

Family Court Bulletin

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Family Courts in the United States

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As the juvenile court celebrates its 100th birthday, policymakers in several states are experimenting with extending the juvenile court's guiding principle¹ into other areas of family law...to realize a "family court."

The Family Court's Ohio Roots

Shortly after the creation of the nation's first juvenile courts at the turn of the century, New Jersey and Ohio expanded the breadth of their experiment from a court with jurisdiction over the legal matters of children to one over the law as it pertains to families and their children.

The first documentary evidence of the family court's creation is in a 1912 enactment of the New Jersey legislature that vested county juvenile courts with jurisdiction to hear and determine all domestic relations disputes.² Ohio followed in 1914 with legislation that created a Division of Domestic Relations in the Hamilton County (Cincinnati) Court of Common Pleas with jurisdiction over divorce, alimony matters, delinquency, dependency, neglected and crippled children, adults contributing to or tending to cause delinquency or dependency, and failure to provide support.³ Ohio's enhanced Domestic Relations Division in Hamilton County is most commonly credited with achieving the nation's first family court consolidation.⁴

The Spark for a Family Court

Hamilton County Domestic Court's first Judge, Charles W. Hoffman, was among the first to publicly define the motivation for a family court:

By reason of the organization of family courts, we believe that the administration of the juvenile court will become more effective and significant and better

understood, not only by those connected with the juvenile court, but by the public generally. There is no need for publicity on this point... It is clear... that the principle of the juvenile court is the foundation upon which the family court must be constructed.⁵

Building Momentum

In the 80 years since Judge Hoffman's committee proposed a family court, the idea has been slow to take hold. In the first four decades, a handful of experiments sprouted in places like Des Moines, Iowa; St. Louis, Missouri; Omaha, Nebraska; Portland, Oregon; Gulfport, Mississippi; and Baton Rouge, Louisiana.⁶ Some of the experiments thrived while others died; some thrived only to die amid their success; and some died and were reborn years later. During this time, Hoffman's own court reorganized into specialized juvenile and domestic courts in Hamilton County as did another prominent Ohio family court in Lucas County (Toledo).

The family court movement was rejuvenated in 1959 when the Standard Family Court Act legitimized the idea. This model legislation was offered in partnership by three national organizations and immediately breathed new life into the movement.⁷

In the 1960s, the first state systems of family courts were established in Rhode Island (1961), New York (1962) and Hawaii (1965). By 1980, thirteen states were operating or seriously studying the feasibility of family court consolidation, and two more national standard settings groups addressed the issue of family courts.⁸

In the last two decades, the family court idea has gained momentum in a host of state task forces, commissions, and

pilot efforts. A number of national organizations currently support movement toward establishing family courts, including the National Council of Juvenile and Family Court Judges, the American Bar Association, and the Association of Family and Conciliation Courts.⁹ By 1996, the number of states operating or seriously considering family courts rose to 35, with 23 adopting measures that would combine, in whole or in part, jurisdiction that involves various family members in different legal proceedings.¹⁰

What is the Family Court Today?

Of the systems that have pursued the idea of family court, no two have built the same structure or stacked the same service ideas upon the basic belief that all family law matters should be guided by the best interest of children. As a result, there is a tendency to define family court as a set of programs or procedures rather than core beliefs or foundation principles.

Wide divergence exists merely on the subject of the appropriate range of family court jurisdiction. For example, several family courts have comprehensive jurisdiction except for one essential element such as delinquency or divorce. The divergence becomes even more marked in terms of emphasis on certain program ideas such as alternative dispute resolution and services for pro se litigants. At times, a set of programs, a procedure to consolidate certain cases before a judge, or a new family-friendly facility becomes family court.

Despite the confusion and extended debate over how a family court is best realized, all functional family courts should have one thing in common — a core belief that the best interests of children should drive family law in the courts.

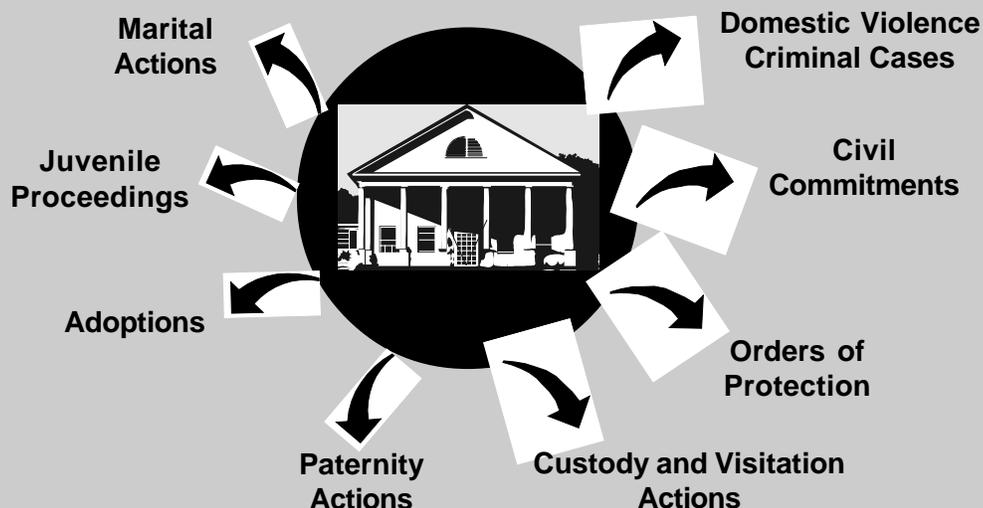
Feasibility of a Family Court in Ohio

Until recently, Ohio family courts have had a local focus. For example, the foreword of the Standard Family Court Act suggests that family courts existed in eight Ohio counties in 1959. On the surface today, seven Ohio counties combine domestic and juvenile matters, 64 combine probate and juvenile matters, one combines all three specialty courts in one court division, and seven are one-judge common pleas courts. Therefore, 79 of the 88 common pleas courts in Ohio have much of the structural underpinnings that encourage the development of a functioning family court.

Ohio’s movement toward family court ideals at the state level gained momentum in 1987 when a Governor’s Task Force on the Investigation and Prosecution of Child Abuse and Child Sexual Abuse Cases was established. The Task Force issued a report in 1992 to the Governor that recommended unified court proceedings for protective, custodial, and criminal issues that involve the same children. One year later, a Supreme Court Ad Hoc Committee on Multidisciplinary Cooperation similarly recommended that the state advance the Task Force’s recommendation. In the same year, 1993, the Governor reconstituted the Task Force. The new Task Force established a Family Court Subcommittee to review and evaluate the concept of an Ohio Family Court.

The next critical step was the Ohio Department of Human Services and the Supreme Court of Ohio entering into their first ever Interbranch Agreement to explore the feasibility of family court and coordinate funding for research.

A structural family court may handle many kinds of matters, with the help of support personnel and social service workers. Some of the possibilities:



In 1996, the National Center for Juvenile Justice (NCJJ) was awarded a contract to conduct a Family Court Feasibility Study on behalf of the Supreme Court and Department of Human Services. The feasibility study was completed in the Spring of 1997 and offered a set of recommendations for the state to pursue family court.¹¹ NCJJ prefaced their recommendations by suggesting that the family court should remain localized, with support and encouragement at the state level.

Subsequent to the feasibility study, the Supreme Court and Department of Human Services have followed NCJJ's recommendations to:

- draft a user-friendly Ohio Family Code;
- increase resources for Family Law Education;
- establish pilots to model family court; and
- support program ideas closely associated with family court principles, including information systems, CASA/GAL, and ADR/Mediation.

Four Family Court Pilots

In 1998, the Supreme Court and Department of Human Services offered grant opportunities to all Ohio Common Pleas Courts for a family court pilot. Four sites were selected out of eight applicants— a medium-sized urban court (Lorain County), a suburban/rural court (Clermont County), and two rural courts (Mercer and Fayette Counties).

The four pilots have recently begun working to implement the proposed family court ideas. The Supreme Court has contracted with NCJJ once again, in a second phase of the original feasibility study, to provide technical assistance to the pilot courts and to evaluate their implementation efforts.

1) Lorain County Domestic Relations Branch and Juvenile Division

Just west of Cleveland, Lorain County is the largest of the four family court pilots. With about 280,000 people, it is Ohio's 9th most populated county.

Lorain County features a combined Domestic and Juvenile Division. The Lorain Domestic Court's family court proposal currently calls for:

- expanding its current capacity to mediate family cases;
- expanding and improving supervised visitation services;
- developing an education program for never-married parents involved in juvenile custody matters;
- coordinating services in family cases better;
- enhancing tracking of family cases across case types and time; and
- developing programs to increase public access to justice in the courts.

2) Clermont County Domestic Relations Court in Partnership with the Clermont County Juvenile Court

To the east of Cincinnati, Clermont County is a mix of the suburban areas surrounding greater Cincinnati and a significant rural population. Clermont has about 175,000 residents, making it the 13th most populated county in Ohio.



Of the two urban pilots, Clermont County features a partnership between the Domestic Relations and combined Probate/Juvenile Divisions of the Common Pleas Court. Their shared proposal currently calls for:

- integrating reception and pro se services for both courts;
- expanding current capacity to mediate family cases;
- expanding the ability to conduct custody investigations; and
- enhancing the court's respective automated information systems to share information.

3) Mercer County Common Pleas Court

In the far western region of Ohio, Mercer County is a rural area with about 41,000 people. The court has a combined general/domestic division and a combined probate/juvenile division. A magistrate is jointly appointed to both divisions to handle all domestic relations filings and custody, support, visitation, and paternity matters filed in the probate/juvenile court. The Court's proposal currently calls for expanding family case services in the areas of:

- mediation services;
- custody investigation;
- supervised visitation;
- family assessments; and
- family counseling.

4) Fayette County Probate and Juvenile Court, in partnership with the Fayette County Common Pleas Court and the Fayette County Municipal Court

Fayette County Probate and Juvenile Court, in partnership with the Fayette County Common Pleas Court, and the Fayette County Municipal Court

On I-71, halfway between Cincinnati and Columbus, Fayette County is a rural area with about 29,000 people. The Probate/Juvenile Court proposal currently calls for:

- establishing intake coordination between the three courts;
- linking the information systems of the three courts and the mediation office through hardware and software upgrades;
- coordinating family services ordered by the court;
- expanding mediation services; and
- expanding diversion services.

END NOTES

¹ The juvenile court was founded on the principle of *parens patriae*. According to *Black's Law Dictionary* (6th edition), *parens patriae* is the concept that the state must care for those who cannot take care of themselves. For example, the state must intervene to protect the interests of children.

² Acts of the State of New Jersey, 1912, pp. 630-632. Reproduced in Bremner, H. R., *Children & Youth in America: A Documentary History*, Cambridge, MA: Harvard University Press, 1971, pp. 543-544.

³ *Employee Orientation Manual: Hamilton County Juvenile Court*, Cincinnati, Ohio, 1973, p.1.

⁴ Page, R. W. "Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes." *Juvenile and Family Court Journal*, vol. 44, no. 1, 1993; Kephart, W. "The Family Court: Some Socio-Legal Implications," W.U.L.Q., 1955, pp. 62-67; Rubin, T. and Flango, V. *Court Coordination of Family Cases*. Williamsburg, VA: National Center for State Courts, 1992, p. 63.

⁵ National Probation Association, Committee on Domestic Relations Court, 1918. Charles W. Hoffman, Chair.

⁶ Hurst, H. *Legislative Approaches to Coordination of Child and Family Legal Proceedings*. Pittsburgh, PA: National Center for Juvenile Justice, November 12, 1992.

⁷ The organizations were the National Probation and Parole Association (later the National Council on Crime and Delinquency), the National Council of Juvenile Court Judges (later the National Council of Juvenile and Family Court Judges), and the U.S. Children's Bureau.

⁸ Please see American Bar Association Commission on Standards of Judicial Administration, *Standards Relating to Court Organization*, Standard 1.12. Chicago, IL: American Bar Association, 1974, and the National Advisory Commission on Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention, Standard 8.8*. Washington, DC: Government Printing Office, 1977.

⁹ National Council of Juvenile and Family Court Judges. *Children and Families First: A Mandate for America's Courts*, Reno, NV: National Council of Juvenile and Family Court Judges, 1993, p. 4-5; American Bar Association, "American Bar Association Policy on Unified Family Courts." *Family Law Quarterly* 32(1): 1-2; and Milne, A. "Considerations in Establishing a Unified Family Court," statement submitted to the U.S. Commission on Child and Family Welfare, April 19, 1995.

¹⁰ Hurst, H., Jr. and Szymanski, L. A. *Family Courts in the United States 1996: Statute, Court Rule, and Practice Analysis*. Pittsburgh, PA: National Center for Juvenile Justice, December, 1996.

¹¹ Halemba, G., et al. *Ohio Family Court Feasibility Study: Summary of Major Recommendations*. Pittsburgh, PA: National Center for Juvenile Justice, April 8, 1997 and Hurst, Jr., H., et al. *Ohio Family Court Feasibility Study: Final Report*. Pittsburgh, PA: National Center for Juvenile Justice, May 5, 1997.

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NCJJ is a non-profit organization that conducts research (statistical, legal, and applied) on a broad range of juvenile justice topics and provides technical assistance to the field.

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