

FINAL REPORT

**FAMILY COURTS
STUDY COMMITTEE**

**Presented to the Legislative Council
and the Iowa General Assembly
January 1991**

Prepared by the Legislative Service Bureau

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AUTHORIZATION AND APPOINTMENT

The Family Courts Study Committee was established by the Legislative Council to study the feasibility of implementing a family court system within the unified trial court system and report to the Legislative Council and the General Assembly. Fifty thousand dollars was made available to the Supreme Court to conduct the study.

Members of the Study Committee were:

Senator Donald Doyle, Co-chairperson
Representative Michael Peterson, Co-chairperson
Senator Mark Hagerla
Senator Jean Lloyd-Jones
Representative Wayne Bennett
Representative Kay Chapman

COMMITTEE PROCEEDINGS

The Legislative Council approved one meeting date for the Study Committee, and the meeting was held on November 27, 1990.

During the meeting the Study Committee heard testimony from the Honorable August F. Honsell, Jr., Chief Judge of the Sixth Judicial District. Judge Honsell discussed the report by the Supreme Court's Family Court Study Panel, which was mandated in section 1518 of chapter 1271, 1990 Iowa Acts, and answered questions from the Study Committee concerning the Panel's activities. A copy of the Panel's report is attached as Exhibit "A". Judge Honsell also briefly addressed the concerns expressed by the Supreme Court concerning the Panel's recommendations in a November 15, 1990, letter to the Co-chairpersons of the Study Committee.

After hearing Judge Honsell's testimony, the Study Committee discussed the recommendations contained in the Panel's report. Following extensive discussion,

the Study Committee approved five recommendations to be forwarded to the Legislative Council and the General Assembly.

RECOMMENDATIONS

The Family Courts Study Committee makes the following recommendations for consideration by the Legislative Council and the 1991 General Assembly:

1. The General Assembly should authorize and fund a pilot project in at least one judicial district to implement the following:

- (a) Automatic court-referred mediation of custody disputes.
- (b) Authorize the chief judge to coordinate family law cases and implement such procedures as deemed appropriate to resolve all family law issues expeditiously, or appoint an assistant chief judge to do so.
- (c) Authorize the chief judge to assign a district associate judge or a juvenile referee to family law matters generally restricted to the jurisdiction of a district court judge. Direct appeal of these decisions should be authorized.
- (d) Videotaping of proceedings.
- (e) Oversight and evaluation by the present panel, together with one representative from the Department of Human Services and two additional persons with experience in nonjudicial mediation.
- (f) Encourage the utilization of mediation of custody disputes in judicial districts not included in the pilot project, which do not have automatic court-referred mediation.

2. The appropriations subcommittees which deal with the Department of Human Services and the Judicial Department should inquire into the appropriateness of additional support personnel in family law matters, including more juvenile court officers, Department of Human Services social workers, court reporters for all juvenile court referees, and personnel to conduct custody investigations, and should consider providing funding for sufficient employees in these areas.

3. The General Assembly should encourage the courts to seek more education in the area of family law, specifically:

(a) Seek the support of the bar organizations and other entities sponsoring continuing legal education programs to sponsor more programs in the area of family law issues.

(b) Encourage the law schools to offer more classes in the area of family law.

4. The General Assembly should raise the compensation of present full-time juvenile court referees to the level received by district associate judges and the title "juvenile court referee" should be changed to "juvenile court judge."

5. The General Assembly should, by attrition, convert the positions of district associate judges to district judge positions. The conversion should be fully funded.

6. The General Assembly should encourage the Supreme Court to modify Court Rule 200 to further the expeditious disposition of family law matters, particularly those involving custody determinations.

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REPORT OF FAMILY COURT STUDY PANEL
October, 1990

I. LEGISLATIVE MANDATE

House File 2569, 73rd G.A., 1990 Session, requires the Supreme Court to develop a plan to implement a family court system within the unified trial court system. In developing the plan, the supreme court must establish a panel consisting of a statewide, geographical representation of each of the following groups: district judges; district associate judges; juvenile referees; juvenile court officers; members of the Iowa State Bar Association; and members of the general assembly as ex officio, nonvoting members.

The court shall submit the findings and conclusions of the panel to a legislative interim committee by November 15, 1990.

II. FAMILY COURT PANEL

The court appointed the following members to the panel: district court judges Honsell, Nahra, and Schechtman; district associate judges MacDonald and Spande; juvenile court referees Eisenhauer and Glenn; juvenile court officers Buck and Husak; Iowa State Bar Association representatives Caldwell and Neylan; Senators Drake and Murphy; and Representatives Peterson and Trent.

The panel submits the following report of its findings and conclusions.

III. PANEL DISCUSSION

During its first meeting, the panel discussed public and legislative perceptions of the system; the mission of the courts in dealing with child and family issues; the impact of major trends; the goals and objectives of the court system in resolving family disputes; and the strengths and weaknesses relevant to the achievement of the goals. The resources available to the panel included the 1990 Annual Statistical Report of the Iowa Judicial Department, the Family Court packet provided by the National Center for Juvenile Justice, Family Court by the National Council of Juvenile and Family Court Judges; and information on future trends and the courts compiled by the National Center for State Courts.

Specifically, the panel studied and discussed the following issues and concerns

1. Subjects Included in "Family-Law" Matters. The panel discussed the types of cases which would fall within the definition of family law matters. It was generally agreed that family law includes the following subjects: delinquency; children in need of assistance; family in need of assistance; voluntary foster care placements; family health care and biomedical issues; termination of parental rights; adoption; marriage and dissolution of marriage; domestic abuse; and other intrafamily criminal offenses; paternity; conservators and guardians; substance abuse; civil commitment; and uniform support enforcement.
2. Impact of Major Trends. The committee investigated the impact of family destabilization on major trends affecting the court system, including the aging population of the state, the drug epidemic and increased drug enforcement effort, the burden on funding sources and competition for funds, and federal legislation such as the family support act of 1988, increasing number of dissolutions and rehearings, and increasing number of reported child abuse cases.

EXHIBIT "A"

3. **Status of Family Law Cases.** Some members of the panel reported that there is a perception among the public that family law matters do not receive the priority which should be designated to them. The panel found that some of the following situations may create this perception--the belief by some that it would be better for judges who preside over family law matters to specialize in that area of the law: most of the juvenile cases are not heard by district court judges but are assigned to district associate judges and juvenile court referees; lack of proportionate court time and resources to accommodate family law matters which constitute approximately one-half of the entire case load.
4. **Resources Available in Family Law Cases.** There are ten full-time juvenile referees; some districts rely on part-time referees who are attorneys paid on a contractual basis; and Polk County relies on the assistance of several attorneys who volunteer as juvenile referees. Some of the referees do not always have the services of a court reporter but must sometimes rely on tape recording devices.

Services provided in rural areas and the administration of cases in rural areas differ from what is offered in urban areas. In rural areas, judges are required to travel which impacts on the amount of time available to spend in the courtroom. In addition, the statutory judgeship formula has not been fully funded. According to the formula, the citizens are entitled to five more district court judges.

The panel concluded that custody investigations and psychological evaluations are beneficial to the court, however, the cost of a custody investigation is often prohibitive and in some areas the service is not available.

Many juvenile court officers and DHS social workers have unmanageable case loads. The panel agreed that more juvenile court officers and DHS social workers are needed.

Most legislation and programs generally impact on the judicial resources. The impact should be considered whenever the legislature considers changes.

The cost of any proposed legislation or new program proposed by the committee should be formulated in light of the financial condition of the state treasury. In some instances, a phase-in of new programs or legislation would be more feasible.

5. **Custody Disputes.** The panel studied problems in resolving custody disputes. Some members believed that custody disputes are not resolved in a timely fashion and that the best interests of the children sometimes take a back seat to property disputes. The panel discussed the pros and cons of an expedited custody determination and also a bifurcated process.
6. **General Conclusions.** The panel discussed other issues and drew the following general conclusions. Every citizen of the state who becomes a litigant in a family-related matter must feel that his or her particular case has been appropriately considered. The recommendations of the panel should not provide for a more complicated system of resolving family law matters. In addition to considering issues which need immediate attention, it would be beneficial for the panel to formulate a long-range plan for the statewide resolution of family law matters. Any plan that is developed should recognize and accommodate the differences between urban and rural areas. There should be provisions made to establish continuity with regard to the administration of family law matters.

IV. PRIORITIZED CONCERNS

The members of the panel were asked to prioritize their concerns and address in detail the reasons for the concern and basis for any recommendation. Judge Honseil appointed a subcommittee consisting of Judge Nahra, District Associate Judge MacDonald, and Referee Eisenhauer, to review the concerns expressed by the panel members and to develop a prioritized list of subjects.

The subcommittee developed the following list of topics:

1. Lack of judicial personnel.
2. Case delay.

3. Status of juvenile cases.
4. Support services.
5. Custody investigations.
6. Continuity of family law matters.
7. Training/education.
8. Limited judicial jurisdiction.

V. RECOMMENDATIONS

It is the general consensus of the panel that the creation of a separate family court will not enhance the quality of judicial services provided to the public. The panel agrees that there should be no dismantling of or interference with the unified court system. The committee finds, however, that there is room for improving the services provided to litigants. The panel concludes that, if implemented, the following recommendations will enhance the judicial department's ability to manage family law case loads; aid the court in resolving family disputes; provide more accessibility to the court for litigants; provide more affordable services; increase the stature of family issues; and reduce the adversarial nature in which some disputes are processed in the court system.

1. The legislature should authorize and fund a pilot project in at least one judicial district to implement the following:
 - (a) Mandatory mediation of custody disputes.
 - (b) Authorize the chief judge to coordinate family law cases and implement such procedures as deemed appropriate to resolve all family law issues expeditiously, or appoint an assistant chief judge to do so.
 - (c) Authorize the chief judge to assign a district associate judge or a juvenile referee to family law matters generally restricted to the jurisdiction of a district court judge. Direct appeal of these decisions should be authorized.
 - (d) Videotaping of proceedings.
 - (e) Oversight and evaluation by the present panel.
2. There should be additional support personnel in family law matters including more juvenile court officers; Department of Human Services social workers; court reporting services for all juvenile court referees; and custody investigations.
3. More education in the area of family law should be required, specifically:
 - (a) Establish a minimum mandatory continuing legal education requirement for judges and lawyers in the family law area.
 - (b) Devote a portion of the judges' conference to family law and encourage all district associate judges and district court judges to attend the juvenile court conference.
 - (c) Seek the support of the bar organizations to continue to sponsor more continuing legal education programs in the area of family law issues.
 - (d) Encourage the law schools to offer more classes in the area of family law.
4. The compensation of present full-time juvenile court referees should be raised to the level received by district associate judges and the title juvenile court referee should be changed to juvenile court judge.
5. The positions of district associate judges and full-time and part-time juvenile court referees should by attrition be converted to district court positions. The judicial department should work with the districts to develop a plan to create full-time positions from currently existing part-time positions. The conversion should be fully funded. (Judge Schectman dissents)
6. The judgeship formula should be fully funded.
7. Compliance with the time standard guidelines in family law cases should be monitored where custody is in dispute. Judges should be required to separately identify on the Rule 200 report matters which involve custody. Time standards should be implemented concerning appellate review of custody and termination cases.

8. In addition to the formula, as a goal, each judicial district should be provided with at least one additional district court judge to accommodate the expedition of family law matters, and to comply with recently enacted state and federal legislation. In districts which are divided into multiple subdistricts, the chief justice of the Iowa Supreme Court should be authorized to designate the subdistrict in which any new position will be located.

VI. BUDGET

1. Pilot project
- | | | |
|-----|--|----------------|
| (a) | Mandatory mediation of custody disputes | |
| (1) | Salary and benefits for 3 full-time mediators | 93,200 |
| (2) | Secretary salary and benefits | 20,400 |
| (3) | Office rent, furniture, equipment & communications | 7,000 |
| (4) | Mediator training | 10,000 |
| (5) | Public education | 500 |
| (6) | Program evaluation | 7,500 |
| (b) | Assignment of family court judge | 0 |
| (c) | Expanded jurisdiction | 0 |
| (d) | Videotape courtroom | 80,000 |
| (e) | Panel expenses | 2,000 |
| (f) | Total | <u>220,600</u> |
2. Additional support personnel (see budget requests submitted by DHS and judicial department)
3. Education for judges and lawyers.
4. Increasing compensation of full-time referees to level of compensation received by DAJ (FY 1990 amounts).

DAJ Salaries	\$ 66,900.00
Referee Salaries	<u>51,667.20</u>
Difference	\$ 15,232.80
Current # of F/T Referees	X 10
Total Cost	<u>\$152,328.00</u>

5. Conversion of district associate judges and referees.

DAJ to DCJ:

D.C. Salary	\$ 76,700
D.A. Salary	<u>66,900</u>
	\$ 9,800
Benefit Jud. Reg.	X 1.03
Total Cost	<u>\$ 10,094</u>

Average number of District Associate Judge vacancies per year for past three years: 1.67

\$ 16,857

Full-time Referee to DCJ:

D.C. Salary	\$ 76,700.00
F.T. Referee Salary	<u>51,667.20</u>
	\$ 25,032.80
Total Jud. Ret. Cost (DCJ)	+ 2,301.00
Less Referee IPERS	<u>1,955.00</u>
Total Cost	\$ 25,378.80

Only two vacancies in three years:

Thus: 67

\$ 17,004.00

Grand Total

\$ 33,861

6. Judgeship formula. Section 602.6201, The Code, as amended authorizes 104 district judges in 1991. Currently, the actual number of judgeships filled is 101. Districts 3, 5, and 6 are each authorized one more judge than currently funded.

Funding for full implementation of the formula now established would be as follows:

Three (3) district judgeships

Salary and benefits	\$ 88,995		
Travel	2,660		
Books	2,520		
Training	<u>3,265</u>		
	\$ 97,440	X 3 =	\$292,320

Three (3) court reporters

Salary and benefits	\$ 44,425		
Travel	1,635		
Office Supplies	<u>1,016</u>		
	\$ 47,076	X 3 =	\$141,228

Court attendant services

\$ 19,585 X .75 X 3 = \$ 44,066

Total Cost

\$477,614

7. Rule 200 report

0

8. Eight district judgeships, salary, travel, books, court reporters and court attendants

\$1,273,638

VII. PANEL EXPENSES

1. The members of the panel, not including legislators, have been reimbursed \$722.22 for expenses. The balance of the panel's budget is \$49,277.78. Legislators have been reimbursed from another fund.

REPORT OF FAMILY COURT STUDY PANEL
ADDENDUM
October, 1990

The panel was asked by the Supreme Court to consider including in the panel's report a recommendation to expand the Court Appointed Special Advocate Program (CASA) into the 6th Judicial District. The cost of the expansion for fiscal year 1992 is \$57,163. A majority of the panel members voted to recommend this program; three voted against the proposal.

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