

STATE LIBRARY OF IOWA
DES MOINES, IOWA 50319

GOVERNOR'S TASK
FORCE ON CHILD SUPPORT
REPORT

Presented to
Governor Terry E. Branstad
September 1985

STATE LIBRARY OF IOWA
DES MOINES, IOWA 50319

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P R E F A C E

PREFACE

Today's society is attempting to adapt to rapid changes in family composition. Published statistics indicate that one-half of the marriages that occurred in the 1970's will end, or have already ended, in divorce. There were three times as many divorces, 1.2 million in 1980, as there were in 1960. Between 1970 and 1979, illegitimate births rose by 50%. Also, it is estimated that by the 1990's, only 56% of children in the United States will spend all of their childhood living with both natural parents. In 1984, 21% of the children in the United States lived in single parent households, 90% maintained by women. In over 80% of such cases, the parent obligated to pay support is delinquent in his or her payments to the other. Nationally, over \$3 billion in support is delinquent. In Iowa, \$170+ million in delinquent support alone is owed to the State of Iowa from parents whose spouses are, or were, on public assistance. Nonpayment of support is a national and statewide disgrace.

Obviously, statistics alone do not tell the story. Nothing can relate the emotional and financial hardships caused children by the break-up of families. Companionship, financial, and emotional support are often lacking in these homes with untold problems possibly resulting from these situations.

Studies, including our own, have found that the overwhelming concern by society is for "the best interest of the child."

Respectfully submitted,

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I N T R O D U C T I O N

INTRODUCTION

Pursuant to PL-378, Section 15c, the Honorable Terry E. Branstad, Governor of Iowa, appointed a seven member commission on child support issues. The commission has met on seven occasions, including a public hearing, and has invited and met with persons with particular knowledge of the subject matter.

The statutory charge to the commission was to examine, investigate and study the operation of the state's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement for both children eligible for state aid and for children not eligible for such aid. Particular attention was given to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost and effectiveness of services to children eligible for aid, and those who are not, and the need for additional state and federal legislation to obtain support for all children.

In addressing the charge given the commission, consideration of fiscal implications has not been addressed. It is likely that full implementation of the recommendations could involve considerable expenditure of public funds.

A public report is required on or before October 1, 1985. The committee in discharge of that requirement submits this its final report, September 1985.

With the enactment of S.F. 244, 72nd G.A., 1985 Session, it is the belief of the commission, confirmed by the Regional Office of Child Support Enforcement, that Iowa is in compliance with the requirements of Federal Law and Regulations necessary to maintain our state's eligibility for AFDC participation. This is in keeping with Iowa's position over time as a leader state in managing child support and related issues. Even so, the commission has identified citizen dissatisfactions with elements of the overall system and areas where improvement of the system is needed. In some divisions, recommendations for remedial legislation are very specific, in others the problem is identified and suggested recommendations are less specific.

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

"The best interest of the child" is the ever recurring theme in the public testimony and oral and written presentations studied by the Governor's Task Force. We have determined that while there may not be a consensus as to what actions, legislation, programs and provisions actually provide for the best interest of the child, there is agreement that more can and should be done to ensure children their rights.

It is with this spirit we present these problems and recommendations for your consideration.

Division I - Establishment of Order

- Section 1

GOAL: To provide parental rights to unwed parents.

RECOMMENDATION: Amend Chapter 598, Code, 1985, by adding a section extending visitation and custodial provisions of the chapter to unwed parents.

- Section 2

GOAL: To establish fair, uniform child support orders throughout the State of Iowa.

RECOMMENDATION: The Committee believes a uniform schedule should be adopted by the supreme court and reviewed periodically. Such support tables should primarily consider the net take-home pay of both parents. A court could deviate from the table only upon a specific finding based on one or more of the following factors:

- Additional property available to a parent.
- Support received by other children.
- An incentive to encourage either parent to improve his or her economic condition.
- The tax effect of the dependency deduction.
- The time the children spend with the non-custodial parent.
- Whether one parent pays for health insurance premiums for the children.
- Other exceptional circumstances.

It is the consensus of the Committee that temporary orders should be promptly entered, and primarily upon the affidavits of both parties.

- Section 3

GOAL: To establish paternity for each child as soon as feasible after birth.

RECOMMENDATION: We recommend that paternity establishment services be available through an appropriate agency in illegitimate births. At the same time, a mechanism to protect the legitimate privacy interest of the mother and child should be established. A confidential, prompt judicial determination of the extent of such privacy interest should be ensured.

- Section 4

GOAL: To allow imposition of temporary support orders in paternity and Uniform Reciprocal Enforcement of Support Action (URESAs) cases.

RECOMMENDATION: We recommend the legislature enact legislation that permits the imposition of temporary support orders in paternity cases, to be segregated in a separate interest bearing account until final disposition of the case.

We also recommend that temporary orders be permitted in Uniform Reciprocal Enforcement of Support Action (URESAs) cases.

- Section 5

GOAL: To limit the defense of laches and promissory estoppel in support and paternity cases.

RECOMMENDATION: We suggest the legislature review the numerous current statutes and their interpretation by the courts, and the common law defense of laches and estoppel. We recommend consolidation of some statutes and clarification of others.

Division II - Childrens' Rights

- Section 1

GOAL: To assure that children from families involved in divorce have counseling services available to them.

RECOMMENDATION: School age children with divorcing parents should have the availability of personal counseling to help them successfully through the adjustment.

- Section 2

GOAL: To ensure that children in contested custody cases are placed in the best custody situation.

RECOMMENDATION: In cases of contested child custody, a home study should be completed by a professional.

- Section 3

GOAL: To provide youth with education concerning the rights and responsibilities of parenthood, divorce and paternity establishment.

RECOMMENDATION: Junior high and high school age children should be educated about the rights and obligations of family living.

We recommend that an appropriate state agency develop suitable educational materials that reflect the legal and moral obligations of parenthood.

- Section 4

GOAL: To establish objective standards for child counseling, health services and legal representation.

RECOMMENDATION: Establish standards for child counseling, health issues and legal representation with objective funding mechanisms which would be in the best interest of the child.

- Section 5

GOAL: To establish equal treatment of all children.

RECOMMENDATION: The issue of unequal treatment of children needs to be further explored.

- Section 6

GOAL: To ensure that child support benefits the children.

RECOMMENDATION: Amend 598.21, Code, 1985, by adding a subsection making the recipient of child support, on the request by the court, accountable for the use of those payments for the benefit of the child(ren).

- Section 7

GOAL: To ensure that children have a right to the opportunity for maximum continuous physical and emotional contact with both parents. Orders concerning visitation should not be considered less significant in their enforcement than orders concerning support obligations.

RECOMMENDATION: CONSIDERATION SHOULD BE GIVEN TO EXTENDING THE USE OF THE ENFORCEMENT REMEDIES PROVIDED IN 598.23.

Division III - Enforcement

- Section 1

GOAL: To ensure that each person obligated by court order to pay child support shall be required to keep the Clerk of Court advised of his or her location.

RECOMMENDATION: We recommend that every court order imposing a support obligation require the obligor and the obligee to keep the Clerk of Court advised of their location. Willful failure to do so should be punishable as a simple misdemeanor.

- Section 2

GOAL: To improve interstate child support enforcement.

RECOMMENDATION: Mandate the passage of standardized legislation in each state which requires acceptance by all jurisdictions of the original dissolution and all the provisions therein.

Also, continued federal reimbursement and incentives for the state IV-D programs for interstate cases and methods to share information will aid in interstate cooperation.

- Section 3

GOAL: To improve location information for enforcement of child support.

RECOMMENDATION: We recommend that federal and state government records be made available for location of obligors and enforcement of child support obligations. In order for the records to be useful, social security numbers of petitioners and respondents must be required on dissolutions.

- Section 4

GOAL: To ensure that individuals obligated to pay child support should not be allowed to transfer assets to other parties for the purpose of evading payment of child support obligations.

RECOMMENDATION: We recommend the current law on fraudulent transfer of property for the purpose of evading a support obligation be reviewed. We recommend enactment of stronger penalties for such transfers, and allow such property to be recovered to satisfy unpaid support obligations.

Also, upon request, we recommend the exchange of financial statements not more than bi-annually, by both parents to allow review for possible modification for change in circumstances.

We also recommend that both parents be required to provide address changes within 15 days of the move to the public agency charged with payment recording and distribution.

- Section 5

GOAL: To improve the procedure for the garnishment of wages.

RECOMMENDATION: Amend 642.14, Code, 1985, by requiring the notice of garnishment of wages to the principal defendant be served by regular mail to the principal defendant's last known address or place of employment.

- Section 6

GOAL: To have the child support recovery system be available to all persons receiving child support payments.

RECOMMENDATION: Recognizing that PL 98-378 requires the federal and state recovery system to place equal emphasis on obtaining and enforcing support for nonassistance cases and assistance cases, we recommend that this provision be a continuing requirement of the child support recovery program.

Division IV - Collection and Distribution

- Section 1

GOAL: To clarify that child support payments are judgments so that interest charged on any delinquent payments may encourage prompt payment.

RECOMMENDATION: The committee believes the legislature should amend 598.21, Code, 1985, by adding a subsection which states that each unpaid child support payment is a judgment after its due date bearing interest at the rate of 10% per annum.

Such interest calculation should be simplified, and should be performed by the Clerk of Court through a computer program developed and implemented to calculate arrearages and interest charges. Payments received should first be applied to principal and then to interest. -

- Section 2

GOAL: To provide standardized, verifiable payment records nationwide.

RECOMMENDATION: Nationwide, child support payments must be mandated to be paid through public agencies to provide standardized procedures for recordkeeping and distribution. Audits will show irregularities for which the agency is liable and for errors and improper crediting of accounts.

- Section 3

GOAL: To encourage prompt and timely payment of support orders from those able to make payments.

RECOMMENDATION: The committee believes serving time in jail is an effective deterrent for some individuals able to pay, but who have resisted making payments. We encourage the courts to order incarceration in selected cases. Other court orders, including visitation, should be treated in like manner.

- Section 4

GOAL: To ensure the prompt receipt by the by the recipient of any support money paid to the Clerk of Court.

RECOMMENDATION: We recommend the legislature or the supreme court adopt a uniform standard for all clerks. We recommend that obligors be allowed to pay by checks, money orders, credit cards, automatic withdrawals or any other convenient method. Such funds should be deposited in an interest-bearing account, and a payout made by the Clerk within five days. The interest earned on the float may be considerable and would help defray the costs of processing to the clerks.

- Section 5

GOAL: To automate the collection and payment of child support payments.

RECOMMENDATION: We recommend the adoption of a uniform, statewide procedure for the collection and recording of support payments. We strongly recommend the legislature and the courts consider purchasing a computerized recordkeeping system. Such system should be centrally located with terminals in each county and child support office for the entry of current orders, modifications, terminations and payment records.

- Section 5 (continued)

RECOMMENDATION: We note the availability of 90% cost sharing for acquisition and implementation of such a system and recommend an application be submitted.
(continued)

We also believe such a central computer should be maintained by a neutral agency such as the supreme court. Access for information should be available to appropriate agencies, particularly the child support recovery system.

- Section 6

GOAL: To adopt a simple and uniform system for determining child support arrearages.

RECOMMENDATION: We recommend that the Clerk of Court calculate all delinquencies on request of any party seeking to execute or levy on such delinquency. Such determination shall not be changed, except upon court order. Good faith reliance on such calculation shall not subject a third party to liability.

We also recommend that such delinquency records be public record.

- Section 7

GOAL: To allow parents to easily ascertain the amount of support owed to them or by them, and to simplify the current procedures for wage assignments, garnishments and other remedies.

RECOMMENDATION: We recommend that some enforcement tools be simplified so that lay persons be allowed to process their own forms. Clerks should have and be able to furnish simple forms to all applicants. We also recommend that a simplified pamphlet be developed, and made available, at each Clerk's office and at the Sheriff's office. As a model, we note that the current small claims system has made access to the court system much easier. A similar procedure should be considered for the enforcement portion of child support orders.

Division V - Mediation

- Section 1

GOAL: To explore alternative dispute resolution mechanisms in family law disputes.

RECOMMENDATION: We recommend alternate dispute resolution mechanisms be explored in certain limited cases. We recommend the legislature consider funding a pilot program to decide whether such programs save judicial time and expense and result in a more prompt resolution of these disputes.

DIVISION I

ESTABLISHMENT OF ORDERS

Section 1

GOAL: TO PROVIDE PARENTAL RIGHTS TO UNWED PARENTS.

DISCUSSION:

While the support obligations of unwed parents are clear, the extent of their custody and visitation rights are not. One way of handling the situation is to extend rights to unwed parents as fully as they have been extended to ones who have been married.

RECOMMENDATION: AMEND CHAPTER 598, CODE, 1985, BY ADDING A SECTION EXTENDING VISITATION AND CUSTODIAL PROVISIONS OF THE CHAPTER TO UNWED PARENTS.

Section 2

GOAL: TO ESTABLISH FAIR, UNIFORM CHILD SUPPORT ORDERS THROUGHOUT THE STATE OF IOWA.

PROBLEM:

There is a lack of uniformity in child support orders in the state courts. Court orders, given similar factual circumstances, often vary widely from county to county. Such disparity and uncertainty encourages litigation, delays in obtaining orders, and is perceived to be unfair by the obligors. As a result, some parents, because they perceive the system to be unfair, do not pay support in a timely manner.

DISCUSSION:

Various systems were discussed. Some states mandate a fixed percentage of the non-custodial parent's income, some attempt to consider the costs of raising the children, and other consider other facts, or a combination thereof.

RECOMMENDATION: THE COMMITTEE BELIEVES A UNIFORM SCHEDULE SHOULD BE ADOPTED BY THE SUPREME COURT AND REVIEWED PERIODICALLY. SUCH SUPPORT TABLES SHOULD PRIMARILY CONSIDER THE NET TAKE-HOME PAY OF BOTH PARENTS. A COURT COULD DEVIATE FROM THE TABLE ONLY UPON A SPECIFIC FINDING BASED ON ONE OR MORE OF THE FOLLOWING FACTORS:

- ADDITIONAL PROPERTY AVAILABLE TO A PARENT.
- SUPPORT RECEIVED BY OTHER CHILDREN.
- AN INCENTIVE TO ENCOURAGE EITHER PARENT TO IMPROVE HIS OR HER ECONOMIC CONDITION.
- THE TAX EFFECT OF THE DEPENDENCY DEDUCTION.
- THE TIME THE CHILDREN SPEND WITH THE NON-CUSTODIAL PARENT.
- WHETHER ONE PARENT PAYS FOR HEALTH INSURANCE PREMIUMS FOR THE CHILDREN.
- OTHER EXCEPTIONAL CIRCUMSTANCES.

IT IS THE CONSENSUS OF THE COMMITTEE THAT TEMPORARY ORDERS SHOULD BE PROMPTLY ENTERED, AND PRIMARILY UPON THE AFFIDAVITS OF BOTH PARTIES.

Section 3

GOAL: TO ESTABLISH PATERNITY FOR EACH CHILD AS SOON AS FEASIBLE AFTER BIRTH.

PROBLEM:

A large number of out-of-wedlock children are born each year. Often the mother does not have the financial ability to commence and enforce paternity proceedings against the father. As a result, there are often long delays before paternity is established.

DISCUSSION:

We believe that every child has the right to have their paternity established as soon as possible after birth. A prompt paternity determination should be the goal in every out-of-wedlock birth.

We also recognize that the mother of such child may, in certain circumstances, have a legitimate interest in not establishing paternity. That interest should be protected.

RECOMMENDATION: WE RECOMMEND THAT PATERNITY ESTABLISHMENT SERVICES BE AVAILABLE THROUGH AN APPROPRIATE AGENCY IN ILLEGITIMATE BIRTHS. AT THE SAME TIME, A MECHANISM TO PROTECT THE LEGITIMATE PRIVACY INTEREST OF THE MOTHER AND CHILD SHOULD BE ESTABLISHED. A CONFIDENTIAL, PROMPT JUDICIAL DETERMINATION OF THE EXTENT OF SUCH PRIVACY INTEREST SHOULD BE ENSURED.

Section 4

GOAL: TO ALLOW IMPOSITION OF TEMPORARY SUPPORT ORDERS IN PATERNITY AND UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACTION (URESА) CASES.

PROBLEM:

In dissolution actions, temporary support orders are readily available. The same remedy is not available in paternity cases. As a result, defendants often delay as long as possible to avoid payment of support. While back support can be ordered, - collection of the arrearage is often difficult.

DISCUSSION:

We believe allowing temporary support orders in paternity cases would avoid later collection problems, and would also eliminate dilatory defense tactics. However, all payments made should be deposited by the Clerk in a special interest-bearing account. In the event of non-paternity, the full amount plus interest, should be returned to the defendant.

RECOMMENDATION: WE RECOMMEND THE LEGISLATURE ENACT LEGISLATION THAT PERMITS THE IMPOSITION OF TEMPORARY SUPPORT ORDERS IN PATERNITY CASES, TO BE SEGREGATED IN A SEPARATE INTEREST-BEARING ACCOUNT UNTIL FINAL DISPOSITION OF THE CASE.

WE ALSO RECOMMEND THAT TEMPORARY ORDERS BE PERMITTED IN UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACTION (URESА) CASES.

Section 5

GOAL: TO LIMIT THE DEFENSE OF LACHES AND PROMISSORY ESTOPPEL IN SUPPORT AND PATERNITY CASES.

PROBLEM:

Although the legislature has considered the statute of limitations on the establishment of paternity and the enforceability of a child support judgment, there have been numerous cases involving the statute of limitations on paternity, such as who is entitled to establish paternity, the length and enforceability of a judgment lien for support payments, and cases involving the defense of laches and promissory estoppel. The current status of such items is often in doubt. Without a clear legislative mandate, parties often determine to litigate such issues. Such litigation is not beneficial to the establishment of a prompt, fair and enforceable support order.

RECOMMENDATION: WE SUGGEST THE LEGISLATURE REVIEW THE NUMEROUS CURRENT STATUTES AND THEIR INTERPRETATION BY THE COURTS, AND THE COMMON LAW DEFENSE OF LACHES AND ESTOPPEL. WE RECOMMEND CONSOLIDATION OF SOME STATUTES AND CLARIFICATION OF OTHERS.

DIVISION II

CHILDRENS' RIGHTS

Section 1

GOAL: TO ASSURE THAT CHILDREN FROM FAMILIES INVOLVED IN DIVORCE HAVE COUNSELING SERVICES AVAILABLE TO THEM.

PROBLEM:

Children of families involved in divorce often need personal counseling services to help them successfully make the necessary adjustments.

DISCUSSION:

It is estimated that over 50% of all children may be affected by divorce before they reach adulthood. Children are greatly affected by divorce both emotionally and psychologically, and yet few have personal counseling services available to them.

Elementary and high school students need counseling services more because of their greater vulnerability. Few divorcing parents have the understanding, psychological energy, and financial resources to provide counseling services for their children. The counseling done at an early age may help prevent more serious problems which the child may exhibit if the problems are untreated. Counselors should be made available to school age children

RECOMMENDATION: SCHOOL AGE CHILDREN WITH DIVORCING PARENTS SHOULD HAVE THE AVAILABILITY OF PERSONAL COUNSELING TO HELP THEM SUCCESSFULLY THROUGH THE ADJUSTMENT.

Section 2

GOAL: TO ENSURE THAT CHILDREN IN CONTESTED CUSTODY CASES ARE PLACED IN THE BEST CUSTODY SITUATION.

PROBLEM:

It is very difficult for judges to make child custody decisions without adequate information.

DISCUSSION:

It is in the best interest of the child to be placed in the best custody situation. A child's interaction with his/her parents, the parent's skills and home environment can be best ascertained with a home study done by a professional observing these factors. It can be extremely difficult for a judge to decide on the physical custody which is in the best interest of the child without this information. A trained, skilled investigator can supply better information than emotionally involved friends and relatives.

RECOMMENDATION: IN CASES OF CONTESTED CHILD CUSTODY, A HOME STUDY SHOULD BE COMPLETED BY A PROFESSIONAL.

Section 3

GOAL: TO PROVIDE YOUTH WITH EDUCATION CONCERNING THE RIGHTS AND RESPONSIBILITIES OF PARENTHOOD, DIVORCE AND PATERNITY ESTABLISHMENT.

PROBLEM:

Most youth do not have adequate information about the legal and moral obligation of parenthood.

DISCUSSION:

Children receive very little information about the consequences of parenthood. All children should know of these rights and responsibilities before they become parents. Past emphasis has been on the reproductive system with limited emphasis on the legal and financial responsibilities of parenthood. Out-of-wedlock births are rapidly increasing among teenagers. Teenagers need to understand they have a legal and moral obligation to provide meaningful emotional and financial help for their children.

We believe all individuals should be aware of their obligations as a mother and a father. Particular emphasis should be placed on the dissemination of such knowledge to young adults or teenagers. A better understanding of their legal obligations may reduce illegitimacy and may also aid in the prompt payment of child support orders.

RECOMMENDATION: JUNIOR HIGH AND HIGH SCHOOL AGE CHILDREN SHOULD BE EDUCATED ABOUT THE RIGHTS AND OBLIGATIONS OF FAMILY LIVING.

WE RECOMMEND THAT AN APPROPRIATE STATE AGENCY DEVELOP SUITABLE EDUCATIONAL MATERIALS THAT REFLECT THE LEGAL AND MORAL OBLIGATIONS OF PARENTHOOD.

Section 4

GOAL: TO ESTABLISH OBJECTIVE STANDARDS FOR CHILD COUNSELING, HEALTH SERVICES AND LEGAL REPRESENTATION.

DISCUSSION:

Counseling, health services and legal representation for children are not usually addressed unless they arise from the adversarial exchange. Often the provision of these services would be in the child's best interest.

RECOMMENDATION: ESTABLISH STANDARDS FOR CHILD COUNSELING, HEALTH ISSUES AND LEGAL REPRESENTATION WITH OBJECTIVE FUNDING MECHANISMS WHICH WOULD BE IN THE BEST INTEREST OF THE CHILD.

Section 5

GOAL: TO ESTABLISH EQUAL TREATMENT OF ALL CHILDREN.

PROBLEM:

The need for children's services in support cases are overwhelmed by the adversary relationship between their parent litigants.

DISCUSSION:

Children eligible for public assistance are eligible for health and counseling services. Are nonassistance children unequally treated because the availability of such services is limited by parental willingness to pay? In those issues the children may be in an adversarial legal relationship to their parents. These issues have not been sufficiently explored.

RECOMMENDATION: THE ISSUE OF UNEQUAL TREATMENT OF CHILDREN NEEDS TO BE FURTHER EXPLORED.

Section 6

GOAL: TO ENSURE THAT CHILD SUPPORT BENEFITS THE CHILDREN.

DISCUSSION:

Child support payments are for the benefit of children. Persons receiving such payments for the children's benefit should be accountable for the use of the payments.

RECOMMENDATION: AMEND 598.21, CODE, 1985, BY ADDING A SUB-SECTION MAKING THE RECIPIENT OF CHILD SUPPORT, ON THE REQUEST BY THE COURT, ACCOUNTABLE FOR THE USE OF THOSE PAYMENTS FOR THE BENEFIT OF THE CHILD(REN).

Section 7

GOAL: TO ENSURE THAT CHILDREN HAVE A RIGHT TO THE OPPORTUNITY FOR MAXIMUM CONTINUOUS PHYSICAL AND EMOTIONAL CONTACT WITH BOTH PARENTS. ORDERS CONCERNING VISITATION SHOULD NOT BE CONSIDERED LESS SIGNIFICANT IN THEIR ENFORCEMENT THAN ORDERS CONCERNING SUPPORT OBLIGATIONS.

PROBLEM:

Often children lack the emotional support of the parents denied visitation.

DISCUSSION:

Studies have shown that children need the emotional support of their parents. Denial of visitation deprives the children of emotional support. Court ordered visitation needs to be as enforceable as nonpayment of child support.

RECOMMENDATION: CONSIDERATION SHOULD BE GIVEN TO EXTENDING THE USE OF THE ENFORCEMENT REMEDIES PROVIDED IN 598.23.

DIVISION III
ENFORCEMENT

Section 1

GOAL: TO ENSURE THAT EACH PERSON OBLIGATED BY COURT ORDER TO PAY CHILD SUPPORT SHALL BE REQUIRED TO KEEP THE CLERK OF COURT ADVISED OF HIS OR HER LOCATION.

PROBLEM:

Locating absent parents is often difficult. Some parents deliberately fail to keep the other parent or the courts advised of their location.

RECOMMENDATION: WE RECOMMEND THAT EVERY COURT ORDER IMPOSING A SUPPORT OBLIGATION REQUIRE THE OBLIGOR AND THE OBLIGEE TO KEEP THE CLERK OF COURT ADVISED OF THEIR LOCATION. WILLFUL FAILURE TO DO SO SHOULD BE PUNISHABLE AS A SIMPLE MISDEMEANOR.

Section 2

GOAL: TO IMPROVE INTERSTATE CHILD SUPPORT ENFORCEMENT.

PROBLEM:

Interstate enforcement of child support orders is a long, frustrating experience.

DISCUSSION:

Because there is no reciprocity for child support orders, many non-custodial parents have found that by moving from the state where the custodial parent and child(ren) live they can avoid providing financial support to the family. Many have found, too, that some states and courts do not aggressively enforce orders or pass laws which require payment. In addition, with multiple orders established for support, both parents misunderstand their rights and responsibilities as to the conflict in the orders. The resulting payment, non-payment and arrearage calculation of the conflicting orders, provides further disagreement over an already emotional problem between the parents.

RECOMMENDATION: MANDATE THE PASSAGE OF STANDARDIZED LEGISLATION IN EACH STATE WHICH REQUIRES ACCEPTANCE BY ALL JURISDICTIONS OF THE ORIGINAL DISSOLUTION AND ALL THE PROVISIONS THEREIN.

ALSO, CONTINUED FEDERAL REIMBURSEMENT AND INCENTIVES FOR THE STATE IV-D PROGRAMS FOR INTERSTATE CASES AND METHODS TO SHARE INFORMATION WILL AID IN INTERSTATE COOPERATION.

Section 3

GOAL: TO IMPROVE LOCATION INFORMATION FOR ENFORCEMENT OF CHILD SUPPORT.

PROBLEM:

Frequent moves by parents effectively prevents establishment or enforcement of a child support order.

DISCUSSION:

When a non-custodial parent is found, a move between local jurisdictions will necessitate beginning the procedures again to locate and enforce, or to establish another order in that jurisdiction. Many of these parents find moving frequently prevents orders from being established. This is frustrating to the parents who are often relying on financial assistance, help from relatives, or low paying jobs. Even if this lengthy process of establishing an order in another state is successful, the courts may reduce the amount that the original state court orders, reduce or eliminate arrearages and may allow other issues (i.e. custody, visitation) to be modified.

Also, when clients have relied on other states to process interstate support cases, these cases often are given lower priority than in-state cases or criminal and other civil cases competing for staff and court time.

RECOMMENDATION: WE RECOMMEND THAT FEDERAL AND STATE GOVERNMENT RECORDS BE MADE AVAILABLE FOR LOCATION OF OBLIGORS AND ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS. IN ORDER FOR THE RECORDS TO BE USEFUL, SOCIAL SECURITY NUMBERS OF PETITIONERS AND RESPONDENTS MUST BE REQUIRED ON DISSOLUTIONS.

WE ALSO RECOMMEND THAT BOTH PARENTS BE REQUIRED TO PROVIDE ADDRESS CHANGES WITHIN 15 DAYS OF THE MOVE TO THE PUBLIC AGENCY CHARGED WITH PAYMENT RECORDING AND DISTRIBUTION.

Section 4

GOAL: TO ENSURE THAT INDIVIDUALS OBLIGATED TO PAY CHILD SUPPORT SHOULD NOT BE ALLOWED TO TRANSFER ASSETS TO OTHER PARTIES FOR THE PURPOSE OF EVADING PAYMENT OF CHILD SUPPORT OBLIGATIONS.

PROBLEM:

Persons obligated to pay support have often transferred property to other individuals, primarily spouses, to avoid having property in their names. In addition, obligors keep such property in other names, but continue to pay to maintain or purchase such assets from their personal earnings. As a result, collection of arrearages is difficult, and the obligor evades his or her responsibility.

RECOMMENDATION: WE RECOMMEND THE CURRENT LAW ON FRAUDULENT TRANSFER OF PROPERTY FOR THE PURPOSE OF EVADING A SUPPORT OBLIGATION BE REVIEWED. WE RECOMMEND ENACTMENT OF STRONGER PENALTIES FOR SUCH TRANSFERS, AND ALLOW SUCH PROPERTY TO BE RECOVERED TO SATISFY UNPAID SUPPORT OBLIGATIONS.

ALSO, UPON REQUEST, WE RECOMMEND THE EXCHANGE OF FINANCIAL STATEMENTS NOT MORE THAN BI-ANNUALLY, BY BOTH PARENTS TO ALLOW REVIEW FOR POSSIBLE MODIFICATION FOR CHANGE IN CIRCUMSTANCES.

WE ALSO RECOMMEND THAT BOTH PARENTS BE REQUIRED TO PROVIDE ADDRESS CHANGES WITHIN 15 DAYS OF THE MOVE TO THE PUBLIC AGENCY CHARGED WITH PAYMENT RECORDING AND DISTRIBUTION.

Section 5

GOAL: TO IMPROVE THE PROCEDURE FOR THE GARNISHMENT OF WAGES.

DISCUSSION:

While everyone is entitled to a day in court with notice and opportunity for hearing, few would argue that anyone would not know the wages had been garnished. It is not necessary to require the sheriff to serve the notice of garnishment of wages on the primary defendant. Sending a copy in the mail will save money, time and still provide an opportunity to defend.

RECOMMENDATION: AMEND 642.14, CODE, 1985, BY REQUIRING THE NOTICE OF GARNISHMENT OF WAGES TO THE PRINCIPAL DEFENDANT BE SERVED BY REGULAR MAIL TO THE PRINCIPAL DEFENDANT'S LAST KNOWN ADDRESS OR PLACE OF EMPLOYMENT.

Section 6

GOAL: TO HAVE THE CHILD SUPPORT RECOVERY SYSTEM BE AVAILABLE TO ALL PERSONS RECEIVING CHILD SUPPORT PAYMENTS.

PROBLEM:

As a result of nonpayment of child support, some families may have to seek financial/public assistance.

DISCUSSION:

The State of Iowa currently has a strong and effective child support recovery program. However, due to prior federal emphasis, such system has in the past been primarily oriented toward the collection of support from individuals whose support payments would go to the state as a result of their receiving Aid to Dependent Children.

RECOMMENDATION: RECOGNIZING THAT PL 98-378 REQUIRES THE FEDERAL AND STATE RECOVERY SYSTEM TO PLACE EQUAL EMPHASIS ON OBTAINING AND ENFORCING SUPPORT FOR NONASSISTANCE CASES AND ASSISTANCE CASES, WE RECOMMEND THAT THIS PROVISION BE A CONTINUING REQUIREMENT OF THE CHILD SUPPORT RECOVERY PROGRAM.

DIVISION IV

COLLECTION AND DISTRIBUTION

Section 1

GOAL: TO CLARIFY THAT CHILD SUPPORT PAYMENTS ARE JUDGMENTS SO THAT INTEREST CHARGED ON ANY DELINQUENT PAYMENTS MAY ENCOURAGE PROMPT PAYMENT.

PROBLEM:

The vast majority of child support payments are not made as ordered. Support payments are judgments and are subject to the statutory rate of interest. However, because calculating interest is complicated, and is often not performed by a neutral party, the interest on delinquent support is seldom collected.

DISCUSSION:

Even after the Iowa Supreme Court has stated with clarity their interpretation of child support installments as judgments, confusion persists on the topic. A statutory change is needed to clear up the confusion.

RECOMMENDATION: THE COMMITTEE BELIEVES THE LEGISLATURE SHOULD AMEND 598.21, CODE, 1985, BY ADDING A SUB-SECTION WHICH STATES THAT EACH UNPAID CHILD SUPPORT PAYMENT IS A JUDGMENT AFTER ITS DUE DATE BEARING INTEREST AT THE RATE OF 10% PER ANNUM.

SUCH INTEREST CALCULATION SHOULD BE SIMPLIFIED, AND SHOULD BE PERFORMED BY THE CLERK OF COURT THROUGH A COMPUTER PROGRAM DEVELOPED AND IMPLEMENTED TO CALCULATE ARREARAGES AND INTEREST CHARGES. PAYMENTS RECEIVED SHOULD FIRST BE APPLIED TO PRINCIPAL AND THEN TO INTEREST.

Section 2

GOAL: TO PROVIDE STANDARDIZED, VERIFIABLE PAYMENT RECORDS NATIONWIDE.

PROBLEM:

Disputes between the obligee and obligor arise regarding whether payments were made.

DISCUSSION:

Some orders and jurisdictions do not require payment through a non-partisan agency (i.e. Clerks of Court) which will record and monitor child support accounts. Thus, a verifiable pay record is not always available, causing private attorneys, IV-D agencies, and the courts to make judgments based on whatever evidence the parents submit.

For those states that require payment through public agencies, the problem has not totally been resolved. This is due to such variation in interpretation of procedures, laws and responsibilities of the Clerks of Court, and little or no regulation on the recordkeeping and distribution of the child support by these agencies. Many times the process is slow because of a lack of automation.

RECOMMENDATION: NATIONWIDE, CHILD SUPPORT PAYMENTS MUST BE MANDATED TO BE PAID THROUGH PUBLIC AGENCIES TO PROVIDE STANDARDIZED PROCEDURES FOR RECORD-KEEPING AND DISTRIBUTION. AUDITS WILL SHOW IRREGULARITIES FOR WHICH THE AGENCY IS LIABLE AND FOR ERRORS AND IMPROPER CREDITING OF ACCOUNTS.

Section 3

GOAL: TO ENCOURAGE PROMPT AND TIMELY PAYMENT OF SUPPORT ORDERS FROM THOSE ABLE TO MAKE PAYMENT.

PROBLEM:

Current collection efforts sometimes break down when individuals resist making payment. Contempt procedures often are commenced but the courts are reluctant to impose incarceration as a penalty for willful nonpayment.

RECOMMENDATION: THE COMMITTEE BELIEVES SERVING TIME IN JAIL IS AN EFFECTIVE DETERMENT FOR SOME INDIVIDUALS ABLE TO PAY, BUT WHO HAVE RESISTED MAKING PAYMENTS. WE ENCOURAGE THE COURTS TO ORDER INCARCERATION IN SELECTED CASES. OTHER COURT ORDERS, INCLUDING VISITATION, SHOULD BE TREATED IN A LIKE MANNER.

Section 4

GOAL: TO ENSURE THE PROMPT RECEIPT BY THE RECIPIENT OF ANY SUPPORT MONEY PAID TO THE CLERK OF COURT.

PROBLEM:

There is no uniformity among the clerks of court on how child support payments are paid to the recipient. Some clerks receive the checks, endorse them and mail them to the recipient. Others cash the checks, wait until the check clears and then issue a separate check. There also exists a wide variance in the length of time such checks are kept or delayed at the clerk of court level for processing. Further, some clerks charge for postage and handling while others do not.

RECOMMENDATION: WE RECOMMEND THE LEGISLATURE OR THE SUPREME COURT ADOPT A UNIFORM STANDARD FOR ALL CLERKS. WE RECOMMEND THAT OBLIGORS BE ALLOWED TO PAY BY CHECKS, MONEY ORDERS, CREDIT CARDS, AUTOMATIC WITHDRAWALS OR ANY OTHER CONVENIENT METHOD. SUCH FUNDS SHOULD BE DEPOSITED IN AN INTEREST-BEARING ACCOUNT, AND A PAYOUT MADE BY THE CLERK WITHIN FIVE DAYS. THE INTEREST EARNED ON THE FLOAT MAY BE CONSIDERABLE AND WOULD HELP DEFRAY THE COSTS OF PROCESSING TO THE CLERKS.

Section 5

GOAL: TO AUTOMATE THE COLLECTION AND PAYMENT OF CHILD SUPPORT PAYMENTS.

PROBLEM:

The current system is cumbersome and requires extensive manual entries in court dockets for each payment. Payments are often delayed and considerable time is spent in each clerk's office to process the checks. In addition, each county clerk may have a different system.

RECOMMENDATION: WE RECOMMEND ADOPTION OF A UNIFORM, STATEWIDE PROCEDURE FOR THE COLLECTION AND RECORDING OF SUPPORT PAYMENTS. WE STRONGLY RECOMMEND THE LEGISLATURE AND THE COURTS CONSIDER PURCHASING A COMPUTERIZED RECORDKEEPING SYSTEM. SUCH SYSTEM SHOULD BE CENTRALLY LOCATED WITH TERMINALS IN EACH COUNTY AND CHILD SUPPORT OFFICE FOR THE ENTRY OF CURRENT ORDERS, MODIFICATIONS, TERMINATIONS AND PAYMENT RECORDS.

WE NOTE THE AVAILABILITY OF 90% COST-SHARING FOR ACQUISITION AND IMPLEMENTATION OF SUCH A SYSTEM AND RECOMMEND AN APPLICATION BE SUBMITTED.

WE ALSO BELIEVE SUCH A CENTRAL COMPUTER SHOULD BE MAINTAINED BY A NEUTRAL AGENCY SUCH AS THE SUPREME COURT. ACCESS FOR INFORMATION SHOULD BE AVAILABLE TO APPROPRIATE AGENCIES, PARTICULARLY THE CHILD SUPPORT RECOVERY SYSTEM.

Section 6

GOAL: TO ADOPT A SIMPLE AND UNIFORM SYSTEM FOR DETERMINING CHILD SUPPORT ARREARAGES.

PROBLEM:

The state court system does not have a uniform system for determining support delinquencies. In some counties, the clerk calculates the delinquency. In others, the attorneys or individuals are required to calculate such delinquency. Often, such differences result in delays and disputes as to the correct amount.

RECOMMENDATION: WE RECOMMEND THAT THE CLERK OF COURT CALCULATE ALL DELINQUENCIES ON REQUEST OF ANY PARTY SEEKING TO EXECUTE OR LEVY ON SUCH DELINQUENCY. SUCH DETERMINATION SHALL NOT BE CHANGED, EXCEPT UPON COURT ORDER. GOOD FAITH RELIANCE ON SUCH CALCULATION SHALL NOT SUBJECT A THIRD PARTY TO LIABILITY.

WE ALSO RECOMMEND THAT SUCH DELINQUENCY RECORDS BE PUBLIC RECORD.

Section 7

GOAL: TO ALLOW PARENTS TO EASILY ASCERTAIN THE AMOUNT OF SUPPORT OWED TO THEM OR BY THEM, AND TO SIMPLIFY THE CURRENT PROCEDURES FOR WAGE ASSIGNMENTS, GARNISHMENTS AND OTHER REMEDIES.

PROBLEM:

The current enforcement system contains many remedies to enforce child support orders. However, the process of enforcing those orders appears complex and time-consuming to the lay person. As a result, they often feel frustrated in enforcing their rights.

RECOMMENDATION: WE RECOMMEND THAT SOME ENFORCEMENT TOOLS BE SIMPLIFIED SO THAT LAY PERSONS BE ALLOWED TO PROCESS THEIR OWN FORMS. CLERKS SHOULD HAVE AND BE ABLE TO FURNISH SIMPLE FORMS TO ALL APPLICANTS. WE ALSO RECOMMEND THAT A SIMPLIFIED PAMPHLET BE DEVELOPED, AND MADE AVAILABLE AT EACH CLERK'S OFFICE AND AT THE SHERIFF'S OFFICE. AS A MODEL, WE NOTE THAT THE CURRENT SMALL CLAIMS SYSTEM HAS MADE ACCESS TO THE COURT SYSTEM MUCH EASIER. A SIMILAR PROCEDURE SHOULD BE CONSIDERED FOR THE ENFORCEMENT PORTION OF CHILD SUPPORT ORDERS.

DIVISION V
M E D I A T I O N

Section 1

GOAL: TO EXPLORE ALTERNATIVE DISPUTE RESOLUTION MECHANISMS
IN FAMILY LAW DISPUTES.

PROBLEM:

Custody fights, support obligation disputes, visitation problems and other like problems often continue after a decree has been entered. The animosity generated by disputes often causes one party or both to retaliate against the other. Such retaliation imposes additional burdens on the judicial system.

DISCUSSION:

We believe that many such disputes are not appropriate for a judicial resolution with its attendant delays, costs and adversarial posture.

We are aware that mediation, fact finding, arbitration and the like have been considered in other states and may be beneficial. While we are not convinced such alternate dispute resolution mechanisms are appropriate in every case, we do believe they should be explored. As an example, a pilot program in some counties or in a state agency might be beneficial.

RECOMMENDATION: WE RECOMMEND ALTERNATE DISPUTE RESOLUTION MECHANISMS BE EXPLORED IN CERTAIN LIMITED CASES. WE RECOMMEND THE LEGISLATURE CONSIDER FUNDING A PILOT PROGRAM TO DECIDE WHETHER SUCH PROGRAMS SAVE JUDICIAL TIME AND EXPENSE AND RESULT IN A MORE PROMPT RESOLUTION OF THESE DISPUTES.

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