, which would be created pursuant to regulations under the *Children's Act*.

### *10.2 Compulsory or voluntary participation*

Before concluding, it is necessary to query whether participation in the FDTC should be compulsory. Research conducted in 2019 revealed that although participation in the FDTC is traditionally voluntary, mandatory FDTCs are no less effective, nor does the fact that they are mandatory detract from the ideals of therapeutic jurisprudence.[209] In fact, as far as drug rehabilitation is concerned, "treatment does not need to be voluntary to be effective",[210] and the strongest predictor of treatment retention is legal pressure.[211]

Rehabilitation, however, is only one aspect of the FDTC model, and the more pertinent question is whether mandatory participation is the more effective approach for ensuring the primary goal of successful reunification between parents and children. The study revealed not only that it is, but also that parents in the mandatory programme were more compliant with court

---

205 Richardson, Spencer and Wexler points out that "therapeutic jurisprudence asks all judges to recognize they can be important agents of change", who must strive to develop empathy, which is the foundation of therapeutic judging. Richardson, Spencer and Wexler 2016 *JJA* 158.

206 Center for Children and Family Futures and National Association of Drug Court Professionals 2019 https://www.cffutures.org/files/OJJDP/FDCTTA/FTC_Standards.pdf.

207 Center for Children and Family Futures and National Association of Drug Court Professionals 2019 https://www.cffutures.org/files/OJJDP/FDCTTA/FTC_Standards.pdf 4.

208 Harwin *et al* 2011 https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf 29.

209 Fessinger *et al* 2020 *Journal of Experimental Criminology* 51.

210 National Institute on Drug Abuse 2018 https://nida.nih.gov/sites/default/files/podat-3rdEd-508.pdf 6.

211 Fessinger *et al* 2020 *Journal of Experimental Criminology* 52.

orders and perceived the process as being more procedurally fair.[212] This would therefore be an important consideration for an FDTC in SA.

The idea with FDTCs is ultimately to rely on the non-adversarial nature of the court to highlight that the focus is on rehabilitation, on a case-by-case basis, to reinforce compliance with mandatory court-ordered SUD treatment.[213]

### *10.3 Minimum requirements for FDTCs in South Africa*

The biggest problem for the implementation of the FDTC in South Africa will be the allocation of resources. South Africa has no appetite for specialist courts because, despite the commitment to family preservation in the social development budget and acknowledgement that SUD is a disease that should be treated therapeutically, this is a far cry from actually allocating precious resources to a new court. Some consolation exists, however.

First, the proposal is to recapacitate the existing Children's Court to operate as an FDTC when SUD has been identified as the cause for statutory intervention, which would alleviate some of the financial burden that creating a whole new court would involve. In addition, South Africa has a statutory obligation to ensure "the transformation of the legal profession that embraces the values underpinning the Constitution", by the "rendering of community service" [214] that must logically focus on civil as opposed to criminal legal aid.[215] Accordingly, the legal practitioners proposed for the FDTC should be required to provide compulsory hours as part of their community service,[216] and would therefore not require additional state funding (at least not for the hours provided, although funding for basic training on SUDs would be necessary). Finally, while some funds would have to be redirected to ensure the upskilling of social workers and treatment providers, there are, at least, existing SUD treatment provider communities and qualified social workers.

Such a system may include the following elements. There must be a rehabilitation time frame of 15 months for any parent or caregiver entering the FDTC programme. The FDTC magistrate, who must be appointed to the FDTC for a continuous period of 15 months before they can be rotated, must receive adequate government-funded training on SUD. A practising legal practitioner, required under the *Legal Practice Act* regulations to provide 40

212 Fessinger *et al* 2020 *Journal of Experimental Criminology* 52.

213 Fay and Eggins 2019 *Campbell Systematic Reviews* 17.

214 Sections 3(*a*) and (*b*)(ii) and 29 of the *Legal Practice Act* 28 of 2014 (the *Legal Practice Act*).

215 Holness 2020 *PELJ* 1.

216 Under s 29(1)(*b*) of the *Legal Practice Act*, legal practitioners must provide "a minimum period of recurring community service upon which continued enrolment as a legal practitioner is dependent".

hours of community service, should be permitted to dedicate a minimum of 30 continuous hours (two hours per month) to the FDTC, and this legal practitioner must remain with the same parents or caregivers for the 15-month period, until the programme is complete. FDTC legal practitioners must also receive basic training on SUD and the representation of clients in these matters. From the outset of the proceedings, both FDTC magistrates and legal practitioners must ensure that they have familiarised themselves with the resources available in the substance-abuse treatment provider community. A social worker should be appointed, with additional training to understand substance abuse as a recurring mental health condition and treat it accordingly. SUD treatment providers, in particular NGOs operating in this field, must receive sufficient government funding, and there must be ongoing effective communication and collaboration with these providers.

In addition, such a system would involve the following principles. First, because FDTCs cannot function alone and are connected to the child welfare and SUD treatment population in their jurisdiction, holistic integration is required. Second, frequent court appearances for the parents involved are necessary. Third, government funding under section 105 of the *Children's Act* for transportation costs for court appearances and the SUD treatment provider for parents or caregivers involved in the FDTC programme must be prioritised.

## 11 Conclusion

Research reveals that the FDTCs in jurisdictions that use them, and whose "best interests" standard is comparable to ours, are proving successful in reunifying parents suffering from SUD with their fostered children. As these courts encompass the idea of therapeutic jurisprudence, reliance on the therapeutic jurisprudential approach would provide the impetus to take the necessary steps to transform the existing family court structure into a therapeutic FDTC model. This model, research confirms, is better designed to rehabilitate parents who abuse substances, so that they can take care of their own children and, in doing so, meet the statutory requirements for family reunification, preservation and secure stability for children fostered as a result of parental substance abuse.

The differences between the current SA model and the FDTC model are the South African Children's Court's reliance on a magistrate only to make decisions (in line with heavily weighted evidence from a social worker) that are in the best interests of foster children, and this is problematic. This is so because reactive magistrates often defer to the reports of social workers, many of whom operate under heavy administrative burdens and are often unaware of the reunification guidelines or the policy on family preservation.

The advantage inherent in the fact that the FDTC is a court is that it can issue orders, and these can create a degree of accountability for the social workers who will act on them, particularly in relation to SUD parents. Although the *Children's Act* makes provision for ordering family preservation and rehabilitation services, the Children's Court fails to order these, or, if it does, it fails to monitor their implementation. Despite the existence of the provisions in the *Children's Act* for various court-ordered services to help the family, the reality is that the focus is still on child protection at the expense of family organisation, and the current situation reflects this.

The disadvantage of the way the South African courts operate, however, is that it is adversarial in nature, and this approach hinders collaborative problem-solving. The FDTC proposes to repurpose the adversarial process to one of support and collaboration among social welfare workers, the court and the attorneys, and the SUD treatment provider community.

A comparison of the USA, UK and Australian FDTC models reveals promising results on successful reunification between parents who abuse substances and their fostered children, as well as successful parental rehabilitation in each jurisdiction. It also reveals, however, the challenges faced by the FDTCs, notably the difficulty in balancing a child's need for permanence with the time parents need to recover. Yet research shows that improved reunification rates were achieved predominantly where parental SUDs had been successfully addressed. Because South Africa is legally mandated to reunify and preserve the family as among the actions that must be taken when acting in the best interests of children, it must focus more on the recovery of these parents.

The integrated model, which involves one family and one judge, is also often referred to as the "traditional" FDTC model and has a better success rate than other models. The focus here is on parents whose children have been removed from their care, and who are receiving timely access to quality SUD treatment services, who frequent meetings with treatment counsellors, and have frequent court appearances. This is because these practices result in significantly higher percentages of participants remaining in treatment, completing treatment and, notably, being reunited with their children. Research shows that parents value having a team of people around them to support their recovery, especially the judge, who they see as being invested in their well-being and not being just someone to order that their children be removed from their care.[217]

FDTC partners must agree that the legal mandate to reunify foster children with their parents and restore the family by ensuring access to and the

---

217 Worcel *et al* 2007 https://npcresearch.com/wp-content/uploads/FTDC_Evaluation_Final_Report.pdf 61.

completion of SUD recovery programmes will form the core of the FDTC vision. In addition, the magistrate should not be rotated for a 15-month period to ensure that her/his relationship with the parents and children is maintained and that continuity is created. In some states, the specialisation of magistrates in these matters is therefore developed over time. The early identification of substance abuse as the underlying cause for abuse or neglect and the early referral of these cases to the right facilities is vital. This is because these facilities will provide appropriate SUD treatment that takes into consideration the importance of family services, especially the need for child permanency, and incorporates these into the family treatment plan.

Although research notes that the FDTC team in various jurisdictions is extensive and varied, a South African FDTC would require, at a minimum, the following role players: The FDTC magistrate who makes the final decision about the court-ordered response, a legal practitioner, a social worker, and a SUD treatment provider. These functionaries must agree that they cannot function in isolation, as they are related to a much larger child welfare and SUD treatment population. The FDTC role players must also acknowledge that the team is multidisciplinary and that frequent drug tests, such as urine tests, are necessary.

Finally, research conducted in 2019 reveals that compulsory participation in the FDTC is no less effective or therapeutic, and as far as drug rehabilitation is concerned, treatment does not need to be voluntary to be effective. Ultimately, and importantly, mandatory participation was found to be the more effective approach for ensuring the primary goal of successful reunification between parents and children.

The FDTC is both a court to adjudicate and a place where parents can come to get the help they need to recover. Here, the justice system and child welfare must collaborate, despite their differences, to achieve the shared goal of reunification. Magistrates and lawyers must also seek to achieve this goal for the same reason and must therefore familiarise themselves with the resources available in the SUD treatment community and ensure that these are made available and accessible. In collaboration with child welfare and the justice system, the SUD treatment community must ensure that they are carrying out court-ordered services which prioritise family preservation, child permanency, and reunification. This focus must be a collaborative effort by an FDTC magistrate, first and foremost, a social worker, a legal practitioner, and a SUD treatment provider, at a minimum, and any other useful professionals whose mandate and ability to be involved is unfortunately beyond the scope of this article. The success of a mooted adoption of a contextually adapted FDTC model for South Africa would rely in part on capacitating a currently under-resourced social services sector

and renewed efforts to prioritise rehabilitation services for persons with SUD.

## Bibliography

### Literature

Arstein-Kerslake and Black 2020 *Int'l J L & Psychiatry*
Arstein-Kerslake A and Black J "Right to Legal Capacity in Therapeutic Jurisprudence: Insights from Critical Disability Theory and the Convention on the Rights of Persons with Disabilities" 2020 *Int'l J L & Psychiatry* 1-10

Babatunde *et al* 2022 *Child and Adolescent Psychiatry and Mental Health*
Babatunde GB *et al* "Identifying Multilevel and Multisectoral Strategies to Develop a Theory of Change for Improving Child and Adolescent Mental Health Services in a Case-study District in South Africa" 2022 *Child and Adolescent Psychiatry and Mental Health* 1-19

Boning and Ferreira 2013 *Journal of Social Work*
Boning A and Ferreira S "An Analysis of, and Different Approach to, Challenges in Foster Care Practice in South Africa" 2013 *Journal of Social Work* 519-543

Burnhams, Myers and Parry 2009 *African Journal of Drug and Alcohol Studies*
Burnhams N, Myers B and Parry C "To What Extent Do Youth-Focused Prevention Programmes Reflect Evidence-based Practices? Findings from an Audit of Alcohol and Other Drug Prevention Programmes in Cape Town, South Africa" 2009 *African Journal of Drug and Alcohol Studies* 1-8

COLP "Definitions Applicable to Proceedings on Juvenile Matters"
Commission on Official Legal Publications "Definitions Applicable to Proceedings on Juvenile Matters" in *The Connecticut Practice Book 2024* (Commission on Official Legal Publications Enfield 2024)

Couzens 2019 *CCR*
Couzens M "The Best Interest of the Child and the Constitutional Court" 2019 *CCR* 363-386

Davel and Skelton *Commentary on the Children's Act*
Davel CJ and Skelton AM (eds) *Commentary on the Children's Act* (Juta Pretoria 2019)

De Villiers *Role of the Social Worker*
De Villiers A *The Role of the Social Worker in the Reunification of Foster Children with Their Biological Parents* (MSA-thesis University of Stellenbosch 2008)

DSD *National Drug Master Plan*
Department of Social Development *National Drug Master Plan 2019-2024* 4th ed (Department of Social Development Pretoria 2019)

DSD *Service Delivery Model*
Department of Social Development *Service Delivery Model for Developmental Social Services* (Department of Social Development Pretoria 2005)

Edwards and Ray 2005 *Juv & Fam Court J*
Edwards L and Ray JA "Judicial Perspectives on Family Drug Treatment Courts" 2005 *Juv & Fam Court J* 1-27

Fay and Eggins 2019 *Campbell Systematic Reviews*
Fay S and Eggins E "PROTOCOL: Family Treatment Drug Courts for Improving Parental Legal and Psychosocial Outcomes" 2019 *Campbell Systematic Reviews* https://doi.org/10.1002/cl2.1024

Fessinger *et al* 2020 *Journal of Experimental Criminology*
Fessinger M *et al* "Mandatory, Fast, and Fair: Case Outcomes and Procedural Justice in a Family Drug Court" 2020 *Journal of Experimental Criminology* 49-77

Folkman 2005 *Child Leg Rts J*
Folkman CJ "Family Drug Courts: A New Approach to Help Solve the Crisis in Child Welfare" 2005 *Child Leg Rts J* 15-24

Fourie and Coetzee 2012 *PELJ*
Fourie E and Coetzee E "The Use of a Therapeutic Jurisprudence Approach to the Teaching and Learning of Law to a New Generation of Law Students" 2012 *PELJ* 367-390

Gainey *et al* 2007 *Social Work Research*
Gainey RP *et al* "Teaching Parenting Skills in a Methadone Treatment Setting" 2007 *Social Work Research* 185-190

Gifford *et al* 2014 *Child Abuse and Neglect*
Gifford EJ *et al* "How Does Family Drug Treatment Court Participation Affect Child Welfare Outcomes?" 2014 *Child Abuse and Neglect, the International Journal* 1659-1670

Green *et al* 2007 *Child Maltreatment*
Green BL *et al* "How Effective are Family Treatment Drug Courts? Outcomes From a Four-site National Study" 2007 *Child Maltreatment* 43-59

Gxubane *Prospects of Family Group Conferencing*
Gxubane T *Prospects of Family Group Conferencing with Youth Sex Offenders and Their Victims in South Africa. Offenders No More: An Interdisciplinary Restorative Justice Dialogue* (Nova New York 2015)

Harwin *et al* 2019 *International Journal of Drug Policy*
Harwin J *et al* "Tensions and Contradictions in Family Court Innovation with High-risk Parents: The Place of Family Drug Treatment Courts in Contemporary Family Justice" 2019 *International Journal of Drug Policy* 101-108

Holness 2020 *PELJ*
Holness D "Improving Access to Justice Through Law Graduate Post-study Community Service in South Africa" 2020 *PELJ* 1-24

Holness 2023 *African Disability Rights Yearbook*
Holness W "Adapting Prevention and Early Intervention Measures and Parenting Capacity Assessments in Neglect Cases Involving Parents with Intellectual Disabilities in South African Children's Court" 2023 *African Disability Rights Yearbook* 32-53

Holness *Access to Justice for Mothers with Intellectual Disabilities*
Holness W *Access to Justice for Mothers with Intellectual Disabilities in Case of Child Neglect at Two KwaZulu-Natal Children's Courts* (LLD-dissertation University of Pretoria 2021)

Kierstead 2011 *Barry Law Review*
Kierstead S "Therapeutic Jurisprudence and Child Protection" 2011 *Barry Law Review* 31-44

King 2008 *MULR*
King MS "Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice" 2008 *MULR* 1096-1126

Kohm 2008 *Journal of Law & Family Studies*
Kohm LM "Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence" 2008 *Journal of Law & Family Studies* 1-40

Lebuso *Family Reunification Support to Inpatient Parents*
Lebuso BA *Family Reunification Support to Inpatient Parents in Western Cape Substance Abuse Treatment Centres: An Explorative Study* (MSW-thesis North-West University 2019)

Magura and Laudet 1996 *Child and Youth Services Review*
Magura S and Laudet AB "Parental Substance Abuse and Child Maltreatment: Review and Implications for Intervention" 1996 *Child and Youth Services Review* 193-220

Mahlangu and Geyer 2018 *Social Work*
Mahlangu S and Geyer S "The Aftercare Needs of Nyaope Users: Implications for Aftercare and Reintegration Services" 2018 *Social Work* 327-345

Makoae *et al Children's Court Inquiries in the Western Cape*
Makoae M *et al Children's Court Inquiries in the Western Cape: Final Report to the Research Directorate, Department of Social Development, Provincial Government of the Western Cape* (Human Sciences Research Council Cape Town 2008)

Maluccio, Abramczyk and Thomlison 1996 *Children and Youth Services Review*
Maluccio AN, Abramczyk LW and Thomlison B "Family Reunification of Children in Out-of-home Care: Research Perspectives" 1996 *Children and Youth Services Review* 287-305

Matthias 2014 *Social Work/Maatskaplike Werk*
Matthias CR "Can We Legislate for Prevention and Intervention Services for Children? An Analysis of Aspects of the 2002 Draft Children's Bill" 2014 *Social Work/Maatskaplike Werk* 172-178

Matthias and Zaal 1996 *Acta Juridica*
Matthias C and Zaal N "Can We Build a Better Children's Court? Some Recommendations for Improving the Processing of Child-removal Cases" 1996 *Acta Juridica* 51-68

Mawoyo *Assessment of the Sustainability of Substance Abuse Organisations*
Mawoyo T *An Assessment of the Sustainability of Substance Abuse Organisations in South Africa* (MSocSc-thesis University of Cape Town 2011)

Mohasoa and Mokoena 2019 *International Journal of Social Sciences and Humanity Studies*
Mohasoa I and Mokoena S "Challenges Facing Rural Communities in Accessing Substance Abuse Treatment" 2019 *International Journal of Social Sciences and Humanity Studies* 35-50

Moon 2009 *Journal of Human Rights*
Moon C "Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation" 2009 *Journal of Human Rights* 71-91

Moreno and Curti 2012 *Social & Cultural Geography*
Moreno CM and Curti G "Recovery Spaces and Therapeutic Jurisprudence: A Case Study of the Family Treatment Drug Courts" 2012 *Social & Cultural Geography* 161-183

Myers, Louw and Pasche 2010 *Substance Abuse Treatment, Prevention, and Policy*
Myers BJ, Louw J and Pasche SC "Inequitable Access to Substance Abuse Treatment Services in Cape Town, South Africa" 2010 *Substance Abuse Treatment, Prevention, and Policy* 1-11

Ndlovu and Khangala "Anatomization of the Best Interest of a Minor Child"
Ndlovu N and Khangala TK "Anatomization of the Best Interest of a Minor Child in the South African Constitution: A Critique" in Delener N and Schweikert C (eds) *GBATA Readings Book* (Global Business and Technology Association New York 2022) 158-166

Nolan and James "Problem Solving Courts"
Nolan JR and James L "Problem Solving Courts: An International Comparison" in Petersilia J and Reitz K (eds) *The Oxford Handbook of Sentencing and Corrections* (Oxford University Press Oxford 2012) 150-173

Panchanadeswaran and Jayasundara 2012 *Journal of Human Behavior in the Social Environment*
Panchanadeswaran S and Jayasundara D "Experiences of Drug Use and Parenting Among Women in Substance Abuse Treatment: An Exploratory Study" 2012 *Journal of Human Behavior in the Social Environment* 971-987

Puleng *Substitute Care*
Puleng R *Substitute Care: An Explanation of African Children's Experiences* (MSW-thesis University of Johannesburg 2004)

Richardson, Spencer and Wexler 2016 *JJA*
Richardson E, Spencer P and Wexler D "The International Framework for Court Excellence and Therapeutic Jurisprudence: Creating Excellent Courts and Enhancing Wellbeing" 2016 *JJA* 148-166

Rosenthal 1984 *Journal of Substance Abuse Treatment*
Rosenthal MS "Therapeutic Communities: A Treatment Alternative for Many but Not All" 1984 *Journal of Substance Abuse Treatment* 55-58

Skelton 2002 *Brit J Criminol*
Skelton A "Restorative Justice as a Framework for Juvenile Justice Reform: A South African Perspective" 2002 *Brit J Criminol* 496-513

Skivenes and Thoburn 2016 *Children and Youth Services Review*
Skivenes M and Thoburn J "Pathways to Permanence in England and Norway: A Critical Analysis of Documents and Data" 2016 *Children and Youth Services Review* 152-160

Stein 2000 *Families in Society*
Stein TJ "The Adoption and Safe Families Act: Creating a False Dichotomy Between Parents and Children's Rights" 2000 *Families in Society: The Journal of Contemporary Human Services* 586-590

Swann and Sylvester 2006 *Demography*
Swann CA and Sylvester MS "The Foster Care Crisis: What Caused Caseloads to Grow" 2006 *Demography* 309-335

Talbot 2006 *Illinois Child Welfare*
Talbot E "Successful Family Reunification: The Contribution of Clinical Social Work" 2006 *Illinois Child Welfare* 103-117

Thoburn 2012 *British Journal of Social Work*
Thoburn J "Achieving Successful Returns from Care: What Makes Reunification Work?" 2012 *British Journal of Social Work* 995-997

Van Westrhenen *et al* 2017 *Child Abuse Research in South Africa*
Van Westrhenen N *et al* "Reflections of Social Workers on Working with Abused Children in South Africa" 2017 *Child Abuse Research in South Africa* 1-10

Waldfogel 2000 *Fam LQ*
Waldfogel J "Protecting Children in the 21st Century" 2000 *Fam LQ* 311-328

Whitt-Woosley and Sprang 2014 *Child Welfare*
Whitt-Woosley A and Sprang G "When Rights Collide: A Critique of the Adoption and Safe Families Act from a Justice Perspective" 2014 *Child Welfare* 111-134

Winick 2003 *Fordham Urb LJ*
Winick BJ "Therapeutic Jurisprudence and Problem-solving Courts" 2003 *Fordham Urb LJ* 1055-1104

Worcel *et al* 2008 *Child Abuse Review*
Worcel SD *et al* "Effects of Family Treatment Drug Courts on Substance Abuse and Child Welfare Outcomes" 2008 *Child Abuse Review* 427-443

Zaal *Court Services for the Child in Need of Alternative Care*
Zaal FN *Court Services for the Child in Need of Alternative Care: A Critical Evaluation of Selected Aspects of the South African System* (PhD-thesis University of the Witwatersrand 2008)

**Case law**

*Centre for Child Law v Director of Public Prosecutions, Johannesburg* 2022 12 BCLR 1440 (CC)

*Minister of Justice and Constitutional Development v Prince* 2018 6 SA 393 (CC)

*S v L M* 2020 4 All SA 249 (GJ)

**Legislation**

*Adoption Assistance and Child Welfare Act* 1980 (USA)

*Adoption and Safe Families Act* 1997 (USA)

*Child Justice Act* 75 of 2008

*Children Act* 1989 (UK)

*Children and Families Act* 2014 (UK)

*Children, Youth and Families Act* 96 of 2005 (Australia)

*Children's Act* 38 of 2005

*Constitution of the Republic of South Africa,* 1996

*Legal Practice Act* 28 of 2014

*Mental Health Care Act* 17 of 2002

*Prevention and Treatment of Substance Abuse Act* 70 of 2008

*Social Security Act* of 1935

**Government publications**

GN 4058 in GG 49658 of 10 November 2023

**Internet sources**

Administration for Children and Families date unknown https://www.acf.hhs.gov/programs/cb/publications/afcars/report8.htm Administration for Children and Families, US Department of Health and Human Services date unknown *AFCARS Report* https://www.acf.hhs.gov/programs/cb/publications/afcars/report8.htm accessed date unknown

Australian Government 2020 https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business?HTML

Australian Government 2020 *Families and Children* https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business?HTML accessed 10 October 2024

Center for Children and Family Futures and National Association of Drug Court Professionals 2019 https://www.cffutures.org/files/OJJDP/FDCTTA/FTC_Standards.pdf
Center for Children and Family Futures and National Association of Drug Court Professionals 2019 *Family Treatment Court Best Practice Standards* https://www.cffutures.org/files/OJJDP/FDCTTA/FTC_Standards.pdf accessed 14 October 2024

Centre for Child Law 2016 https://centreforchildlaw.co.za/wordpress21/wpcontent/uploads/2019/03/2016_Guidelines_for_Legal_Reps_of_Children_web.pdf
Centre for Child Law, University of Pretoria 2016 *Guidelines for Legal Representatives of Children in Civil Matters* https://centreforchildlaw.co.za/wordpress21/wpcontent/uploads/2019/03/2016_Guidelines_for_Legal_Reps_of_Children_web.pdf accessed 14 October 2024

Children and Family Futures 2015 http://www.cffutures.org/files/publications/FDC-Guidelines.pdf
Children and Family Futures 2015 *Guidance to States: Recommendations for Developing Family Drug Court Guidelines* http://www.cffutures.org/files/publications/FDC-Guidelines.pdf accessed 14 October 2024

Children's Court of Victoria date unknown https://www.childrenscourt.vic.gov.au/family-division/family-drug-treatment-court
Children's Court of Victoria date unknown *Family Drug Treatment Court* https://www.childrenscourt.vic.gov.au/family-division/family-drug-treatment-court accessed 14 October 2024

Child Welfare Information Gateway 2023 https://www.childwelfare.gov/pubPDFs/best_interest.pdf
Child Welfare Information Gateway date unknown *Determining the Best Interests of the Child* https://www.childwelfare.gov/pubPDFs/best_interest.pdf date accessed 10 October 2024

De Bortoli *et al* 2018 https://www.childrenscourt.vic.gov.au/sites/default/files/2020-09/The-Family-Drug-Treatment-Court-An-Evaluation-Report_1.pdf
De Bortoli L *et al* 2018 *The Family Drug Treatment Court. An Evaluation Report* https://www.childrenscourt.vic.gov.au/sites/default/files/2020-09/The-Family-Drug-Treatment-Court-An-Evaluation-Report_1.pdf accessed 10 September 2024

Department of Education 2021 https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review
Department of Education, UK Government 2021 *Statutory Guidance Children Act 1989: Care Planning, Placement and Case Review* https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review date accessed 7 September 2024

DSD date unknown https://vulekamali.gov.za/2019-20/national/departments/social-development
Department of Social Development, Republic of South Africa date unknown *National Department Budget for 2019-2022* https://vulekamali.gov.za/2019-20/national/departments/social-development accessed 14 October 2024

Fakier and Myers 2007 http://www.mrc.ac.za/adarg/audit.pdf
Fakier N and Myers B 2007 *Audit of Substance Abuse Treatment Facilities in Gauteng and KwaZulu-Natal (2006-2007): Technical Report* http://www.mrc.ac.za/adarg/audit.pdf accessed 12 October 2024

Fakier and Myers 2008 https://www.yumpu.com/en/document/view/40685555/audit-of-substance-abuse-treatment-facilities-in-sa-healthinfo
Fakier and Myers 2008 *Audit of Substance Abuse Treatment Facilities in Free State, Limpopo, Mpumalanga, North West and Northern Cape (2007-2008): Technical Report* https://www.yumpu.com/en/document/view/40685555/audit-of-substance-abuse-treatment-facilities-in-sa-healthinfo accessed 12 October 2024

Family Drug Treatment Court date unknown https://www.cpmanual.vic.gov.au/advice-and-protocols/advice/court/family-drug-treatment-court-advice
Family Drug Treatment Court date unknown *Family Drug Treatment Court – Advice* https://www.cpmanual.vic.gov.au/advice-and-protocols/advice/court/family-drug-treatment-court-advice accessed 13 October 2024

Harwin *et al* 2011 https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf
Harwin J *et al* 2011 *The Family Drug and Alcohol Court (FDAC) Evaluation Project: Final Report* https://wp.lancs.ac.uk/cfj-fdac/files/2016/11/fdac_2011_evaluation.pdf accessed 10 October 2024

Harwin *et al* 2014 https://fdac.org.uk/wp-content/uploads/2020/03/Changing-Lifestyles-Keeping-Children-Safe-an-evaluation-of-the-first-Family-Drug-and-Alcohol-Court-FDAC-in-care-proceedings-May-2014.pdf
Harwin J *et al* 2014 *Changing Lifestyles, Keeping Children Safe: An Evaluation of the First Family Drug and Alcohol Court (FDAC) in Care Proceedings* https://fdac.org.uk/wp-content/uploads/2020/03/Changing-Lifestyles-Keeping-Children-Safe-an-evaluation-of-the-first-Family-Drug-and-Alcohol-Court-FDAC-in-care-proceedings-May-2014.pdf accessed 10 October 2024

McKellar G 2018 https://mainstreamtj.com/2018/06/11/restorative-practices-to-further-therapeutic-jurisprudence-in-family-courts-an-amicus-justitia-brief/
McKellar G 2018 *Restorative Practices to Further Therapeutic Jurisprudence in Family Courts (An Amicus Justitia Brief)* https://mainstreamtj.com/2018/06/11/restorative-practices-to-further-therapeutic-jurisprudence-in-family-courts-an-amicus-justitia-brief/ accessed 11 December 2024

National Center on Substance Abuse and Child Welfare 2006 https://attcppwtools.org/ResourceMaterials/SAFERR.pdf
National Center on Substance Abuse and Child Welfare, Department of Health and Human Services, United States of America 2006 *Screening and Assessment for Family Engagement, Retention and Recovery* https://attcppwtools.org/ResourceMaterials/SAFERR.pdf accessed14 April 2022

National Institute on Drug Abuse 2018 https://nida.nih.gov/sites/default/files/podat-3rdEd-508.pdf
National Institute on Drug Abuse 2018 *Principles of Drug Addiction Treatment: A Research-based Guide 3rd ed* https://nida.nih.gov/sites/default/files/podat-3rdEd-508.pdf accessed 11 December 2024

National Welfare, Social Service and Development Forum date unknown https://ci.uct.ac.za/sites/default/files/content_migration/health_uct_ac_za/533/files/nwssdf%2520discuss%2520doc%2520fc4.pdf
National Welfare, Social Service and Development Forum date unknown *Use of the Statutory Foster Care System to Support Long-term Kinship Care: Impact on the Social Welfare System and the Social Work Profession. Discussion Paper* https://ci.uct.ac.za/sites/default/files/content_migration/health_uct_ac_za/533/files/nwssdf%2520discuss%2520doc%2520fc4.pdf accessed 13 October 2024

Oxford Living Dictionary 2016 https://en.oxforddictionaries.com/definition/drug
Oxford Living Dictionary 2016 *Drug* https://en.oxforddictionaries.com/definition/drug accessed 6 June 2024

PMG date unknown https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fstatic.pmg.org.za%2FRNW1576A-150506.doc&wdOrigin=BROWSELINK
Parliamentary Monitoring Group date unknown *List of Substance Abuse Treatment Facilities* https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fstatic.pmg.org.za%2FRNW1576A-150506.doc&wdOrigin=BROWSELINK accessed on 22 April 2024

Paul date unknown https://www.civilsocietyacademy.org/post/shadow-report-an-important-tool-for-advocacy
Paul S date unknown *Shadow Report: An Important Tool for Advocacy* https://www.civilsocietyacademy.org/post/shadow-report-an-important-tool-for-advocacy accessed 28 November 2022

Saferspaces date unknown https://www.saferspaces.org.za/organisation/entry/sanca-national
Saferspaces date unknown *SANCA* https://www.saferspaces.org.za/organisation/entry/sanca-national accessed 14 October 2024

Sauls 2015 https://www.westerncape.gov.za/assets/departments/social development/an_evaluation_of_family_reunification_services_in_the_western_cape_final_report_26_1 1_2015.pdf
Sauls H 2015 *An Evaluation of Family Reunification Services in the Western Cape: Exploring Children, Families and Social Workers' Experiences of Family Reunification Services within the First Twelve Months of Being Reunified*
https://www.westerncape.gov.za/assets/departments/socialdevelopment/an_evaluation_of_family_reunification_services_in_the_western_cape_final_report_26_1 1_2015.pdf accessed 9 October 2021

Worcel *et al* 2007 https://npcresearch.com/wp-content/uploads/FTDC_Evaluation_Final_Report.pdf
Worcel S *et al* 2007 *Family Treatment Drug Court Evaluation: Final Report* https://npcresearch.com/wp-content/uploads/FTDC_Evaluation_Final_Report.pdf accessed 9 September 2024

## List of Abbreviations

| | |
|---|---|
| ASFA | Adoption and Safe Families Act 1997 |
| Brit J Criminol | British Journal of Criminology |
| CCR | Constitutional Court Review |
| Child Leg Rts J | Children's Legal Rights Journal |
| COLP | Commission on Official Legal Publications |
| DSD | Department of Social Development |
| Fam LQ | Family Law Quarterly |
| FDAC | Family Drug and Alcohol Courts |
| FDTC | Family Drug Treatment Court |
| Fordham Urb LJ | Fordham Urban Law Journal |
| Int'l J L & Psychiatry | International Journal of Law and Psychiatry |
| JJA | Journal of Judicial Administration |
| Juv & Fam Court J | Juvenile and Family Court Journal |
| MULR | Melbourne University Law Review |

| | |
|---|---|
| NGO | non-governmental organisation |
| PELJ | Potchefstroom Electronic Law Journal |
| PMG | Parliamentary Monitoring Group |
| PTSA | Prevention of and Treatment for Substance Abuse Act 70 of 2008 |
| SA | South Africa |
| SANCA | South African National Council on Alcoholism and Drug Dependence |
| SUD | substance use disorder |
| UK | United Kingdom |
| US / USA | United States of America |