



Ohio Family Court Bulletin

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A Family Code for Ohio

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In 1997, the National Center for Juvenile Justice (NCJJ) recommended that Ohio statutes governing family matters be consolidated in an Ohio Family Code. For the next 13 months, a 10-member task force of Ohio family law experts volunteered over 2,000 hours to accomplish this task. Last summer, the Ohio Legislative Services Commission (OLSC) adapted the product of the Task Force's labor into bill form that legislators could consider as early as summer 2001.

The new Governor's Task Force established a Family Court Subcommittee to review and assess the concept of an Ohio Family Court.

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

In 1996, the National Center for Juvenile Justice received a contract to conduct a Family Court Feasibility Study on behalf of the Ohio Supreme Court and Department of Job and Family Services. The Feasibility Study was completed in the spring of 1997 and offered a set of recommendations, including those to:

Background

The recommendation for an Ohio Family Code grew from research that explored the feasibility of a statewide family court system. Ohio has a long tradition of family court experiments growing at the local level. Ohio was among the first states to establish a family court with the 1914 enactment to create a family court in Hamilton County (Cincinnati), Ohio. The foreword to the Standard Family Court Act suggests that eight Ohio counties had family courts by 1959.

Ohio's movement toward family court ideals at the state level gained momentum in 1987 when the Governor's Task Force on the Investigation and Prosecution of Child Abuse and Child Sexual Abuse Cases (hereinafter referred to as the Task Force) was established. The Task Force issued a report to the Governor in 1992 that recommended unified court proceedings for protective, custodial, and criminal issues involving 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.

- ◆ draft a user-friendly Ohio Family Code;
- ◆ increase resources for Family Law Education;
- ◆ establish pilot sites to model family court; and
- ◆ support program ideas closely associated with family court principles, including information systems, court appointed special advocates/guardians *ad litem*, and alternative dispute resolution/mediation (Halemba et al., 1997).

NCJJ prefaced its set of major findings and recommendations by suggesting that the family court should remain localized, but with more support and encouragement at the state level. Regional focus groups, professional surveys, public hearings and over 300 interviews with family law professionals across the state supported the conclusion that the state's role would best serve the ideal of family court by encouraging, rather than mandating, family courts.

The Need for a Family Code

The Family Court Feasibility Study found that Ohio statutes governing the judicial handling of various types of legal proceedings involving the family are scattered across the Ohio Revised Code (please see Figure 1 on facing page).

The Feasibility Study suggested that the scattering of the provisions dramatically impacted the professionals working in the court and the public who uses it. Almost every judge, magistrate, court administrator, attorney, social service provider, and family advocate interviewed by NCJJ identified areas of overlapping jurisdiction and confusion. For some, it represented an isolated problem, a bother that came up only a couple times a year. For others, statutory conflict in the family law statutes created daily concerns about mission, function and effectiveness.

To make matters worse, the problems seemed to compound each year as statutory provisions in one realm of family jurisdiction are modified with seemingly insufficient attention toward how the changes impact other sections of Ohio family law. The net result over time produces the symptoms that give rise to family courts as a solution:

Every new condition is met at first by a special act, and so for every new problem there is likely to be a new court. . . . The several parts are likely to be distorted in considering them apart from the whole, and the whole may be left undetermined in a series of adjudications of the parts (Pound, 1959).

While the Feasibility Study found limited support for actually consolidating courts by fiat handed down from the state level, nearly every individual interviewed during the Feasibility Study indicated that some type of family law revision was necessary to better coordinate family cases. Generally, these respondents fell into two categories – those who felt that

specific sections of the Ohio Revised Statutes needed revision and those who recommended a comprehensive examination and integration of Ohio statutes governing family matters.

Most respondents fell into the first category and, as a result, NCJJ documented specific areas of overlap with lengthy discussions in the Feasibility Study of the problems they create for families in court. The area of jurisdiction most frequently cited in the Study for overlap between courts was loosely characterized as the jurisdiction over paternity, custody, support and visitation determinations. The second most frequently cited area of conflict involved domestic violence.

The second set of respondents, while also citing specific deficiencies in the family law statutes, advocated a sweeping examination and consolidation of Ohio statutes that reference the family law. For the most part, these individuals were experienced judges or attorneys who presented compelling arguments for their opinion. They were likely to observe that the complexity of family law serves the interest of attorneys rather than families and cited the exorbitant cost of family litigation and the virtual requirement in some areas of jurisdiction for attorney representation. They viewed the proliferation of disjointed laws, and courts to serve them, as a disservice to the public they were supposed to serve.

NCJJ observed that the scattering of family law statutes across the code was not a problem isolated to Ohio. Rather, it was a common phenomenon in the states, and one frequently encountered when conducting comparative family law statute analysis at the national level. Even where states consolidated family jurisdiction in a single court, problems could still arise because the family law was diffused across the code and full of contradictions and complexity that compounded with each meeting of the legislature (e.g., New Jersey). Only Texas directly addressed the issue by consolidating the family law into a set of five titles in 1973 (view the Texas Family Code on the Texas Legislature Online web site at www.capitol.state.tx.us/statutes/fatoc.html).



Family Court Conference

Sponsored by the National Council of Juvenile and Family Court Judges and hosted by the Supreme Court of Ohio and the Ohio Department of Job and Family Services.

Mark your calendar now for a special Forum on Family Court, September 23-26, 2001, in Cincinnati, Ohio. The Forum will address the Unified Family Court concept with seminars and workshops on best practices in dependency, delinquency, domestic relations, and family violence jurisdiction. The conference will also feature a special track for Ohio family courts. For more information on this training event, contact Dean M. James Toner, 775-784-6159 or visit the Continuing Judicial Education Department on the National Council of Juvenile and Family Court Judges' website, <http://training.ncjfcj.unr.edu>.

**FIGURE 1:
CHAPTERS OF THE OHIO REVISED CODE THAT ADDRESS LEGAL PROCEEDINGS INVOLVING THE FAMILY**

TYPE OF FAMILY CASE

CHAPTER OF OHIO REVISED CODE

FAMILY RELATIONS

(e.g., marriage, husband and wife, divorce, dissolution, legal separation, domestic violence)

2103
2307; 2323
2719
3101; 3103; 3105; 3113; 3117

PARENTAL RIGHTS AND RESPONSIBILITIES

(e.g., parent and child determination, parenting, uniform child custody jurisdiction law)

2301
3109; 3111
3770
4705
5101

SUPPORT

(i.e., child support)

2301
3103; 3105; 3109; 3111; 3113; 3115
5101

PROTECTION OF CHILDREN

(e.g., abused, neglected and dependent children; delinquent children and status offenders, juvenile traffic, adult cases in juvenile court, termination of parental rights and permanent surrender)

121
307
2151; 2152; 2153
3109
5101; 5103; 5139; 5153

PROBATE

(e.g., adoption of children; estates and fiduciaries, executors and administrators; adult protection; guardianships and conservatorships, right to die and living wills; name change)

339¹
1337; 1339; 1340
2101; 2103; 2105; 2106; 2107; 2108; 2109; 2111; 2113; 2114;
2115; 2117; 2119; 2121; 2123; 2125; 2127; 2129; 2131; 2133
2717
3107
3701; 3705
5101; 5103; 5122; 5123; 5126
5905

CONTEMPT POWERS

2101; 2151
2333
2705; 2727; 2713; 2731; 2743
2935
3105; 3109; 3111; 3113
5155

Source: Report to the Governor's Task Force on the Investigation and Prosecution of Child Abuse and Child Sexual Abuse Cases, re: Family Code Revision (March 3, 1999)

¹This chapter has been repealed by the legislature.

FAMILY CODE TASK FORCE MEMBERS

Judge Phillip Rose (Chair)

Vinton County Probate/Juvenile Court

Judge David Basinski

Lorain County Domestic Relations Court

Judge Douglas Jenkins

Columbiana County Common Pleas Courts

Judge Russ Steiner

Licking County Domestic Relations Court

Magistrate Michael Bernstein

Mercer County Common Pleas Court

Magistrate William Reddington

Franklin County Probate Court

Robert Frankart

Ohio Department of Job and Family Services

Lewis George

Ohio Department of Youth Services

William Kurtz

Attorney

Michael Ring

Marion County Children Services

Craig Tame

Ohio Victim/Witness Association

reorganize hundreds of Ohio Revised Code statutes relating to domestic relations, juvenile and probate law. The process was essentially one to identify and reorganize, as opposed to addressing substantive changes to law. However, in the words of one member, "given the rare opportunity to bring everything out and clean house, we provided detailed comments where substantive changes to law might be appropriate." The commentary of the Task Force ranged from recommending to repeal several statute provisions that were obsolete, to indicating chapters with misleading titles, to providing the rationale for transferring specific sections of a chapter into another related chapter. Among the more difficult and global considerations, the Task Force recommended the transfer of all statutes governing contempt of court into a new title, and to transfer all statutes that establish criminal offenses into the Criminal Code (Title 29).

By fall 1998, the Task Force developed a proposal to restructure all family law statutes into six new Revised Code Titles that would organize the family law statutes into a logical and easily accessible format:

Title 63: Family Relations (Chapters 6301 to 6307)

Title 65: Parental Right and Responsibilities
(Chapters 6501 to 6511)

Title 67: Support (Chapters 6701 to 6711)

Title 69: Protection of Children (Chapters 6901 to 6925)

Title 71: Probate (Chapters 7101 to 7167)

Title 73: Contempt of Court (Chapters 7301 to 7311)

Recent Developments

NCJJ concluded that problems with jurisdiction involved more than resolving specific problem areas and agreed with the second set of respondents that the diffusion of family law in Ohio statutes hampers the consideration of coordinating related family cases in the courts. In essence, consolidating courts is premature if the laws that cause them to exist cannot first be corralled to remove ambiguities and conflicts and place language in a simplified and clear text within a logical format.

The Family Code Task Force

In the summer of 1997, Supreme Court Justice Thomas J. Moyer appointed the Family Code Task Force, and they began the daunting task of setting the boundaries for family law and mapping it through a maze of 12 titles and 63 separate chapters of the Ohio Revised Code. The Task Force was charged with developing a proposal for reorganizing all relevant chapters into a single title or set of titles, featuring simplified text and logical format. Over the course of the work, the Task Force was also charged with identifying the duplication, overlap and confusion identified by NCJJ.

The 10-member Task Force was staffed by Doug Stephens of the Supreme Court and met monthly for more than a year to

In the spring of 1999, the chair of the Family Code Task Force submitted the proposal for an Ohio Family Code to the Governor's Task Force on the Investigation and Prosecution of Child Abuse and Child Sexual Abuse Cases. The Governor's Task Force studied the proposal, approved it and incorporated it into its recommendations to the Governor for reform of state laws.

The language drafted by the Task Force to replace existing statute and serve as the Ohio Family Law Statute should be enacted by the Ohio General Assembly.

Members of the Governor's Task Force subsequently worked with the Supreme Court to find sponsors in the legislature. Senator Louis W. Blessing Jr. then submitted a request to the Ohio Legislative Services Commission (OLSC) to draft a bill based upon the proposal. The OLSC bill draft was completed last summer and required the involvement of 16 people who spent over 500 hours to complete this task. Most recently, the bill was returned to the Senator and in turn to the Governor's Task Force and the Family Code Task Force for final consideration.

Ohio to Begin Preparing for Federal Child and Family Service Plan Reviews

Hunter Hurst, Jr., Senior Research Assistant, NCJJ

A previous issue of the *Ohio Family Court Bulletin* introduced the framework for Ohio's IV-E maintenance reviews by the U.S. Department of Health and Human Services (DHHS). Preparations for a second and separate DHHS review are scheduled to begin at the end of this year.

The 1994 Amendments to the Social Security Act authorize DHHS to review child and family service plans in each State for compliance with requirements under the Act's titles IV-B and IV-E. The review will document Ohio's "substantial conformity" with Federal requirements and subsequently develop plans to improve child welfare service outcomes. The reviews are also intended to (bullets excerpted from Children's Bureau, 2000):

- ◆ ensure that Federal funds are spent in accordance with Federal statute, regulation, and policy;
- ◆ link the review to the joint planning, technical assistance, and program improvement processes that exist between State and Regional Offices;
- ◆ assist States to become self-evaluating over time;
- ◆ assemble data that will inform national policy; and
- ◆ provide timely and specific feedback to States directly related to program performance and outcomes.

State and Federal governments will collaborate on these reviews, with both State and Federal staff serving on the review teams. The tentative schedule for the start of Ohio's review is May 20, 2002. However, preparations for the review, including a self-assessment, will begin this year.

The reviews involve an initial "Statewide Assessment" to gather information to identify areas where Ohio may be doing well and areas that may be served by further examination in local "onsite reviews." The onsite reviews will be conducted in **at least three locations in Ohio, including the largest metropolitan subdivision (whether it is a city or county)**. The appropriate regional office of DHHS will select the other sites in consultation with the review team's Ohio staff and by considering the following criteria:

- ◆ It is not necessary to target the most troublesome jurisdictions for onsite review as long as the sites selected fairly represent Ohio practice;
- ◆ The initial Statewide Assessment can identify particular jurisdictions, program areas, or populations of children and families served that could benefit from the more intense onsite reviews; otherwise
- ◆ Selection may be from jurisdictions that are most typical of Ohio practice and include a mix of rural and urban sites.

Project Updates

Lorain County Domestic Relations Division and Juvenile Branch

Court to Premiere New Parent Education Program, May 14, 2001

Under its family court pilot, the Lorain Domestic Relations Court has expanded its tradition of court-based parent education to the unmarried by establishing a program specifically tailored for couples that have recently established paternity and are faced with issues of access and parenting time (visitation).

The unmarried seminar was developed from experience with parent education

The planned seminar for unmarried parents is based upon the Domestic Relations Court's long-standing education program for separating married couples with children. Through the auspices of its Family Court Department, the court operates its own, mandatory two-hour divorce seminar three to four times per month. The seminars are held at non-traditional times, including weekday evenings and Saturday morning and are personally hosted by one of the three domestic relations judges. Two years ago, the court, in collaboration with the Lorain County Community College, developed a video to support and enhance the divorcing parents seminar. A key to the program's success is court-ordered participation and the judges' personal

investment to host each seminar. Although many participants are typically reluctant to attend the court-ordered program, most have a change of heart after they attend the seminar and hear what the judges have to say about putting their children first.

The seminar is among the first in the Nation

During the early stages of developing a program for the unmarried, NCJJ conducted a search for program examples from other jurisdictions across the country. The search yielded only a handful of well-documented examples where a court or child support enforcement agency was administering a seminar for unmarried parents. Examples were found in Cook County (Chicago) and DuPage County, Illinois and Wayne County (Detroit) and Oakland County (Pontiac), Michigan. Out of these sites, Pontiac was the only one to use a locally developed video for the seminar.

Plan for the Seminar

To support the seminar, the court has recently worked with the local family bar to revise its local court rule with a requirement for parenting education in cases involving children:

All parents filing initial actions in which there are any minor children shall attend an educational seminar for parents sponsored by the Court. Seminar attendance may also be required by order of the Court after the filing of motions concerning the modification of parental rights and responsibilities and modification of enforcement and parenting time.

The seminar will be held prior to visitation hearings that are scheduled subsequent to the IV-D agency establishing paternity, and the court ordering support based upon the administrative finding. Penalties for non-compliance with the court rule apply to both married and unmarried couples:

- 1) No action shall proceed to final hearing until there has been compliance with the rule, provided, however, that non-compliance by a parent who enters no appearance and does not contest the action shall not delay the final hearing.
- 2) No person shall be designated residential parent and legal custodian of any minor child without attending the Parenting Seminar, except under extraordinary circumstances.
- 3) No shared parenting plan shall be approved unless both parties have attended the Seminar.

- 4) Parenting time orders shall be held in abeyance until such time as the parent seeking parenting time has completed the Seminar.

The penalties enumerated in the court rule give the Domestic Relations Court the authority to hold parents in contempt or to waive the parenting education requirement for good cause shown.

Clermont County Domestic Relations Court in Partnership with the Probate/Juvenile Court

Family-Friendly Waiting Areas

Both court divisions have installed new family friendly furnishings in their respective waiting areas. For several years, the waiting areas were furnished with hard wooden pews like those found in an old country church. This was no coincidence or planned effort. The seating was rescued from a church in Kentucky. While a fitting testament to the frugality of the court, the seating proved both uncomfortable and unsightly, being vulnerable to graffiti and wear and expensive to refinish. More importantly, the seating was inflexible in that it lent itself to arrangements fit for lectures or sermons rather than sensitive family discussions.

The Domestic Division and the Probate/Juvenile Division have replaced the hard, wooden, former church pews in their respective waiting areas with more comfortable and less intimidating modular furniture. The ability of the furniture to be arranged in discussion squares has enabled the Domestic Relations Court to encourage family discussion and attorney conferencing in the waiting area.

Court Appointed Special Advocates

As an independent adjunct to the pilot, a court appointed special advocates (CASA) program was developed under the auspices of a local private treatment provider that was managing a mentoring program for the court. As the program grew (it currently supports over 20 volunteers), the court recognized a conflict of interest in the arrangement for administering the program. Most recently, the Probate/Juvenile Court has applied for funds to transition the CASA program from the auspices of the local treatment provider by creating an independent non-profit CASA organization.

Fayette County Probate/Juvenile Court in Partnership with the Fayette County Common Pleas Court and the Fayette County Municipal Court

Mediation Expansion

The court has expanded its capacity to mediate disputes under the family court pilot. As a result, referrals to the mediation office grew 43% in calendar year 2000, and the proportion of referrals from the courts increased from 10% of total referrals in 1999 to over 40% in 2000. Despite the increased business from the court, the office continues to accept non-court referrals from the community. In calendar year 2000, school officials referred 40% (65) of the cases directly to mediation, and parents/custodians of children referred 17% (28).

As part of assessing its performance, the program has been surveying participants in the mediation process. Selected findings from the surveys collected to date suggest over 90% of respondents agreed mediation is better than going to court, and helps them to understand the other side's view and the needs and concerns of their children. Over 80% agreed that mediation in Fayette County reduces the costs of being involved with court and is likely to decrease the amount of time they spend in the justice system.

Mercer County Common Pleas Court, Probate/Juvenile and General/Domestic Relations Divisions

Mediation Expansion

The Mercer County Court of Common Pleas pilot family court effort began operations in June, 1999 with a focus on supporting a wide range of family services provided through a local, non-profit social service agency – O.U.R. Home, Inc. Close collaboration with this agency during the proposal development and planning phases enabled Mercer County to get on the fast track in terms of putting its family court initiatives into practice.

O.U.R. Home, Inc. provides a wide range of services for families referred by the pilot family court including mediation, mediation training, supervised visitation, home investigations, counseling, and mental health assessment. These services are either provided on-site or via contracts with counselors and agencies at other locations throughout the county on an as-needed basis.

- ◆ *Mediation* – While mediation is being used at all stages of divorce/dissolution and custody, a primary emphasis of the program

has been on developing mutually satisfying agreements among parents having difficulty arranging custody, visitation or support.

- ◆ *Mediation Training* – A certified mediation trainer has held introductory and advanced family mediation training seminars for judges, prosecutors, attorneys, and child welfare staff. Mercer County has invited other pilot family courts to send participants to its mediation seminars.
- ◆ *Supervised Visitation and Exchange* – To reduce the stress levels often accompanying disputing parents, O.U.R. Home, Inc. provides a safe, neutral and homelike environment for custodial transfer of children and child visitations.
- ◆ *Mental Health Assessments and Counseling* – the court can refer families for these services via a court order. These services are provided by a local provider via a contract with O.U.R. Home, Inc.

Service provision statistics maintained by the O.U.R. Home court liaison/coordinator indicate that, as of March, 2000, 99 families were served with funds provided via the family court grant. Mediation services were provided to 68 families during this time. Other services provided included supervised visitation/exchange, counseling and psychological assessment.

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The Ohio Family Court Feasibility Study refers to a constellation of activities jointly administered by the Supreme Court of Ohio and the Ohio Department of Job and Family Services to improve both the interaction between child welfare and judicial systems, and the effectiveness of the intervention in cases involving families where judicial action is required. This study is supported by a blend of federal Court Improvement and Children's Justice Act grant funds.

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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