ADMINISTRATIVE OFFICE OF THE COURTS
Report Summary

Family and Juvenile Law Standing Advisory Committee June 28, 1995

SUBJECT: Report of the Governor's Child Support Court Task Force (Action Required)

This memorandum summarizes the Report of the Governor's Child Support Court Task Force ("Report"), which is attached to this memorandum, and discusses the issues relevant to the judicial branch. It concludes with a recommendation that the Judicial Council support the proposal generally and provide a concurring opinion proposing that blanket disqualification of a child support commissioner be limited.

Recommendation

The Family and Juvenile Law Standing Advisory Committee recommends that the Judicial Council

1. Conditionally approve the Report of the Governor's Child Support Court Task Force.

2. File with the task force, as a concurring opinion, the section of this memorandum appearing under the heading "Blanket disqualification of a commissioner."

3. Delegate to the advisory committee the authority to review changes made to the draft report and either approve the changes or refer them to the council as the committee deems appropriate.

4. Delegate to the advisory committee the authority to work with the task force in the development of the legislative program and recommend to the Policy Coordination Committee appropriate action on the proposed legislation.

THE JUDICIAL COUNCIL OF CALIFORNIA
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TO: Members of the Judicial Council

FROM: Family and Juvenile Law Standing Advisory Committee
Hon. Leonard Edwards and Hon. James D. Garbolino, Co-chairs

Family Law Subcommittee
Hon. James D. Garbolino, Chair
Michael A. Fischer, Counsel

DATE: June 28, 1995

SUBJECT: Report of the Governor's Child Support Court Task Force (Action Required)

Summary

This memorandum summarizes the Report of the Governor's Child Support Court Task Force ("Report"), which is attached to this memorandum, and discusses the issues relevant to the judicial branch. It concludes with a recommendation that the Judicial Council support the proposal generally and provide a concurring opinion proposing that blanket disqualification of a child support commissioner be limited.

It should be noted that the Report is still in draft stage, although it is close to final draft. Any changes in the draft presented to the council, and the final draft, will be presented to the Family and Juvenile Law Standing Advisory Committee for its consideration. The council is requested to delegate to that advisory committee the authority to approve the minor changes expected in the draft report. The advisory committee would report any major changes to the report to the council for its consideration.

The proposed legislation implementing the Report is also attached for information only. The council is not being asked to approve the legislation. The draft language is still at a very early stage and the proposal will be presented to the council when it is in a more final version.

Background

The child support enforcement system

Title IV-D was added to the Social Security Act in 1975.[1] As modified over the years, these provisions strongly encourage the establishment of a child support enforcement program in each state by the following means:

- Federal reimbursement of two-thirds of the administrative costs of the program.
- State recovery of its portion of AFDC costs on the amount of support collected.
- Incentive payments of additional money for meeting certain performance standards.
- Penalties, including possible loss of Aid to Families with Dependent Child (AFDC) funding, for states not having a program that conforms to federal requirements.

The enforcement of child support under this provision is often referred to as a IV-D action. In California this program is centered in the State Department of Social Services, with enforcement carried out in each county by the district attorney.

Child support enforcement requires both the establishment of a child support order and the enforcement of that order through various collection means. Establishment of an order can occur in a dissolution action, a paternity action under the Uniform Parentage Act, or a welfare recoupment action by the county for AFDC funds. Enforcement is handled through any of the existing means of collecting upon a judgment, but most particularly through a system of automatic wage withholding.

There is a close relationship between child support and AFDC. As the Report notes:

> Early establishment of support orders increases the chances that the child will not become a recipient of AFDC. Once AFDC is paid early establishment ensures that the taxpayers are reimbursed as soon as possible to the extent the noncustodial parent is able to pay.[2]

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[1] Social Security Act Amendments of 1975, sections 451-460 For a history of this involvement see Goldberg, *Child Support Enforcement Balancing Increased Federal Involvement with Procedural Due Process* (1985) 19 Suffolk U L Rev 687, 689–692

[2] Report at p 12

"Vision for Excellence"

In June 1992, Governor Wilson unveiled a 10- point plan to improve the child support enforcement program ("Vision Report"). The Vision Report was "a business plan for improving the Child Support Enforcement Program in California and making it an integral part of the Governor's welfare reform strategy."[3] The plan recommended maximizing "the use of cost-effective technology to support the business functions of the Program. Included are a clear commitment to implement statewide automation and enhance electronic links among entities involved in Program administration."[4]

The Vision Report recognized that the increased automation of the support program would result in a significant increase in court filings. Consequently it recommended:

> [A] Governor's Task Force [be convened], including representatives from the Judicial Council, the Attorney General's Office and the Department of Social Services as well as appropriate District Attorney and local program manager representatives, to make recommendations regarding appropriate structure and funding for the determination of child support matters, including support order establishment and enforcement.[5]

Statewide Automated Child Support Systems (SACSS)

The technology investment recommended by the Vision Report consists, in large part, of the soon-to-be-operational Statewide Automated Child Support System (SACSS). The development and implementation of SACSS is funded primarily by the federal government. As the Report notes:

> [C]ounties that have become automated report similar results [increases in court cases of between 200 and 300 percent in one year] after conversion to the new computer systems. Once SACSS is installed and is fully functional, it is expected that many of the cases now backlogged will begin moving into the court system.[6]

Other factors are also expected to increase this effect.[7]

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[3] Vision Report at p. v
[4] *Id*, at p ii
[5] *Id*, at p 16.
[6] Report at pp 35–36
[7] Report at pp. 34, 36–37.

The task force

As noted in the Report:

> The Governor's Child Support Court Task Force was created in 1993. Its mission is to study the process of establishing and enforcing child support orders in California's courts, and to make recommendations concerning the creation of an efficient, humane, and effective process for the expedited handling of child support cases as required by federal law.[8]

Members of the task force are listed immediately after the title page of the Report. As can be seen from the listing, the membership was expanded beyond that originally mentioned in the Vision Report to include representatives of the County Clerk's Association, the California Judges Association, and advocacy groups, and some legislators. Staff to the council's Family and Juvenile Standing Advisory Committee attended task force meetings and reported on developments to that committee. At appropriate times, members of the committee attended task force meetings.

Federal requirements

The federal government, through statutory and regulatory law, establishes a number of requirements for any state child support enforcement program. These requirements include specified time limits for: (1) opening of a case within the child support enforcement agency; (2) undertaking to locate the noncustodial parent; (3) taking action to establish paternity and child support once the noncustodial parent is located; (4) serving the noncustodial parent with process; and (5) resolving the action once service of process has been achieved. The last action obviously requires court action.

As a general rule, the federal regulations require that a court adopt "expedited processes" for the establishment and enforcement of child support matters. An exemption can be received by a county that demonstrates it is able to meet the federal timeframes using traditional court procedures.

Federal law also provides that two-thirds of the administrative cost of the child support enforcement program will be paid for by the federal government. Although the federal government will pay two-thirds of the cost of an administrative referee or of a subordinate judicial officer hearing child support matters, it will not pay any portion of the costs of a judge hearing child support matters nor will it pay any part of the cost of the courtroom staff of the judge.

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[8] Report at p 5.

Summary of the proposal

The recommendations made by the task force have significant effects on the court system. Attempts have been made, during the development of the recommendations, to ensure that the program will be administered locally where appropriate, and that the cost will be revenue-neutral to the judicial branch. Preliminary discussions with staff of the Department of Finance indicate support for the idea that the one-third part of the cost that is not paid for by the federal government will come from the state general fund rather than from state trial court funding or other parts of the judicial branch budget. Since the benefits from this increased effort in child support enforcement will flow to the general fund,[9] this position is appropriate. Indeed, it is doubtful that this proposal will go forward unless the Department of Finance is supportive of using the state general fund to finance it.

The Executive Summary of the Report provides a good overview of the recommendations.[10] These recommendations are not reprinted here but are, as appropriate, discussed below in the analysis of issues.

Issues

Administrative versus judicial establishment and enforcement

The task force, at an early state, explored the desirability of an administrative system of child support enforcement.[11] Approximately 20 states use an administrative system. The proponents of an administrative system urge the following advantages:

- An administrative system is considered by some to be cheaper and more efficient.
- There may be greater uniformity in an administrative system because hearing officers are part of a single, statewide agency.
- It is easier for parents to use because of relaxed procedural rules.

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[9] The Vision Report indicated that the child support enforcement program generates a total net return on investment to all levels of government of about 15 percent, in addition to substantial welfare savings due to cost avoidance In fiscal year 1991–92 it is estimated that $106 million was returned to the state General Fund on an investment of $33 million. Vision Report at p. 2

[10] Report at pp 6–10

[11] In 1993, a measure was introduced in the Legislature seeking the establishment of an administrative enforcement process (Sen Bill No 407 (Hughes), 1993 Legislation) This bill was not passed. A similar measure is pending currently but is not yet set for hearing in its first policy committee (Sen Bill No 235 (Hughes))

- It permits redirection of court resources to other priorities.

The task force rejected the administrative system for the following reasons:

- It is undesirable to add another forum to a system that is already overly fragmented and frustrating to the parties.

- There are concerns about the impartiality of a system that is part of the agency enforcing the order.

- There would be duplication of systems and a need to provide one system for the private cases and another for the IV-D cases

The advisory committee agrees with the task force. It believes that the advantages of an administrative system can be achieved in a court system if attention is paid to issues of uniformity and simplicity of rules and procedures and training of hearing officers.

In addition, an administrative system would incongruously split the decision making in a child support decision. Under the California Child Support Guideline, one factor affecting the amount of child support is the amount of time each parent is responsible for the child. Under either an administrative or judicial system of child support, the court would continue to decide the issue of division of responsibility for the child. It would be incongruous for that court, then, to be unable to adjust the child support once a change in custody and visitation had been made.

In addition, the determination of issues involving children and families is a matter that has been traditionally handled by the courts of this state, and the council's policy has been that this is an appropriate role for the judiciary. Indeed, a proposed federal requirement that decisions concerning child support not be heard by a court was opposed by the council in the late 1980's on the very ground that this was an appropriate function of the court.

Use of commissioners

In the past, the Judicial Council has taken the following position in regard to the use of commissioners and referees:

> Commissioners and referees are appropriately used as subordinate judiciary officers and, when *temporary* shortages of judicial resources necessitate, as temporary judges. To that extent and where consistent with efficient court administration, the use of commissioners and referees is appropriate.

> The use of commissioners and referees as temporary judges in place of superior court judges as a means to effect cost economies is unsound in principle and unlikely to achieve significant fiscal results in practice.[12]

The discussion in the annual report noted that use of commissioners and referees as temporary judges offends principles of separation of powers and judicial independence,[13] and that the use of commissioners and referees results in a perception that the matters being heard have secondary status.[14] This perception was noted as being particularly pronounced in regard to family and juvenile law matters.

It should be noted that the intent of the Report is to use a commissioner in a child support determination primarily as a temporary judge but, in the face of a party's objection, use the commissioner as a subordinate judicial officer. Code of Civil Procedure section 640.1 is the present provision providing for an expedited process system using commissioners and referees. Under that section a commissioner or referee has the following duties:

- Take testimony.
- Establish a record, evaluate evidence, and make recommendations or decision.
- Accept voluntary acknowledgments of support liability and parentage and stipulated agreements respecting the amount of child support to be paid.
- Enter default orders where authorized.
- In actions in which paternity is at issue, order the mother, child, and alleged father to submit to blood tests.

The commissioner's recommendation goes to a judge for review (Code Civ. Proc. §640.1(c)-(f)).

Anecdotal evidence suggests that, in a significant number of cases today that are heard by a commissioners or referee, the hearing is actually before the commissioner as a temporary judge rather than as a commissioner or referee under section 640.1.

Under the proposal, there will be a significant proportion of the cases in which the commissioner will sit, by stipulation, as a temporary judge. Indeed the task force recommends that the commissioner be given statutory authority to make final orders in all

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[12] 1984 Judicial Council Annual Report, p. 41

[13] *Id*, at pp. 37–38.

[14] *Id.*, at p 38

issues related to district attorney child support cases to the extent that such authority is constitutional. And, in contested cases, where there may be a right to judicial review by the court, review would not be required in every case.

The proposal envisions that the parties be advised prior to the beginning of the hearing that the commissioner will be sitting as a temporary judge and that any order will be final unless either party requests a trial de novo by a judge either at the conclusion of the hearing or within a specified number of days after an order or judgment is entered.[15] It appears, though, that this case presents a reason for an exception to the council's policy regarding use of commissioners and referees.

As noted above and in the Report, there is little doubt that the courts will soon have a significant increase in child support establishment and enforcement cases. This increase might, without adequate planning, result in an overtaxing of the courts' resources. There further exists a method of accommodating the influx of cases without diverting court resources from other matters. Yet this method--federal and added state general fund payment for the cost of a hearing officer--is available only if the hearing officer is not a judge.

The only practical alternative to use of a commissioner is the removal of these cases from the courts entirely, by establishing an administrative system. If the administrative alternative were elected, the child support cases would not only not be decided by a judge, but would not be decided in a court setting. It appears desirable to retain these matters in the courts, and to use commissioners subject to the rights of a party to seek review of the decision by a judge.

Blanket disqualification of a commissioner[16]

The advisory committee believes strongly that some method must be taken to protect commissioners appointed under the system envisioned by the report from arbitrary district attorney action that may jeopardize the impartiality and independence of the commissioner. Yet the report is silent on this subject, in large part due to the refusal of the district attorneys to have a discussion included in the main report. This issue is discussed in this section and is presented as a proposed concurring opinion on the report It is suggested that the council approve, as part of its endorsement of the report, the attachment of this concurring opinion.

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[15] While it might be presumed that a losing side, in almost every case, would request a rehearing in front of a judge, this is not the case based on the experience of those states that have similar systems

[16] The council has opposed proposals to permit the preemptory challenges of judges on the grounds that delay would result (See Judicial Council Legislative Guidelines and Precedents, p 5, at fn 25)

The hiring and training of a child support commissioner for most counties (and the sharing of commissioners among those counties without an adequate caseload to utilize a commissioner full time) provide the child support enforcement system with a valuable resource for accomplishing its goals. Yet this system may also create a situation in which the impartiality and independence of the commissioner may be subject to the whim of the district attorney family support division.

It is expected that, with very few exceptions, each county will have only one child support commissioner. As can be seen from the report, the commissioner will be specially trained to handle child support matters, and the reimbursement by the federal government of two-thirds of the commissioner's full pay will be subject to the commissioner's not hearing matters other than IV-D cases. To the extent the commissioner hears other matters, the time of the commissioner must be specially noted so that federal reimbursement applies only to IV-D related matters.

Code of Civil Procedure section 170.6(1) provides:

> No . . . court commissioner . . . of any superior . . . court of the State of California shall try any civil . . . action or special proceeding of any kind or character nor hear any matter therein which involves a contested issue of law or fact when it shall be established as hereinafter provided that the judge or court commissioner is prejudiced against any party of attorney or the interest of any party or attorney appearing in the action or proceeding.

The section further provides that the mere statement by a party that the judicial officer is prejudiced is grounds for removal of the judicial officer from hearing the case.

In the case of IV-D child support enforcement, the district attorney is always an attorney in the case. Thus, it is permissible under this section that the district attorney may file a blanket affidavit under section 170.6 to permanently disqualify a commissioner from hearing IV-D child support cases. Since this commissioner was specially hired and specially trained solely or primarily to hear IV-D child support cases, and since the pay of the commissioner is available only to the extent that the commissioner is involved in IV-D matters, the district attorney has a life-or-death power over the commissioner.[17]

In addition, the existence of an unfettered power to remove the child support commissioner would work a significant disruption to the child support enforcement system. The commissioners are to receive particularized education and training. Their

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[17] It should be noted that the council's position in this instance is stronger than its traditional opposition to peremptory challenges to a judicial officer The factors involved in this case are far more serious in regard to judicial independence and fairness than in other cases involving the peremptory challenge of a judicial officer.

calendars, thus, are not easily susceptible of being taken over by judges or other commissioners or referees. A substantial number of 170.6 challenges by the district attorney will have the inevitable result of frustrating the expedited process.

Several district attorneys have expressed concerns that without the power to disqualify a commissioner on a blanket basis, they run the risk of having a commissioner who may not apply the child support laws in accordance with what that district attorney believes is proper. They state that the threat of a blanket disqualification can cause a commissioner to change position on an issue. Of course, this is the very problem with the blanket disqualification.

Under the system of separation of powers upon which our government is based,[18] the authority to review and discipline judicial officers resides in the judicial branch. The Legislature may not condition judicial action on the approval of an executive officer.[19] And separation of powers means that "no provision of law 'impermissibly threatens the insitutional integrity of the Judicial Branch.'"[20]

The Legislature has adopted a number of provisions confirming the authority of the courts over the activities of judges, in addition to the general authority of the appellate courts over decisions by the trial courts:

Code of Civil Procedure section 170.1(a) provides, in part:

> A judge shall be disqualified if any one or more of the following is true:
>
> . . .
>
> (6) For any reason . . . (B) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

Code of Civil Procedure section 170.3(c)(1) provides, in part:

> If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge.

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[18] California Constitution, Art III, §3

[19] See, *e g , People v. Navarro* (1972) 7 Cal 3d 248, *People v. Tenorio* (1970) 3 Cal. 3d 89.

[20] *Mistretta v United States* (1989) 488 U S 361, 383, quoting from *Commodities Futures Trading Commission v Schor* (1987) 478 U S. at 851.

The section then goes on to provide a procedure for a hearing on this statement.

Several deputy district attorneys have objected to use of this procedure on the ground that they claim that proving the actual bias is very difficult. They apparently believe the determination of bias more appropriately belongs with the district attorney (one of the litigants) rather than with another judge.

Yet another safeguard existing for the district attorney in the proposed system is the ability to refuse to stipulate to the hearing of the matter by a commissioner acting as a temporary judge. In this case proposed Code of Civil Procedure section 640.1(c) provides:

> If any party refuses to stipulate that the commissioner or referee may act as a temporary judge, the commissioner or referee will hear the matter and make findings of fact and a recommended order. Within ten court days, a judge shall ratify the recommended order unless either party objects to the recommended order, or where a recommended order is clearly in error, in which case the judge shall issue a temporary order and schedule a hearing de novo within ten court days. Any party may waive his or her right to review hearing at any time.

It is not clear what additional protection the district attorneys seek to gain by holding on to their power to peremptorily challenge a commissioner. Indeed, the ability of the district attorneys to effectively remove a commissioner from office will inhibit qualified individuals applying for this position.

Training of commissioners

The Report envisions:

> Training for all child support commissioners and other court personnel assigned to the child support commissioner courts should be mandated by statute. As federal requirements have expanded over the past twenty years, the area of child support has grown increasingly complex. Training should emphasize federal and state law concerning issues related to child support including federal performance standards and time frames.
>
> The legislature should delegate to the Judicial Council the responsibility for developing minimum education requirements and standards for training.

> Actual training programs could be provided by appropriate organizations designated by the Judicial Council.[21]

The proposed legislation adds Code of Civil Procedure section 261, which states:

> (a) . . . The Judicial Council shall coordinate the implementation and operation of the child support commissioners in every county. These duties shall include, at a minimum:
>
> . . .
>
> (2) Establish minimum educational and training requirements for child support commissioners and other court personnel that are assigned to Title IV-D child support cases. Training programs shall include both federal and state laws concerning child support.

The chair and staff of the Family Law Subcommittee have already met with staff from the Center for Judicial Education and Research in order to discuss the parameters for a commissioner education program. The funding for the education program would come under a cooperative agreement between the Judicial Council and the Department of Social Services; two-thirds of the money would come from the federal government and one-third from the Department of Social Services.

Streamlined, uniform rules and forms

The Report states:

> The task force recommends that simple streamlined procedures that are uniform throughout the state be adopted for the expedited process courts. Uniform streamlined procedures and forms would help achieve a number of objectives.
>
> With installation of statewide automation in all district attorneys' offices it is essential that procedures for establishing and enforcing child support obligations be uniform in all courts. The success of statewide automation depends upon cases being processed in a uniform manner both within district attorneys' offices and in the courts.
>
> . . .

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[21] Report at p 49

> The lack of uniform procedures can also create a perception that the system is not fair. . . .
>
> The result of these varied practices is that similarly situated parents and children receive vastly different results depending upon which county their case has been filed (sic). This result fosters the perception among parents that the system is unfair.[22]

The council has, over the past four years, adopted several mandatory forms for Title IV-D child support actions, commonly known as "Governmental Forms."[23] These forms have been developed in concert with the California Family Support Council, the statewide organization of child support enforcement district attorneys, as well as other interested parties.

The development of the simplified forms and procedures is expected to also be covered by cooperative agreement between the Department of Social Services and the Judicial Council, with the result that two-thirds of the development costs would be covered by the federal government.

Friend of the court

Perhaps the most innovative recommendation of the task force is that a Child Support Information and Assistance Office be established in each county, which would provide information and assistance to parents involved in both district attorney and private child support cases.[24] This office would be an important means of providing help to the increasing number of litigants in family law matters who are representing themselves. Among the services expected to be rendered by the office are:

- Educational and outreach materials about the child support process and the child support enforcement program.
- Assistance to parents, individually or in group settings, in completing necessary forms.
- Alternative dispute resolution services including mediation of child support matters.

The two major issues with the friend of the court system are the authority over the system and the funding of it.

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[22] Report at p 57

[23] See forms adopted by rules 1298 01–1298 12

[24] Report at pp. 72–78

The report suggest that the program be implemented as part of a statewide expansion of the highly successful Family Law Facilitator program currently in operation in San Mateo and Santa Clara Counties.[25] Federal IV-D funding would then be sought for the child support functions of those offices. The report notes that the courts will experience some cost savings by using a federal and state general fund-financed commissioner instead of a trial court funding-financed commissioner or judge. Some of these savings could also be used to help fund this program. In return, the program is likely to lower the cost of processing cases in the courts.[26]

There is some dispute about whether the location of the assistance centers as part of the courts is appropriate. The experience of San Mateo and Santa Clara Counties indicates that litigants accept the role of the court in providing assistance and do not view that function as tainting the impartial decision-making role of the court. In addition, there does not appear to be any other entity that is better equipped or more likely to be viewed as an impartial assistance giver.

Presumed income and set-asides

The Report notes that there should be a presumption established as to the income of a noncustodial parent who does not appear at the hearing. This presumption would be: (1) the actual income of the parent, if known; (2) no income if the parent is either incarcerated, known to have no income or assets, or is receiving public assistance; (3) otherwise a statutory amount of income.

There was significant disagreement among the members of the task force concerning the amount of income that should be presumed. Some argued for minimum wage while others urged a standards of one-and-one-half times the average annual wage.[27]

The Report notes:

> In general, there was agreement that minimum wage is too low in that it would be a strong disincentive for anyone earning more than minimum wage to come forward and provide their correct income information if they make more than minimum wage. On the other hand, one and one half times the average annual wage is too high.

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[25] See discussion of these programs in the Report at pp 38–39

[26] Preliminary data from the Maricopa County (Arizona) program involving a court-funded self-help center for family law matters shows the center's activities resulted in a measurable decrease in court clerk time spent handling filings by unrepresented litigants

[27] This later amount, for California, would be over $44,000 per year

. . .

> The task force considered several alternative that fell between the two extremes. . . . Task force members have agreed that resolution of the issue of the amount of presumed income should be pursued in consultation with the legislature through the legislative process.[28]

In order to ameliorate the possible harsh results from a presumption of income, the Report recommends a softening of the rules regarding setting aside the order. In cases without a presumption of income, the provisions of Code of Civil Procedure section 473 would apply.[29] In cases where the presumption of income was used, a party would have 90 days from the time that party first received notice that the IV-D agency has collected support through a wage assignment or other enforcement means. The action the party must take would be either to contact the IV-D agency or file a motion on a simplified form in the court.

Additional duties of Judicial Council

The report envisions several duties for the Judicial Council in addition to those mentioned elsewhere in this memorandum. All of the duties are repeated here. The duties include:

- Funding: The plan of cooperation required for federal funding would be between the Department of Social Services and the Judicial Council. The council would then provide the funding for the commissioners to the local courts. This would change the present system in some counties where the district attorney is the conduit for the funding. Funding would also be provided for the council's costs for this system.

- Uniform rules, forms, and procedures: This issue is discussed above.

- Mandatory training: This issue is discussed above.

- Technical assistance: This task would include dissemination of federal and state requirements and claiming procedures to ensure that federal funding is being used and claimed appropriately.

- Qualifications for commissioners: The council would, through rules of court, establish minimum qualifications for child support commissioners.

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[28] Report, at p 63

[29] This section generally provides that the application for relief must be made within a reasonable time not exceeding six months after the judgment, dismissal, or order

- Hiring procedures: Child support commissioners would be hired by and would be employees of the local courts. The council would establish procedures for hiring commissioners.

- Caseload and staffing standards: In order to determine the amount of funding each county would need for commissioners and staff, the council would develop standards to determine how many commissioners are needed in a court and how the court obtains approval for those positions.

- Resource sharing: Smaller counties may not be able to fully utilize a commissioner. These counties would either need to allocate the time the commissioner spent on IV-D cases or would need to share the commissioner with other counties. The council would provide assistance for sharing of a commissioner between counties and for other ways counties could share resources used for child support enforcement.

- Statistics: The council, in conjunction with the Department of Social Services, would collect statistics on private and IV-D child support cases for use in analysis and planning for the future needs of the system.

Conclusion

The Report of the Governor's Child Support Court Task Force makes recommendations that would result in far-reaching changes to the court processes involving child support enforcement. Overall these proposals will result in a marked improvement in the handling of cases and provide the court system with the necessary resources for coping with the large influx of cases expected in the near future. The proposals also ensure adequate resources to the council for carrying out its responsibilities under the recommended system. The recommendations are also largely consistent with prior council policies.

Recommendation

The Family and Juvenile Law Standing Advisory Committee recommends that the Judicial Council:

1. Conditionally approve the Report of the Governor's Child Support Court Task Force.

2. File with the task force, as a concurring opinion, the section of this memorandum appearing under the heading "Blanket disqualification of a commissioner."

REPORT OF THE

GOVERNOR'S CHILD SUPPORT COURT TASK FORCE

ADVANCE COPY

April 28, 1995

CHILD SUPPORT COURT TASK FORCE
MEMBERSHIP

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Catherine Morrison, Chief of Staff, Senator Cathie Wright

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Hon. Frances Rothschild, Judge, Los Angeles County Superior Court, representing the California Judges Association

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Mikki Bako Sorensen, Staff Counsel, Senate Judiciary Committee

Melissa Toben, Commissioner, San Francisco County Superior Court, representing the Family Law Section of the State Bar

Carol Ann White, Deputy Attorney General, Statewide Child Support Coordinator, Attorney General's Office, representing Attorney General Dan Lungren

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EXECUTIVE SUMMARY

The Governor's Child Support Court Task Force was created in 1993. Its mission is to study the process of establishing and enforcing child support orders in California's courts, and to make recommendations concerning the creation of an efficient, humane, and effective process for the expedited handling of child support cases as required by federal law.

Federal law requires that legal actions to establish and enforce child support obligations be completed within strict time frames in federally funded Title IV-D cases In California, the California Department of Social Services (CDSS) is responsible for the administration of the Title IV-D Child Support Enforcement Program. CDSS works cooperatively with the Attorney General and local district attorneys who are responsible for providing Title IV-D child support enforcement services at the local level.

The district attorneys provide free child support services to all California families Families that receive public assistance are referred to, and must cooperate with, the district attorney as a condition of receiving aid. It is estimated that one half of all child support obligations in California are established by the district attorneys.

Child support obligations are also established and enforced in domestic relations actions, such as divorces, between private parties. Child support is usually one of several issues that are resolved through a domestic relations action. Other issues that may be decided are child custody and visitation, spousal support, property division, protective orders, and marital status

Federal requirements for the expeditious processing of child support cases apply only to Title IV-D cases. Nevertheless, the need for a quick, efficient and accessible process to establish, modify, and enforce child support obligations is needed for both Title IV-D and private cases

Although the success of the California Child Support Enforcement Program depends upon the fast and efficient processing of child support cases both within the district attorney's office and the court, the task force did not study, and this report does not include recommendations regarding the handling of cases within the offices of the district attorney. Issues concerning the amount of support and the child support guidelines are also not addressed. Both of these issues are the subject of ongoing review by the legislature.

Although the majority of the recommendations contained in this report address an expedited process for Title IV-D cases, some recommendations for improving the process in private cases are made as well. Some of the highlights of the recommendations are:

- An expedited process for district attorney child support cases needs to be established within the courts The process should incorporate many of the streamlined features of the best administrative and court-based models that are used in some California counties and in other states

- All counties should be mandated to use commissioners instead of judges for district attorney child support cases in order to maximize federal funding Federal funding is not available for judges or costs associated with judges due to federal prohibitions against funding traditional state and local judicial branch functions. Federal funding should be utilized by the courts to provide adequate staffing and hearing time to ensure that cases are processed quickly

- The Judicial Council should provide coordination, training and support services for the child support commissioner system in local courts. Judicial Council functions would include:

  - Adoption of simplified, mandatory statewide procedures and forms.

  - Establishment of qualifications for child support commissioners and the development of statewide standards for the hiring of commissioners.

- The development of caseload standards for commissioners and support staff to determine when additional positions are necessary due to caseload growth.

- Provision of mandatory training for child support commissioners and other assigned court personnel.

- Technical assistance to local courts, including dissemination of information on state and federal requirements, recommendations for developing automated resources for courts and the development of claiming procedures to maximize federal funding.

- Coordination of sharing commissioners and other resources among counties, if needed.

- Development of appropriate mechanisms for gathering statistics on both private and district attorney child support cases to assist in analysis and planning for the future resource needs of the courts

- Child support commissioners should be given statutory authority to make final orders in district attorney child support cases to the extent that such authority is constitutional

- The use of automation and other technology for processing cases should be optimized by the courts.

- In order to make courts more accessible to parents who are not represented by counsel, simple, streamlined, uniform procedures and forms should be adopted for the child support commissioner system. The legislature and the Judicial Council should make the following changes to existing procedures:

- A simpler process for initiating and responding to child support actions which provides better notice to the parents of the importance of their participation in the action and the consequences if they fail to participate and provide information concerning their income.

- A streamlined process for obtaining default orders when parents fail to respond to notice or otherwise fail to participate in the proceedings should replace the existing default process.

- A statewide standard amount of income should be used to determine the amount of support when actual income is unknown. Actual income will be used if known. Zero income will be used when the noncustodial parent is on aid or incarcerated.

- Default orders based on presumed income may be set aside for an extended period of time.

- A hearing should not be required to enter voluntary acknowledgmentsorstipulations to paternity provided a statutory advisement and waiver of rights form is submitted with the stipulation.

- A simple procedure should be adopted to modify orders after giving notice of a proposed order.

- Check stubs or other reliable documentation should be used in lieu of income and expense declarations in appropriate cases.

- Court orders for support should give authority to the district attorney to use automatic enforcement remedies such as earnings assignments, liens and writs without the necessity of obtaining a separate enforcement order. A simple request for hearing

form should be served in conjunction with all administrative enforcement actions Disputed portions of enforcement actions would be stayed pending a hearing and hearings should be scheduled on an expedited basis.

- A central registry of all California orders should be built and procedures should be adopted to permit consolidation of existing multiple orders involving the same parents and children. There should be only one statewide order for the same parents and children which would be subject to modification and enforcement only in the county with venue. Simplified case transfer procedures between counties should be developed.

- Statutes should be revised to allow parents to litigate and resolve custody and visitation issues using district attorney actions as a vehicle after an order for support is entered. Commissioners should have the authority to order parents to attend mediation and accept stipulations Contested custody and visitation issues would be referred to another family law department

- Streamlined and simplified procedures should also be adopted for use in private cases

- In order to assist parents with child support issues in private cases, Child Support Information and Assistance Centers should be established in each county to provide education, information, assistance and referrals for parents with child support cases Depending on the level of county, state and federal funding provided some or all of the following services would be provided:

  - Distribute forms and educational materials on the child support process including written materials, video tapes, interactive software and curriculum for clinics or group presentations.

- Assistance in completing necessary forms.
- Alternative dispute resolution services to assist parents in determining the appropriate amount of support, identifying issues and preparing stipulations.

Dissenting comments by individual task force members are attached as Appendix I.

I. INTRODUCTION

A. Task Force Background

The creation of a task force to study and make recommendations concerning child support and the courts was first proposed in "Vision for Excellence", the California Department of Social Services' ten point plan to improve the Child Support Enforcement Program which was unveiled by Governor Pete Wilson in June 1992. While the "Vision" plan called for a number of steps to be undertaken to assist local child support enforcement programs within county district attorneys' offices to improve their child support collection efforts, the plan also recognized the important role of the courts in the overall success of California's Child Support Enforcement Program

The courts have traditionally played a central role in child support. State law requires that all child support obligations must be court ordered. Paternity and child support obligations are established, modified, and enforced in domestic relations actions between private parties in superior courts.

Paternity and child support orders can also be established, modified, and enforced in the courts in separate actions initiated by district attorneys who operate child support enforcement programs at the county level Title IV-D of the federal Social Security Act mandates that states make child support services available. In California, district attorney child support services, also known as Title IV-D services, are provided free to all parents. Parents who receive Aid for Families with Dependent Children (AFDC) and/or Medi-Cal benefits must assign their right to child support to the county and cooperate with the district attorney in establishing and enforcing child support orders Parents who do not receive public assistance can receive Title IV-D services by submitting an application to the district attorney.

District attorney services include locating absent parents, establishing paternity, establishing and enforcing orders for child support and medical insurance coverage, and modifying existing child support orders.

While this report primarily focuses on the processing of district attorney cases through the courts, the task force recognizes that the court process for establishing, modifying, and enforcing child support orders must be fast, and easy to access and use for all parents regardless of whether the case is a district attorney case or a private case. Accordingly, although most of the recommendations made in this report concern the processing of district attorney cases, there are some recommendations that apply to private cases as well.

The success of California's Child Support Enforcement Program depends upon its ability to establish and enforce support orders quickly and efficiently. The early establishment of orders is critical to ensure that a child's financial needs are promptly met when the need first arises, either at birth if the parents are not together, or upon separation of his or her parents. Early establishment of support orders increases the chances that the child will not become a recipient of AFDC. Once AFDC is paid early establishment ensures that the taxpayers are reimbursed as soon as possible to the extent the noncustodial parent is able to pay

Federal law recognizes that early establishment of support orders depends upon quick and efficient handling of cases both within the district attorney's office and the court. The federal government mandates that cases within child support enforcement agencies be opened, and efforts to locate noncustodial parents be undertaken, within specified time frames.[1] Once the noncustodial parent is located, actions to establish paternity and child support must be filed within 90 days.[2]

Federal law also requires that states meet strict time frames for establishing support orders in Title IV-D cases once the noncustodial parent is served notice that an action has been filed.[3] Once a support obligation has been established, enforcement actions must be completed quickly when a payment is missed. To assist the states in meeting the time frames, federal funding is available for

expedited child support processes. To receive federal funding the presiding officer in the expedited process cannot be a judge. Federal funding is not available for judges because of federal policy that prohibits federal funding for the general operations of the judicial branch of state and local governments and encourages the use of administrative and quasi-judicial procedures for processing federally funded Title IV-D child support cases.

In California, child support caseloads within district attorneys' offices statewide have doubled within the last five years from nearly 1.1 million cases to nearly 2.2 million cases.[4] This explosive growth together with other factors including the lack of adequate automation in all counties, and the lack of adequate staffing has created a significant backlog of cases that need paternity and/or child support orders established. It is estimated that as many as half of all cases within the district attorneys' caseloads statewide have not yet been filed in the courts.[5] In many of these cases, noncustodial parents have not been identified or located. If located, there is no income information available to the district attorney. In some cases, the custodial parent does not provide sufficient information to identify the other parent.

The "Vision" plan recognized that California cannot successfully address the backlog of child support cases within the system by directing its efforts solely at the district attorneys If efforts to assist the district attorneys in processing the large backlog of cases are successful, there will be a huge impact on court resources which will seriously jeopardize the courts' ability to process the cases in an expedited manner.

The need for additional resources for the court to expand services for child support cases comes at a time of chronic budget shortfalls at the state and local level. Given the status of the state and local budgets, the child support process in the courts must better utilize federal funding and existing resources in order to minimize the need for additional state and local resources

The "Vision" plan also recognized that there is a growing dissatisfaction with the existing court process among both custodial and noncustodial parents. Many parents cannot afford attorneys Parents complain that the existing process is too complicated and cumbersome to use without assistance, and that it intensifies rather than calms tensions between the parents.

The purpose of the task force was to bring together representatives of the courts, the district attorneys, the Attorney General, the legislature, the administration, the State Bar, and advocacy groups representing children and parents to study the current court process and other alternatives The task force was responsible for making recommendations for establishing an expedited process that would enable California to establish support orders in an ever increasing number of cases in a fast and efficient manner that is both cost effective and more accessible to parents

B. Task Force Membership

The Governor's Child Support Court Task Force was established in July 1993. Eloise Anderson, Director of the State Department of Social Services, invited various individuals and organizations representing the spectrum of those concerned with child support to appoint representatives to the task force.

The following individuals and organizations were invited to send representatives to participate on the task force:

Governor's Office

Department of Justice

California Family Support Council (2)

California Judicial Council

California Judges Association

Department of Social Services

California District Attorneys Association (2)

Federal Office of Child Support Enforcement Region IX

California State Bar- Family Law Section	County Clerks Association
Senator Gary Hart	Senate Judiciary Committee
Senator Cathie Wright	Assembly Judiciary Committee
Legislative Analyst's Office	Assemblyman Dean Andal
Legal Services of Northern California	Children Now
Coalition of Parent Support	Harriet Buhai Center for Family Law

Not all of the organizations and individuals that were invited to send representatives were able to participate. Where possible organizations unable to participate were asked to appoint alternate representatives.

C. Task Force Mission

In August 1993, the first meeting of the Governor's Child Support Court Task Force was convened. At the first meeting the task force defined its mission:

> The charge of the Child Support Court Task Force is to develop and recommend legislation for the establishment of a process for the expedited handling of child support cases as required by federal law. The Task Force will study the present court system in California, and will analyze and evaluate alternative models for the expedited processing of child support cases used in other states. The Task Force will then make recommendations to modify the current judicial system, and/or devise other appropriate processes as necessary to create an efficient, humane, and effective process for establishing paternity, and establishing and enforcing all child support orders in California.
>
> Other issues related to child support, such as the guidelines for setting the amount of support, or the processing of cases internally within the local district attorneys' offices, though important, are not within the scope of review of the Child Support Court Task Force

D. Task Force Process

Since August 1993, the task force has been meeting on a monthly basis. The task force reviewed applicable federal and state law. Presentations were made to the task force on how the court process for establishing and enforcing child support presently works in selected California counties. Problems with the current system from the perspective of the various groups and individuals represented were discussed in detail. Once problems were identified the task force established goals to be achieved in modifying the current process or establishing a new process

The goals established by the task force were to create a process that would be able to handle the expected influx of child support cases during the next ten years. The process must be able to handle child support cases in a fast, efficient, and cost effective manner within federal time frames and with due process safeguards. The process needs to be simplified and more responsive to the needs of children and parents.

The task force examined possible alternatives to the court process in California The task force heard presentations on administrative processes for Title IV-D cases which are used in a number of states. In an administrative process, child support hearings are conducted by administrative law judges employed either by the state agency responsible for the child support enforcement program or another executive branch agency.

A representative from the Oregon Attorney General's office provided an overview of Oregon's administrative process. The sponsor of S.B. 407, a bill first introduced in 1992 that proposed an administrative process for California based upon Oregon's system, discussed the benefits of an administrative adjudication system.

A representative from Michigan's Administrative Office of the Courts discussed the Friend of the Court system in Michigan. The Friend of the Court system is a unique court based system where an office within the courts provides support, custody, and visitation services to parents. Child support services include outreach and education, assistance to parents in gathering income information and documentation to determine the amount of support, calculation of the support obligation, assistance in preparing agreements or stipulations, making recommendations to the court when the issue cannot be settled, collection of support, and enforcement services.

There were also presentations on the mediation process used in custody and visitation disputes in California, and on pilot projects in the Superior Court of the Counties of San Mateo and Santa Clara that provide assistance to parents who do not have an attorney in obtaining temporary support and other family law orders.

After examining the applicable law, the current court process for establishing and enforcing child support orders, and the various possible alternatives, the task force issued preliminary findings and recommendations in November 1994, and scheduled public hearings and a public comment period.

Four public hearings were held in December 1994 and January 1995 in San Jose, Los Angeles, Sacramento, and Fresno. More than 100 people gave presentations at the public hearings.

In addition, the task force received in excess of 100 written comments Summaries of both the written comments and the oral testimony presented at the hearing were prepared and presented to the task force for consideration. Comments were received from a wide range of groups and individuals concerned with child support issues. The diversity of public comments received made it clear that when considering an expedited process for child support cases a number of competing interests must be reconciled.

In child support matters, time is of the essence for the child, the parents, and the taxpayers. The child and custodial parents have similar interests in receiving child support to help to meet the child's financial needs with as little delay as possible.

The taxpayers share an interest in early establishment of support orders. If the custodial parent and child receive public assistance, the state is concerned with shifting all or part of the cost of public assistance from the taxpayers to the noncustodial parent to the extent of his or her ability to pay. If the custodial parent and child do not receive public assistance, early establishment of a court order may reduce the likelihood that public assistance will be needed by imposing responsibility for his or her share of support on the noncustodial parent.

The noncustodial parent must receive adequate notice of any child support proceeding and an opportunity for a hearing. In AFDC cases, early establishment is in the noncustodial parent's interest in order to avoid large retroactive support orders to reimburse the taxpayers for AFDC payments made prior to entry of the order.

It is everyone's interest that there be an impartial decisionmaker to decide contested cases, and that the correct amount of support is ordered pursuant to the factors set forth by the laws established by the legislature.

For the state, funding for an expedited process is also a major concern Given the chronic budget problems that state and county governments have experienced during the last several years, the expedited process must be as cost effective as possible.

After extensive study of the problems and the possible solutions, task force members deliberated at length about the best ways of achieving an effective expedited process for child support cases that takes into account the interests and protects the rights of all concerned. Task Force recommendations are set forth below.

II. BACKGROUND FOR RECOMMENDATIONS

A. The Need For Early Establishment and Enforcement of Child Support Orders.

For most children, the ability to develop and reach their potential is greatly enhanced by the emotional and financial support of both parents. However, during the past forty years California has experienced the gradual breakdown of the traditional two parent family. Approximately fifty (50) percent of all marriages end in divorce and the rate of nonmarital births has been steadily increasing. Between 1966 and 1993 the rate of nonmarital births increased from nine (9) percent to thirty-five (35) percent of all live births in California.[6]

According to the 1990 U.S. Census nearly thirty (30) percent of children in California reside in single parent households. The financial needs of children in these households are often not met. Forty (40) percent of California children who reside with one parent lives in a household with income below the poverty level. A child who lives with a single parent is four times more likely to live in poverty than a child who resides with both parents

The lack of adequate child support is one of the primary factors that has led to such a high percentage of single parent families living in poverty. The lack of support not only impacts the lives of the children affected, it also impacts all Californians.

Many of the children who live in poverty receive Aid to Families with Dependent Children (AFDC) benefits In fiscal year 1993-94, there were approximately 743,000 AFDC cases based upon the absence of a parent in California with nearly 1.39 million children receiving benefits. In fiscal year 1993-94 AFDC payments for these cases totaled $4.82 billion.[7] This figure represents only AFDC payments where eligibility is based on the absence of one parent. Not included are

the costs of AFDC benefits paid due to the unemployment of both parents or for foster care. The costs of Food Stamps and Medi-Cal benefits for which most AFDC children also qualify are also substantial.[8]

When a person receives AFDC benefits his or her right to receive child support is assigned to the state by operation of law.[9] The district attorney is required by law to establish and enforce child support obligations for nearly all children who receive public assistance including AFDC benefits.[10] A review of the AFDC child support caseload makes it evident that the lack of support is a significant factor which contributes to the high percentage of children living in poverty when they reside with only one parent.

Statistics from 1993-94 indicate that more than half of AFDC child support cases statewide do not have child support orders established and presumably no support is being paid for the children in these cases. Fewer than twenty five (25) percent of all AFDC child support cases received any payment [11]

The lack of child support is not limited to poor children on AFDC. Single working parents who manage to keep their children from becoming recipients of public assistance also experience difficulty in receiving regular support payments. Of cases handled by the district attorneys' offices, approximately forty-six (46) percent of non-AFDC cases do not have court orders for support. Of the cases with an order, approximately twenty-five (25) percent do not receive any payments.[12]

Many child support cases never reach the district attorneys' offices. The best estimates are that at least fifty (50) percent of the child support cases in California do not involve government intervention, and that child support is paid regularly in many of those cases.[13] It should be recognized that there are many responsible noncustodial parents whose efforts to maintain financial support for their children often goes unmentioned.

Nevertheless, the connection between AFDC and the lack of child support cannot be ignored This connection has led to the adoption of public policy on both the state and federal levels of government that the cost of raising children should be primarily borne by parents, and only secondarily by the taxpayers in the form of AFDC and other benefits.[14]

To further this policy, child support enforcement has become a cornerstone of state and federal welfare reform efforts over the past twenty years. To reduce the burden on the taxpayers of supporting children, the Child Support Enforcement Program was first established by Congress in 1975.[15] Since 1975 this federal and state program has greatly expanded in scope and size to include services for all children regardless of whether the family receives public assistance.

B. Federal Law

Federal Law Overview

Family law traditionally has been governed by state law. Until relatively recently the issue of child support was resolved solely in actions to establish paternity, divorces, annulments and legal separations between private parties.

In 1975, Congress significantly changed the role of government in child support cases when it passed Title IV-D of the Social Security Act and created a federal-state program for the establishment and enforcement of child support obligations. It is estimated that one-half of all child support cases in the United States are now within the IV-D system.[16]

Pursuant to Title IV-D, states are required to designate a single state agency that is responsible for administration of the Child Support Enforcement Program. The state agency is required to develop and submit a state plan for approval which details how the state will comply

with federal requirements. However, federal mandates are upon the state as a whole, and not just the state agency responsible for administering the plan. In the child support arena, federal mandates require the cooperation of all three branches of government.[17]

In California, the California Department of Social Services (CDSS) is the designated single state agency that is responsible for the administration of the Title IV-D Child Support Enforcement Program. CDSS works cooperatively with the Attorney General's office, and with county district attorneys who are responsible for providing IV-D child support enforcement services at the local level.[18]

The state plan includes state statutes, rules of court, cooperative agreements between CDSS and other state and local entities, rules and regulations promulgated by CDSS, and relevant court decisions. In order to insure that the state plan meets federal requirements, CDSS must work in cooperation with the legislative and judicial branches.

Since 1975, Congress has passed a series of laws designed to strengthen the child support enforcement process. Although initially these laws were designed to apply only to the IV-D system, the trend in recent years has been to mandate state laws that affect all child support cases whether IV-D cases or private cases.

States are now required to have uniform state guidelines for child support orders,[19] mandatory wage withholding to enforce all support orders, and have laws that require parents' Social Security numbers on birth certificates.[20] Other federal mandates that affect all child support cases include a ban on retroactive modification of child support orders.[21]

California has traditionally been a leader in the area of child support enforcement. Many of the federal mandates are based upon innovations initiated by California. California counties were using local guidelines, and California law authorized wage withholding long before the federal mandates.

Recent innovations in California include the state license match program, the state utility match system, and the Franchise Tax Board (FTB) child support enforcement program

Federal Expedited Process Requirement

One federal mandate directly impacts state courts, and the processing of child support cases within the courts. States are required to establish and enforce child support obligations in Title IV-D cases within strict time frames.[22]

The Child Support Enforcement Amendments of 1984 required the states to adopt new procedures, laws, and processes to improve their child support collection efforts as a condition for receiving continued federal financial participation for their AFDC and Child Support Enforcement Programs.[23]

One of the mandates contained in the Amendments was a requirement that the states have laws creating an expedited process for establishing and enforcing child support orders, and at the option of the state, for establishing paternity. The 1993 Omnibus Reconciliation Act (OBRA'93) amended Title IV-D again to provide that paternity cases must now be included in a state's expedited process [24]

Federal regulations published on May 9, 1985 and on December 23, 1994 provide further clarification of the expedited process requirements. These regulations provide that states must have in effect and use expedited processes (administrative or expedited judicial process or both) in which all Title IV-D child support cases are completed from the time of service of process within the following time frames: (1) 75% in six months; and (2) 90% in twelve months.[25] Completed is defined as the establishment of a judgment or order for support or dismissal of the action.

These are new time frames which are somewhat more relaxed than the time frames in effect when the task force began its work. Prior to the publication of the December 23, 1994 regulations, time frames had been (1) 90% in 3 months; (2) 98% in six months; and (3) 100% in twelve months.

The May 9, 1985 regulation specified that the hearing officer for the expedited process could not be a judge. The December 23, 1994 regulation deletes the requirement that the expedited process hearing officer not be a judge. However, there was no change in the prohibition against federal funding for judges and costs related to judges.[26] As discussed below, federal funding is available for expedited process hearing officers who are not judges. There must be written qualifications for hearing officers. Orders by hearing officers other than judges may be ratified by a judge or reviewed by a judge under generally applicable judicial procedures.

Orders established in an expedited process in which the hearing officer is not a judge must have the same force and effect under state law as orders established by judges The due process rights of parties must be protected, and parties must receive a copy of the order.

At a minimum the functions performed by an expedited process hearing officer must include 1) taking testimony on the record, 2) evaluating evidence and making recommendations or decisions to establish and enforce orders; 3) accepting stipulations or agreements concerning paternity, support liability, and the amount of support; 4) entering default orders; and 5) ordering genetic tests in contested paternity cases.

Federal Funding

At present, the federal government provides federal financial participation at 66% of the administrative costs for the IV-D child support program. Certain costs such as those associated with statewide automation and genetic testing for paternity establishment are funded by the federal government at an enhanced rate of 90%.[27] In addition, federal incentives are paid based

upon child support collections. A percentage of collections between six and ten percent is paid to the states. California currently receives a 6% incentive rate from the federal government. Federal law requires that federal incentive payments be passed on to the counties.[28]

In 1993-1994, California received approximately $215 million in federal financial participation for administrative costs and $54.5 million in incentives from the federal government.[29]

The federal government receives money back from the states in the form of child support collections on behalf of children who receive AFDC, which is also known as AFDC recoupment. AFDC recoupment is distributed back to federal, state and county governments in the same proportion that the respective governments share in the costs of the AFDC program. Currently, AFDC recoupment is distributed 50% federal, 47.5% state and 2.5% county in California In 1993-94 AFDC collections in California were approximately $373 million.[30]

Federal financial participation at 66% is available for the courts provided that the courts utilize a hearing officer who is not a judge, and a plan of cooperation has been signed between the courts and the IV-D agency. Funding is available for the salaries of the hearing officer and support staff such as clerks and bailiffs, equipment, supplies, and other overhead costs [31]

Federal financial participation for judges, their support staff, and overhead costs is prohibited by federal regulation. However, federal financial participation is available for court clerk costs associated with processing IV-D cases regardless of whether the hearing officer is a judge or a commissioner, if the clerk has entered into a plan of cooperation with the IV-D agency.

The federal funding scheme creates a large financial incentive for California to have hearing officers who are not judges hear district attorney child support cases.

Federal Financial Penalties

Federal law requires that each state be audited by the Office of Child Support Enforcement (OCSE) at least once every three years to determine if it is in substantial compliance with its state plan. To be found in substantial compliance, each state must process Title IV-D cases in the time frames established by the expedited process regulations.[32]

If the state is found out of compliance with its state plan, OCSE may impose a financial penalty on the state. If substantial compliance is not achieved after corrective action, total payments to the state under Title IV-A (AFDC) may be reduced by one to two percent in the first year, two to three percent in the second year, and three to five percent in the third and subsequent years.[33] In fiscal year 93-94, federal funding for all Title IV-A programs in California exceeded $4.5 billion.[34] A one percent penalty for non-compliance with the state plan requirements would cost California $45 million in federal funding. In addition to reduced Title IV-A monies, OCSE may also suspend all or part of its federal financial participation for the state's Title IV-D administrative costs [35]

California very nearly incurred federal financial penalties in 1986 when it failed the federal audit in several areas relating to case processing and program management. The state was able to avoid financial penalties by submitting a corrective action plan and passing a follow up audit

It is important that the California courts have the resources that are necessary to process Title IV-D cases within the federal time frames in order to avoid the imposition of federal financial penalties in the future.

Federal Welfare Reform Proposals

Recently, welfare reform legislation was passed by the House of Representatives. HR 4, also known as "The Personal Responsibility Act" contains many of the child support provisions of the

Clinton welfare reform proposals that were introduced in 1994. There appears to be broad consensus on the child support component of welfare reform.

The Personal Responsibility Act mandates that certain establishment, modification, and enforcement functions must be processed administratively without court involvement. These functions include:

Genetic Testing

Orders for genetic testing in paternity cases would have to be issued by the IV-D agency rather than the court.

Default Orders

Administrative entry of default orders would be required in paternity cases when the alleged father refuses to submit to genetic tests and in support establishment and modification actions when a parent fails to respond to a notice to appear at a hearing.

Administrative Subpoenas

The IV-D agency would have the authority to issue and enforce subpoenas to obtain financial information in order to establish or enforce support orders. In California, the deposition subpoena procedure is similar to the procedures that are proposed.[36] The key difference is that in a deposition subpoena a court action must be pending. Under HR 4 the subpoena could be issued without an action pending.

Administrative Access to Records

States would be mandated to have laws that would grant IV-D agency access to records of virtually all governmental agencies. In addition, records of private utilities, including cable companies and financial institutions, would have to be accessible to the IV-D agency.

Administrative Income Withholding

Income withholding orders for child support would be issued directly by the administrative agency rather than by the court. The IV-D agency would have authority to send existing wage assignments to new employers and to amend wage assignment orders.

Administrative Order for Change of Payee to IV-D Agency

The IV-D agency would be given authority to issue an order directing payments to the IV-D agency when a case is opened.

Administrative Intercepts and Writs

All intercepts currently used in California would be mandated by the proposed reforms Administrative writs against bank accounts and public and private retirement funds would also be required. At present all writs filed by the district attorneys must be approved by the courts In California, the Franchise Tax Board (FTB) currently has authorization to directly issue administrative writs to collect child support. Franchise Tax Board authority to collect child support has been limited to six pilot counties until recently. Legislation passed in 1994 authorizes an expansion of this project statewide.[37]

Administrative Liens

The IV-D agency would be given administrative authority to impose liens on real and personal property and, in appropriate cases, to force a sale of property.

Administrative Authority to Set Arrears Payments

The IV-D agency would have authority to order payment on arrears without the necessity of obtaining a court order.

Administrative Suspension of Drivers Licenses

The state license match program would be extended to include all driver's licenses In California, current law provides for suspension of only commercial driver's licenses, however, legislation has been introduced in 1995 to include all driver's licenses in California

The federal legislation also contains significant changes in federal funding for the state IV-D child support program. Federal financial participation would remain at 66% of administrative costs However, federal incentives would be gradually phased out and replaced with enhanced federal financial participation which would be based upon certain performance criteria Under the proposal the maximum federal funding that a state could receive would be 90% Although California has never achieved full federal funding, under the current system it is conceivable that the combination of federal financial participation and federal incentives could result in 100% federal funding of the child support enforcement program. The task force considered the proposed federal legislation in making its recommendations. Federal proposals concerning administrative procedures are addressed below in the section of the recommendations concerning streamlined procedures. However, funding assumptions in this report are based upon the current

funding structure. There is no indication from Congress that either the federal match rate of 66% or the federal funding rules as they apply to judges and commissioners will be changed by the pending welfare reform legislation.

C. Child Support in California's Courts

All child support cases are heard in county superior courts in California. Child support is established in private cases in dissolution of marriage, legal separation, nullity and parentage actions Child support can also be established in separate actions initiated by the district attorney as part of Title IV-D child support services. Federal time frames are only imposed on Title IV-D cases and not private cases.

California's Response to Expedited Process Requirements

California's laws concerning expedited process for district attorney cases are found in Welfare and Institutions Code Section 11475.1 and Code of Civil Procedure Section 640.1. Welfare and Institutions Code Section 11475.1 provides that the time frames for completion of IV-D child support cases are as required by federal law. Code of Civil Procedure Section 640.1 establishes an expedited process for child support cases with commissioners or referees as hearing officers.

Prior to December 23, 1994, when the new federal expedited process regulations were issued, counties were required to have an expedited process for Title IV-D cases which utilized commissioners or referees. Exemptions of this requirement could be granted if counties were able to process cases through their traditional court system within the federal time frames.

The new expedited process regulations require only that cases be processed within the new time frames. There is no longer a requirement that the expedited process hearing officer be someone other than a judge. Under both the old and new regulations, federal funding is not available for

judges or costs associated with judges, but is available for commissioners or referees and their related costs.

Fourteen counties have approved plans of cooperation between the district attorney and the superior court for an expedited process utilizing commissioners or referees. An approved plan of cooperation is a prerequisite for receiving federal funding for the expedited process court.

The counties which have approved plans of cooperation are: Los Angeles, Orange, San Francisco, Contra Costa, Santa Clara, El Dorado, Placer, Fresno, Stanislaus, Sacramento, Riverside, San Bernardino, Solano and Kings Shasta County is in the process of establishing an expedited process court, and additional counties have expressed an interest.

Some counties that have adopted an expedited process court use a commissioner as the hearing officer and others use a referee. The legislature has placed limits on the number of commissioners the local courts may hire. The number of commissioners permitted usually depends on the size of the county.[38] Those counties that use referees for their child support expedited process usually do so because they have reached their statutory limit for commissioners

Several counties provide commissioners or referees to hear IV-D child support cases but have not entered into a plan of cooperation between the district attorney and the courts to receive federal funding The majority of counties have judges hear Title IV-D cases These counties, and counties that use commissioners or referees but do not have a plan of cooperation in place, do not receive federal funding for their costs of processing child support cases. Costs for IV-D cases in those counties are paid from either county general funds or a combination of county general funds and state trial court funding.

Federal funding at 66% is available for the superior court clerk's costs for staff and other expenses related to the processing of district attorney child support cases.[39] To receive funding for clerk's office expenses there must be a plan of cooperation between the clerk's office and the district

attorney. Federal funding is available regardless of whether the court uses judges, commissioners or referees for district attorney cases

The task force conducted an informal survey to determine the extent to which counties are experiencing difficulties in processing district attorney child support cases. District attorneys from forty-seven counties responded to the survey. Of the forty-seven counties that responded, fifteen counties stated that they do not have plans of cooperation with their superior court clerk and that no IV-D funding is provided to the clerk or court executive office in those counties.

The fifteen counties range from large to small in size. In these counties, the costs of processing IV-D child support cases by court clerks are paid by state and county general funds instead of available federal IV-D funding. In counties where clerk costs are claimed for federal funding, the amount of funding appears to vary considerably between similarly sized counties

Responses to the survey did not indicate why a large number of counties do not claim available federal funding Presumably they are either not aware of the availability of federal funds, or do not wish to engage in the recordkeeping that is required to receive federal funding. Counties may need technical assistance in establishing recordkeeping and claiming procedures Whatever the reason, it is apparent that federal funding is not being utilized to the extent possible for clerk's costs

Despite the fact that federal funding appears to be under utilized, the results of the task force survey indicated that the majority of courts are able to process the cases within time frames once an action has been filed by the district attorney.

Of the forty-seven counties that responded to the survey, twelve counties reported delays in calendaring cases. Delays ranged from one month to more than two months. Seventeen counties reported delays in receiving documents back from the clerk's office These delays ranged from two weeks to more than six weeks.

Survey comments revealed a number of reasons for the delays. In one medium sized county with approximately 20,000 cases, the court limited the number of orders to show cause that could be filed by the district attorney each day to five. In other counties, the number of cases that could be calendared was limited to a specific number each day and calendars were filled for six to eight weeks in advance, resulting in delays. A number of comments indicated that there were not enough clerk staff to process the volume of district attorney filings and that delays in processing papers resulted.

Anecdotal evidence also suggests that certain types of documents take longer to process than others in some counties. For example, in a number of counties, there are long delays in filling requests for certified copies. Certified copies are needed for the registration process outlined in the URESA statutes for inter-jurisdictional cases. Inter-jurisdictional cases cannot be initiated without certified copies.[40]

A number of courts experience delays in processing requests that are more labor intensive such as writs and renewals of judgement. Writs and renewals are issued by the clerk after the documents are reviewed for accuracy. Often these documents can have long detailed accountings attached.

There was also evidence that in some of the counties in which delays did occur, the delays were occasional due to temporary staff shortages because of illness or disability, or the result of the inability of the courts to increase staffing on short notice in order to keep pace with increased filings by the district attorneys.

Hiring additional permanent staff is a fairly lengthy process because it requires going through the County Board of Supervisors and the budget process. Better planning and communication between the district attorneys and the local courts would help both in anticipating the need for increased staffing.

Although delays in processing cases do occur in both the district attorney's and the clerk's office, the majority of counties reported that their courts are presently processing cases quickly and efficiently.

Future Impact of Title IV-D Cases on the Courts

Although the majority of courts are currently able to process cases within federal time frames, the courts soon will be faced with a number of challenges that will affect their ability to process child support cases quickly. There are a number of factors which indicate that the courts will be experiencing a substantial increase in the number of child support cases filed by the district attorneys This increase comes at the same time that the courts are facing increased demands on limited resources from criminal cases In order to process the expected influx of cases in a timely manner, the courts will need additional resources. With ongoing pressures on state and county budgets, the courts need to maximize existing resources by processing cases more efficiently in order to reduce the need for additional resources as much as possible.

Caseload Growth within the IV-D System

During the period of July 1, 1989 through June 30, 1994 the caseload within district attorneys' offices statewide doubled from 1,016,565 to 2,169,185.[41] This represents an average twenty (20) percent annual increase in the caseload during the past five years These figures do not include private cases where support is established without district attorney involvement

Although this caseload count may be somewhat overstated due the methodology used for counting cases, it nevertheless reflects that the number of cases within the district attorneys' offices are increasing rapidly.

Backlog of Cases in the IV-D System

Of the nearly 2.2 million open cases, more than 50% or approximately 1.2 million do not have court orders for support.[42] Most of these are cases that are open but have not yet been filed in court.

This backlog of cases is due to a number of factors. The district attorneys have experienced phenomenal growth in cases during the past five years. The growth has come at a time during which new federal mandates have required the district attorneys to significantly expand the services they provide, and have restricted the reasons that cases can be closed. Preparation for installation of the new statewide computer system has required a significant diversion of resources within district attorneys' offices for case review and interest calculation. In some counties, the district attorneys have been unable to add enough additional staff to keep pace with the rapid growth because of county budget constraints. In these counties, the district attorney generally does not receive enough federal and state incentives to cover the county share of cost, and must compete with other county departments for limited county general funds.

Although a large number of cases are backlogged, statistics from 1993-94 indicate that some of these cases are beginning to move into the court system. For example, the number of paternities established increased by twenty-five (25) percent and the number of orders modified increased by forty-six (46) percent in the one year period ending June 30, 1994.[43] There are indications that these cases will begin to move into the courts much more rapidly within the next few years.

Statewide Automation

The state is under a federal mandate to install a statewide automated child support system by October 1995.[44] The system has been under development for the past several years. The experience in counties which have installed interim computer systems during the past several years indicate that there is a substantial increase in the number of cases filed in court as the district attorney becomes more efficient at locating parents and their assets, and at initiating paperwork

For example, in San Francisco County the number of cases in which paternities were established and the number of cases in which support obligations were established increased between two hundred (200) and three hundred (300) percent in one year after the San Francisco Family Support Bureau became automated. During that same year the number of enforcement actions filed increased by nearly forty (40) percent.[45]

Other counties that have become automated report similar results after conversion to the new computer systems. Once SACSS is installed and is fully functional, it is expected that many of the cases now backlogged will begin moving into the court system.

Review and Adjustment Requirements

Another federal mandate that will have a direct impact on the courts is review and adjustment Periodic review and modification of child support orders within the IV-D system was mandated by the Family Support Act of 1988.[46]

Effective October 1993, all cases within the district attorneys' offices in which support has been assigned due to the receipt of AFDC or Medi-Cal benefits must be reviewed for modification at least once every three years. All cases including non-AFDC cases must be reviewed for modification upon the request of either parent if the other parent's location is known, and if the order has not been reviewed within the last 12 months or modified in the last 24 months [47]

Although much of the review process is designed to take place administratively within the district attorney's office, any proposed modification of an order which is contested must be heard in the courts. In addition, all agreements or stipulations to modify an order must be filed and processed in the courts.

Full implementation of the new review and adjustment regulations is expected to result in a significant increase in the number of modification motions and stipulations filed with the court.

Because the requirement to review and modify orders is ongoing, this increased filing activity will continue to impact the courts indefinitely.

Problems Parents Experience with the Current Child Support Process

An increasing number of parents are finding themselves in court on private family law matters without attorneys. Statistics are not kept by the courts but informal surveys with family law judges indicate that as many of fifty (50) percent of their cases involve parents on both sides who do not have attorneys and that in some counties the number may exceed fifty (50) percent. It is estimated that as many as two-thirds of divorce filed each year involve at least one parent who does not have an attorney.

Informal surveys with district attorneys indicate that the vast majority of parents in their cases do not have legal representation. By law, the district attorney does not represent either parent, but rather the public interest [48]

The large number of parents who are representing themselves is a reflection of the lack of affordable resources for legal assistance for family law matters in general, and child support matters in particular.

Family law matters are becoming increasingly complex Many family law attorneys state that this increased complexity results in higher costs for legal representation Despite the trend toward increasing complexity, a growing number of parents are without legal representation in family law matters because the cost of legal representation is prohibitive

Alternatives to traditional legal representation are not sufficient to meet the growing demand For low income parents, legal aid programs provide limited assistance in some counties Legal aid offices do not have enough resources to provide individual representation in family law matters to all low income people who need assistance. In counties where legal aid does provide family law

services, parents who qualify for assistance participate in clinics where attorneys and paralegals teach parents in a group setting to fill out the necessary papers to file their own family law action in court In many counties, legal aid does not provide any family law services.

Bar Associations in several of the larger counties have organized volunteer programs to provide representation, advice, and assistance to parents without attorneys. Often these programs work closely with family law courts who provide referrals.

The volunteer attorney programs have met with varying degrees of success. The demand for assistance has always exceeded the resources of these programs. Only a portion of people who need help have been able to get assistance. In some counties, volunteer programs have had to reduce services or have shut down altogether for various reasons including reductions in funding for administrative costs, increasing demands for services, and not enough volunteer attorneys to meet the demands.

For parents who are not eligible for legal aid services by virtue of their income exceeding legal aid guidelines, even fewer alternatives exist. There are private paralegal services in some counties Generally, private paralegal services can only provide a typing service for parents who need help in completing family law forms Unless the paralegal is directly supervised by an attorney, anything more than a typing service would be considered the unauthorized practice of law.

Various groups have unsuccessfully attempted to pass legislation which would authorize paralegals or legal technicians to provide limited services in routine cases. The State Bar of California has opposed the legislation because of concerns over how the paralegals would be regulated

In 1993, the legislature authorized two pilot counties, San Mateo and Santa Clara, to develop family law advisor programs in the courts to assist pro per parents in obtaining temporary family law orders. The pilot programs are directed by an attorney who has a staff of volunteers. The attorney and volunteers help parents complete forms, run guideline calculations, meet with both parents when appropriate, make recommendations, draft stipulations, prepare orders after hearing, and provide

general information on family law procedures.[49] The pilot projects are not limited to support issues Assistance is also provided in other areas of family law including temporary restraining orders, custody and visitation, and property issues.

Both the courts and the litigants have praised the pilot projects. The courts in both counties have recommended that the projects be expanded statewide; however, state funding for the pilot projects is due to terminate in 1995.

Despite the pilot projects, the pro bono programs, and legal aid services, the vast majority of parents who cannot afford attorneys, do not have access to affordable resources to assist them through the family law court process.

Parents without attorneys who are forced to navigate the child support process by themselves find it too complicated. Parents who need to establish, modify, or enforce a court order are unfamiliar with the forms that need to be filed to initiate an action. A parent who has been served with notice of pending action usually does not know how to file a formal answer or responsive pleading. Once parents determine which forms to ~~use, they~~ often find the forms confusing and difficult to complete correctly. Procedures for filing and serving petitions, complaints, and motions are hard for lay persons to understand.

Child support guidelines are particularly difficult for parents to use and understand The guidelines are based upon an algebraic formula which uses a number of factors, including parent's income, the amount of time each parent has custody of the children, the number of children, and the number of children each parent has from other relationships. It is difficult to calculate the amount of child support without the aid of a computer.

Parents in both private cases and district attorney cases are in need of a central place where they can obtain information about, and assistance with, child support issues. The current process for establishing, modifying, and enforcing child support is too complicated to use without assistance

Family law cases in which parents represent themselves can present difficult problems for the courts. In the clerk's office, papers that are filed must be carefully reviewed. If not completed properly, papers often are rejected. This results in files having to be handled multiple times as papers are returned and later refiled. Multiple handling of files not only causes delays in obtaining orders but also is more costly to the courts. In addition, clerk staff must deal with the frustration of parents who must repeatedly refile their papers and have no place to go for help.

Cases in which parents are not represented by counsel can be more difficult and time consuming for judges. A family law calendar dominated by pro per parents takes longer to get through. Judges must take additional time to solicit information because of incomplete forms Often cases need to be continued because parents have not filed a proof of service, completed their forms properly, or brought the necessary evidence to court. They listen to testimony and argument that is often irrelevant to the child support determination because the parents are unfamiliar with the law and come to court with unrealistic expectations. They also must spend time helping parents understand what additional papers and forms must be filed to obtain written orders after the hearing

Judges often find themselves playing the role of counselor and advisor to an unrepresented party in order to help them struggle through the hearing to obtain the relief they are seeking It is extremely difficult for judges to be both a decisionmaker and an advisor to both parties at the same time.

The courts are currently ill equipped to handle the large number of unrepresented parents in the family courts. It is not cost effective to have judges and commissioners take time in court to help litigants fill out forms The challenge the courts are facing is to find a way to accommodate the ever increasing number of parents who represent themselves in family law proceedings

The number of complaints from parents regarding the child support process received by all branches and levels of government have been steadily increasing over the past several years. Many parents are dissatisfied with the amount of their support order. These types of complaints are difficult

to effectively address because of the nature of family law. By definition, the breakup of a family unit into two households means that there are greater expenses to be paid from the same limited resources that previously supported one household. The proceedings often become adversarial as each parent seeks to maximize their share of the limited resources. Under these circumstances it is not surprising that neither parent feels satisfied with the court's decision.

There are also a number of complaints about the process itself. Parents who provided public comments to the task force expressed a number of valid complaints. A large number of custodial parents expressed their frustration with the district attorneys and their inability to secure support for their children. Many felt that they received inadequate services despite their efforts to provide information to the district attorneys. A number of custodial parents cited the lack of adequate district attorney resources, a lack of staff training, and insufficient enforcement remedies as reason for the problems they have encountered.

A common theme that emerged from comments made by noncustodial parents was their frustration with not being able to raise issues of custody and visitation in district attorney child support actions Current law requires that a separate action be filed to raise these issues [50] Noncustodial parents complained that the procedures to file separate actions are too complicated to use without attorneys. As a result, disputes concerning custody and visitation often go unresolved It was repeatedly emphasized by custodial and noncustodial parents that children need both financial and emotional support from both parents.

A common complaint from both parents is that the complicated and adversarial nature of proceeding often increases tensions between the parents to the detriment of the children. Suggestions were made that greater opportunities need to be provided for parents to resolve issues concerning their children in a less adversarial setting.

While it is recognized that it is difficult for many parents to set aside their anger after the breakdown of their relationship and work cooperatively to further the best interests of their children, alternatives to the current court process that would encourage parents to work cooperatively for the benefit of their children should be explored.

III. RECOMMENDATIONS CONCERNING DISTRICT ATTORNEY CASES

A. An Expedited Process for District Attorney Child Support Cases Should Remain Within the Courts

When considering an expedited process for district attorney child support cases the first issue that confronted the task force was whether the child support expedited process should remain in the courts or whether an administrative process should be established.

A number of states have an administrative process for establishing child support orders in IV-D support cases in which administrative law judges appointed by an administrative agency conduct child support hearings. There is ample precedent for administrative hearings in California A number of state agencies provide administrative hearings for issues the agency regulates including the Department of Social Services (welfare and licensing), the Employment Development Department (unemployment), the Department of Industrial Relations (workers compensation, wages, hours, working conditions).

The success of an administrative process for child support cases depends upon a close cooperative relationship with the courts. Since child support orders can be established either in the administrative agency, or the courts as part of private family law actions, the courts and administrative agency must be able to coordinate in order to avoid duplicate and conflicting support orders.

In most states that have adopted an administrative process, the courts continue to play a critical role in child support cases. All contested paternity cases are heard in the courts Parties who are not satisfied with the results of administrative hearings can either appeal to, or request a new trial by, the court. Enforcement actions such as civil contempt and criminal nonsupport actions are heard by the courts. Child support issues in private family law actions and all other issues concerning children including custody and visitation are decided in court.

In states that have adopted an administrative process, the courts and administrative agency are able to coordinate their actions through the maintenance of a statewide central registry of all child support orders. The central registry insures that both the courts and the administrative agency are aware of the existence of existing court orders, and that duplicate orders are not issued.

Proponents of an administrative process argue that: 1) it is cheaper and more efficient; 2) it is able to provide greater uniformity because hearing officers are employees of a single state agency, 3) it is easier for parents to use because proceedings are more informal with relaxed rules of evidence; 4) it can provide due process safeguards; and 5) it removes a substantial number of routine cases from the courts and allows the courts to redirect resources to other priorities.

However, the majority of task force members were convinced that similar results could be achieved in the courts. Task force members were concerned that an administrative process would 1) add a separate forum for hearing child support cases to a system that is clearly inefficient and frustrating to parents because of its diverse players and scattered forums; 2) not provide a neutral forum to decide cases if the hearing officer was employed by the same agency that enforces support orders; 3) duplicate costs for two processes that essentially perform the same functions since child support would continue to be decided by the courts in private family law actions, and in IV-D paternity cases and certain IV-D enforcement actions, and 4) relegate IV-D child support cases to a second class adjudication system.

While an administrative process might be efficient and cost effective in the long run, such a result would be realized only after an initial financial investment and commitment of resources to establishing the administrative process. There would be substantial costs for creating a new administrative adjudications division within a state agency which would include administrative law judges and their support staff, overhead costs for central administration, facilities for holding

hearings in each county, and related costs such as security. The majority of task force members believe that the investment of these same resources in the courts, where an infrastructure already exists, can achieve better results.

In addition, a functioning central registry for child support orders must be in place for an administrative process to work. While statutory authority exists for the creation of a state registry of child support orders through the Statewide Automated Child Support System (SACSS), a feasibility study to determine how to implement the state child support registry in SACSS is not to be conducted until full federal funding for the registry is available or on January 31, 1996, whichever occurs first [51] A central registry for child support orders is several years away in California.

An administrative process would remove only district attorneys' cases from the court system. Since child support guidelines take into account child custody and visitation arrangements, parents who raise these issues in the administrative setting would have to be referred back to the courts to have those issues resolved. After the custody and visitation issues were resolved the child support issue might then have to be relitigated in court, or referred back to the administrative agency. Rather than add yet another forum, in another location, to hear child support cases, the majority of the task force believes it would be preferable for child support cases to be heard in the courts where other family law services related to children are provided.

At present there is a statutory prohibition against litigating issues other than paternity and support in actions filed by the district attorney.[52] Parents who wish to raise issues of custody and visitation in district attorney support actions are told that they have to file a separate action under a separate court number. This separation of issues creates similar problems to those created by removing the child support issue in IV-D cases from the courts and into an administrative process

A majority of members on the task force believe that the separation of child support from other family law issue is a major source of the frustration with the process that many parents, especially noncustodial parents experience. To reduce parental frustration, we should be moving in

a direction of greater integration of the various legal issues involving children, not greater separation The goal in family law should be the creation of a "one stop shop" where services for all issues relating to children will be available to parents in a central location.

The number of child support cases entering the court system will increase substantially within the next few years because of caseload growth and the number of cases without orders that are currently in the district attorneys' offices. While the task force recommends that child support cases should remain in the courts, it is recognized that the court process needs to be significantly streamlined and simplified in order to enable the courts to address parental frustration and process the expected influx of new cases quickly and efficiently within federal time frames.

To address these issues, a uniform expedited process for child support cases needs to be established within the courts. The process should incorporate many of the streamlined features of the best administrative and court based models that are used by some California counties and by other states.

B. A Uniform Expedited Process ~~for District~~ Attorney Cases in Which Commissioners are Hearing Officers Should be Established in the Local Courts.

The state should mandate that all counties have IV-D child support commissioners The use of commissioners would make Title IV-D federal funding at 66% available to the courts for the commissioners, support staff, space and other overhead costs For counties that currently use judges or nonfederally funded commissioners, 66% of their costs for providing services in district attorney cases now funded either from the county general fund or state trial courts funds would be supplanted with federal funds.

The task force recognizes that the majority of counties do not have large enough district attorney caseloads to justify full-time commissioners. However, given the projections of a significant increase in the number of cases filed in the courts, many counties will be needing to expand the court

time available in order to meet case processing time frames. For those small and medium counties that still will not need a full-time commissioner even after taking into account caseload growth, part-time commissioners may be used. Part-time commissioners could either be shared with other counties, or could be full-time commissioners within a single county who also handle other types of cases. Commissioners assigned to cases other than district attorneys cases will have to time study IV-D versus non IV-D functions in order to claim federal IV-D funding.

In larger counties it is likely that more than one commissioner of IV-D child support cases will be needed as the number of cases filed increases. At present, statutory limitations exist on the number of commissioners the counties are permitted to hire.[53] Legislation is needed which exempts child support commissioners from these limitations.

As discussed below, caseload standards for IV-D child support cases should be developed A mechanism should be put in place to enable counties to apply for additional commissioner positions once the caseload standards for one commissioner are exceeded Uniform staffing ratios for commissioners should also be developed so that each commissioner has adequate support staff including bailiffs, court clerks, and other staff as needed ~~to~~ process documents in a quick and efficient manner.

State law already provides that paternity and child support cases be given priority among civil cases.[54] Since federal funding will be provided to the courts for child support cases, the statute should be expanded to provide that courts must provide adequate staffing and hearing time to insure that federal case processing time frames are met.

C. The Judicial Council Should Provide Coordination for the Child Support Commissioner System

Under the California Constitution, the Judicial Council is the appropriate agency to provide coordination of the child support commissioner system in the local courts.

Article VI, Section 6 of the California Constitution defines the role of the Judicial Council in relation to the local courts. It provides (in pertinent part) that in order "[t]o improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules of court administration, practice and procedure, not inconsistent with statute, and perform functions prescribed by statute..."

Federal law requires that there be a written plan of cooperation between the courts and the IV-D agency in order for the courts to receive federal funding for an expedited child support process.[55] At present the counties that use commissioners and receive federal IV-D funding have plans of cooperation between the local courts and the local district attorney. Each county's plan of cooperation varies slightly. The costs claimed for federal IV-D reimbursement for the expedited process in the courts varies from county to county.

The task force proposes that with the adoption of a state child support commissioner system, the mandated plan of cooperation be between CDSS as the designated single state IV-D agency and the Judicial Council. Instead of Title IV-D funding flowing from CDSS through the local district attorney to the courts, federal funding for the child support commissioners would flow from CDSS through the Judicial Council to the local courts as part of the trial court funding process.

The current funding process in which federal funding for child support commissioners and referees in the local courts is provided through the local district attorney's office, fosters the appearance that the commissioner cannot be impartial because one of the litigants provides funding for their position. By changing the flow of federal funding from the Department of Social Services through the Judicial Council to the courts, the district attorney would no longer have to be the conduit for funding of the commissioner position.

Full funding, including federal IV-D funding, should also be provided to the Judicial Council for its costs in providing the coordination, training and support services as outlined below. In order to implement and coordinate the child support commissioner system, the Judicial Council's functions should include:

Adoption of Uniform Statewide Procedures and Forms

As discussed below, procedures in all courts need to be simplified and made uniform in all child support cases. This should be accomplished through statutes, and where appropriate, through state rules of court and mandatory forms adopted by the Judicial Council

Implementation of Mandatory Training

Training for all child support commissioners and other court personnel assigned to the child support commissioner courts should be mandated by statute As federal requirements have expanded over the past twenty years, the area of child support has grown increasingly complex. Training should emphasize federal and state law concerning issues related to child support including federal performance standards and time frames

The legislature should delegate to the Judicial Council the responsibility for developing minimum educational requirements and standards for training Actual training programs could be provided by appropriate organizations designated by the Judicial Council

Provision of Technical Assistance to Local Courts

The Judicial Council should coordinate the provision of technical assistance to the local courts on issues related to implementation of the child support commissioner system. Technical assistance would include the dissemination of information on federal and state requirements, and the development of claiming procedures to insure that federal funding is being utilized and claimed to the

maximum extent possible. Counties that currently have an expedited process and claim federal funding should be studied to determine the best ways of identifying all expenses related to the child support commissioner system that are eligible for federal funding. The Judicial Council could designate other appropriate organizations to provide technical assistance to the courts.

Establishment of Qualification for Commissioners and Statewide Standards for the Process of Hiring Commissioners

Federal law requires that the state adopt "written procedures for ensuring the qualifications of presiding officers" in the expedited child support process. The Judicial Council, through rules of court, should establish minimum qualifications for child support commissioners Existing commissioners or referees in counties that have adopted an expedited process could be "grandfathered in" if they do not meet the new standards and qualifications.

At present commissioners and referees are hired by, and are employees of the local courts Child support commissioners would not be an exception However, in order to meet the federal requirements the Judicial Council would be responsible for establishing minimum standards and procedures for hiring child support commissioners.

Development of Caseload and Staffing Standards

A methodology needs to be developed to determine the amount of funding each county will need for child support commissioners and their support staff. A few of the larger counties will need more than one full-time commissioner while many of the medium and smaller counties will need less than one full-time commissioner.

As caseloads grow, counties will need additional funding. At present, the number of commissioners for each county is limited by statute. Instead of requiring each county to return to the legislature each time they need an additional child support commissioner, the legislature should

exempt these commissioners from the statutory limitations, and direct the Judicial Council to develop caseload standards to determine the number of child support commissioners that will be funded in each county and a mechanism for courts to obtain approval for additional commisioner positions

In addition, standards should be developed for the type and number of support staff that each commissioner needs. Provision of adequate support staff is critical to ensuring that child support cases are processed in a quick and efficient manner.

Coordination and Facilitation of Resource Sharing

Many small and medium counties will not have enough district attorney child support cases to justify a full-time child support commissioner. Those counties that have commissioners who hear other types of cases could utilize one part-time as the child support commissioner However, time studies and cost allocation procedures sufficient to segregate those costs that are eligible for federal funding will have to be developed.

An alternative would be for counties to share commissioners. A single commissioner could "circuit ride" several counties spending one or two days per week in each county as needed The Judicial Council can provide coordination for those counties that want to share commissioners

The Judicial Council should also coordinate and facilitate the sharing of other resources For example, within the next year the district attorneys will install the Statewide Automated Child Support System (SACSS) and will have the same automated system in all counties except for Los Angeles which has developed their own system which will interface with SACSS and the other fifty seven counties. The Judicial Council, should explore the best ways for the child support courts to tie into SACSS, and to develop and implement automation resources for the child support courts

Development of Appropriate Mechanisms to Gather Statistics Concerning Child Support Cases

When examining the current court process for establishing and enforcing child support, the task force was struck by the lack of statistics presently maintained by the courts concerning child support cases. For the most part courts do not keep statistics regarding the number of private family law cases in which child support is established.

Although the district attorneys and CDSS are required to maintain statistics on IV-D child support cases, the federal statistical reporting requirements are complicated and geared toward assessing federal performance standards. The value of these statistics for planning purposes is questionable at best.

The Judicial Council and CDSS should develop appropriate mechanisms to gather statistics on both private and IV-D child support cases which would assist in analysis and planning for the future resource needs of the courts

D. The Expedited Process Should be Streamlined to Avoid the Necessity of Superior Court Review in Every Case. A Commissioner Should be Granted Statutory Authority to Make Final Orders to the Extent Possible Under the California Constitution

Statutory authority for the current child support expedited process is found at Code of Civil Procedure Section 640.1 which requires that the commissioner or referee who hears the case file a recommended order within seven days after the child support hearing concludes.

The clerk of the court is required to mail an endorsed copy of the order to all parties by the close of the business day on which the order is filed together with a notice of review hearing before a judge of the superior court which states the date and time a party may appear and object to the

recommended order. As an alternative to mailing the recommended order and notice of review hearing, the clerk can personally serve them on the parties at the conclusion of the hearing.

The review hearing must be held between 15 and 20 days following service of the recommended order. On the date of the review hearing the court may adopt the recommended order or modify it on its own motion if no objections are made. If an objection to the recommended order is presented, the court may review the record, and any supplemental papers filed, and either adopt the recommended order, modify it, or order a rehearing.

Many counties have criticized this expedited process procedure for being too cumbersome in requiring a superior court judge to review every case. A number of counties that use commissioners to hear child support cases reported to the task force that they have not sought federal funding because they do not wish to follow Section 640.1 procedures.

Other counties have avoided Section 640 1 requirements by having the parties stipulate to the commissioner or referee sitting as a temporary judge pursuant to Article VI, Section 21 of the California Constitution. As a temporary judge, the ~~commissioner~~ has the authority to make final orders.

California Constitution, Article VI, Section 22 states that "[t]he legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties." Case law generally defines "subordinate judicial duties" to include uncontested matters such as the entry of judgments and orders based upon stipulations and the entry of default judgments. Preliminary matters such as discovery issues may also be decided. On the other hand, courts have generally held that contested hearings and trials are not subordinate judicial duties.

The task force recommends that child support commissioners be given statutory authority to make final orders in all issues related to district attorney child support cases to the extent that such authority is constitutional. For those contested issues in which there must be the right to judicial review by the court, the review should be available upon request but not required in every case.

Parties should be advised prior to the beginning of the hearing that the commissioner is sitting as a temporary judge and that any order will be final unless a party requests a review by a superior court judge either at the conclusion of the hearing, or within a specified number of days after an order or judgement is entered. Notice should be clearly given that the failure to request a review hearing will be deemed to be a stipulation to the commissioner sitting as a temporary judge.

E. The Use of Automation and Other Appropriate Technology Needs to be Optimized to Track and Expedite the Processing of a Large Volume of Cases and to Improve Parental Access to the Courts.

Automation of all expedited process courts would create the ability for courts to streamline their internal procedures for processing cases. Automation, when used effectively, can reduce the costs of processing cases. With the installation of statewide automation in the district attorneys' offices, coordination between the district attorneys and the courts could streamline the process of calendaring cases and the filing and exchange of documents for both the courts and the district attorneys.

Fresno County has one of the most advanced child support courts in the state. In Fresno County, the child support courtroom is automated which permits the production of court orders that can be served upon the parties at the conclusion of the hearing The ability to provide the parties with copies of the orders the day of the hearing speeds the process considerably. It saves district attorney staff time in having to bring their file back to the office for preparation of the order after hearing It

saves the court clerk from having to handle the file multiple times after the hearing is completed. It insures that parents are personally served with orders if later enforcement is needed, without the time and costs required to serve parents after they have left the court. Fresno County should be used as a model for the use of automation in the courts.

Fresno County uses other appropriate technology in its courtroom to reduce costs Proceedings in the expedited process court are videotaped to create a record of proceedings. In a number of other counties audio tapes are used instead of court reporters. The expanded use of video and audio technology as a cost effective method to create a record of proceedings needs to be explored.

The use of appropriate technology can also provide better access for parents In Arizona, and in San Diego County informational kiosks have been placed in areas that are accessible to the public In Maricopa County, Arizona, family law litigants can obtain information concerning forms and procedures to process their cases. By using interactive computers, many parents who are not represented by counsel are able to obtain their own divorces.

The use of video and audio technology can also provide better access for parents and reduce delays in interstate cases, and cases where parents reside in different counties. California processes thousands of interstate child support cases each year under the Uniform Reciprocal Enforcement of Support Act (URESA).[56] In cases where the custodial parent resides out of state, testimony is submitted by affidavit. If the need arises for additional information, cases must be continued in order to allow the district attorney to obtain additional information by affidavit. Long delays may result as the district attorney must contact the IV-D agency in the other state to obtain additional information

Proceedings by affidavit also impair the noncustodial parents ability to cross examine the custodial parent in court. In 1993 the U.S. Commission on Interstate Child Support recommended the use of the telephone to allow the appearance of out-of-state parents in interstate cases.[57] While

the appearance of witnesses by telephone raises a number of issues concerning the ability of the hearing officer to judge credibility, the use of the telephone in interstate cases is superior, from a due process standpoint, to proceeding solely by affidavit.

Cases involving parents who reside in different counties within California also present problems of access for parents. With the installation of the statewide computer system in district attorneys' offices, only one case will be open at a time involving the same parents and children. Under recent legislation, venue for modification and enforcement purposes will follow the child and custodial parent as they move to a new county. Venue will lie in only one county at any given time [58] When venue changes, noncustodial parents will have to appear in proceedings outside their county of residence. This will be a major source of frustration for noncustodial parents as they cannot control when and where the other parent moves.

The use of telephone and televideo technology to allow court appearances by parents who live in distant counties as well as out of state, could help reduce parental frustration. The legislature should consider giving judges and commissioners the discretion to use telephone and televideo technology in appropriate cases.

F. The Legal Procedures for Establishing, Modifying and Enforcing Child Support Orders in the Expedited Process Should be Simple, Streamlined, and Uniform Throughout the State.

The task force recommends that simple streamlined procedures that are uniform throughout the state be adopted for the expedited process courts. Uniform streamlined procedures and forms would help achieve a number of objectives.

With installation of statewide automation in all district attorneys offices it is essential that procedures for establishing and enforcing child support obligations be uniform in all courts. The success of statewide automation depends upon cases being processed in a uniform manner both within

district attorneys' offices and in the courts. Since the system will be generating the forms to be filed in the courts, all courts should accept the same forms. It is difficult and costly to design a system to accommodate different procedures and forms for each county.

Uniform procedures and forms should also ease the transfer of cases between counties. In the child support area, one of the barriers to quick enforcement is the movement of parents and children both inside and outside California. The processing of paperwork can often be delayed when the district attorney of one county attempts to file documents in another county which has local rules that are different than in his or her own county.

The lack of uniform procedures can also create a perception that the system is not fair. For example, more than half of child support orders established statewide are by default after the defendant fails to respond to a complaint, or fails to appear at a hearing Under current law, a default judgment can be entered after a hearing, or at the option of the court by declaration. In some counties, the court may issue an order based upon a declaration using a standard imputed income in a default situation where the defendants income is unknown. In other counties, the court may require a default hearing and decline to enter a support order unless proof is provided concerning the defendant's income

The result of these varied practices is that similarly situated parents and children receive vastly different results depending upon which county their case has been filed. This result fosters the perception among parents that the system is unfair.

The distinction needs to be made between uniform procedures and uniform results. Each case presents different fact situations, and each case should be decided based upon its facts. To the extent that the guidelines and other applicable statutes permit discretion, the hearing officers must be free to exercise it in individual cases. Nevertheless, the procedures and forms utilized to present cases should be uniform in all child support proceedings.

Simplified and streamlined procedures and forms which are designed for use by parents who do not have attorneys would help alleviate some of the frustration with the process that many of the

Initiation of Actions

Currently, actions to establish paternity and child support orders are initiated in district attorney cases by the filing of a Summons and Complaint. Because the defendant's income is often unknown, the complaint usually does not provide notice of the amount of support sought except in general terms. To contest the action, the defendant must file a formal answer with the court within 30 days of service, and serve it upon the district attorney. The defendant can avoid the necessity of filing an answer by resolving the matter by stipulation or agreement. If the defendant fails to file an answer and does not reach a stipulation, a request to enter default is filed and thereafter a default judgment is entered.

In the administrative processes in Washington and Oregon, actions are initiated using a different kind of pleading called a Notice of Proposed Order. The Notice of Proposed Order tells the defendant the amount of the order based upon the amount of income as known to the IV-D agency. If income is unknown, the proposed order is based upon a presumed income that is utilized statewide The defendant can either request a hearing if he or she wants to contest the proposed order, or arrange to sign a stipulation for entry of the order. If the defendant does not request a hearing or sign a stipulation, the proposed order is entered.

In district attorney cases, the complaint process should be revised to provide the defendant with better notice of the possible outcome of the proceedings that have been filed The defendant should be advised of allegations of parentage, if paternity is at issue The amount of support sought if income is known should be stated. If income is unknown the notice should advise the defendant that support will be set based upon evidence presented to the court, or based upon a standard presumed income unless the defendant provides income information and requests a hearing There should be clear notice of the amount of presumed income and the resulting order that will be entered if the defendant does not respond.

A simple answer form together with Income and Expense forms should be served with the complaint to allow defendants to request a hearing. If paternity is at issue the form would allow the defendant to request a blood test and a hearing. No income information would have to be provided until parentage is determined.

Defaults

It is estimated that more then half of all child support orders established in district attorney cases statewide are based on defaults. Every effort should be made to encourage parents to provide financial information and to participate in the process so that the correct amount of support can be ordered. The recommendation on revising the complaint and answer process is designed to encourage greater participation.

HR 4 provides that the Title IV-D agency must be given the authority to enter a default order administratively upon a showing of service process in a paternity action when the putative father refuses to submit to blood tests, or in an action to establish or modify support when a parent fails to appear at a hearing

Since paternity and child support orders are issued by the court, the task force had some questions about how exactly this provision could be implemented in California Instead of providing for administrative entry of default orders by the district attorney, the task force suggests that the current default process be streamlined and simplified

Currently, under Family Code Section 7551, the court can make a finding of paternity if the putative father fails to submit to genetic testing If the putative father has filed an answer, the judgment for paternity is not technically a default judgment but is a judgment that is entered as the result of an evidentiary sanction.

To streamline the process and to more closely conform to the intent of the pending federal legislation, Family Code section 7551 could be amended to provide that a judgment for paternity shall be entered upon the filing of a declaration by the district attorney which states that the putative father has failed to appear for genetic testing.

The default process for obtaining support orders should also be streamlined and made more uniform throughout the state. At present, if a parent fails to file an answer within 30 days of being served with a complaint, the district attorney must file a request to enter a default. In some counties a hearing is scheduled, while in other counties the courts allow the entry of default based upon a declaration.

For district attorney cases, all defaults should be by declaration unless the court for good cause orders otherwise. The requirements of the declaration should be simplified so that the default judgment is based upon the income allegations in the complaint or upon presumed income if no other information has been obtained by the district attorney between the time the complaint is filed and the request for default is entered. If additional income information has been obtained, the declaration should so state, and the support order should be based on the income information presented

Presumed Income

At present, there is not a single statewide standard for determining the amount of a child support order when the order is set by default and the income of the person against whom the order is entered is unknown. In some counties, the court will not enter an order for support. In other counties, income is presumed at minimum wage. In a few counties, income is presumed in an amount that results in an order that is equivalent to the AFDC grant.

In those counties in which presumed income is not permitted, or in which the presumed income is minimum wage, parents who choose not to provide income information to the court or participate in the process of setting child support, are rewarded with no or low court orders for

support. This provides a disincentive for parents to provide income information to the court which would allow the court to set the support order in the correct amount.

If a parent defaults, the order should be based upon actual income if known to the district attorney. Zero orders should be entered when the parent is incarcerated and has no income or assets or is receiving General Assistance, SSI or other income which is excluded from determining net income for guideline purposes. If income is unknown, the state should adopt a statewide standard for presumed income.

The amount of income that is presumed in states that have adopted presumed income ranges from minimum wage in Oregon to one and one half times the annual average wage for all employment in Vermont. In California, one and one half times the annual average wage would be $44,232 per year. In Washington, presumed income is based upon the average wage paid in the defendant's usual occupation if his or her occupation is known

The task force decided not to make a recommendation as to the amount of presumed income In general, there was agreement that minimum wage is too low in that it would be a strong disincentive for anyone earning more than minimum wage to come forward and provide their correct income information if they make more than minimum wage. On the other hand, one and one half times the average annual wage is too high.

The task force considered several alternatives that fell between the two extremes Alternatives that were considered included the average noncustodial parent income in the IV-D caseload based upon the annual CDSS Characteristic Survey. For 1993-94, the average gross income was $2132 per month (net income $1638). Also considered was income sufficient to support the Minimum Basic Standards of Adequate Care for children as set forth in Welfare and Institutions Code section 11452, which would be $1790 per month (net income $1398). Task force members have agreed that resolution of the issue of the amount of presumed income should be pursued in consultation with the legislature through the legislative process.

The application of presumed income can lead to harsh results. Therefore, it is essential that the rules for vacating or setting aside an order based upon presumed income be different from the rules for vacating orders where the support order is based upon evidence of income. The period for requesting vacation of a support order based on presumed income should run from the date on which defendant first gets notice that the IV-D agency has collected support through a wage assignment, intercept, or any other method. The defendant shall have 90 days from the date he or she receives notice to either contact the IV-D agency to negotiate a new order, or file a motion on a simplified form requesting that order be vacated and a correct order be entered in its place. The burden of proof shall be on the defendant to prove that his or her income was lower than that imputed to him or her. If he or she meets that burden, the Court will vacate the order and enter a new order running from the effective date of the original order.

These set aside rules would only apply to cases in which presumed income is used to set the support amount. In default cases where evidence of income was presented, set aside procedures currently set forth in Code of Civil Procedure section 473 would apply.

Existing law for the set aside of judgments would also continue to apply to determinations for paternity if the default judgment is based upon a custodial parent's affidavit of paternity or upon genetic test results.

Any money actually paid before an order is set aside would not be refunded to the defendant If a new order is entered the court should credit any money paid toward satisfaction of the new order

Voluntary Acknowledgments and Stipulations

Hearings should not be required to enter judgments of paternity based upon a voluntary acknowledgment or stipulation provided that a standard statutory written advisement and waiver of rights is submitted to the court with the acknowledgment or stipulation.

Modification of Support Orders

In 1994 the legislature repealed simplified modification procedures. The repeal was made necessary because the modification was based upon a percentage increase of the original order and not the guidelines as required by federal law.

An easy procedure that allows parents to seek modification of their court orders quickly is needed. Noncustodial parents who lose their jobs or become disabled or experience other significant changes in circumstance need to access the courts as soon as possible so that arrears and interest that cannot be paid do not accrue. Custodial parents who find themselves with reduced income also need access to the courts quickly to increase their orders in order to meet their children's financial needs

A simple procedure in which the parent against whom the modification is sought is given notice of a proposed order should be developed for use in both district attorney and private cases

Provision of Income Information

Simplified income and expense declarations are being developed by the Judicial Council pursuant to legislation passed in 1994 for use in appropriate cases.[59] Consideration should be given to dispensing with income and expense declarations all together when the parent produces a check stub or other reliable documentation of income in appropriate cases.

Automatic Enforcement Remedies

HR 4 contains provisions that would mandate that the state grant local IV-D agencies broad administrative enforcement authority. The district attorneys already use a number of automatic enforcement remedies including liens, tax and lottery intercepts, the license match program, and the use of the Franchise Tax Board for enforcement through administrative writs.

If HR 4 becomes law, earnings assignments for child support would have to be issued directly by the district attorney rather than through the court. The district attorney would also have the authority to set monthly arrears payments in earnings assignments without obtaining court approval.

The child support provisions in HR 4 also require that the district attorneys be given the authority to directly issue administrative writs against bank accounts and other property owned by the obligor.

At present, all earnings assignments and writs must be issued by the courts. Earnings assignments are submitted to the court either at the time, or subsequent to the time, an order for support is issued. It is signed by the judge and then returned to the district attorney, who in turn mails it to the support obligor's employer. Any subsequent modification of the wage assignment must also be filed with the court for the judge's signature.

Writs of Execution also require court approval. Writs may be signed by either a clerk of the court or a judge. Once signed, the writ is returned to the district attorney, who in turn sends it to the county sheriff. The sheriff is responsible for serving the writ and collecting any money or property that may result from the writ. If a claim of exemption is not filed within the statutory time limit, the sheriff sends the money or property collected to the district attorney.

Giving administrative authority to the district attorney to issue earnings assignments and writs directly would speed the enforcement process considerably and cut down on the number of documents which have to be handled by the courts.

The task force endorses the idea of expansion of administrative enforcement authority as proposed on the federal level provided that such authority originates in the support order issued by the court. When a support order is issued, the court should also order that the district attorney issue a wage assignment and take all necessary actions including intercepts, liens, and writs to enforce the order.

A simple method to determine the amount of the monthly payment towards arrears in earnings assignments should be set by statute. For example, the monthly payment on arrears could be a standard twenty-five (25) percent of the current support order. The district attorney would have to obtain a court order for a higher monthly arrears payment. If the support obligor objects to the standard arrears payment, he or she should be given the opportunity to request that the court lower the arrears payment based upon economic hardship.

It is essential that a simple process be developed to challenge any enforcement action taken by the district attorney. At present each enforcement remedy has a different procedure for a parent to obtain a hearing to object to the particular enforcement action undertaken by the district attorney. A simple request for hearing form should be served on the parent in conjunction with all enforcement actions. If the form is completed and filed with the court, any disputed portion of the enforcement action should be stayed pending a hearing. Hearings should be scheduled on an expedited basis

Administrative Subpoenas

California already has a deposition subpoena procedure in which subpoenas can be sent directly by the district attorney when an action is pending. The provisions in HR 4 appear to require that the states permit the use of administrative subpoenas even when an action is not pending The use of administrative subpoenas prior to the filing of an action to establish paternity or an initial support obligation, raises due process and privacy issues which need to be seriously considered prior to the legislature granting any such authority to the district attorney.

Once a paternity and a support order is established, the use of an administrative subpoena for modification and enforcement purposes poses fewer problems provided that the support obligor is given notice of the subpoena and that there is a simple process for challenging the subpoena in court

Consolidation of Actions

In AFDC cases where benefits have been received in multiple counties, it is possible that multiple support orders exist involving the same parents and children. As custodial parents and children move from county to county, each district attorney usually obtains his or her own order for support. Where multiple orders exist, many of the orders are conflicting.

A central registry of all California support orders needs to be built to allow courts to identify existing orders in their own courts and in other counties. Procedures need to be adopted that permit consolidation of existing multiple orders involving the same parents and children. There should only be one statewide order involving the same parents and children. Modification of that order should occur only in the county that has proper venue. Only one county at a time should have venue to modify or enforce a support order. Simplified case transfer procedures between counties need to be developed to ease the transfer of cases between counties

Integration of Custody and Visitation Issues

At present, there is a statutory prohibition against the joinder of any actions or issues in support actions filed by the district attorney.[60] If parents want to resolve custody or visitation issues, a separate court action with a separate file number must be filed. This results in the court having to maintain multiple files on the same two parents and their mutual children

The prohibition against joinder of actions is a source of frustration for parents. Parents who are ordered by the court to pay support are told that they have to file and serve a separate action when they request an order for custody and visitation or for protective orders

Welfare and Institutions Code Section 11350.1 should be amended to permit parents to litigate and resolve custody and visitation issues in the district attorney action after an order for support has been entered. District attorneys would not be involved in litigating the custody and

visitation issues. Parents would have to obtain counsel or represent themselves with regard to these issues. Child support commissioners would have the authority to order parents to attend mediation, and to accept stipulations. However, any contested custody or visitation issues should be referred to another family law department in the superior court.

Custodial Parent's Participation in District Attorney Cases

Welfare and Institutions Code Section 11350.1 specifies that the caretaker parent shall not be a necessary party to an action for paternity and/or support filed by the district attorney. The caretaker parent may be subpoenaed as a witness.

Welfare and Institutions Code Section 11478.2 requires that the district attorney provide the caretaker parent notice when a complaint for paternity and/or support is filed. The notice must state that the district attorney may enter into a stipulation to resolve the complaint. The district attorney is further required to provide a statutory notice of the initial date and time and purpose of every hearing in a civil action for paternity or support. The required notice informs the caretaker parent that they have a right to attend the hearing and to be heard with the permission of the court

If the district attorney intervenes in a family law action in which the caretaker parent is a party and the caretaker parent is not a recipient of AFDC, the caretaker parent must execute any stipulation which establishes or modifies support.

A number of task force members proposed that all caretaker parents, regardless of whether they receive AFDC, should have the right to fully participate in the district attorney's action. Some members assert that all caretaker parents should be parties, while other members prefer that the caretaker parent be given the option to participate.

There are a number of complex issues involved with making the caretaker parent a party, especially in cases where the child is receiving AFDC and their rights to support have been assigned to the county by operation of law. Without working through all of the specific procedural details, the task force is in agreement on the following general principles:

1. The custodial parent should be joined as a party to the district attorney action at the request of either parent. This is essential if the district attorney action will be used as a vehicle to resolve custody, visitation or protective order issues as recommended above;

2. The district attorney should not be involved in any issue other than the support issues Both parents must either represent themselves or obtain legal counsel for those issues.

3. Joinder of the custodial party must be accomplished procedurally in a manner which does not interfere with the district attorney's ability to establish support orders quickly and efficiently.

4. The district attorney must be notified of any proceedings that affect the support order.

Task force members have agreed to continue their work on resolving the procedural details necessary to implement these principles as part of the legislative process.

V. RECOMMENDATIONS CONCERNING PRIVATE CASES

A. Forms and Procedures for Establishing, Modifying, and Enforcing Child Support Should be Simplified and Streamlined for Private Cases as Well as District Attorney Cases

The proposed expedited process is for district attorney child support cases and is designed to meet federal expedited process requirements for processing those cases. Most of the recommendations for streamlining procedures apply only to district attorney cases.

The task force recognizes that many child support orders are established in private family law actions without district attorney involvement although the parties are eligible for district attorney services A growing number of parents are representing themselves in a family law process that has become too complex for many of them. Some of the recommendations for simplifying and streamlining procedures can be adapted for use in private family law actions.

The Judicial Council has been engaged in a process of simplifying family law forms for private cases during the past few years. The council is presently circulating a draft simplified income and expense declaration for use in appropriate support cases. Simplification of the forms and procedures is an important step towards making the process more accessible to parents who are not represented by counsel and the Judicial Council should continue in its efforts.

The recommendations concerning defaults, modification of support orders, and the provision of income and expense information should be adapted for use in private cases.

B. A Child Support Information and Assistance Office Should be Established in the Courts of Each County to Provide Information and Assistance to Parents Involved in Both District Attorney and Private Child Support Cases.

As discussed above, the courts have seen a tremendous increase in the number of litigants who are representing themselves in private family law actions. For parents with cases in the IV-D system, the district attorney by statute does not represent either parent.[61] The vast majority of parents involved in the IV-D system are not represented by counsel and affordable resources for advice and consultation regarding their cases outside the district attorney's office are not readily accessible.

It is apparent that parents who do not have attorneys often become frustrated with complex and difficult legal procedures. They need help in presenting their cases to the court. Many have bad experiences in court. For many people, family law is their only contact with the courts If their only experience with the court system is negative, they lose faith in the courts and in government institutions in general.

Lack of respect in the system results in a greater likelihood that parents will not voluntarily comply with court orders. The costs of noncompliance with child support orders are significant Most important are the effects on children, many of whom must do without basic necessities due to the lack of financial support. Not insignificant are the costs to taxpayers who pay for public assistance and the child support enforcement program.

It is important that the courts become more responsive to the needs of parents and children who are not represented by lawyers. If parents respect the process and feel that they are treated fairly, there is a greater likelihood of voluntary compliance with court orders. Greater voluntary compliance with court orders not only benefits children, it also benefits the taxpayers by reducing the costs of public assistance and child support enforcement incurred by both the district attorney and the courts.

While the adoption of simplified procedures should assist many parents in navigating through the system, simplified procedures alone will not be enough to assist many parents who face barriers to access due to a lack of education, illiteracy, the inability to speak English, or simply due to a lack of understanding and familiarity with legal procedures.

Child Support Information and Assistance Centers should be established in each county to provide education, information, assistance and referrals for parents with child support cases Although the establishment of assistance centers would require an investment of resources, the investment should pay for itself if parent contact with the system becomes more positive and greater voluntary compliance with court orders is the result.

Assistance for parents will not only address much of the frustration expressed by parents and encourage greater voluntary compliance with court orders, but it will also provide immediate benefits for the courts. A family law calendar dominated by unrepresented parents takes longer to get through as judges struggle with unprepared parents who do not know what to expect from the process It is expensive to have judges provide assistance and guidance to parents in the courtroom. It would be far more cost effective to have an attorney and other staff provide assistance to prepare parents prior to the hearing If parents are prepared, cases will take less time to resolve in court resulting in a greater number of cases being processed during each calendar.

The recommendation for child support information and assistance centers is based upon the experiences of the two pilot projects in San Mateo and Santa Clara counties Reports from these counties that were submitted to the legislature indicate that the programs are cost effective for the courts because assistance provided at the front end makes the processing of cases through the clerk's office and the courtroom faster and more efficient. In addition, comments from the pro per litigants have been overwhelmingly favorable. Both counties have recommended to the legislature that the pilot programs be expanded statewide. The task force supports this recommendation.

A major issue to be addressed in expanding the pilot projects to all counties is funding While federal funding would not be available for issues other than child support, many, if not all of the services provided by the Child Support Information and Assistance Centers may be eligible for federal IV-D funding. The extent of federal funding that may be available needs to be explored.

Services provided by the Child Support Information and Assistance Centers should include.

Education and Outreach

Educational materials should be developed about the child support process and the child support enforcement program for distribution to all courts Educational materials should include written materials, educational videotapes, interactive computer software, and curriculum for clinics or group presentations.

The Child Support Information and Assistance Center would coordinate educational activities Upon initial entry into the system parents should be provided with an information booklet and referred to a videotape presentation on the child support process. Ideally, staff would also be available to answer questions from parents about child support.

The information booklet and the videotape presentation should include information about parent's rights and responsibilities in relation to their children, the role of the courts and the IV-D program in resolving child support matters, the procedures for setting, modifying, and enforcing child support orders, how the courts determine the amount of the award, and the documentation of income and assets that parents need to bring to the court hearing

Interactive computer software should be developed for distribution to the courts Informational kiosks should be made available where parents can obtain forms and information concerning service of process and filing Parents should also be able to input financial information,

time sharing arrangements, and other required information, and obtain a printout of the amount of support based upon guidelines.

The Child Support Information and Assistance Center should also serve as an information and referral center where parents can obtain information about forms they will need, how and where to file the forms, referrals to IV-D services, Family Court Services and other outside agencies that provide services to families and children.

Individual Assistance for Parents

In addition to outreach and education, assistance should be provided in completing the necessary forms for parents to present their case. Assistance could be provided either in individual or group settings, or both.

Individual assistance could be provided by volunteers or paid staff who are supervised by an attorney as is presently done in the Santa Clara County pilot project. Individual parents who need help in completing forms could meet with trained staff who would instruct parents on completing the forms and on the procedures for filing and serving the completed forms

Instruction on completing forms could also be accomplished in a group setting Curriculum for classes and clinics should be developed and made available to the courts The Child Support Information and Assistance Center could periodically schedule clinics on how to establish, modify or enforce court orders. Curriculum should be modeled after the curriculum that has been developed by successful legal aid programs and voluntary attorney programs.

Alternative Dispute Resolution

The Report on the Commission of the Future of California Courts recommends that alternative dispute resolution and mediation be expanded to all appropriate family law issues including financial issues.[62] In order to address parental criticism that the current process intensifies rather then calms tensions between parents, the task force endorses the idea that alternative dispute resolution should be expanded to child support issues.

Alternative dispute resolution services would require the services of a neutral person who would meet with both parents. They would gather financial and custody information, calculate guideline support, answer questions, assist parents in preparing stipulations where there is agreement, and prepare a report for the court which sets forth income information, timesharing arrangements, and guideline calculations where there is no agreement.

This service will meet several needs. For the parents, a less adversarial forum will be available to resolve support establishment and modification issues. Actual court time for contested hearings should be reduced because a number of cases will settle ~~before hearing~~ Those cases that do not settle will take less time because issues would be narrowed and the parties would be prepared for court More efficient processing of paper work would also result.

There will also be benefits for the IV-D child support enforcement program. The goal of early establishment of child support orders would be more likely to be achieved in private cases Private cases in which the children are recipients of AFDC, could be identified and referred to the district attorney so that duplication of efforts at establishing court orders can be avoided. The likelihood that the correct amount of support is ordered in pro per cases will be increased, reducing the need to modify the court order once the case is opened in the district attorney's office for enforcement.

Implementation of the Child Support Information and Assistance Centers

If the legislature authorizes the expansion of the pilot projects to all counties, the recommendations concerning the Child Support Information and Assistance Centers should be incorporated and implemented as part of the Family Law Facilitator program. Federal IV-D funding should be sought for the child support functions to help offset the state and county costs associated with the Family Law Facilitator program. If the pilot projects are not expanded to all counties, attempts to secure federal IV-D funding for the Child Support Information and Assistance Centers should be made. If federal funding is secured, Child Support Information and Assistance Centers should be implemented in all counties and the counties should be encouraged to supplement the program with services for other family law issues.

The courts will experience some costs savings by going to a commissioner system for IV-D child support cases For those counties that don't already have IV-D commissioners, state and local trial court funding now used for judges in IV-D cases will be supplanted with federal IV-D funding. State and local trial court funding previously used for judges could be used to pay the nonfederal share of costs for the Child Support Information and ~~Assistance~~ Centers

If federal funding is not forthcoming for the full range of services provided by the Child Support Information and Assistance Center as outlined above, the task force recommends that there be a phased in implementation. The Child Support Information and Assistance Center would be mandated for each county and the educational and assistance components as outlined above would be required. The educational and assistance components would require a relatively small commitment of staffing and resources.

Counties would be encouraged, but not mandated, to also implement alternative dispute resolution as outlined above. To determine the most cost effective ways to implement individual alternative dispute resolution services, it is recommended that the two pilot counties continue to receive funding and that additional pilot counties be added. The pilot counties should be encouraged

to experiment with different approaches to providing alternative dispute resolution utilizing paid staff and volunteers from the private bar, law schools, and other community organizations. After a designated period the pilot counties would report back to the Legislature on whether the program produced cost savings for the courts in terms of reducing the time that judges, commissioners, and the clerk's office had to spend processing cases.

If the pilot counties can show that alternative dispute resolution services pay for themselves in cost savings to the courts, alternative dispute resolution services should be expanded statewide.

END NOTES

1. 45 C.F.R. 303.3(b)(3)

2. 45 C.F.R. 303.4(d) and 303.5(a)

3. 45 C.F.R. 303.101(b)

4. California Department of Social Services, Child Support Management Information System Report (CSMIS), 1993-94

5. Ibid; State Department of Social Services Child Support Characteristic Survey, 1994

6. California Department of Health Services Birth Records, 1966, 1993

7. California Department of Social Services, Public Welfare in California, 1993-94

8. In 93-94 California distributed $2.3 billion in food stamps and spent $15.1 billion on Medi-Cal benefits. Although many AFDC families also receive these benefits, these programs are not limited to those eligible for AFDC. Many low income adults receive food stamps and Medi-Cal (Source. California Department of Social Services and California Department of Health Services)

9. Welfare and Institutions Code section 11477

10. Welfare and Institutions Code section 11350

11. California Department of Social Services Child Support Characteristics Survey, 1994

12. Ibid

13. U.S. Department of Health and Human Services; Administration for Children and Families, Office of Child Support Enforcement, Sixteenth Annual Report to Congress, 1991

14. Family Code section 4053, 42 U.S.C. 651

15. P.L. 93-647

16. Id, supra note 13

17. 42 U.S.C. 654

END NOTES

1. 45 C.F.R. 303.3(b)(3)

2. 45 C.F.R. 303.4(d) and 303.5(a)

3. 45 C.F.R. 303.101(b)

4. California Department of Social Services, Child Support Management Information System Report (CSMIS), 1993-94

5. Ibid; State Department of Social Services Child Support Characteristic Survey, 1994

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14. Family Code section 4053, 42 U.S.C. 651

15. P.L. 93-647

16. Id, supra note 13

17. 42 U.S.C. 654

18. Welfare and Institutions Code section 11475.1

19. 42 U.S.C. 667

20. 42 U.S.C. 666(a)(i)

21. 42 U.S.C. 666(a)(9)(C)

22. 42 U.S.C. 666(a)(2), 45 C.F.R. 303.101

23. P.L. 98-378

24. 42 U.S.C. 666(a)(2)

25. 45 C.F.R. 303.101

26. 45 C.F.R. 304.21(b)(2)

27. 42 U.S.C. 655

28. 42 U.S.C. 658

29. CSMIS, supra note 4

30. California Department of Social Services, CS 800 Reports, July 93-June 94

31. 45 C.F.R. 304.21

32. 45 C.F.R. 305.50

33. 45 C.F.R. 305.100

34. California Department of Social Services, Public Welfare in California, 93-94

35. 45 C.F.R. 301.10

36. Code of Civil Procedure section 1985 et seq.

37. Revenue and Taxation Code section 19271

38. Government Code section 70140 et seq.

39. 45 C.F.R. 304.21

40. Family Code sections 4827 and 4852

41. CSMIS, supra note 4

42. CSMIS, supra note 4

43. CSMIS, supra note 4

44. 45 C.F.R. 307.5

45. California Department of Social Services, CS 850 Reports for San Francisco County Family Support Bureau, 1989-90, 1990-91

46. P.L. 100-485; see, 45 C.F.R. 303.8

47. California Department of Social Services, FSD Letter 94-02, January 14, 1992

48. Welfare and Institutions Code section 11478.2

49. Family Code section 20000 et seq.

50. Welfare and Institutions Code section 11350.1

51. Welfare and Institutions Code section 16575

52. Welfare and Institutions Code section 11350.1

53. Government Code section 70140 et seq.

54. Family Code section 4033; Welfare and Institutions Code section 11479

55. 45 C.F.R. 304.21

56. Family Code section 4800 et seq.

57. The U.S Commission on Interstate Child Support's Report to Congress, 1993

58. Welfare and Institutions Code section 11475.1(m)

59. Welfare and Institutions Code section 11475.1(c)

60. Welfare and Institutions Code section 11350.1

61. Welfare and Institutions Code section 11478.2

62. Justice in the Balance - 2020, Report of the Commission on the Future of the California Courts

APPENDIX

Dissenting Reports From Task Force Members

Child Support Court Task Force
Partial Dissent

Children Now and Legal Services of Northern California

Introduction

The Child Support Court Task Force Report contains many excellent recommendations which, if adopted, will expedite the handling of child support cases for the benefit of all parties involved, particularly children. However, the proposed structure of the case handling system is cumbersome and cannot assure there will be adequate resources and expertise in all counties to handle the cases. Therefore, we respectfully dissent in part from the Task Force's recommendations

After considering all the factors, we are convinced that the best way to adjudicate child support matters handled by the state's child support agency is through an administrative forum modeled after Oregon's very successful system. However, in an effort to reach a unanimous recommendation of the Task Force, we agreed, along with a majority of the Task Force members, that a statewide commissioner system would be an acceptable compromise. Unfortunately, due to objections from a small but powerful special interest group, the Task Force chose to recommend a county-based commissioner system. We therefore must dissent from the structural recommendations of the Task Force for the reasons stated below.

I. An Administrative Forum for Child Support Cases is the Best System

As the majority Task Force Report acknowledges, an administrative forum for handling child support cases is faster and less expensive than a court process. First, processing cases expeditiously is crucial in order for the program to get needed support to children. Relying on scarce judicial resources to review only the few appeals from an administrative forum is much less time consuming

than requiring judicial officers and facilities to determine every support order, hear every request for modification and enter enforcement orders. This is especially true given that the IV-D caseload is likely to double in the coming five years just as it did in the past five years. Increasing child support cases will be competing with "three-strikes" criminal cases and other demands, while available resources will be shrinking. Second, an affordable system is critical for California. Given the chronic budget shortfalls at both the state and local levels, it is imperative that the most cost-effective system is used: An administrative system is far more cost-effective than the judicial process. For these two very important reasons alone, an administrative process is superior to the recommended judicial system.

From a legal standpoint, guaranteeing due process is an equally important reason to select the administrative system. The majority report acknowledges that due process protection can be guaranteed by an administrative system, which provides the required notice and opportunity to be heard. Moreover, under an administrative model parents would always have the right to appeal directly to court, as is constitutionally required. The number of cases, however, actually appealed to court is quite small. The statistics speak for themselves: In Oregon and Washington, states which have adopted the administrative model, appeals are ~~minimal~~. In Oregon, less than five percent of cases are appealed to court, while in Washington appeals are below one percent.

An administrative system can far outperform the court process in providing due process by assuring accessibility for all participants. The vast majority of parents in the state's child support system are not represented by counsel. While the court process necessarily provides the due process requirements of notice and a hearing, for many unrepresented parents these constitutionally guaranteed protections are illusory. Unrepresented parents working their way through the judicial maze often do not know what papers need to be filed, how to complete and serve the papers, what evidence can or should be presented at their hearings or how to follow-up with orders. Their understandable confusion further delays court clerks processing papers and slows court proceedings

A simpler, more relaxed forum, which would allow parents to be assisted by knowledgeable legal advocates, paralegals or even friends and relatives, would allow more meaningfully participation by unrepresented parents. In fact, many other state administrative hearings have demonstrated that this type of informal assistance makes all the difference for unrepresented people. An administrative forum can be user-friendly, does not impose strict rules of evidence that only trained lawyers can understand, allows for greater discussion between the adjudicator and the parties, and thus results in more informed decisions. An added benefit is that administrative forums can significantly reduce hostilities between the participants.

In attempt to assist the vast numbers of unrepresented parents, the Task Force recommends creating a "Child Support Information and Assistance Office" in each county superior court. The Child Support Information and Assistance Office would assist parents with their child support cases by providing education, information, assistance and referrals. While this is an excellent suggestion for ensuring equal access to justice for all participants, it will be extremely expensive -- perhaps prohibitively so -- to implement fully.

An even better method would be to simplify ~~the system~~ as much as possible so that parents can more fully assist themselves, with minimal outside assistance. Such measures would not only improve access to the process, they would also reduce the costs of running it. Superior court is designed to deal with sophisticated issues and highly trained attorneys An administrative system has been designed for lay individuals, not for trained attorneys. It operates from the presumption that parties will not be represented, while the judicial system assumes the opposite. In an administrative system, the Child Support Information and Assistance Office would still necessary, but would only be needed in a much more limited capacity.

The majority raises concerns that an administrative process could not guarantee the independence of the decisionmaker. History does not support this view. Administrative law judges in California today hear public benefits, disability and unemployment cases, among others. These judges are seldom charged with conflict of interest and carry out their roles as independent

decisionmakers without challenge from the participants. Moreover, any concern over lack of independence can be eliminated by using the administrative law judges from Office of Administrative Hearings. This would assure independent decisionmaking.

In addition, administrative law judges would be far better equipped to hear and decide child support cases. Unlike county-based court commissioners, these judges would specialize in child support cases exclusively. These administrative law judges thus would develop an expertise that could not be developed by county-based commissioners who might hear child support matters only a few hours a month and spend the rest of their time hearing other matters, such as criminal, traffic and small claims cases. These commissioner also would be required to perform the onerous task of time-studying their work to assure that federal funding is available for them.

County commissioners also would report to 58 separate presiding judges, making uniformity of practice, procedure and results impossible to achieve. Moreover there would be no direct accountability and no agency with direct authority over the entire system. Identifying problems across California and finding solutions would be all but impossible. Administrative law judges, who would report to the same agency, would provide maximum uniformity and could be help accountable

The Task Force raises the concern that an administrative system would separate certain child support cases from the rest of family law. While this is certainly undesirable, it has always been the practice in California. Under both the current system and the Task Force's recommendations, IV-D child support cases are and will continue to be separated from the rest of family law. Today, these matters almost always are heard before a separate judge or commissioner in a calendar reserved exclusively for IV-D cases. Other issues, such as custody, visitation and domestic violence routinely are referred to other judges in another courts. Likewise, the system proposed by the majority of the Task Force will require that all contested issues unrelated to the IV-D case must be handled in another court and by a different judge.

To reduce problems associated with this separation, both a commissioner system and an administrative system can address the separation in the same way: Co-locating courts and hearing rooms, coordinating case numbers and hearings times, and directly referring cases to the appropriate next forum. This coordination can be accomplished either in a commissioner system or in an administrative process, requiring very similar structuring. Co-locating also would help minimize any initial start-up costs of the administrative system.

Finally, the Task Force suggests that a judicial process and an administrative system can be made to look and feel almost identical by relaxing the rules and procedures of the judicial system However, if the goal is to make the process as simple, fair, user-friendly and effective as the administrative process, it makes more sense to begin with an administrative model rather than reinvent the judicial process. Rather than strive to make something else look like the genuine article, it makes more sense to begin with the genuine article: An administrative system.

II. If Child Support Cases are Left in the Courts, a Statewide System is Essential

If, despite all the compelling reasons to move IV-D child support cases to an administrative system, they are left in the courts, a statewide commissioner system is essential. The majority of Task Force members recommends a county-level commissioner system, rather than a state-level system However, only a state-based system can guarantee uniformity of rules, procedures and decisions to the maximum extent possible This is because in a state-based system all commissioners report to same master: The Judicial Council. In contrast, in a county-based system each county commissioner reports to the local superior court presiding judge. No one agency is directly accountable for the entire system.

For any child support adjudication system to work effectively and within federally-mandated timeframes, there must be a guarantee that decisionmakers will be available to hear all cases in a timely fashion. A coordination of county systems depends on the cooperation of 58 separate county courts to ensure the availability of sufficient personnel, space and time across the state. Without

centralized oversight and control, many county courts will be unable to keep up with the increased caseload growth. A state-based system will provide one oversight agency to ensure that child support needs are met across the state and that there is sufficient funding to pay for commissioners, their staff and courtrooms across California. Moreover, it will allow for the greatest flexibility in rotating commissioners to handle cases statewide.

Furthermore, a state-based system will assure that commissioners have the expertise needed to accurately and efficiently adjudicate child support cases by requiring them to handle these cases full time. Today, only a few counties have enough cases to require a full-time child support commissioner. Consequently, under the county-based system commissioners may hear only a few child support cases a month, spending the rest of their time on other matters such as criminal violations, traffic infractions and small claims. While counties might share commissioners, this will be extremely difficult to coordinate, requiring individual counties to agree to pool their resources and coordinate their hearing dates. This likely will lead to untimely adjudications and a backlog of cases. Additionally, part-time child support commissioners will have to time-study their hours, a time-consuming process, to ensure the availability of federal funds. A state-based system will eliminate these problems entirely.

Conclusion

The Task Force's goal was to make recommendation for a system to handle the state's IV-D cases for the next ten years. The structure of the system proposed by the majority will not do this Instead, it will provide a band-aid fix to a system that today, based on data collected by the Department of Social Services, cannot handle all the cases required of it even without caseload growth. While it may be easier to swallow small changes to the existing system, these changes will not produce the needed results for the parents, children and taxpayers of California.

Association for Children for Enforcement of Support, Inc. (ACES) Dissenting Statement to the Governor's Child Support Court Task Force Report

ACES hoped that the Child Support Court Task Force would take steps to implement real child support court reform. Unfortunately, the recommendations of the court task force are only a minimal attempt to address this serious problem. The current court system is overloaded and cannot keep pace with the changing family structure in California. Real reform is needed now.

An administrative process is needed to expeditiously process the over **one million** child support cases in need of an order in California. **1.9 million** children are currently waiting for the court system to process their cases With an administrative process, children would receive their support because cases would be resolved expeditiously. It also would free the court dockets for other matters and eliminate the need for repeat court appearances.

Administrative process tends to be less formal than the judicial and quasi-judicial process It allows a judicial appeal procedure should either of the parties dispute the administrative decision Most importantly, the administrative process is more cost effective than a quasi-judicial system because salaries of administrative law officers and caseworkers are lower than the salaries of quasi-judicial law decision makers.

ACES opposes the final report of the court task force for the following reasons:

1. Cost

In a time when Californians are calling for less government bureaucracy and waste, the court task force report is recommending setting up a new quasi-judicial system which is more expensive

than administrative process. It fails to address that state and local governments would be required to cover the 34% of the costs in a time of severe budget restraints. A quasi-judicial system could receive a federal reimbursement at the rate of 66%. The report fails to realistically estimate the costs of each commissioner and support staff.

2. Court commissioners are county employees rather than state employees

The quasi-judicial system is being set up as a county based system. This leads to a lack of uniform procedures. This will cause parents to navigate through a system which is frustrating because of fragmentation. ACES is concerned about the built-in lack of accountability of the court commissioners.

3. Child support cases a priority, but report allows other use of commissioner's time

If a county determines child support cases are a low priority, they can use quasi-judicial commissioners for other purposes. Court commissioners must be used strictly for child support cases or the system will violate federal law which mandates federal money be used only for child support cases. The court task force report also recommends that there be a limit on the number of commissioners per county. Some counties would have to share a commissioner because of their small caseload. This leads to lack of uniform staffing standards

4. The court task force focus on non child support cases

In fiscal year 1993-1994, California Department of Social Services received from the federal government $269 million dollars in funds to establish and enforce child support orders. The funds come to the state for child support cases handled by the District Attorneys. The court task force is recommending an assistance center for private cases staffed with an attorney to help parents going

into court pro per to fill out forms, provide educational materials and use of interactive software. Child Support Division services are required to be provided by the District Attorneys. Another "system" for pro per cases is a duplication of efforts and a waste of tax dollars. Rather than funding a separate office, the funding should go to the District Attorneys for improved enforcement.

Court Task Force Legislation
AB 1058

SECTION 1. The Legislature finds and declares the following:

1) Child and spousal support are serious legal obligations.

2) The current system for obtaining, modifying and enforcing child and spousal support orders is inadequate to meet the future needs of California's children due to burgeoning caseloads within district attorneys' offices and the growing number of parents who are representing themselves in family law actions.

3) The success of California's child support enforcement program depends upon its ability to establish and enforce child support orders quickly and efficiently.

4) There is a compelling state interest in creating an expedited process in the courts for establishing and enforcing child support orders in district attorney cases that is cost effective and accessible to parents.

5) There is a compelling state interest in having a speedy conflict-reducing system for resolving all issues concerning children including support, health insurance, custody and visitation in private family law cases that is both cost effective and accessible to families with middle and low incomes.

6) As part of the Governor's "Vision for Excellence" plan to improve child support enforcement, a task force was appointed to review the current court process for establishing and enforcing child support orders. The task force was asked to study the various alternative models for processing child support cases and to make recommendations on how services could be expanded either in the courts or in an administrative agency in order to meet the expected increased demands presented by child support cases. Individuals and organizations that were invited to participate on the task force include: Governor's Office, Department of Justice, California Family Support Council, California Judicial Council, California State Bar - Family Law Section, Senator Gary Hart, Senator Cathie Wright, Legislative Analyst's Office, Legal Services of Northern California, Coalition of Parent Support, California Judges Association, Department of Social Services, California District Attorneys Association, Federal Office of Child Support Enforcement Region IX, County Clerks Association, Senate Judiciary Committee, Assembly Judiciary Committee, Assemblyman Dean Andal, Children Now, and Harriet Buhai Center for Family Law.

7) The goals of the task force were to create a process that will be able to handle the expected influx of support cases in a fast, efficient, cost effective manner within federal timeframes and with due process safeguards. The process must also be simplified and more responsive to the needs of children and parents.

8) It is the intent of the legislature to: 1) establish a system of commissioners to hear district attorney child support cases; 2) adopt uniform and simplified procedures for all child support cases; and 3) create an Office of the Family Law Facilitator in the courts which would provide education, information and assistance to parents with child support issues.

SEC.2. Section 260 is added to the Code of Civil Procedure, to read:

260. (a) Commencing January 1, 1997, all superior courts shall provide commissioners to hear child support cases filed by the district attorney. All actions filed by the district attorney for an order to establish, modify or enforce child and/or spousal support, including actions to establish paternity, shall be referred for hearing to a child support commissioner unless a child support commissioner is not available due to exceptional circumstances. Exceptional circumstances shall be limited to unforseen circumstances such as the illness or disability of the child support commissioner.

(b) The commissioner shall act as a temporary judge with the consent of all appearing parties when otherwise qualified to so act. While acting as a temporary judge the commissioner shall receive no compensation therefor other than compensation as a commissioner.

(c) If any party refuses to stipulate that the commissioner may act as a temporary judge, the commissioner will hear the matter and make findings of fact and a recommended order. Within ten court days a judge shall ratify the recommended order unless either party objects to the recommended order, or where a recommended order is clearly in error, in which case the judge shall issue a temporary order and schedule a hearing de novo within 10 court days. Any party may waive his or her right to the review hearing at any time.

(d) The temporary judge or commissioner shall, where appropriate, do any of the following:

(1) Take testimony.

(2) Establish a record, evaluate evidence, and make recommendations or decisions.

(3) Enter judgments or orders based upon voluntary acknowledgements of support liability and parentage and stipulated agreements respecting the amount of child support to be paid.

(4) Enter default orders where authorized pursuant to Section 639.5.

(5) In actions in which paternity is at issue, order the mother, child, and alleged father to submit to blood tests pursuant to Section 7551 of the Family Code.

(e) Pursuant to Welfare and Institutions Code 11350.1, the commissioner may, upon application of either parent, join issues concerning custody, visitation, or protective orders in the action filed by the district attorney. After joinder, the commissioner shall:

(1) Refer the parents for mediation of disputed custody and/or visitation issues pursuant to Section 3170 of the Family Code.

(2) Accept stipulated agreements concerning custody, visitation or protective orders and enter orders pursuant to the agreements.

(3) Refer contested issues of custody, visitation or protective orders to a judge or commissioner for hearing.

(f) The district attorney shall be given notice of any proceeding under this section in which child support is at issue. Any order for child support that is entered without the district attorney having received proper notice shall be voidable.

(g) Nothing in this section prohibits persons other than the district attorney from bringing an action under this section, if permitted by that particular county. However, actions brought by the district attorney shall have priority over actions brought by other persons.

SEC.3. Section 261 is added to the Code of Civil Procedure, to read:

261. (a) One or more child support commissioners shall be appointed by the superior court to perform the duties specified in Section 260.

(b) The Judicial Council shall coordinate the implementation of child support commissioners in every county. The Judicial Council shall:

(1) Establish minimum qualifications for child support commissioners.

(2) Establish minimum educational and training requirements for child support commissioners and other court personnel that are assigned to district attorney child support cases. Training programs shall include both federal and state laws concerning child support.

(3) Establish caseload and staffing standards for child support commissioners.

(4) Adopt uniform rules of court and forms for use in district attorney cases.

(5) Offer technical assistance to counties regarding issues relating to implementation of child support commissioners including assistance related to funding, staffing, and the sharing of resources between counties.

(6) Adopt uniform rules which define the exceptional circumstances in which judges may hear district attorney child support matters as provided in Section 260(a).

(c) Child support commissioner positions shall not be subject to the limitation on other commissioner positions imposed upon the counties in Article 13 (commencing with Section 70140) of Chapter 5 of Title 8 of the Government Code. The number of child support commissioner positions allotted to each county shall be determined by the Judicial Council in accordance with caseload standards developed pursuant to subsection (b)(3), subject to appropriations in the annual budget act.

SEC.4. Section 640.1 of the Code of Civil Procedure is amended to read:

640.1. (a) To the extent required by federal law, all applications filed by the district attorney for an order to establish or enforce child support, including actions to establish paternity, shall be referred for hearing to a commissioner or a referee./ ~~Unless the district attorney of that particular county has applied for/ and received/ an exemption from this requirement/ from the State Department of Social Services/~~

~~In counties which operate an expedited process/ commissioners and referees/ shall order a temporary support obligation under the expedited process prior to referring those cases to the full judicial system/~~

All ~~applications~~ actions to be heard by a commissioner or referee shall be made returnable on an order to show cause within 30 days after service thereof or heard on a noticed motion within 30 days after service of notice. The matter shall not be heard earlier than 10 days after service of the order to show cause or notice of motion and supporting papers. The hearing shall not be continued to a date more than 10 days after the date originally set for hearing.

Nothing in this section prohibits persons other than the district attorney from bringing an action under this section, if permitted by that particular county. However, actions brought by the district attorney shall have ~~priority~~ over actions brought by other persons.

(b) The commissioner or referee shall act as a temporary judge with the consent of all appearing parties when otherwise qualified to so act. While acting as a temporary judge, the commissioner or referee shall receive no compensation therefor other than compensation as a commissioner or referee.

(c) If any party refuses to stipulate that the commissioner or referee may act as a temporary judge, the commissioner or referee will hear the matter and make findings of fact and a recommended order. Within ten court days, a judge shall ratify the recommended order unless either party objects to the recommended order, or where a recommended order is clearly in error, in which case the judge shall issue a temporary order and schedule a hearing de novo within ten court days. Any party may waive his or her right to review hearing at any time.

~~(b)~~(d) ~~At the hearing/~~ The commissioner or referee shall, where appropriate, do all of the following:

(1) Take testimony.

(2) Establish a record, evaluate evidence, and make recommendations or decisions.

(3) Accept voluntary acknowledgments of support liability and parentage and stipulated agreements respecting the amount of child support to be paid.

(4) Enter default orders where authorized pursuant to Section 639.5.

(5) In actions in which paternity is at issue, order the mother, child, and alleged father to submit to blood tests pursuant to Section 7551 of the Family Code.

(c) Except where a default or stipulated order has been entered by a commissioner or a referee, a recommended order shall befiled, by the commissioner or referee within seven court days after the hearing concludes. The clerk shall mail an endorsed copyfirst class, postage prepaid, to all parties by the close of thebusiness, day on which the order is filed, together with a notice of a review hearing before a judge of the superior court, stating the date any party may appear and object to the recommended order. As an alternative to mailing the copy of the order and the notice to the parties, the clerk may personally serve the copy of the order and the notice at the time of the hearing. The clerk shall also provide a written notice of that hearing to all persons appearing at the hearing before the commissioner or referee. The hearing in superior court shall takeplace no earlier than 15 days nor later than 20 days following the mailing of the recommended order to all parties. Thehearing, before the superior court shall not be continued to a datemore than 10 days after the date originally set for hearing. Section 1013 does not apply to these time limits.

(d) Except as provided in subdivision (e), on the appointed hearing date, the superior court shall independently review the record of the original hearing, any supplemental papers filed, hearany oral objections and responses thereto, and either adopt therecommended order or modify it on such terms as the interests ofjustice require.

(e) Notwithstanding subdivision (d), on its own motion, the superior court may rehear the matter. Any rehearing determined necessary by the court shall be heard within 10 days of the date ofthe hearing required by subdivision (d). At the conclusion of thehearing, the superior court shall either adopt the recommended order or modify it on such terms as the interests of justice require.

(f) If no objection to the recommended order is presented to thecourt, on the date specified in subdivision (c), the court shall adopt the recommended order, unless it modifies it on its ownmotion, consistent with the interests of justice, as described in subdivision (e).

(e) This section shall be operative until December 31, 1996, and as of January 1, 1997, is repealed.

SEC.5. Division 14 (commencing with Section 10000) is added to the Family Code, to read:

DIVISION 14. FAMILY LAW FACILITATOR ACT

10000. This division shall be known as the Family Law Facilitator Act.

10001. Legislative findings and declarations

(a) The Legislature finds and declares the following:

(1) Child and spousal support are serious legal obligations. The entry of a child support order is frequently delayed while parents engage in protracted litigation concerning custody and visitation. The current system for obtaining child and spousal support orders is suffering because the family courts are unduly burdened with heavy case loads and personnel insufficient to meet the needs of increased demands on the courts.

(2) Reports to the Legislature regarding the Family Law Pilot Projects in the Superior Courts of the Counties of Santa Clara and San Mateo indicate that the pilot projects have provided a cost effective and efficient method for the courts to process family law cases that involve unrepresented litigants with issues concerning child support, spousal support, and health insurance.

(3) The reports to the Legislature further indicate that the pilot projects in both counties have been successful in making the process of obtaining court orders concerning child support, spousal support, and health insurance ~~more~~ accessible to unrepresented parties. Surveys conducted by both counties indicate a high degree of satisfaction with the services provided by the pilot projects.

(4) There is a compelling state interest in having a speedy, conflict-reducing system for resolving issues of support, health insurance, custody and visitation that is cost effective and accessible to families with middle or low incomes in every county superior court.

(b) Therefore, it is the intent of the Legislature to make the services provided in the Family Law Pilot Projects available to unrepresented parties in the superior courts of all California counties.

10002. Each superior court shall maintain an Office of the Family Law Facilitator. The Office of the Family Law Facilitator shall at a minimum be staffed by an attorney licensed to practice law in this state, with mediation or litigation experience, or both, in the field of family law. The Family Law Facilitator shall be appointed by the superior court.

10003. This division shall apply to all proceedings for temporary or permanent child support, spousal support, or health insurance in a proceeding for dissolution of marriage, nullity of marriage, legal separation of the parties, exclusive custody, or pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

10004. Services provided by the Family Law Facilitator shall include the following: providing educational materials to parents concerning the process of establishing, modifying and enforcing child and spousal support in the courts; distributing necessary court forms; providing assistance in completing forms; preparing support schedules based upon statutory guidelines; providing referrals to the district attorney, family court services, and outside community agencies and other resources where services for parents and children are provided.

10005. By local rule, the superior court may designate additional duties of the Family Law Facilitator, which may include, but are not limited to the following:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Preparing support schedules based on statutory guidelines accessed through existing up-to-date computer technology.

(3) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 10003.

(4) If the parties are unable to resolve issues with the assistance of the Family Law Facilitator, prior to or at the hearing, and at the request of the court, the Family Law Facilitator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed.

(5) Assisting the clerk in maintaining records.

(6) Preparing formal orders consistent with the court's announced order in cases where both parties are unrepresented.

(7) Serving as a special master to hearing proceedings and making findings to the court unless he or she has served as a mediator in that case.

(8) Assisting the court with research and any other responsibilities which will enable the court to be responsive to the litigants' needs.

(9) Developing programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to Family Court. These programs shall specifically include information concerning underutilized legislation, such as expedited temporary support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9), modification of support orders (Article 3 (commencing with Section 3680) of Chapter 6 of Part 1 of Division 9) and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children.

10006. The court shall adopt a protocol wherein all litigants, both unrepresented by counsel or represented by counsel, have ultimate access to a hearing before the court.

10007. The court shall provide the Family Law Facilitator at no cost to the parties.

10008. (a) Except as provided in subdivision (b), nothing in this chapter shall be construed to apply to a child for whom services are provided or required to be provided by a district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(b) In cases in which district attorney services are provided pursuant to Section 11475.1 of the Welfare and Institutions Code, either parent may utilize the services of the Family Law Facilitator that are specified in Section 10004. In order for a custodial parent who is receiving district attorney services pursuant to Section 11475.1 of the Welfare and Institutions Code to participate in the proceedings specified in Section 10005, the custodial parent must obtain written authorization from the district attorney. It is not the intent of the Legislature in enacting this section to limit the duties of district attorneys with respect to seeking child support payments or to in any way limit or supersede other provisions of this code respecting temporary child support.

10009. The Judicial Council shall adopt minimum standards for the Office of the Family Law Facilitator and any forms or rules of court that are necessary to implement this section.

10010. The Director of the Department of Social Services shall seek approval from the United States Department of Health and Human Services, Office of Child Support Enforcement to utilize funding under Title IV-D of the Social Security Act for the services provided pursuant to this division.

SEC.6. Section 70141 of the Government Code is amended to read:

70141. (a) To assist the court in disposing of its business connected with the administration of justice, the superior court of any city and county may appoint not exceeding 10 commissioners, and the superior court of every county, except a county with a population of 4,000,000 or over, may appoint one commissioner. Each person so appointed shall be designated as "court commissioner" of the county.

(b) In addition to the court commissioners authorized by subdivision (a) or any other provision of law, either the superior court or the municipal court, but not both, of any county or city and county may appoint one additional commissioner, at the same rate of compensation as the other commissioner or commissioners for that court, upon adoption of a resolution by the board of supervisors pursuant to subdivision (c).

(c) The county or city and county shall be bound by, and the resolution adopted by the board of supervisors shall specifically recognize, the following conditions:

(1) The county or city and county has sufficient funds for the support of the position and any staff who will provide direct support to the position, agrees to assume any and all additional costs that may result therefrom, and agrees that no state funds shall be made available, or shall be used, in support of this position or any staff who provide direct support to this position.

(2) The additional commissioner shall not be deemed a judicial position for purposes of calculating trial court funding pursuant to Section 77202.

(3) The salary for this position and for any staff who provide direct support to this position shall not be considered as part of court operations for purposes of Sections 77003 and 77204.

(4) The county or city and county agrees not to seek funding from the state for payment of the salary, benefits, or other compensation for such a commissioner or for any staff who provide direct support to such a commissioner.

(d) The court may provide that the additional commissioner may perform all duties authorized for a commissioner of that court in the county. In a county or city and county that has undertaken a consolidation of the trial courts, the additional commissioner shall be appointed by the superior, municipal, or justice courts pursuant to the consolidation agreement.

(e) In addition to the court commissioners authorized by subdivisions (a) and (b), the superior court of any county or city and county may appoint additional commissioners as authorized by Section 261 of the Code of Civil Procedure.

SEC.7. Section 11353 is added to the Welfare and Institutions Code to read:

11353. (a) Notwithstanding Section 585 of the Code of Civil Procedure, in any action filed by the district attorney pursuant to Section 11350, 11350.1 or 11475.1, a judgment shall be entered if the defendant fails to file an answer or otherwise appear in the action after service of process upon the defendant.

(b) The court shall grant the relief requested in the complaint, upon the filing of a request to enter default which contains a declaration under penalty of perjury that the district attorney has not obtained any additional relevant information since the filing of the complaint. If additional information has been obtained the declaration shall include the additional information and any revisions to the relief requested as a result of the additional information.

(c) The Judicial Council shall develop the forms and procedures necessary to implement this section.

SEC.8. Section 11354 is added to the Welfare and Institutions Code, to read:

11354. (a) In any action filed by the district attorney pursuant to Section 11350, 11350.1, or 11475.1, the court may, on any terms that may be just, relieve the defendant, from that part of the judgment or order concerning the amount of child support to be paid after the six month time limit of Section 473 of the Code of Civil Procedure has run, based on the grounds, and within the time limits specified in this section.

(b) This section shall apply only to judgments or orders for support that were based upon presumed income as specified in Section 11475.1 (c) and that were entered after the entry of the default of the defendant under Section 11353. This section shall apply only to the amount of support ordered and not that portion of the judgment or order concerning the determination of parentage.

(c) The grounds for a motion to set aside the amount of a child support order under this section shall be limited to the fact that the defendant's income was substantially different from the income that defendant was presumed to have. A substantial difference is defined as that amount of income that would result in an order for support that deviates from the order entered by default by twenty (20) percent or more.

(d) The burden of proving that the actual income of the defendant deviated substantially from the presumed income shall be on the defendant.

(e) A motion for relief under this section shall be filed within ninety (90) days of the first collection of money by the district attorney or the obligee. The ninety (90) day time period shall run from the date that the defendant receives notice of the collection. If the first collection is a voluntary payment, the ninety (90) day time period shall run from the date of payment.

(f) In all proceedings under this section, before granting relief, the court shall consider the amount of time that has passed since the entry of the order, the circumstances surrounding the defendant's default, the relative hardship on the child or children, the caretaker parent, and the defendant and other equitable factors that the court deems appropriate.

(g) If the court grants the relief requested, the court shall issue a new child support order using the appropriate child support guidelines currently in effect. The new order shall have the same commencment date as the order set aside.

SEC.9. Section 11475.1 (c) of the Welfare and Institutions Code is amended to read:

(c)(1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Judiciary Committee, the Assembly Judiciary Committee, and a legal services organization providing representation on child support matters, shall develop simplified complaint and answer forms for any action for support brought pursuant to this section or Section 11350.1.

(2) The simplified complaint form shall provide the defendant with notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of the Family Code ~~by stating the possible amount of an order in terms of a percentage of the defendant/s/ income for the number of children specified in the order// The Judicial Council shall determine the percentage estimates/ The complaint shall state that the estimated percentage is only an estimate and that the actual order will be based upon the defendant/s actual ability to pay and may be significantly higher or lower than the estimated percentage/~~ based upon the income of the defendant as known to the district attorney. If the defendant's income is unknown to the district attorney, the complaint shall inform the defendant that income shall be presumed in an amount that results in a court order equal to the minimum amount of support as provided in Section 11452 unless the defendant provides ~~information~~ concerning his or her income to the court.

(3)(A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall include a blank standard or simplified Declaration of Income and Expenses form and instructions on how to complete the Declaration of Income and Expenses. The answer form shall direct the defendant to file the completed Declaration of Income and Expenses with the answer, but shall state that the answer will be accepted by a court without the Declaration of Income and Expenses.

(C) The clerk of the court shall accept and file answers that are completed by hand provided they are legible.

(4)(A) The simplified complaint form prepared pursuant to this subdivision shall be used by the district attorney or the Attorney General in all cases brought under this section or Section 11350.1.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on a defendants shall not invalidate any judgment obtained. However failure to serve the answer form may be used as evidence in proceeding under Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the district attorney with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the district attorney's office or the superior court clerk.

SEC.10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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