

MANUAL OF FAMILY COURT PROCEDURES
An Introduction for Mental Health
Professionals and Social Service Agencies

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Staten Island Family Court Services
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CONTENTS

Page Number

Prefatory Note

i

Part I. Overview of the Family Court

Chapter 1. Orientation to Family Court Cases

1

Chapter 2. Introduction to Family Court
Terminology

7

Chapter 3. Jurisdiction of the Family Court

10

Chapter 4. Overview of Family Court
Procedures

13

Chapter 5. Overview of Services Requested
by the Family Court

24

Part II. Specific Procedures in Each Type of Case

Chapter 6. Delinquency (D.C.) Petitions

26

Chapter 7. Persons in Need of Supervision:
PINS Petitions

37

Chapter 8. Child Protective Proceedings:
Neglect and Abuse Petitions

45

Chapter 9. Family Offense Petitions

53

Chapter 10. Support, Custody and Visitation
Petitions

60

References

68

List of Flow Charts

	<u>Pages</u>
Figure 1. Flow Chart of Delinquency Cases.....	26A
Figure 2. Flow Chart of PINS Cases.....	37A
Figure 3. Flow Chart of Neglect and Abuse Cases.....	45A
Figure 4. Flow Chart of Family Offense Cases.....	53A
Figure 5. Flow Chart of Support, Custody and Visitation Cases.....	60A

Prefatory Note

As indicated by its subtitle, this Manual presents an overview of Family Court procedures in a form found helpful to mental health professionals dealing with cases referred from the Family Court system. The Family Court system of New York State is the one described in this Manual, but mental health professionals in other states may also find the Manual useful in terms of a general understanding of court procedures in such cases.

We wish to point out that Family Court law is an area in which rapid changes have been taking place. Moreover, certain details of the processing of cases may be subject to discretion at the local level. We would suggest that readers use this Manual as a general guide and aid to understanding, and verify specific points about procedures at the time and place with which they are concerned.

A grammatical note should be added to explain that, although masculine pronouns have been used for the most part in the text, as is customary, there are both male and female petitioners and respondents involved in Family Court cases.

We wish to express our thanks to the Staten Island Family Court, and particularly to Philip Vota, Chief of

Probation, and all the members of the Probation Department at the Staten Island Family Court, for their patience and helpfulness in explaining and clarifying court procedures.

Special thanks are due to Judge J. Holt Meyer, Presiding Judge of the Staten Island Family Court, and to Mr. Joseph X. Kenavan, Clerk of the Staten Island Family Court, and to Mr. Arthur Russo, Supervising Probation Officer of the Westchester County Family Court (White Plains), for their valuable comments on a preliminary draft of this Manual.

PART I

OVERVIEW OF THE FAMILY COURT

Chapter 1

Orientation to Family Court Cases

Staten Island Family Court Services (FCS) was set up as a unit of the South Beach Psychiatric Center in Staten Island, New York, to provide unified and comprehensive clinical services to the Staten Island Family Court. Whereas most mental health facilities that accept referrals from courts do so on a piece-meal basis (often providing diagnoses only or accepting juvenile cases only), FCS serves the whole gamut of juvenile and adult Family Court cases and provides services from intake and evaluation through outpatient or inpatient treatment as needed.

The major types of cases which come to the attention of the Family Court are: delinquency (D.C.) cases; status offenses (PINS) cases; child neglect and abuse; family offenses; and support, custody and visitation cases. In response to requests from judges or probation officers at the Staten Island Family Court, FCS conducts evaluations and submits reports and recommendations as to the best possible disposition of cases and/or provides treatment for the individuals or families involved.

In addition to FCS' main clinic at the South Beach Psychiatric Center, a small office in the Family Court building is staffed on a rotating basis by FCS staff members during most of the hours the court is open. This makes possible continuing contact between the FCS staff and court personnel and provides immediate availability of an FCS staff member at the court for consultations, emergency evaluations, and immediate intake of case referrals. Each referred case is then assigned to an FCS staff member who can call upon a broad spectrum of services in his assessment and treatment of the case. A list of the range of services performed by FCS includes the following: 1. Emergency evaluations at Family Court; 2. immediate intake interviews of referred cases at Family Court; 3. consultations with Family Court personnel; 4. psychiatric evaluations; 5. psychological testing; 6. assessment of the case in individual and family interviews; 7. home visits; 8. consultations with schools, the Bureau of Child Welfare (BCW), DSS, and other agencies with knowledge of the family; 9. individual therapy sessions; 10. conjoint (marital) therapy sessions; 11. family group therapy sessions; 12. preparation of reports to Family Court judges, including evaluation reports and recommendations as to best possible dispositions

of cases; 13. field visits to private and public facilities (such as training schools, group homes, camps, etc.) to assess them as potential placement facilities for juveniles; 14. communication with and referrals to special programs (such as educational programs, after-school or recreational programs, alcoholism or drug treatment programs, etc.) as needed. Thus, the court may rely on FCS for complete clinical services, rather than needing to contact different services for different functions.

Another crucial distinction between FCS and the majority of mental health facilities providing services to courts lies in the fact that FCS works only with Family Court cases. This singleminded focus on case referrals from the Family Court makes possible program development and staff development aimed at enhancing the usefulness of services provided to the court. Most mental health facilities provide services to courts only tangentially, and their staffs usually lack familiarity with Family Court procedures. Staff development in terms of understanding of the Family Court system is essential in order for clinical staff to be able to assess the interactions between court procedures and clinical processes. Considerable investment of time and training is also necessary to develop

staff ability to produce specific types of evaluative reports and recommendations most helpful to judges in decision-making.

The experience of the Family Court Services (FCS) with the need for mental health professionals to become familiar, in a non-legalistic way, with the functioning of the Family Court system has led to the development of this Manual. It is hoped that it may serve as a relatively brief but useful introduction to the Family Court system for persons engaged in providing clinical services to Family Courts or to individuals or families involved in Family Court cases.

Purpose and Plan of this Manual

This Manual of Family Court Procedures has been designed to provide basic information on the Family Court system in a form aimed at meeting the needs of mental health professionals. In no sense is this Manual a legal document: it does not attempt to detail all the legal technicalities of Family Court law and practice. Rather, it presents a description of the functioning of the Family Court system in such a way as to make clear the points at which the legal system and clinical services "interface" -- that is, the points in the legal processing

of cases at which referrals and requests for recommendations are likely to be made and the contingencies that may occur at each stage in the legal process.

The Manual is divided into two main sections. Part I gives a brief general overview of the Family Court system in New York State, including an introduction to commonly used terms, a summary of the types of cases which fall under the jurisdiction of the Family Court, and an overview of the principal steps in the processing of Family Court cases in general.

Part II is divided into five sub-sections, each of which describes the step-by-step processing of one of the major types of cases handled by the Family Court: Delinquency (D.C.) cases; Status Offenders (P.I.N.S.) cases; Neglect and Abuse cases; Family Offense cases; and Support, Custody and Visitation cases. Each sub-section contains a flow chart and description of the movement of such a case through the court and points out the legal possibilities related to referrals, court requests and possibilities for interventions or recommendations to be made.

This division of Part II into five sub-sections has two purposes: 1) to make it possible for a reader who is pressed for time to be able to look up a particular type

of case; and at the same time: 2) when the Manual is read in its entirety, the necessary repetition of certain steps which occur in more than one type of case is likely to enhance the learning and retention of these common elements and to point up, by contrast, steps or contingencies unique to one particular type of case only. It is therefore recommended that the Manual be read through as a whole once or (preferably) twice, and then used for reference as needed.

Chapter 2

Introduction to Family Court Terminology

McKinney's Consolidated Laws of New York states:

"The Family Court Act adopts an elaborate new vocabulary to distinguish proceedings under it from normal civil or criminal proceedings. Plaintiffs (or the People) are "petitioners"; defendants are "respondents"; trials are "hearings"; sentences are "dispositional orders"; and so forth." (McKinney, 1975, p.6.)

Similarly, complaints filed to institute court hearings are "petitions"; charges are "allegations"; being arrested is being "taken into custody"; and a juvenile respondent being sent to a public or private institution is "placement."

The term "guilty" is never used, but rather it is said that there has been a "finding" in a case. The Family Court Act defines "findings" as "conditions on which the family court may intervene in the life of a child, parent and spouse." (Family Court Act § 242.)

A "law guardian" is an attorney designated to represent a minor in Family Court.

"Adjustment" of a case refers to an agreement being come

to by the Department of Probation (described below) and all interested parties in a case not to file a petition which would bring the case to court but to close the case instead. This is known as "diversion" or "diverting" the case from court. (The complainant who originally made the application for a petition is still generally called the "petitioner" and the defendant the "respondent" even in these "adjusted" cases where the petition was not actually filed but only an application at the intake interview.)

"Status offenses" are acts which are non-criminal in nature (such as running away, truancy, etc.) but for which petitions may be filed in Family Court against persons whose status is that of a minor. In New York State, these are termed "PINS" cases, the letters standing for "Persons in Need of Supervision." These "PINS" cases are in contrast to "D.C." cases, in which the letters D.C. stand for "Delinquency Charge" and which involve acts which would be criminal offenses if committed by an adult.

The "Preliminary Proceeding" is the first court hearing, the purpose of which is to inform the respondent of the allegations against him, of his right to remain silent, and of his right to legal counsel.

The "Fact-Finding Proceeding" is a court hearing at which

the judge determines whether the evidence supports the allegations. If the judge so determines, that is called the "finding" in the case.

The "Dispositional Proceeding" is the court hearing at which the judge announces the "dispositional order" in the case (which would be called the sentence in a criminal court).

Chapter 3

Jurisdiction of the Family Court

The most common categories of cases included within the Family Court's jurisdiction are as follows:

1. Delinquency: cases in which a person between the ages of 7 and 16 years of age is alleged to have committed an act or acts which would be a criminal offense (felony or misdemeanor) if committed by an adult.
2. PINS (Persons in Need of Supervision): cases in which a person between the ages of 7 and 16 years of age is alleged to be in need of supervision by the court because of having run away from home, or of habitual truancy, or incorrigible, ungovernable, habitually disobedient behavior beyond the control of his parents, guardian or custodian;
3. Neglect and Abuse: Neglect cases are those in which parents or guardians are alleged to have failed to adequately supply basic needs or supervision for a child or children under the age of 18;

Abuse cases are those in which parents, guardians or custodians are alleged to have physically or sexually abused a child or children under 16 years of age or to have permitted such abuse.

4. Family Offense: cases in which assault, attempted assault, harrassment, disorderly conduct, menacing or reckless endangerment is alleged to have occurred between adult members of a family or household.

As of September 1, 1977, the petitioner has the option of bringing such a case to Criminal Court in New York State, instead of Family Court. Furthermore, according to the new law, the Criminal Court may not then refer such a case back to Family Court.

5. Support: cases in which applications for support or involving non-payment of support or request for change in support payments are made, whether intra-state or inter-state, are in the jurisdiction of the Family Court (excluding those in which an application for temporary or permanent support is part of an action for divorce or separation before the Supreme Court, unless such a support application has been referred to Family Court from Supreme Court);

6. Custody: cases involving custody or request for change of custody of a child or children (excluding those where an application to fix temporary or permanent custody is part of an action for divorce or separation before the Supreme Court, unless such application to fix custody has been referred to Family Court from Supreme Court).
7. Visitation rights: cases involving requests for visitation rights or alleged violation of visitation rights or requests for change of visitation rights. (Although such petitions may be filed as cases in themselves, questions of visitation rights often occur also as part of other types of cases, such as custody cases, support cases, or family offense cases.)

Other types of cases that fall within Family Court jurisdiction include paternity proceedings, adoptions, guardianship, foster care review, and cases of permanent termination of parental rights (based on a child being adjudged a "permanently neglected child" abandoned or placed in an institution by a parent who has failed subsequently to maintain contact with the child for a year or more). Since these types of cases have rarely been referred to FCS, they will not be discussed in this Manual.

Chapter 4

Overview of Family Court Procedures

When a family member or the police (or other persons or agencies) first come to the Family Court to apply to file a petition, they are received by the Probation Department.

McKinney's Consolidated Laws of New York summarizes the Probation Department's functions in the Family Court as follows:

"The Probation Service provides three main service components to the Family Court: (1) pre-petition intake and adjustment, (2) pre-disposition investigation and report, and (3) post-dispositional supervision." (McKinney, 1975, p. 182).

Thus, when a person first comes to Family Court intending to file a petition of any kind, he or she is referred to a Probation Intake Officer, and the usual procedure is roughly as follows:¹

1. Probation Intake

The would-be petitioner is interviewed by a Probation Intake Officer who fills out Probation Intake forms containing basic demographic data (such as names, addresses, age, occupation, etc.) and detailed information as to the allegations being made.

1

Certain types of cases go directly to court without first being screened by the Probation Department. These include cases of Child Neglect or Abuse brought by the Bureau of Child Welfare or other child care agency, plus Adoptions, Paternity cases, Interstate Support cases, Guardianship, Foster Care Review, and Termination of Parental Rights.

The Probation Intake Officer attempts to interview all persons involved in a case [petitioner, respondent, victim (if any), parents of juvenile respondents, etc.] with a view to seeing whether it would be both possible and advisable to "adjust" (i.e., close) the case without actually drawing up a petition and sending the case to the court for court action. As noted above, if the case is adjusted, this is called "diverting" the case from court. However, in a number of instances, the Probation Intake Officer has little discretion in the matter, since certain cases must go to court. These include:

(a) Since the Designated Felony Act of New York State became effective in February 1977, delinquency cases involving allegations of serious felony offense listed in it may not be "adjusted" at Probation Intake, unless the consent of a judge is obtained.²

(b) All cases of child neglect or child abuse must be sent directly to court.

2

Offenses included in the Designated Felony Act of 1976 are those in which an act by a juvenile between 14 and 16 years of age was one which, if done by an adult, would constitute one of the following: murder in the first degree; murder in the second degree; rape in the first degree; assault in the first degree; manslaughter in the first degree; sodomy in the first degree; arson in the first degree; kidnapping in the first degree; kidnapping in the second degree if deadly physical force or the threat of it was used; arson in the second degree; robbery in the first degree; attempted murder in the first or second degree; or attempted kidnapping in the first degree.

(c) Other cases which must be sent to court for court action include those in which a petitioner is seeking an Order of Protection, or an Order of Support, or an Order of Visitation, or the enforcement of such orders previously issued; or where a warrant is needed for the police to seek and detain a runaway child.

(d) Finally, in any type of Family Court case, any petitioner has the right to refuse to have the case "adjusted" at Probation Intake and to insist on having the petition drawn up and sent to court.

(e) If the case does fall into a category where the Probation Intake Officer is permitted to exercise discretion, the following contingencies apply:

1. With the consent of all the parties involved, the Probation Intake Officer may "adjust" (i.e., close) the case without drawing up a petition, thus diverting the case from court.
2. The case may be held open at Probation Intake for 60 days (with a possible extension of another 60 days with court permission) during which further attempts to "adjust" the case may be made: by the end of this period, the case must either be adjusted or a petition be drawn up and sent to court;

3. The petition setting forth the allegations against the respondent may be drawn up and the case sent to court.

The respondent has the right to have an attorney present during the Intake interview, if he wishes.

In the process of adjusting cases, Probation Intake Officers may make referrals of cases to a clinical service, such as FCS. Such referrals from Probation Intake are on a voluntary basis. Treatment of such voluntary cases referred by Probation Intake constitutes preventive mental health work aimed at ameliorating harmful tendencies within the individual or family and thus preventing more serious pathology and possible future court involvements.

2. Court Hearings

Cases in which a petition is drawn up and sent to court go through a series of court hearings (Preliminary, Fact-Finding, and Dispositional) which will be described below.

(a) At the Preliminary Proceeding, the allegations against the respondent are read to him, a copy of the petition is given to him, and his right to legal counsel is explained. If necessary, legal counsel is provided, especially if incarceration is possible. The judge also determines whether the respondent will be remanded

to a detention facility to await the Fact-Finding Proceeding or may be paroled on his own recognizance, if an adult, or in the custody of his parents, if a juvenile. (Bail is possible, but is rarely resorted to in Family Court cases.)

In cases in which the judge is in doubt as to whether the respondent is mentally competent to understand and respond to the allegations against him, or as to whether the respondent requires psychiatric hospitalization, the judge may request a clinical service, such as FCS, to carry out an immediate evaluation of the mental status of the respondent. If necessary, the judge may remand the respondent to the Department of Mental Hygiene for 30 days psychiatric hospitalization. (Since FCS is a unit of the South Beach Psychiatric Center on Staten Island, psychiatric hospitalization at South Beach can be arranged and the case followed up by FCS.)

Unless there is a question of mental competency, referrals are generally made after the Fact-Finding hearing.

(b) At the Fact-Finding(or Adjudicatory) Proceeding, the judge makes a determination either:

1. that the allegations of the petition have not been established;

or

2. that the respondent did commit the alleged acts, and the court then makes a "finding" (or adjudication)

based on the allegations in the case, such as a "finding" of delinquency or of neglect.

If the allegations of the petition were judged not to have been established, the court then proceeds to enter an order dismissing the petition. This is generally done immediately following the Fact-Finding Hearing and is the most common reason for a Dispositional Hearing to be held immediately after a Fact-Finding Proceeding.

In juvenile cases (PINS and D.C.), and in Neglect cases, the Fact-Finding Proceeding may be "adjourned in contemplation of dismissal" when the judge deems it to be in the interests of justice. Such an "Adjournment in Contemplation of Dismissal" may include specific conditions which must be met during the period of the adjournment (up to 6 months in juvenile cases and up to one year in Neglect cases). Such conditions may include participation in treatment; and, in Neglect cases, must include supervision by a child protective agency. If any further charge against the respondent occurs in the interim, the "Adjournment in Contemplation of Dismissal" is automatically rescinded. If this does not occur, and if the case is not reopened by the petitioner or the court during the adjournment period, it will be deemed to be dismissed at the end of the period of an "Adjournment in Contemplation of Dismissal."

More often, however, after a "finding" against a respondent, an "Adjournment Date" is set for the "Dispositional Proceeding," and the judge determines whether to remand the respondent to a detention facility until that date or to parole him, if adult, on his own recognizance, or in custody of his parents, if he is a juvenile. The case is usually adjourned to give the court time to have an investigation carried out and a report (termed an "I and R") submitted by the Probation Department prior to the date for the Dispositional hearing.

In addition, the judge may request a clinical service, such as FCS, to do an evaluation of the respondent and/or to assess the overall family situation and submit a recommendation to the Court as to the best possible disposition of the case.

(c) At the Dispositional Proceeding, the judge gives his decision as to the disposition of the case. The specific dispositions among which the judge may choose are different for each type of case.

Dispositions possible in juvenile cases - i.e., delinquency (D.C.) and PINS - include the following (in addition to the outcomes of "Dismissal" or "Adjournment in Contemplation of Dismissal" described above):

1. In PINS cases, the respondent may be discharged with a warning;

2. "Suspended judgment," if the judge decides to take no action but to keep the case open for possible action in the event of further complaints against the respondent (usually for a period up to 1 year); certain conditions may be imposed as part of a suspended judgment (such as participation in treatment).

3. "Probation": A juvenile respondent may be placed on probation to be supervised by the Department of Probation (in a PINS case, for a period up to one year; in a delinquency case, for a period up to two years, with possible extensions of one year for each). The judge may set up various conditions as part of probation: these may include the respondent's participation in treatment. During the period of probation, the Probation Officer supervising the case may reopen the case at any time.

4. "Placement": A juvenile respondent may be removed from his home by court order and "placed" with a relative, a foster parent, a private residential treatment center, camp or group home, or in a public facility (group home, camp or training school) run by the New York State Division

for Youth. The Division for Youth (known as "DFY") operates two types of facilities: "Title II" facilities which are open, non-secure group homes, schools or camps; and "Title III" facilities which are secure (locked) training schools or camps. If placement is with DFY, PINS respondents may be sent only to Title II facilities; D.C. respondents may be sent to either Title II or Title III facilities. Placement under DFY supervision may be for an initial period of up to 18 months in PINS cases and for initial periods of from 18 months to 5 years in D.C. cases (depending on the seriousness of the offense). Not all of this time, however, is necessarily spent at a DFY facility, since DFY may permit the juvenile to return home under DFY supervision after a certain period.

Dispositions possible in adult cases (Neglect and Abuse; Family Offense; Support, Visitation and Custody) depend upon the nature of the case. Each type of case is discussed in more detail in Part II. However, it should be pointed out here that Family Court judges are empowered to issue Orders of Support (in cases where there has been a "finding" that the respondent is liable for support of a spouse and/or children);

Orders of Protection setting forth conditions of behavior towards other family or household members; and Orders of Visitation setting forth times and conditions for visits with children. Furthermore, Family Court is empowered to deal with violations of such orders. In Neglect and Abuse cases, Family Court judges may remove the children from a home or place the family under the supervision of the Bureau of Child Welfare (BCW). Thus, in addition to the outcome of "Adjournment in Contemplation of Dismissal," possible in Neglect cases, as described above, dispositions available in this wide range of adult cases would include the following:

1. "Dismissal," if the judge decides no further court action or supervision is needed;
2. "Suspended judgment" (usually for up to a year); certain conditions, including participation in treatment, may be imposed as part of a suspended judgment; this disposition applies to Family Offense cases and to Neglect and Abuse cases;
3. "Probation:" the respondent may be placed under the supervision of the Department of Probation; terms and conditions, including participation in treatment, may be required as part of probation; this disposition applies to Family Offense cases;

4. BCW supervision: In Neglect or Abuse cases, respondents may be placed under the supervision of the Bureau of Child Welfare;
5. Placement of children in Neglect or Abuse Cases: Neglected or abused children may be removed from the home and placed with a suitable person or agency for an initial period of up to 18 months (with possible extensions thereafter);
6. "Order of Protection": An Order of Protection may be issued directing the respondent to abstain from behavior harmful to spouse or children or other household members. Wilful violation of an Order of Protection may be punished by a jail sentence of up to six months;
7. "Order of Support": An Order of Support may be issued following a "finding" that the respondent is liable for the support of spouse and/or children. Wilful violation of an Order of Support may be punished by a jail sentence of up to six months;
8. "Order of Visitation": An Order of Visitation may be issued setting forth the times and conditions for visits with children;
9. Custody: Custody of children may be awarded to either parent or to an appropriate relative, foster parent or guardian.

Chapter 5

Overview of Services Requested by the Family Court

A general overview of the points in the Family Court system at which referrals are most often made to FCS would emphasize the following:

1. Cases referred for treatment from Probation Intake: these are all on a voluntary basis and involve cases which may still be prevented from having to go to court.

2. Cases referred by Family Court judges after a "finding" and prior to disposition: The court usually requests evaluation of the respondent (and sometimes other family members) and also requests FCS to offer recommendations as to the best possible disposition of the case.

3. Cases referred for treatment as part of the disposition of the case: treatment may be ordered by the judge as a condition of probation or of a suspended judgment or of an adjournment in contemplation of dismissal, or a case may be referred back to FCS for treatment following an earlier evaluation and recommendation for treatment made by FCS prior to the dispositional hearing. Other cases may continue in treatment on a voluntary basis at FCS following a court-ordered evaluation or may undertake treatment on a voluntary basis on the recommendation of the court or Probation Department.

Another type of case referral, which occurs less frequently than those listed above, involves cases referred before a "finding" for an evaluation to be made of the respondent's mental competence to understand and respond to the allegations against him.

Options available to the court for ordering evaluations and for ordering or recommending treatment of individuals and families are discussed in more specific detail in Part II.

Part II

SPECIFIC PROCEDURES IN
EACH TYPE OF CASE

Chapter 6

Delinquency (D.C.) Petitions

A comprehensive overview of the step-by-step processing of a delinquency case by the Family Court system is shown in Fig. 1 (Flow Chart of Delinquency Cases). It indicates the paths whereby cases may be either "diverted" or sent to court; the contingency points at which referrals to the Family Court Services (FCS) are made; and the possible outcomes or dispositions of cases which do go to court. Fig. 1 also shows the system followed by FCS in responding to requests from the Family Court and in evaluation and treatment of the cases referred. The following paragraphs in this section give a detailed description of the steps in the Family Court system.

The beginning of a delinquency petition officially occurs when a juvenile between 7 and 16 years of age is taken into custody for the commission of an act which would be a criminal offense (a felony or misdemeanor) if committed by an adult. The juvenile is apprised of his rights and the police officer fills out an arrest sheet. The juvenile may then either be brought directly to the Family Court if it is

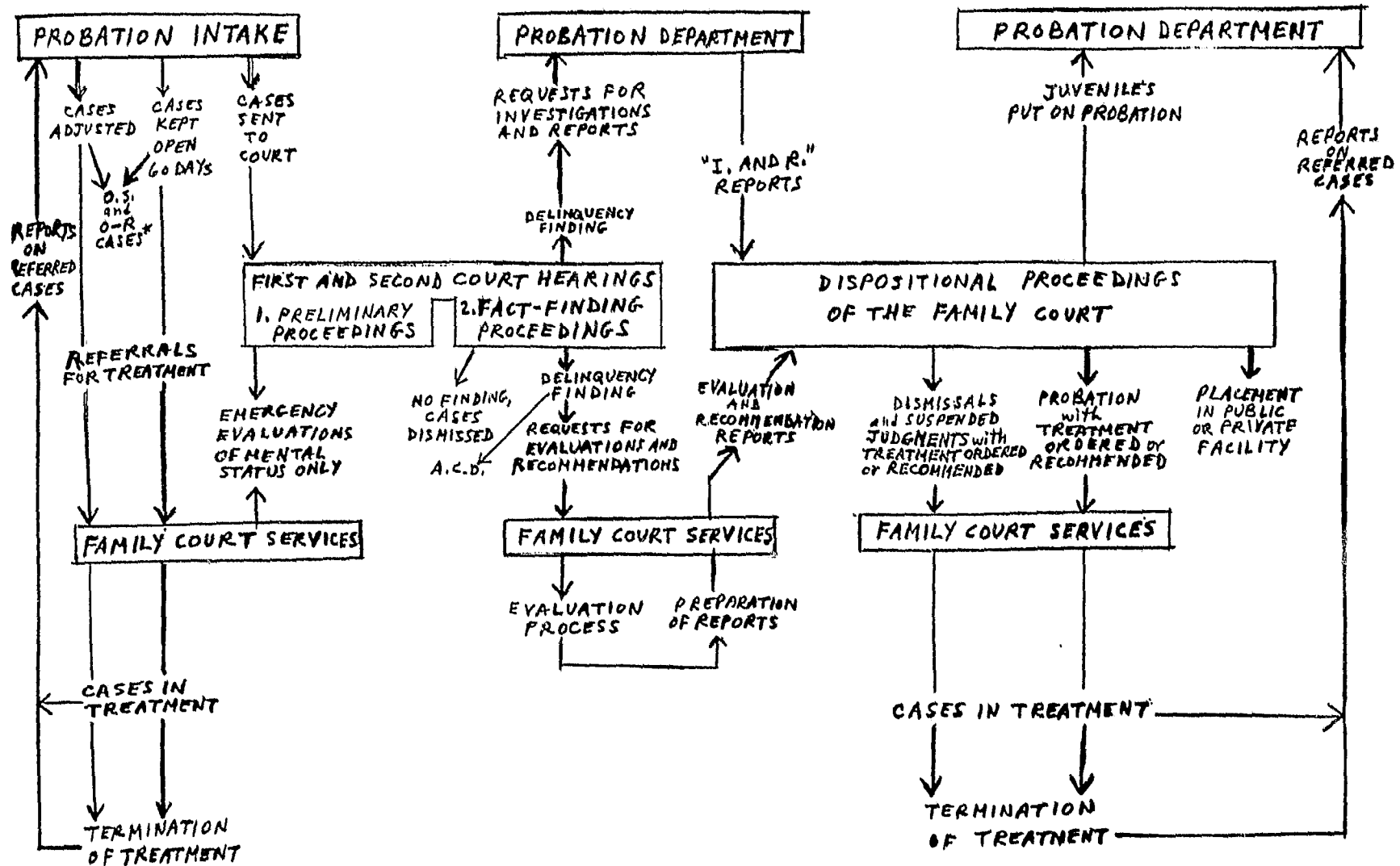


FIG. 1. FLOW CHART OF DELINQUENCY CASES

(N.O.S. = Out of System; O-R = Out of System, Referred to other agency); A.C.D. = Adjournment in Contemplation of Dismissal

open, or may be detained overnight or over a weekend until Family Court reopens, or he may be released on the basis of an R.O.R. (Released on Own Recognizance) form signed by a parent. In the latter case, a date is set on which the juvenile and his parent must report to the Family Court.

Step One at the Family Court is the interviewing of the would-be petitioner (usually the police officer or alleged victim), the juvenile and his parents by a Probation Intake Officer to see if "adjustment" of the case without drawing up a petition and sending it to court is possible. As stated above, however, since the Designated Felony Act of 1976 became effective in New York State as of February, 1977, cases involving allegations of designated felony offenses (enumerated above in Footnote 2, p.14) by persons 14 to 16 years of age may not be "adjusted" at Probation Intake without the consent of a judge being obtained.

At the Probation Intake interview, basic demographic data and the specific allegations in the case are recorded, and other relevant information (relating to home situation, school and previous court record, if any) are explored by the Intake Officer.

If the case does fall into a category in which the Probation Intake Officer is permitted to exercise discretion, the following possibilities exist:

- a) the case may be "adjusted" (i.e., closed) if all parties concerned, including the petitioner, are willing; however, any petitioner may insist on having the petition drawn up and sent to court;
- b) the case may be held open in Probation Intake files for 60 days, with a possible additional 60 day extension: during this time the decision as to whether to "adjust" the case or send it to court must be made;
- c) a petition may be drawn up and sent to court: such a delinquency (D.C.) petition sets forth the specific allegations in the case and alleges that the "respondent requires supervision, treatment or confinement" [N.Y. Family Court Act § 731 (c).]

Cases sent to court would necessarily include all offenses enumerated in the Designated Felony Act (see Footnote 2, p. 14), plus any other cases in which the Probation Intake Officer judged court action to be advisable, and all cases in which the petitioners insisted on bringing the cases to court.

If the case is adjusted or held open in Probation Intake files, the Probation Intake Officer may refer the juvenile and his family to the Family Court Services (or other agencies) for evaluation and treatment. Reports from the Family Court

Services to Probation Intake on cases so referred contribute additional information and, in pending cases, may assist the Probation Intake Officer in arriving at a decision as to whether to adjust the case at the end of 60 (or 120) days or to send the case to court.

Step Two at the Family Court is the Preliminary Proceeding. At this first court hearing, the allegations against the respondent are read, he is advised of his rights, and a copy of the petition is given to him. Arrangements are made for legal counsel; if the family cannot afford to retain an attorney, either Legal Aid or a County lawyer will be provided as Law Guardian for the juvenile.

A date for the Fact-Finding Proceeding in the case is set, and the judge decides whether to remand the juvenile to detention until that time or not. "A fact-finding hearing shall commence not more than three days after the filing of a petition... if the respondent is in detention. However, a fact-finding hearing to determine whether such respondent committed an act, which would be a class A, B, or C felony if committed by an adult, may commence no later than fourteen days after the filing of the petition." (N.Y. Family Court Act § 747).³

A felony is an offense which, if committed by an adult, is punishable by more than one year in jail. Class A felony acts are the most serious felony offenses, namely: murder in the first degree, murder in the second degree, arson in the first degree, and kidnapping in the first degree. Examples of Class B felonies are manslaughter in the first degree, rape in the first degree, or robbery in the first degree. Examples of Class C felonies are assault in the first degree, burglary in the second degree, or forgery in the first degree.

Step Three at the Family Court is the Fact-Finding Proceeding. At this court hearing, the petitioner is represented by the County attorney (or in New York City by the Corporation Counsel's office) and the juvenile respondent by his private or court-appointed attorney. At the Fact-Finding Proceeding, evidence is presented and the judge makes a determination as to whether the juvenile did commit the alleged act and whether it would be a misdemeanor or felony if committed by an adult. Such a determination "must be based on proof beyond a reasonable doubt." (N.Y. Family Court Act § 744.)

If the judge determines that the juvenile did not commit the act or that it would not be a criminal offense if committed by an adult, the case is dismissed.

If the judge determines that the alleged act was committed by the juvenile respondent and would be an offense if committed by an adult, the court enters an order finding that the respondent is a juvenile delinquent. Contingencies at this point include the following:

- 1) If the acts committed by the respondent did not include a designated felony act, the judge may proceed to adjourn the case "in contemplation of dismissal", thus releasing the respondent for a period of six months, with the case automatically

dismissed at the end of that time if no new charge has been brought against the respondent and if the case has not been reopened by the petitioner or the court. Specific requirements, including participation in treatment, may be imposed by the court as part of the terms and conditions of an "adjournment in contemplation of dismissal."

or: 2) The Dispositional Proceeding may commence immediately after the completion of the Fact-Finding hearing;

or: 3) The most usual contingency at this point is that the case is adjourned to enable the court "to make inquiry into the surroundings, conditions and capacities of the respondent." (N.Y. Family Court Act § 749).

If the respondent is remanded to detention and did not commit a designated felony act, the adjournment may not be for more than ten days, nor may there be more than two such adjournments except in special circumstances. If the respondent did commit a designated felony act, an adjournment "may be for a period up to thirty days if the respondent is detained, and no additional adjournments

may be granted in the absence of special circumstances." (N.Y. Family Court Act § 749). If the respondent is not remanded to detention, the adjournment may not be for more than two months. As stated above, most cases are adjourned for the purpose of having an investigation carried out and a report submitted by the Probation Department. Such reports may not be made to the court prior to the completion of the Fact-Finding hearing.

Following a "finding" of delinquency at the Fact-Finding Proceeding, in addition to ordering an investigation by the Probation Department, the judge may request evaluation of the case and recommendations as to the best possible disposition of the case from a clinical service (such as FCS). The evaluation report and recommendations must be submitted to the court prior to the Dispositional hearing.

Full evaluation is required in all cases where the disposition being considered is "Placement" of the juvenile in an institutional facility (public or private), but may also be requested in other cases by the judge or be decided upon by Family Court Services in any case. Full evaluation for placement purposes generally includes a psychiatric evaluation and psychological testing, as well as overall assessment of the respondent, his family situation, conditions in the home, feasibility of treatment, and assessment

of parental responsibility. The purpose of such evaluation is to formulate recommendations to the court as to whether "Placement" of the juvenile is necessary and, if so, what type of placement would be most suitable for the child. In addition, most placement facilities require a full evaluation report of this type in order to make a decision as to whether they will accept the juvenile.

Step Four in a delinquency case is the Dispositional Proceeding. At the Dispositional Proceeding, the judge decides the disposition, or outcome, of the case. The possible contingencies among which the judge chooses in the disposition of a delinquency case (in addition to "Adjournment in Contemplation of Dismissal" described above) include the following:

- 1) The judge may give a "suspended judgment", for a period up to one year, during which time there is no direct court supervision except that the case may be reopened by any further complaint against the respondent. If not reopened, the case is automatically closed at the end of the period. Specific conditions may be imposed during this period: for example, treatment might be made a condition of the suspended judgment. Alternatively, treatment may simply be recommended to a respondent and his family on a voluntary basis.

2) A juvenile may be placed on probation for a period of up to two years (with a one-year extension possible). The juvenile is under the supervision of the Probation Department during this period and the case may be reopened in the court during this period if the Probation Officer deems it necessary. Treatment may be made a condition of Probation by the court. Alternatively, treatment may simply be recommended to a respondent and his family on a voluntary basis.

3) Except in cases where "restrictive placement" has been ordered (see 4 below), the court may arrange "Placement" of a juvenile in his own home or in the custody of a relative or other suitable person, or in a private institutional facility, such as a group home, residential school, camp or treatment program, or may commit the juvenile to the custody of the New York State Division for Youth (DFY) to be placed in a training school, group home, camp or other residential facility operated for delinquent youth by DFY.

"Placements" are for an initial period of 18 months, with the possibility of extension without the child's consent up to his 18th birthday, and with the child's consent up to his 21st birthday.

4) In the case of a respondent who has been found to have committed a designated felony act, the order of disposition "shall include a finding, based on a preponderance of the evidence, as to whether... the respondent does or does not require a restrictive placement." (N.Y.Family Court Act § 753-a).

a) When the court orders a restrictive placement for a respondent who has committed a designated Class A felony, the respondent will be placed in the custody of the New York State Division for Youth (DFY) for an initial period of 5 years, to be confined in a secure facility for 12 months, followed by at least 12 months in a residential facility, and intensive supervision by DFY for the entire 5-year-period, with the possibility of extension of the placement until the respondent's 21st birthday.

b) When the court orders a restrictive placement for a respondent who has committed a designated felony other than a Class A felony, the respondent will be placed in the custody of the Division for Youth for an initial

period of 3 years, to be confined in a secure facility for a period between 6 and 12 months, followed by 6 to 12 months in a residential facility, and intensive supervision by DFY for the entire 3-year period, with the possibility of extension of the placement until the respondent's 21st birthday.

Chapter 7

Persons in Need of Supervision: (PINS Petitions)

The step-by-step processing of a PINS petition by the Family Court is shown in Fig. 2 (Flow Chart of PINS cases).

Comparison of Fig. 2 with Fig. 1 will demonstrate that the processing of these two types of cases (Delinquency vs. PINS Petitions) is identical as far as the steps shown on the flow charts are concerned.

The principal differences in these two types of cases lie: 1) in the nature of the alleged act or acts which bring juveniles to the attention of the court; 2) the sources of delinquency petitions vs. PINS petitions; and 3) differences in the regulations governing detention and disposition of PINS vs. delinquency respondents.

The beginning of a PINS case usually occurs when a juvenile under 16 years of age is brought to the attention of Family Court by: 1) a petition by one or both parents (or others responsible for the juvenile) alleging that the juvenile is "incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority." (N.Y. Family Court Act § 712);

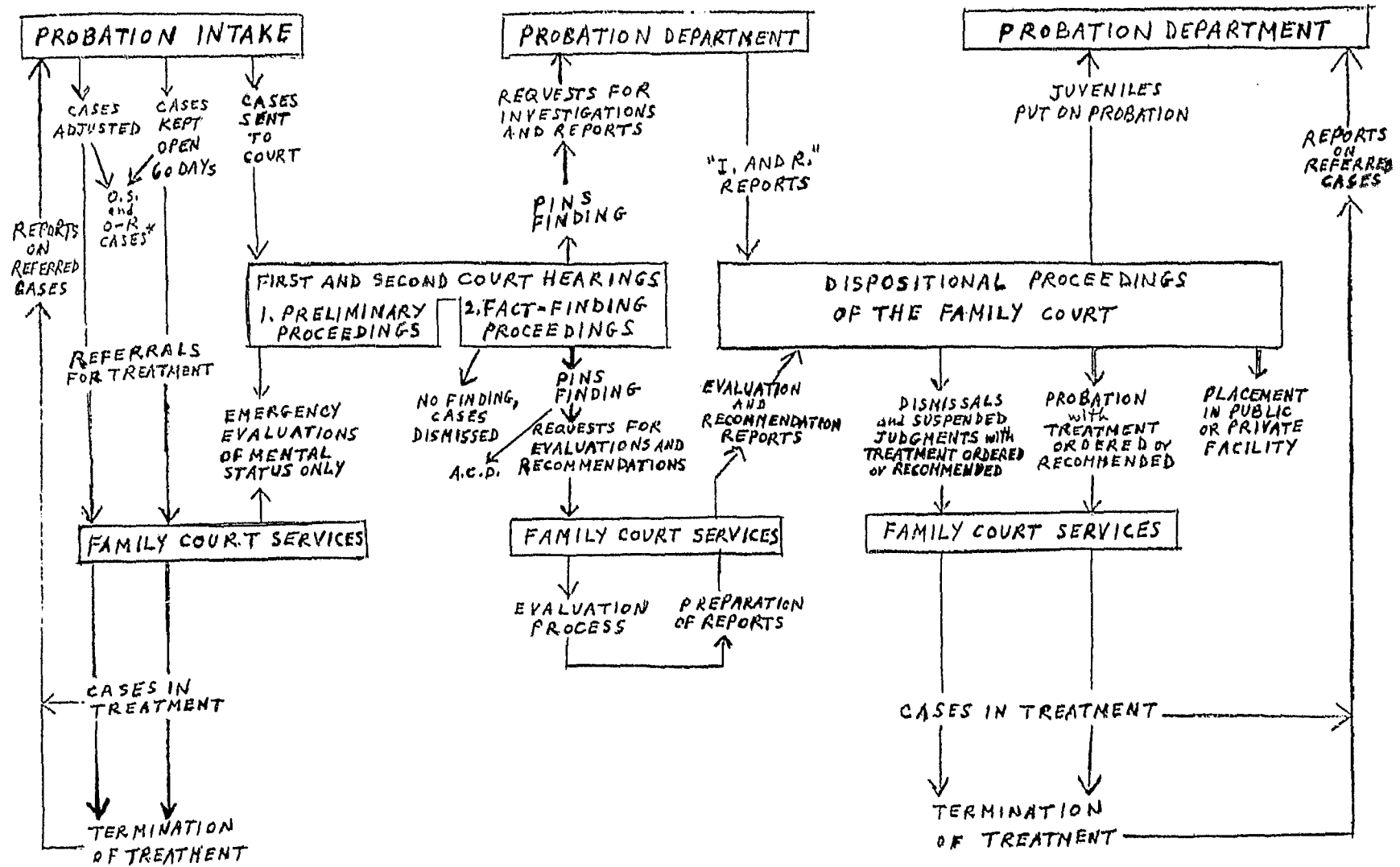


FIG. 2 FLOW CHART OF PINS CASES

(#O.S. = out of System; O-R = Out of System, Referred to other agency)

A.C.D. = Adjournment in Contemplation of Dismissal

or 2) a petition by school authorities alleging that the juvenile is a habitual truant; or 3) by a petition from a parent or other lawful authority that the juvenile has run away from home and is missing, whereupon the court may issue a warrant for the child to be sought and apprehended by the police. In addition, all PINS petitions allege that the "respondent requires supervision or treatment." [N.Y. Family Court Act § 732 (C)] . (Since none of these acts would be offenses if committed by an adult, considerable controversy exists as to whether such juveniles should continue to be the concern of the Family Court system or whether they should be removed from its jurisdiction).

In the case of a runaway apprehended by the police as a result of a warrant having been issued by the court, the juvenile would be brought to the Family Court and held in detention while his family was notified and an immediate court hearing arranged (usually the next court day). In other types of PINS petitions, or even in cases of runaways who return voluntarily, there is usually no detention of the juvenile prior to Family Court processing.

Step One at Family Court is the interviewing of the juvenile and his parent or parents by a Probation Intake Officer to see if adjustment of the case is possible without

drawing up a petition and sending it to Court. Pertinent information concerning the alleged acts, and background information on the family, home situation, school record and previous court record, if any, of the juvenile is recorded and considered by the Probation Intake Officer. The possible contingencies available at this point are as follows:

- a) the case may be adjusted (i.e., closed) at the Intake interview, if all parties concerned are willing;
- b) the case may be held open at Probation Intake for 60 days, with the possibility of an extension for an additional 60 days;
- c) a petition may be drawn up and the case sent to court. This would necessarily include cases of runaways apprehended by the police in response to a warrant previously issued by the court, plus any case in which the Probation Intake Officer judges court action advisable, and all cases in which the parents or other petitioners insist on bringing the cases to court.

If the case is adjusted or held open in Probation Intake files, the Probation Intake Officer may refer the juvenile and his family, on a voluntary basis, to a

clinical service, such as FCS, for evaluation or treatment. In pending cases, reports from the Family Court Services to the Probation Intake Officer may contribute information of assistance in the decision as to whether to close the case at the end of the 60 (or 120) day period or to send the case to court during that time.

Step Two in PINS cases is the Preliminary Proceeding.

A petition having been drawn up and sent to court, at the first court hearing the allegations against the respondent are read and a copy of the petition given to him. Arrangements are also made for legal counsel: if the juvenile does not have private legal representation, a Law Guardian is appointed by the court to represent the juvenile. A date for the Fact-Finding Proceeding is set. If the respondent is in detention, the date for the Fact-Finding hearing must be within three days (with the possibility of an additional three day extension by the court).

Step Three at the Family Court is the Fact-Finding Proceeding. At this court hearing, the petitioner is represented by the County attorney (or in New York City by the Corporation Counsel's office) and the juvenile by his private or court-appointed Law Guardian. At the Fact-Finding hearing, evidence is presented and the judge determines whether the juvenile did commit the alleged acts

and should be adjudged to be a Person In Need of Supervision (PINS). If such a "finding" is arrived at, the following contingencies then apply:

- 1) the judge may "adjourn the case in contemplation of dismissal", thus releasing the respondent for a period of six months with the case automatically dismissed at the end of that time if no further charges have been brought against the respondent, and if the case has not been reopened by the petitioner or the court. Specific requirements, including participation in treatment, may be imposed by the court as part of the terms and conditions of an "adjournment in contemplation of dismissal";
- 2) the Dispositional hearing may commence immediately after the Fact-Finding hearing; or
- 3) the most usual contingency at this point is that the case is adjourned and the judge orders an investigation to be carried out by the Probation Department. If the respondent is remanded to detention, the adjournment may not be for more than ten days, nor may there be more than two such adjournments except in special

circumstances. If the respondent is not remanded to detention, the adjournment may not be for more than two months.

In addition to ordering an investigation by the Probation Department, the judge at this time may also refer the case to a clinical service (such as FCS) for evaluation and recommendations as to the best disposition of the case. The evaluation report and recommendations must be submitted to the court prior to the Dispositional hearing.

If the possibility of placing the juvenile in a public or private institution (or even in the home of a relative other than his parents) is being considered, full evaluation is required. This usually includes psychiatric evaluation, psychological testing, and overall assessment of the juvenile, his family and his home setting. The purpose of such evaluation is to formulate recommendations to the court as to whether "Placement" of the juvenile is necessary and, if so, what type of placement would be most suitable. In addition, most placement facilities require a full evaluation report before making a decision as to whether to accept the juvenile.

Step Four at Family Court is the Dispositional Proceeding, at which the judge determines the disposition

(outcome) of the case. Possible dispositions in a PINS case (in addition to the outcome of "Adjournment in Contemplation of Dismissal" described above) include the following:

- 1) discharging the respondent with a warning:
- 2) a suspended judgment, for a period up to one year, during which time there is no direct court supervision except that the case may be reopened during this period by any further complaint against the respondent. If nothing occurs to reopen the case, it is automatically closed at the end of the period. During this period, also, the judge may impose certain conditions which must be met, such as the respondent entering into treatment of some kind.
- 3) the juvenile may be placed on probation under the supervision of a Probation Officer to whom he must report during the period of probation. The period of probation, in a PINS case, may be up to one year, with a possible one year extension. Specific terms may be imposed as conditions of probation, including treatment by authorized persons or agencies. The case may be reopened by the Probation Department at any time during the probation period.

4) "Placement" of the juvenile may be made by the court. The juvenile may be placed in his own home or in the care of a relative or guardian, or in a private or public institution, such as a group home, work camp or training school. However, when a PINS respondent is placed in an institution of the New York State Division for Youth (DFY), it may be only in an "open", not in a "secure" (or locked) facility.⁴

"Placements" are made for an initial period of 18 months, with the possibility of extension without the child's consent up to his 18th birthday, and with the child's consent up to his 21st birthday.

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Exceptions to this rule occur when, in a particular case, no facility except a DFY Title III (or locked) facility will accept a particular PINS respondent.

Chapter 8

Child Protective Proceedings: Neglect and Abuse Petitions

The step-by-step processing of a petition alleging the neglect or abuse of a child or children is shown in Fig. 3 (Flow Chart of Neglect and Abuse cases).

The Bureau of Child Welfare (BCW) is mandated by New York State law to investigate all allegations of child neglect or child abuse reported to it and to take action in those cases where evidence of neglect or abuse is found. Therefore the Bureau of Child Welfare (BCW) is currently the source which brings most such cases to Family Court, and either BCW or the person who brought the complaint to their attention is named as the petitioner in most cases. The respondents in most cases are one or both parents, or other persons responsible for the care of the child or children. (As Fig. 3 indicates, if such allegations are brought to Family Court directly, they are usually referred to BCW, except for cases which appear to call for immediate urgent action. In such cases, a judge determines whether, on the basis of petitioner's testimony, some immediate action should be taken.

In cases of abuse or neglect, emergency removals of children from their homes may be made by the police or child

O.S. CASES = OUT OF SYSTEM CASES ; A.C.D. = ADJOURNED IN CONTEMPLATION OF DISMISSAL

protective agencies, with or without court orders, or children may be kept temporarily in the custody of a physician rendering treatment or an institution such as a hospital. An appropriate child protective agency (usually BCW) must be notified and the Family Court may issue a preliminary court order authorizing temporary removal of the child or children involved even before a petition alleging neglect or abuse has been filed. In any case in which abuse is alleged, or when a child has been removed without court order, a hearing is held in Family Court as quickly as possible.

Step One at the Family Court in Neglect or Abuse cases is a court hearing "to determine whether the child's interests require protection pending a final order of disposition" (N.Y. Family Court Act § 1027). At such a hearing, the judge determines whether to release the child to the custody of his parent or guardian pending final disposition; whether to issue a preliminary Order of Protection directing the parent to abstain from certain behavior; or whether to remove the child and remand him to the custody of a suitable person or institution, pending final disposition. In addition, in cases of abuse the court must order, and in cases of neglect the court may order examination of the child or children by a physician.

(In abuse cases where visible signs of trauma exist, the physician also arranges to have colored photographs taken.)

The court issues a copy of the petition and a summons to the respondent to appear in court to answer the petition on a date set for the Fact-Finding hearing. In cases involving allegations of child abuse, this date is within three court days. If the child has not been removed from the home, the court may also require the respondent to produce the child at the Fact-Finding hearing.

The court informs the respondent of his right to be represented by legal counsel of his own choosing or, if he is financially unable to obtain counsel, to have counsel assigned by the court. The court also informs both the child and the parent of the child's right to be represented by either private legal counsel or by a Law Guardian assigned by the court.

If the parent or guardian could not be served with the summons or refused to obey the summons, a warrant may be issued by the court for the person to be taken into custody and brought to court.

If, after all reasonable efforts, it has not been possible to locate the respondent, a Fact-Finding hearing may be held in a Neglect or Abuse case if the child is represented by private legal counsel, a court-appointed

Law Guardian, or a court-appointed guardian.

The purpose of a Fact-Finding hearing in Neglect and Abuse cases is to determine whether the child is a neglected or abused child.

Step Two at the Family Court in Neglect and Abuse cases is the Fact-Finding Proceeding. At the Fact-Finding hearing, evidence relating to the alleged neglect or abuse of the child is presented, and the judge makes a determination as to whether the preponderance of evidence supports the allegations of neglect or abuse. If the judge decides the facts do not sustain the petition, or if, in a case of alleged neglect, the court feels that its aid is not required, the petition is dismissed. If the judge decides the evidence is sufficient to sustain the petition and that court action is needed, the court makes a finding that the child is a neglected or abused child. (If necessary, the court may amend some specific allegations to conform to the evidence.)

Prior to or upon a Fact-Finding hearing, the judge (with the consent of the petitioner, the respondent and the child's attorney or law guardian) may "adjourn the case in contemplation of dismissal." Such an "Adjournment in Contemplation of Dismissal" is for an initial period of up to 1 year, with terms and conditions which must include

supervision of the child and respondent by a child protective agency (usually BCW) during that period, and may include other conditions as well, such as participation in treatment. If the case is not reopened by complaints from any agency or party involved, it will be deemed to have been dismissed at the end of the period set.

After a "finding" that a child is a neglected or abused child, the court may issue such orders as are felt to be needed in the child's interest, pending disposition. These may include releasing the child to the custody of his parent or guardian, pending disposition; issuing a preliminary Order of Protection directing the parent to abstain from certain behavior; or removing the child and remanding him to the custody of a suitable person or institution, pending disposition.

The court usually adjourns the case, setting a date for the Dispositional hearing that allows time for further investigation and study. The judge then orders an investigation and report to be made by the Probation Department prior to the Dispositional hearing. In addition, the judge may request a clinical service (such as FCS) to carry out a full evaluation of all respondents and children in the case and make recommendations as to the best possible disposition.

The evaluation report and recommendations must be submitted to the court prior to the Dispositional hearing.

A full evaluation usually includes psychiatric evaluation, psychological testing, and overall assessment of the family, home conditions, and feasibility of treatment. The purpose of such evaluation is to formulate recommendations as to whether "placement" of the child or children is necessary and, if so, what type of placement would be most suitable. (Most placement facilities also require a full evaluation report before deciding whether to accept a child.) In addition, recommendations may deal with the feasibility of alternatives for the family other than placing the children in a public or private institution, or with the feasibility of treatment for the respondent with a view to eventual restoration of the family.

Step Three at the Family Court in Neglect and Abuse cases is the Dispositional Proceeding. In addition to the outcome of "Adjournment in Contemplation of Dismissal" described above, possible dispositions include:

- 1) a "suspended judgment" for up to one year (with possible extension for an additional year), during which period the court may set conditions as part of the suspended judgment, which may include participation in treatment;

- 2) releasing the child to the custody of the parent or guardian;
- 3) placing the respondent under the supervision of a child protective agency (usually BCW) for an initial period of 18 months (with possible extensions thereafter). This usually means that some or all the family remain together under this supervision.
- 4) "Placement" of the child (or children) in the custody of a relative or other suitable person or in the custody of an appropriate private or public agency for an initial period of eighteen months, with possible extensions of one year each up to the child's 18th birthday without his consent (and in no case beyond his 21st birthday). In addition, the court may direct such an agency to help improve the parental relationship and assist the parent to obtain suitable housing, employment, medical or psychiatric treatment, etc. Conversely, the court may direct the agency to institute proceedings to free the child legally for adoption.
- 5) an Order of Protection may also be issued directing the respondent to refrain from certain behavior.

At the Dispositional hearing, the judge may also refer the family or respondent to the Family Court Services (or other agency) for treatment, either as a condition of a suspended judgment or of supervision of the respondent, or as a recommendation on a voluntary basis.

Chapter 9

Family Offense Petitions

The step-by-step processing by the Family Court system of family offense cases is shown in Fig. 4 (Flow Chart of Family Offense Cases).

As of September 1, 1977, in New York State, the petitioner has the option of bringing such a case to Criminal Court, instead of Family Court. If the petitioner does press charges in Criminal Court, such a case may not be referred back to the Family Court.

"Family Offenses" concern acts of "disorderly conduct, harassment, menacing, reckless endangerment, an assault or attempted assault between spouses or between parent and child or between members of the same family or household." (N.Y. Family Court Act § 812). A large majority of such cases involve alleged acts of wife-beating or harassment or menacing of wives by husbands, with a much smaller number of cases involving acts by the wife, or between a parent and a child over sixteen, or between siblings. It should be noted that, although

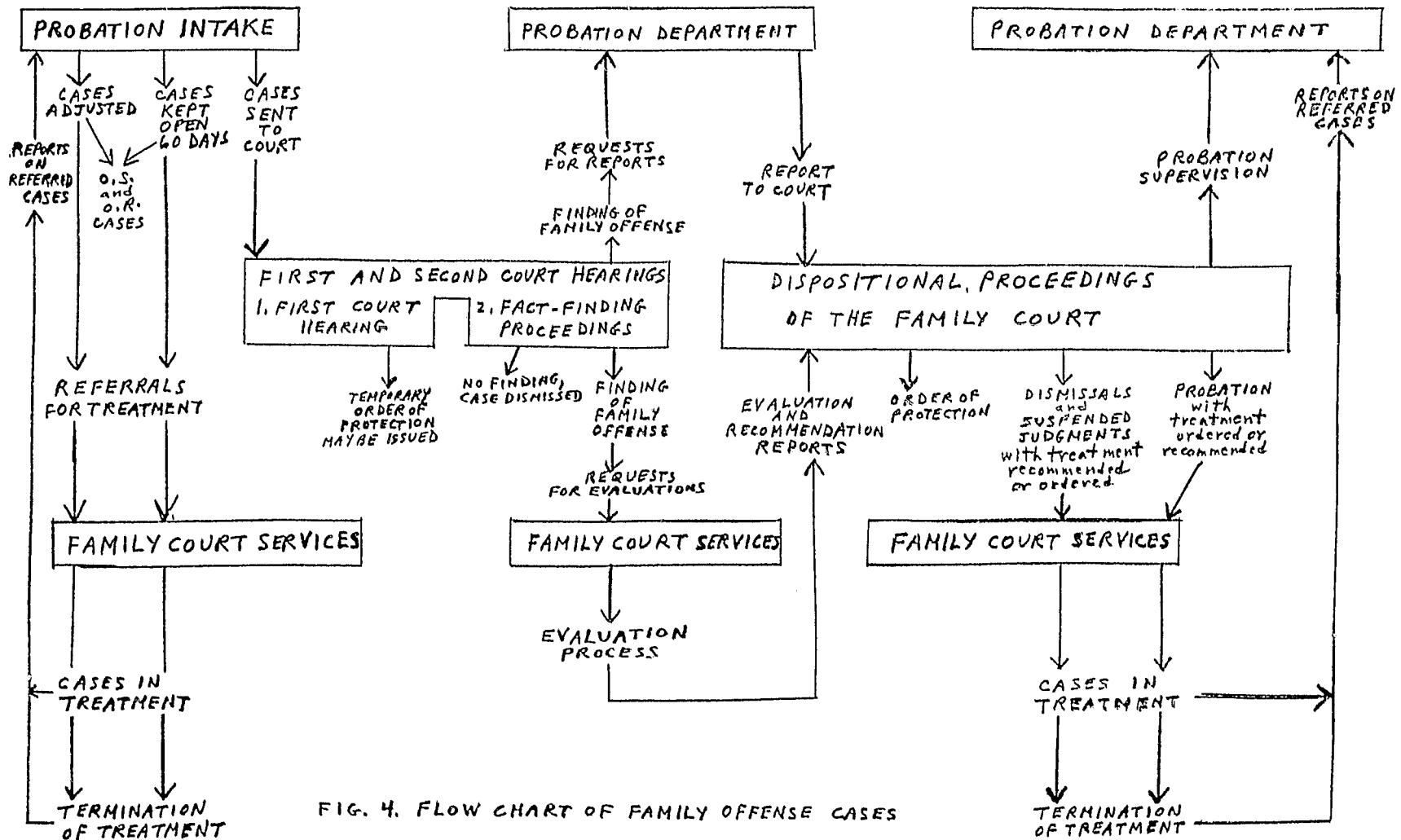


FIG. 4. FLOW CHART OF FAMILY OFFENSE CASES

O.S. = Out of System; O.R. = Out of System, Referred to other agency.

the law refers to "parent and child", the child must be over sixteen for a case to fall into the Family Offense category.⁵

The Family Court does not have jurisdiction over certain serious felonies between family or household members, such as homicide or attempted homicide or manslaughter, nor does it have exclusive jurisdiction over cases involving sexual offenses between a parent and child.

The most usual beginning of a Family Offense case is the appearance at Family Court of a family member (most often a wife) alleging that another family member (most often a husband) has committed acts which would constitute disorderly conduct, harassment, menacing, reckless endangerment or an assault or attempted assault. The step-by-step processing of such cases is described below.

Step One in Family Offense cases is the interviewing of the potential petitioner and other interested parties by a Probation Intake Officer with the view of attempting "through conciliation and agreement to adjust suitable cases before a petition is filed" (N.Y. Family Court Act § 823). The possible contingencies at this point, then, are as follows:

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Violence by a child under 16 against a parent is included, by statute, in the PINS category of juvenile "status" offenses. This obscures the true total amount of violence within families.

- a) The case may be "adjusted" (i.e., closed) at Probation Intake, if all parties agree; however, any petitioner may insist on having a petition drawn up and sent to court.
- b) The case may be kept open in Probation Intake files for a period of sixty days (with a possible additional sixty day extension) while efforts at "adjustment" are made, again with the consent of the parties involved;
- c) A petition may be filed and the case sent to court, either after the initial interview or during the period the case remains open in Probation Intake files. The petition describes the acts which are alleged to constitute disorderly conduct, harassment, menacing, reckless endangerment, assault or attempted assault, and requests "an order of protection or the use of the court's conciliation procedure" (N.Y. Family Court Act § 821).

If the case is "adjusted" or held open at Probation Intake, the Probation Intake Officer may refer the family to a clinical service, such as FCS, on a voluntary basis.

Step Two in a Family Offense case is the first court hearing, at which usually only the petitioner appears before

the judge. (In the event of the petitioner failing to appear, the case is usually dismissed.) The respondent is generally not present at this first hearing, and the court issues a summons for the respondent to appear at a Fact-Finding hearing. The court may also issue a "Temporary Order of Protection", which may direct the respondent to stay away from the home, the other spouse or child, or to "abstain from offensive conduct against the child or against the other parent" or "to refrain from acts of commission or omission that tend to make the home not a proper place for the child." (N.Y. Family Court Act § 842). Such an order may also designate stated times when the respondent may visit a child or children. (N.Y. Family Court Act § 842).

A copy of the petition, the summons and Temporary Order of Protection (if issued) are sent to the respondent. If, however, the summons cannot be served or the respondent fails to obey the summons, the court may issue a warrant for the respondent to be taken into custody and brought to court.

Step Three in a Family Offense case is the Fact-Finding Proceeding. Since the respondent in a family offense

case is usually appearing for the first time in response to the summons, he is advised of his right to legal counsel (which includes the right to an adjournment to give him time to confer with counsel and the right to have counsel assigned by the court if he is unable to afford the legal fee). If requested by the respondent, therefore, the Fact-Finding hearing is adjourned to a later date to permit him to confer with counsel.

At the Fact-Finding hearing, evidence relevant to the allegations is presented, and the judge determines whether the allegations are supported by the evidence. If the evidence is judged insufficient, the case is dismissed. If there is a "finding" that a family offense has been committed, the court may either commence the Dispositional Proceeding immediately or set an adjournment date for the Dispositional Proceeding to permit time for further inquiry into the case. A Temporary Order of Protection may be issued, or continued if previously issued.

After a "finding" in a family offense case, the court usually requests investigation of the case by the Probation Department, with a report to be submitted before the Dispositional hearing.

The court may also refer the case to a clinical service (such as FCS) for evaluation and recommendations as to the

best possible disposition. The evaluation report and recommendations must be submitted to the court prior to the Dispositional Proceeding.

Step Four in a Family Offense case is the Dispositional Proceeding. At the Dispositional Proceeding, the judge determines the disposition (outcome) of the case. The possible contingencies in the disposition of a family offense case are as follows:

- 1) The petition may be dismissed "if the allegations of the petition are not established or if the court concludes that the court's aid is not required " (N.Y. Family Court Act § 841);
- 2) A suspended judgment for a period up to six months may be given, which may include conditions such as treatment being required;
- 3) The respondent may be placed on probation for a period up to one year , during which conditions of probation may include treatment;
- 4) An Order of Protection may be issued which "may set forth reasonable conditions of behavior to be observed for a period not in excess of one year by the petitioner or respondent or both" (N.Y. Family Court Act § 842). As previously stated, an Order of Protection may order a person to stay away from

the home, the other spouse or the child; it may set times for a parent to visit a child; it may direct a person to abstain from offensive conduct or acts that make the home not a proper place for the child. The court may also award custody of a child to either parent, or to a relative, during the term of the Order of Protection. (In the event that an Order of Protection is later violated by the respondent, the court may commit the respondent to jail for up to six months.)

At the Dispositional hearing, the judge may refer the respondent to a clinical service (such as FCS) for treatment, either as a condition of a suspended judgment or of probation, or as a recommendation on a voluntary basis.

Chapter 10

Support, Custody and Visitation Petitions

The step-by-step processing of support, custody and visitation cases is shown in Fig. 5 (Flow Chart of Support, Custody and Visitation Cases). These three types of petitions are grouped together in this section because they are frequently intertwined in cases at the Family Court. Separated or divorced parents may institute a variety of petitions against each other involving questions of support for spouse and/or children, child custody, and/or visitation rights.

Although the Family Court does not deal with divorce proceedings or proceedings for legal separation, the Supreme Court may refer an application for temporary or permanent support of a spouse or a child or children to the Family Court. Similarly, "In an action for divorce, separation or annulment, the Supreme Court may refer to the Family Court applications to fix temporary or permanent custody, applications to enforce judgments and orders of custody, and applications to modify judgments and orders of custody" (N.Y. Family Court Act § 467). Furthermore, after an order fixing support or custody or visitation rights has been made

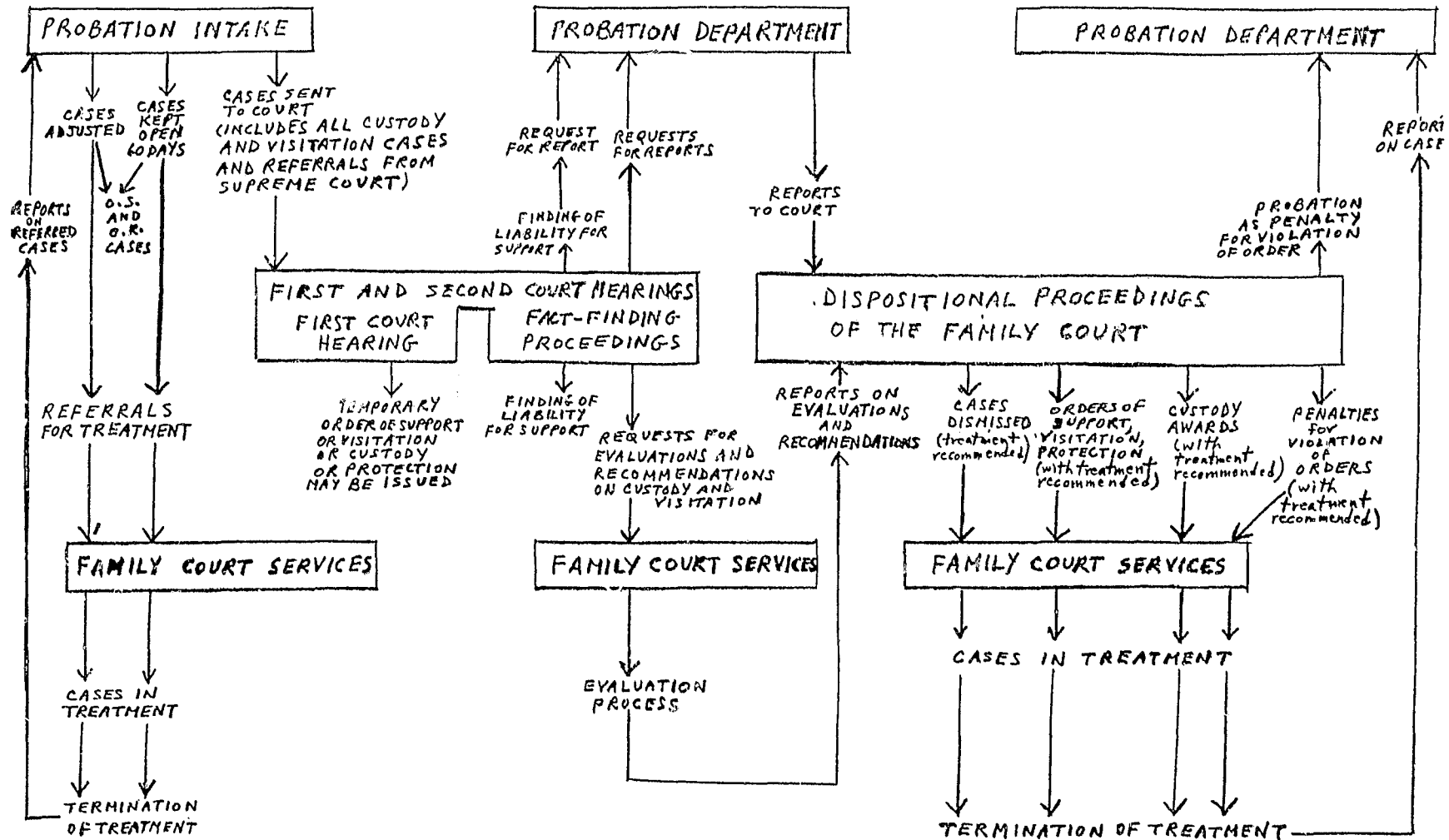


FIG. 5 FLOW CHART OF SUPPORT, CUSTODY AND VISITATION CASES

O.S. = OUT OF SYSTEM; O.R. = OUT OF SYSTEM, REFERRED TO OTHER AGENCY

by the Supreme Court (or other court) during separation or divorce proceedings, applications either to enforce that order or to modify the order due to change in circumstances may be made to the Family Court. In cases where there has been no divorce or legal separation but rather de facto separation, applications for support or custody or visitation rights may be made directly to Family Court.

It should be noted that the ages used to define the status of being a "child" vary in different kinds of cases or court orders. Custody of a minor (in New York State) refers to children up to eighteen years of age, but child support may refer to payments for the maintenance and education of children up to twenty-one years of age.

The beginning of a support, custody or visitation case at Family Court, then, is most likely to be based on an application for support, custody or visitation rights, or for enforcement or modification of support, custody or visitation rights, made by one parent against the other parent, or by the referral of such a case from another court to the Family Court. In some cases, authorized social service agencies may file support petitions on behalf of persons who would otherwise become public charges or are unable to file a petition for themselves.

Step One at the Family Court in a Support, Custody or Visitation case is the interviewing of the would-be petitioner and other interested parties by a Probation Intake Officer, with the view of discovering whether "adjustment" of the case without sending it to court is possible.⁶ Pertinent information is recorded and relevant facts in the case are explored. The possible contingencies at this point are the following:

- a) The case may be "adjusted" (i.e., closed) at Probation Intake, if all parties agree; however, any petitioner may insist on having a petition drawn up and sent to court.
- b) The case may be held open at Probation Intake for 60 days (with a possible 60-day extension) while efforts towards conciliation and agreement are made.
- c) A petition may be drawn up and sent to court. This would necessarily include all cases in which there appears to be no chance of achieving agreement or in which the petitioner insists on the case being sent to court.

6

Cases involving claims for support against a person residing in another state do not come to Probation Intake but go directly to court to be dealt with under the Uniform Support of Dependents Law.

If a case is "adjusted" or held open at Probation Intake, the Probation Intake Officer may refer the family to a clinical service, such as FCS, on a voluntary basis.

Step Two in a Support or Custody or Visitation case is the first court hearing at Family Court. In most support cases, and in some custody and visitation cases, only the petitioner usually appears at this first hearing, the respondent not being present. The court issues a summons for the respondent to appear at a Fact-Finding hearing. The court may also issue a Temporary Order of Support; a Temporary Order of Visitation; a Temporary Order of Protection (described above); or decide temporary custody of a child, if any of these appear necessary before the Fact-Finding Proceeding is to be held.

A copy of the petition, the summons to appear at the Fact-Finding hearing, and copies of any temporary orders issued are sent to the respondent. If, however, the summons cannot be served or the respondent fails to obey the summons, the court may issue a warrant for the respondent to be taken into custody and brought to court.

Step Three is the Fact-Finding Proceeding. If the respondent in the case is appearing in court for the first time in response to the summons, he is advised of his right

to legal counsel and, if necessary, the Fact-Finding hearing may be adjourned to give him time to confer with counsel.

At the Fact-Finding Proceeding, evidence is presented relevant to the allegations in the petition, and the judge determines whether the allegations are supported by the evidence. If not, the case is dismissed. In support cases, the determination deals with whether the respondent is liable for support. If so, this is called a "finding" of liability for support. In custody or visitation cases, a "finding" indicates that the court sees a possible need for court action on these questions.

Following a "finding", the Dispositional hearing may commence immediately but, more often, the case is adjourned to permit time for investigations to be carried out and reports submitted to the court. An "adjournment date" for the Dispositional Proceedings is set, and a Temporary Order of Support, or a Temporary Order of Visitation, or a Temporary Order of Protection, or a temporary custody order, may be issued or continued.

After a "finding" at the Fact-Finding Proceeding, the court usually requests that an investigation be done and a report submitted by the Probation Department.

The court may also refer the case to a clinical service (such as FCS) for evaluation and recommendations as to the best possible disposition. The evaluation report and recommendations must be submitted to the court prior to the Dispositional hearing.

Step Four in Support, Custody or Visitation cases is the Dispositional Proceeding at which the judge issues the orders representing his decisions in the case. Orders which may be issued include:

- 1) Orders dismissing petitions;
- 2) Orders of support by husbands;
- 3) Orders of support by fathers;
- 4) Orders of support by mothers;
- 5) Orders of support by relatives; (Since, in New York, both spouses and step-parents may be liable for support in certain cases, this type of order covers cases where a wife or a step-parent is the respondent);
- 6) Orders fixing custody;
- 7) Orders of visitation.
- 8) Orders of protection.

Orders of Support set the amount, conditions and duration of payments for support.

Orders of Visitation set times and conditions for visits with children; such conditions may include visitation to be supervised by an appropriate person or agency.

In Custody cases, the court has the power to fix custody and may also issue Orders of Visitation and Orders of Protection when deemed necessary.

Orders of Protection set forth behavior to be observed by petitioner or respondent or both. The law states:

"Such an order may require either person

- (a) to stay away from the home, the other spouse or the child;
- (b) to permit a parent to visit a child at stated intervals;
- (c) to abstain from offensive conduct against the child or against the other parent or against any person to whom custody of the child is awarded;
- (d) to give proper attention to the care of the home;
- (e) to refrain from acts of commission or omission that tend to make the home not a proper place for the child.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree."

(N. Y. Family Court Act § 446.)

In cases in which the court has issued an Order of Support, the court may also require the respondent to give "a written undertaking with sufficient surety approved by the court that the respondent will abide by the order for support." (N.Y. Family Court Act § 471). The "surety"

referred to may be either cash or a lien against real estate, furnished either by the respondent or by someone else on his behalf.

Penalties for violation of Orders issued by the court may include the following:

- (1) commitment of the respondent to jail for a term of up to six months, if the violation was willful;
- (2) the respondent may be put on probation;
- (3) the respondent may be required to give written undertaking and sufficient surety on an Order of Support; if a cash deposit was given earlier as surety, it may be forfeited and used to pay the arrears of support payments;
- (4) an Order of Sequestration of respondent's property within the state may be issued and the income therefrom may be used for defaulted support payments.

At the Dispositional hearing, the court may also refer respondents or families to a clinical service, such as FCS, for treatment. Such referrals may be part of the conditions set by court orders, or they may be recommendations to the families to pursue treatment on a voluntary basis.

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