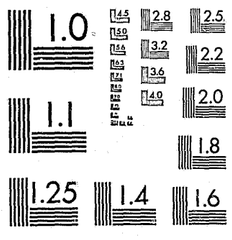




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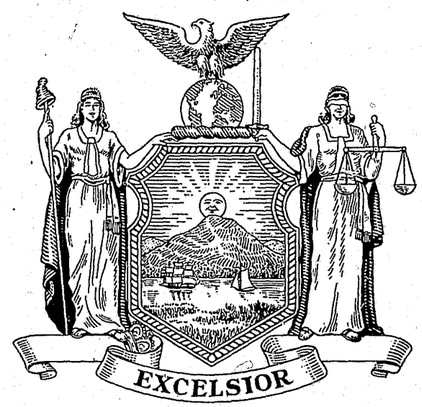


# THE THIRD ANNUAL REPORT OF THE TEMPORARY STATE COMMISSION TO RECODIFY THE FAMILY COURT ACT

ASSEMBLYMAN GEORGE FRIEDMAN
CHAIRMAN

31 MARCH 1982



ORABLE DONALD J. CORBETT, JR., VICE-CHAIRMAN
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ORABLE HOWARD A. LEVINE
ORABLE EDITH MILLER
OL SHERMAN, ESQ.

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Assemblyman George Friedman
Chairman
31 March 1982





NEW YORK STATE TEMPORARY COMMISSION
TO RECODIFY THE FAMILY COURT ACT

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31 March 1982

TO THE GOVERNOR AND THE LEGISLATURE
OF THE STATE OF NEW YORK

I have the honor to transmit herewith the third annual report of the Temporary State Commission to Recodify the Family Court Act.

On behalf of the Commission, I would like to express our continuing appreciation of your cooperation and support.

Very truly yours,

GEORGE FRIEDMAN

## PREFACE

This Annual Report of the Temporary State Commission to Recodify the Family Court Act summarizes our activities since the issuance of our Second Annual Report, which appeared in March 1981.

In June, the Governor appointed Clara Valiente Barksdale to fill the vacancy created by the resignation of Joyce A. Ladner. Commissioner Donald J. Corbett, Jr., was appointed to the position of Vice Chairman.

Commissioner Barksdale is a resident of Brooklyn. She received her graduate degree in social work in 1959 from the Universidad Libre in Buenos Aires, and has done graduate and post-graduate work at Fordham University School of Social Work. She is currently Executive Director of the Council on Adoptable Children and was the former Director of Sloane Center. She has published numerous articles relating to adoption, children and families, and is a frequent speaker at public hearings and conferences relating to adoption and child abuse prevention. In addition, she is Chairperson of the Eighth North American Conference on Adoptable Children, to be held in New York City

in August 1982, is a member of the New York State Federation of Task Forces on Child Abuse and Neglect, and is a consultant to the Children's Bureau. She was a member of the Mayor's Task Force on Foster Care and of the Board of Directors of the Association of Community Service Centers.

In August 1981, Commissioner Charles Schinitsky retired as Attorney-in-Charge of the Juvenile Rights Division of the Legal Aid Society and resigned from the Commission. In December 1981, Carol Sherman, Esq., was appointed to the Commission. Carol Sherman is a graduate of the Harvard Law School and received her B.A. degree from the University of Rochester. She has been the Assistant Attorney-in-Charge of the Juvenile Rights Division since 1980 and has served the Division in a variety of capacities since 1971. She is a member of the Association of the Bar of the City of New York, Children's Rights Committee and Juvenile Justice Committee, as well as a member of the New York City Council Advisory Committee on Foster Care.

The Honorable Edith Miller was appointed to the Commission in February 1982 upon the resignation of Catherine Mitchell, who relocated professionally to New



Jersey. Edith Miller, a New York State Supreme Court Justice and the Administrative Judge of the New York City Family Court, has served on the Family Court since 1972. She has been an adjunct associate professor at Fordham University Graduate School of Social Service since 1976 and an adjunct associate professor at New York University School of Law from 1972 to 1974. She is often called upon to lecture and speak to numerous professional groups, including the Practising Law Institute, the New York State Bar Association, and the National Council of Juvenile and Family Court Judges Association, on juvenile justice issues and Family Court practice. She is active in many community activities and is an active member of the bar.

The Commision has held six meetings since April 1981 as follows:

| | |
|---|---|
| 24 April 1981 | New York City |
| 19 August 1981 | Albany |
| 5 November 1981 | Albany |
| 4 December 1981 | New York City |
| 9 January 1982 | New York City |
| 28 January 1982 | New York City |

The Commission has held three public hearings on voluntary foster care placement and review proceedings: in New York City on March 19, 1982, in Albany on March 24, 1982, and in Rochester on April 6, 1982.



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# INTRODUCTION

## Adult Proceedings

The Commission's work for 1981-1982 began with a consideration of adult proceedings: Article 4 (Support), Article 5 (Paternity), Part 3 of Article 6 (Custody), and Article 8 (Family Offense). The Commission, by considering these four articles together, sought to establish a policy framework that would provide substantive and procedural consistency among the articles. By combining an article-by-article approach within the framework of policy considerations common to all the articles, the Commission sought to develop an integrated approach to issues such as the role of probation, court administration and operations, and court procedures. The Commission's work plan for adult proceedings specified the following:

- decide whether to recommend alternatives to the present structure of judicial hearings in support cases, either IV-D, private, or both;
- review paternity proceedings and determine the import of filiation orders;
- decide whether counsel should be appointed in situations where it is not presently provided (e.g., for children in paternity cases, for petitioners in family offenses and support);

- analyze present standards for support awards, present interpretations of the "best interest" of the child in custody and visitation awards, and perhaps recommend changes that would foster greater consistency in court decisions on these matters;

- analyze the division of jurisdiction over matrimonial cases between Family and Supreme Court, make recommendations on the questions of status jurisdiction for the Family Court (e.g., paternity, separation, divorce) and merger of matrimonial matters into a single jurisdiction; and

- outline a procedural code.

The Commission began to put this plan into operation with a consideration of support proceedings.

Support matters are seen by many as the most difficult aspect of Family Court adult practice, placing a heavy burden upon the court's caseload and raising issues that many believe might best be resolved in some other forum. The issues are complicated by the dual system of support determination (arising from the requirement of federal law under Title IV-D of the Social Security Act), whereby the Department of Social Services petitions for reimbursement of support for AFDC families using its own support formulas, whereas private petitioners follow another procedural track and a separate set of substantive guidelines. Many cases originate as support, often moving to collateral issues, such as paternity, custody, and



visitation. While these may be treated procedurally as separate matters, the parties concerned usually see them as parts of the same family problem. Thus, it becomes necessary to maintain the interrelationships of all these matters in both procedure and substance.

The first project under the work plan was a paper describing Family Court procedures for IV-D and private support determinations and enforcement in a sampling of counties around the State to illuminate the problems encountered by the bench, the bar, DSS, and the parties. The paper presents alternative models that are in use elsewhere or have been proposed. (See Working Paper on Support, pp. 1-44.)

The alternatives were examined in light of their possible effects on collateral actions in addition to the establishment and enforcement of support. For example, if IV-D support cases were handled entirely within an administrative agency, as they are in some other states, how would paternity be established or how would a respondent raise the issue of visitation? The implications of treating IV-D and private cases in the same or separate systems were considered in the context of each alternative model.

Following those discussions, a bill was drafted that establishes an administative process for the recovery of funds paid to AFDC recipients from those legally responsible for their support. The bill, which was filed on March 16, 1982, in effect removes support proceedings brought by the Commissioner of Social Services from Family Court. (See Memorandum in Support of Legislation and the Bill, Appendix B.)

The next project was a consideration of paternity, with particular emphasis upon the question of the Family Court's jurisdiction over paternity as a status determination and the relationship between paternity and support. (See Working Paper on Paternity, pp. 45-61.) Work is proceeding on the issues of custody and visitation. A great deal of work on family offenses has already been done on Article 8, Family Offenses. (See Second Annual Report of the Temporary State Commission to Recodify the Family Court Act.)

Child Welfare

The Commission has agreed to begin its consideration of child welfare issues by developing materials covering the following areas:



- foster care placement and review, voluntary surrender of custody, and voluntary surrender of guardianship;
- child protective proceedings, including questions of jurisdictional definition and evidence, procedures for the removal of children from parental custody, standards for disposition, and monitoring of dispositional orders;
- status offenses, including jurisdictional definition, standards for disposition, and questions of detention;
- custody, termination of parental rights, and adoption, including questions unresolved in the case law, the respective rights and interests of putative fathers and foster parents, and possible alternatives to full termination and adoption; and
- court jurisdiction over services to handicapped children.

A common factor in all these issues is that the court's role is shaped by the determinations and actions of public and private social services agencies.

Family Court proceedings on such matters as foster care, abuse and neglect, and termination of parental rights all require judicial decision-making in areas that are ordinarily seen as the province of the social services professions. From one point of view, this places judges in the position of second-guessing social workers. Yet the court's determinations clearly affect the legal relationships and fundamental rights and liberties of children

and families, matters traditionally considered "judicial" in nature.

The Family Court Act and the Social Services Law have placed the court at the center of a child welfare system that is plagued by severe and persistent problems:

- a child protective system that relies on poorly trained workers who are ill-prepared to function in their dual roles as investigators and service-providers;
- over-reliance upon foster care and institutional placement and a dearth of alternative services designed to keep children at home and families intact;
- the failure of child care agencies to develop and implement timely plans for the future of children in placement, resulting in protracted periods of care prior to the reunification of families and the placement of children for adoption, and at times in bitter conflict between biological and foster families;
- abuse and neglect in foster homes and institutions;
- a high incidence of inappropriate placements, resulting in geographical and cultural barriers to continued family contact, the exacerbation of children's emotional problems by unnecessary institutionalization, and the unavailability of adoptive parents;
- failure to use family and community resources to support families with children at risk;
- confusion regarding the use and consequences of voluntary surrenders of custody; and
- insufficient information to guide decision-making in individual cases and in the child welfare system as a whole.



These problems are not of the court's making, but the law nonetheless requires the court to confront them, while failing, in the view of may observers, to give the court an effective means for constructive action.

Many knowledgeable observers of New York's child welfare system look to future legislative and administrative initiatives as well as aggressive enforcement of the Child Welfare Reform Act for further improvements in the policies, performance, and accountability of the various public and private agencies that make up the child welfare system. But there is also a growing feeling that the Family Court's role in child welfare matters can be redesigned to create a broader and more effective judicial authority over the actions of child welfare agencies. The Commission views the court as an essential element and resource in the child welfare system and believes that meaningful judicial involvement in individual child welfare decisions may serve as an incentive for fundamental change throughout the system.

Beginning with the issue of voluntary foster care placement and review, the Commission determined that there is a compelling need for closer judicial review of such placements, and that the most critical decisions which

affect the child's future are likely to be those made at the time of placement or very soon thereafter. The Commission then developed a proposal altering the present statutory scheme for voluntary foster care placement and review proceedings. (See Proposal for Voluntary Foster Care Placement and Review Proceedings in Family Court, pp. 63-89.) Public hearings were held in New York City on March 19, 1982, in Albany on March 24th, and in Rochester on April 6th. (See Appendix A.) Based in part upon the testimony received at these hearings, the Commission will present recommendations in the form of legislation to revise foster care placement and review proceedings in Family Court.



## WORKING PAPER ON SUPPORT

### Introduction

The Commission decided to consider "adult disputes" (support, paternity, custody, and family offenses) as a unit in order to foster substantive and procedural consistency in treating apparently related matters. As a first step in this process, we have researched the handling of support proceedings in Family Court.

Support matters place a heavy burden on the court's caseload: in 1979, there were 95,539 support and paternity petitions and over 100,000 modification and enforcement petitions, many that were support-related.[1]

The Department of Social Services (DSS) is the petitioner in approximately one-half of the cases as assignee of the support claims of AFDC recipients. The passage of Amendment IV-D to the Social Security Act in 1975 mandated the current social service support collection scheme, which

1. Second Annual Report of the Chief Administrator of the Courts for Calendar Year January 1, 1979 Through December 31, 1979. (OCA Report) Table 3-33.

has complicated handling of support matters in Family Court as well as increased the numbers of petitions. The introduction of IV-D cases into the Family Court under Articles 4 and 5 has created both conceptual and practical problems for the Family Court.[2]

To give focus to our consideration of "adult issues," this paper will review the problems of IV-D support cases in Family Court and then discuss support cases in general. We will then expand the paper to cover the interrelation of Article 4 (Support) to Article 5 (Paternity), Article 6 Part 3 (Custody), and Article 8 (Family Offenses), while suggesting proposed alternatives and changes to the current scheme.

## I. The IV-D Program

Any state that elects to receive funds under the federal program of Aid to Families with Dependent Children (AFDC) must now comply with guidelines set forth in the

2. Committee commentaries, p. 3420 cited in Family Court Act, Article 1, commentaries, p. 5.



Social Security Act and appropriate Health and Human Services regulations.[3] Every state participates in this reimbursement program.

Under IV-D, the state requires that applicants for and recipients of AFDC assign their right to support from the absent parent. Applicants must cooperate with the state in establishing paternity of a child born out of wedlock.[4] The state initiates action to determine paternity, locate the absent parent, and collect support payments from the absent parent. To accomplish this, the state must establish support collection units and parent locator services. The federal guidelines do not specify a particular state agency to perform these tasks or the methods to be used to determine and enforce the support obligation, although financial guidelines must be established. Seventy-five percent federal reimbursement has been provided for state expenses for administering the IV-D program.

The Department of Social Services, as the designated IV-D agency in New York State, has established a Bureau of Child Support (BCS), Support Collection Unit (SCU), and a

3. Social Service Admendment to the Social Security Act, Title IV-D. 42 U.S.C.A. §§601, et seq.

4. 42 U.S.C.A. 602, 26 A, B.

Parent Locator Service (PLS).[5] When a person seeking AFDC applies to an Income Maintenance Center for aid (under IV-A of the Social Security Act), information concerning an absent parent is gathered. BCS then attempts to locate the parent to collect support. It is at this point that BCS interacts with the Family Court.

The Family Court Act requires that all support actions be commenced in Family Court under Article 4. To establish paternity for the purpose of seeking support, a party proceeds under Article 5 of the Family Court Act. In 1976, BCS began filing large numbers of petitions in Family Court as the assignee of AFDC recipients' "support rights" under the IV-D program.

The problems this created are still reverberating throughout the system and can be summarized as follows.[6]

- Tens of thousands of new cases were automatically generated as all AFDC recipients became assignors.[7]

5. Social Services Law §§111a, et seq.

6. All references to counties and agencies come from the interviews conducted by Commission staff listed in Appendix A.

7. Community Council of Greater New York, Who Should Support the Children? December 1977, p. 17.



- Procedures established in Family Court to handle individual support cases were now being taxed by a DSS computerized system.[8]

- Traditional Probation intake and collection services were inappropriate for IV-D cases.[9]

- Unlike other legal assignments of obligations or contracts, which are usually definable and finite, support obligations are often long-term, modifiable, and subject to judicial scrutiny. Thus, an assignment of the "support obligation" raised novel legal problems: Does the assignee properly represent the assignor's future interests? When the assignment terminates, what are the assignor's rights in the order? What are the respondent's rights to modify? How are the respondent's visitation counterclaims to be handled?

- Family Court judges who deal with "fundamental rights of children and families" (termination cases, juvenile delinquency, custody, etc.) were confronted with a staggering number of what amounted to "small claims cases" brought by a state agency. (Many respondents in IV-D cases are themselves poor and can afford only small payments.)

8. Supra, note 2.

9. Supra, note 7.

• Court administrators were faced with a potential conflict of priorities and interests. As they saw it, absorbing IV-D cases might adversely affect the private cases; cooperating with DSS may be interpreted as "special treatment" to a litigant; accepting 75% federal reimbursement for court-related expenses might require special monitoring of court personnel and could interfere with the independent functioning of the judiciary.[10]

Additionally, there were a number of fundamental questions concerning the IV-D program, which, although federally determined, affected considerations of state administration and policy: the extension of the federal government into an area traditionally left to the states; the rights of individuals and families receiving public assistance to equal protection and privacy; and the role of social services in quasi-judicial functions.[11]

While the IV-D program was viewed as an anathema by many in the Family Court system, others felt it would improve services for all those seeking support from absent

10. Interviews with DSS, OCA, and administrative judges.

11. Supra, note 7, p. 5.



parents. After all, the establishment of the IV-D program was a response to a national problem: the increased numbers and impoverishment of single parent families, and the large expenditure of public funds being used for their support.[12] IV-D was seen as a national solution to one of the perceived causes of the increased poverty of children: parental desertion. National data samples indicated that support contributions by absent parents (separated, divorced, and unmarried) were often very low, nonexistent, or

12. The Bureau of Census for 1978 reported that there were eight million female heads of households in the United States, a 46% increase since 1970. The female head of household is the only category of household that has increased in poverty. Half exist on less than $7,000 per year, a quarter on less than $4,000. Three and a half million women were on welfare, along with their six and a half million children. Five out of six AFDC families have an absent father, two-thirds of whom are categorized as separated or divorced. It is projected that if the poverty population continues to grow at its present rate and the conditions in society at large continue, by the year 2000 the poverty population will be composed almost entirely of women and children. Statistics from National Advisory Council on Economic Opportunity; Bureau of the Census, and 7 F.L.R. 2333, 3/24/81. Cf. H.R. Rep. No. 93, 92nd Congress, reprinted in [1974] U.S. Code Cong. and News 10/7.

unenforced.[13] New York State was no exception.[14] The IV-D program, while creating administrative problems for the court, was designed to be an effective system for establishing and enforcing child support orders.

How the Family Court handles both IV-D and private support cases has been the subject of a staff survey of sixteen New York counties. What we have found is that the Family Court, Probation, and DSS operate and interact differently in each county. Practice often is determined by the

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13. A University of Michigan long-term study of 5,000 American families revealed that wives and children were twelve times more likely to be on welfare if the wife was divorced, while the spendable income of ex-husbands increased. 7 F.L.R. 2333, 3/24/81.

    An Illinois study found that child support is regressive in that fathers with less income are paying a larger percentage of their income. "There is a large difference in well-being between absent fathers and female heads-of-household and the magnitude of surplus income available at all income levels." Judith Cassetty, Child Support and Public Policy. Lexington Books, Massachusetts, 1978, p. 65.

14. In 1972, New York collected $11,978,000 in child support payments from absent parents. Today, collections total over $160,000,000 (one-third AFDC and two-thirds non-AFDC). Remarks by Senator William T. Smith, II, Chairman, New York State Temporary Commission to Revise the Social Services Law before the National Conference of State Legislatures Eastern Regional Seminar on Child Support Enforcement, 10/22/79.



population density of the county, the policies of the administrative judge, and the local history and administration of the court and the agencies.

Although the procedure differed substantially from county to county, many of the problems created by the IV-D program were similar in nature and remain unresolved.

Federal Reimbursement

IV-D cases have been heard in Family Court for over five years without New York State having applied for seventy-five percent reimbursement of expenses. Court personnel, excluding judges, but including hearing examiners and court officers, and operating expenses might have been reimbursed at the rate of seventy-five percent by the federal government if appropriate cost analyses and formal application had been completed and submitted and aggressively pursued.[15] Some other states are taking advantage of this opportunity by treating IV-D cases administratively and receiving funds for their administrative agency.

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15. 45 C.F.R. 304.20 (a)(4).

The Caseload

The number of IV-D cases exceeds the ability of the court to hear and determine them efficiently. In response to this problem, hearing examiners have been appointed to hear and report on support cases in some of the most congested counties. However, the problem persists. In New York City and other large counties, the courts have either formally or informally imposed quotas on the number of petitions they will accept each month. Although once filed, a claim may reach the hearing stage in two to three months, the case may already have awaited docketing for two or three months. This delay creates a new set of problems. For example, the respondent's circumstances may have changed from the time of the initial DSS investigation, e.g., he may have moved or changed employment. In enforcement cases, arrears may have accumulated beyond the point where collection is likely. As one report indicated: "It would seem self-defeating to expend hundreds of thousands of dollars and man-hours to design an elaborate system to enforce support payment obligations only to let cases pile up for so



long that arrears are uncollectible as a practical matter, even from absent parents who are employed."[16]

As of April 1981, there were approximately 18,000 arrears cases in New York City DSS files. While these may include some very old cases that will never be adequately processed, new arrears cases continued to accummulate under the quota system. Although some upstate counties do not have backlogs, large urban areas usually do.

Systems

While DSS, as the IV-D agency, is receiving federal funds to modernize its systems, the Family Court is not revamping its operation with new technology. DSS summonses and petitions are produced on word processors and case information is stored on computers, whereas Family Court is still processing cases by hand and does not even have uniform forms. This slows down each step in the process for both IV-D and non-IV-D cases. For example, all orders must be entered in a docket book by a court clerk, causing long delays in providing SCU with copies of orders. In turn,

16. Economic Development Council of New York City. New Burden for the New York City Family Court: Federal IV-D Legislation on Support Obligations and Paternity. January 1976, p. 27.

checks received by SCU cannot be properly accounted for or given to the right party until the order is received. According to the New York City Department of Social Services, BCS, Family Court delays or loses between forty and fifty percent of its court orders.

Coordination of Probation Intake and DSS

The Department of Probation was responsible for all support and paternity cases prior to 1975.[17] After the IV-D program was established, Probation relinquished the support collection and enforcement function to the DSS Support Collection Units. However, Probation retained the support intake function in some counties. The relationship and functions of the Department of Probation and BCS in paternity and support cases are still confused and duplicative. The functions of each agency vary from county to county, and little coordination or cooperation exists.

For example, in some counties, all IV-D and private child support cases are referred to BCS for intake. In other counties, including New York City, only AFDC cases are referred. Counties vary as to which agency handles modifications and paternity cases.

17. Supra, note 7.



Probation is charged with informing non-AFDC petitioners that they may utilize DSS services, but since this is not a legal mandate, the practice varies.[18] If Probation referred non-AFDC cases to DSS, New York State could receive federal funds for processing them. When Probation handles these cases, there is no reimbursement.

There is also a conflict in purpose and emphasis between the Department of Probation and Bureau of Child Support. Probation officers view themselves as conciliators. This is in keeping with the original goal of the Family Court: to render adjustment and conciliation services to families with multiple problems. The single-minded goal of BCS, to collect support, and the emphasis of the Family Court Act toward conciliation and consolidation of problems are at odds. For example, Probation may have to refer AFDC recipients to BCS for support while retaining a custody or family offense problem. Probation dislikes this fragmentation of cases and resists such referrals.

18. Unpublished proposed rules and regulations for New York State Department of Probation.

5. Article 5-A Special Provisions: The Assignor/Assignee Nature of IV-D Cases

There are situations in which the assignment of support rights by an AFDC recipient to DSS creates confusion. For example, when a petitioner has obtained a support order prior to going on welfare, does DSS simply take over the order? If DSS wants to modify the order, is this binding on the petitioner? Does the original order become reinstated afer public assistance is terminated? In cases where DSS obtained the support order and the assignor subsequently leaves public assistance, must the assignor bring a case de novo under 5-A? Can she accept the DSS order? Is there a hearing to convert the order? Can the respondent challenge the order anew after the petitioner goes off public assistance? Who is responsible for advising assignors concerning these orders when they leave public assistance? Are all appropriate orders being converted? How is a respondent's counterclaim for visitation to be handled if DSS is a petitioner? What if the respondent can afford more than the petitioner is receiving on public assistance? Is the court awarding orders in excess of AFDC grants? How do Probation and BCS coordinate these cases?



These issues do not appear to have been resolved either in the statute or administratively, and must be kept in mind in considering new approaches for handling IV-D cases.

According to the Department of Social Services, Bureau of Child Support, the Family Court causes unnecessary delays by requiring appearances in stipulated cases, calendaring cases before service, giving all IV-D cases low priority in all-purpose parts, and poor enforcement of its own orders.

A support schedule has been established by DSS to determine the obligation of the absent parent. Using this formula, BCS attempts to settle cases before filing Family Court petitions. DSS claims that it is unsuccessful in settling many cases because the respondent must still go to court. This gives him little incentive to enter into an early stipulation. Others say that the support formula used by DSS is unrealistically high, and therefore few settlements are achieved.

Since Family Court is organized for pro se petitioners, return dates are issued prior to service. If DSS

cannot accomplish personal service within the period before the return date, DSS personnel must make appearances to adjourn the case. In New York City, it is estimated that in up to 50% of DSS cases, the parties do not appear on the first return date, making multiple and unnecessary appearances inevitable. Also, New York City's personal service requirement and the court's refusal to provide for substituted service makes for a formidable obstacle.

Many Family Courts have multiple, all-purpose parts, and therefore DSS must have caseworkers or attorneys to cover all parts. DSS complains that this is an unnecessary burden.[19] It argues that the large number of DSS cases should be funneled through one part and thereby covered by a single DSS worker. Additionally, in this way, the costs of IV-D cases could be more easily ascertained and reimbursed by the federal government.

DSS personnel also complain that since IV-D cases are given the lowest priority, they are the first to be adjourned or rushed. They observe that IV-D awards are generally lower than private support cases and that there has

19. Supra, note 16.



been little judicial acceptance of the DSS support formula. Support orders, they say, are unpredictable and depend on the predilictions of the judge. Finally, they claim they have problems getting upward modifications in IV-D cases.

Most observers, including DSS, point out that enforcement in Family Court is poor. Judges regularly forgive arrears, often accummulated because of court delay. Judgments are not entered on a regular basis, and incarceration is rarely used. Since stipulation of settlement of arrears must be reviewed by court, a backlog is created even as to cases that have been settled.[20]

While DSS may view Family Court procedure as problematic, others defend the practices. Family Court, after all, does not exist to serve DSS. It is claimed that the traditional judicial role of overseeing private settlements remains firm in our public policy. Further, special parts for calendaring should not be arranged for one litigant, namely DSS. Finally, while enforcement is important, the rights of respondents must also be protected.

20. Family Court Act §§423 and 424.

Although the operation of DSS is not the subject of this paper, it must also be mentioned that many of those interviewed felt that the DSS Bureau of Child Support was disorganized, unprepared, incompetent, and abusive. They said the cases DSS brings are often worthless, that respondents are never served properly, and that the whole IV-D program is a waste of taxpayers' money.

Both critics and supporters of the present IV-D program, however, agree on the need for changes in the system.

Some Alternatives

Many participants in the system feel that a completely new approach to handling IV-D cases is required.

The Office of Child Support Enforcment of the United States Department of Health and Human Services sponsors studies and issues extensive reports on IV-D child support enforcement efforts in the states.[21] As part of this national effort, the Office of Child Support conducted a

21. There is a National Child Support Enforcement Reference Center in Washington, D.C. and the National Conference of State Legislatures is conducting a Child Support Enforcement Project and has an information clearinghouse to inform state legislatures of developments in the area.



comparative study of various state systems that handle support cases, comparing them for cost and efficiency.[22] Nine state systems were broken down into three categories: administrative, quasi-administrative, and judicial. The administrative system was characterized by the fact that the administrative agency determines the amount of support the absent parent should pay. In three states, for example, when a child goes on AFDC, the parents automatically incur a debt to the state for the total welfare grant made to the child. The accumulation of the debt at this maximum level is lowered only by a subsequent order of support for a lesser amount based on the income and assets of the parties. The administrative agencies also are authorized to enter default orders, which may be docketed in court (either at maximum level or at the new obligation set by the agency). Also there are administrative enforcement remedies, including wage garnishment. The quasi-administrative systems allow for the docketing of stipulations on support

22. U.S. Department of Health, Education, and Welfare, Office of Child Support Enforcement. Comparative Analysis of Court Systems Procedures and Administrative Procedures to Establish and Enforce Child Support. February 1980.

and paternity without judicial orders and the processing of wage garnishments by IV-D agencies. However, disputed cases are sent to court. The pure court systems require the parties to appear in all cases even when a stipulation has been reached. Enforcement techniques focus on returning the delinquent parent to the courtroom for a lecture.

Not surprisingly, the administrative systems have the highest collections per case, followed by quasi-administrative systems. The study also found that administrative jurisdictions were disadvantaged in enforcement unless orders were docketed and had the effect of judgments.[23]

New York State has the least effective means of support enforcement: the judicial model.

The federal Office of Child Support is encouraging the states to place IV-D support cases in administrative agencies.[24] Removing IV-D cases from Family Court would address some of the major problems for Family Court: its

23. Ibid., p. 5.

24. National Conference of State Legislatures, A Legislature's Guide to Child Support Enforcement. April 1980, p. 35.



caseload would be substantially relieved; computer systems could be utilized by the IV-D agency, and seventy-five percent federal reimbursement could be obtained without requiring Family Court participation; enforcement could be improved; and orders could be made more uniform.

Utah and Oregon have adopted administrative procedures that may be a guide for New York State.

Utah has given authority to its Department of Social Services to establish and enforce support obligations. DSS, having established a support formula, sets the support obligation and notifies the absent parent by service of a summons and notice. The absent parent may default, stipulate, or request a hearing before an administrative law judge. Appeals may be taken to the district court. Orders of the agency become judgments of the district court. DSS can then enforce the judgment by issuing a wage assignment, among other enforcement techniques.

Oregon's scheme differs only in that the absent parent is automatically liable for the entire amount of public assistance until the support obligation is established. Paternity may also be established by stipulation. There is no scheme for administrative enforcement, since the Oregon

legislature felt that court enforcement was satisfactory. If a case is contested, it is certified to the circuit court for a hearing, but since the emphasis is on negotiation, few cases are certified to court.

A conference in Chicago on July 20, 1981 by the U.S. Department of Health and Human Services, Office of Child Support, provided the staff with details on the operation of IV-D administrative agencies.

It must be pointed out that there are objections to removing IV-D cases from Family Court to DSS. Opponents argue that it is discriminatory to remove only the IV-D cases, since this would deny a particular class of litigants (particularly poor respondents) access to the court.[25] They also say that the IV-D agency has no understanding of or commitment to due process, and is ill-equipped to take on a quasi-judicial function.

However, removing both IV-D and private support cases to DSS raises other problems: it may further fracture an already fragmented system (Family Court/Supreme Court), it would prevent private petitioners from requesting multiple

25. Supra, note 7, p. 1.



relief, and private petitioners and respondents may object to being processed by DSS when they are not receiving public aid. Also, removing private support cases might require a constitutional amendment.[26] IV-D, it may rightfully be claimed, can be removed because these are in the nature of "recoupment" actions rather than support cases.

A Quasi-Judicial Model

If the Commission wishes to consider a judicial model to include IV-D within the court system, it may consider a plan prepared in June 1980 by the New York State Department of Social Services for a pilot project to be submitted for funding to the U.S. Department of Health and Human Services, entitled "To Compare the Effectiveness and Efficiency of a Model Special Family Court Part with Existing Family Court Structure in Processing Title IV-D Child Support Enforcement Cases." This plan included having IV-D staff available in the court part; training court and child support staff; and using hearing examiners. The hearing examiners, record keepers, court clerk, and stenographer were to be paid for

26. New York State Constitution, Article 6, §13 provides that support and paternity cases are to originate in Family Court.

by U.S. funds. The plan was never submitted because of a time limit and technical objections by OCA.

This pilot plan, however, suggests a quasi-judicial alternative for handling IV-D and private support matters within the court. A special part could be created in Family Court using hearing examiners to hear and determine all or only IV-D support cases. The hearing examiner could also enter orders when the parties have stipulated to support (and/or paternity), or stipulated support cases could be automatically entered. Only Article 4 and 5 cases involving litigatable issues of paternity or custody would be referred to a judge. Since there are federal funds available for IV-D court-related expenses, seventy-five percent of the cost of that portion of the part's work devoted to IV-D cases could be reimbursed. Since support cases and paternity consents make up such a large percentage of the court's caseload, the usual objections to special parts and under-utilization should not occur. If and where it did, the days and hours of the hearing examiner could be limited and the intake personnel used in other adult intake situations.

Some say that since support orders are so unpredictable and enforcement so poor in Family Court, only removal of IV-D cases altogether will make the program workable.



Obviously, removal of IV-D cases alone will not resolve the problems of private support proceedings.

## II. Private Support

Private support cases in Family Court are also handled differently from county to county. However, as was the case with IV-D, certain common issues and problems emerged from our interviews and observations. It should be noted that certain problems are peculiar to private cases (intake, service of summons), while others are endemic to both IV-D and private cases (standards for support, timeliness, enforcement). The following is a summary of how the system works from intake to enforcement for private support matters.

Individuals seeking support in Family Court are routed in several ways, depending on the county. In New York City, petitioners are interviewed by Probation intake. If at all possible, Probation will attempt conciliation by sending notices to respondents and interviewing both parties. In some other counties, those seeking child support

are sent to DSS, whereas Probation handles spouse support and modifications. As previously indicated, private petitioners are qualified to receive DSS IV-D services, but often are not referred for these services by Probation. The Department of Probation does not use a support formula or provide specific guidelines to their officers, while DSS has a support formula.

In counties where Probation provides intake service but does not draft petitions, parties are sent to petition clerks after conciliation has failed. The petition clerks use Probation worksheets to draft petitions, and they frequently re-interview petitioners for pertinent information. In other counties, Probation interviews petitioners, conciliates, and drafts petitions. In some places, Probation does not attempt to conciliate, but does draft petitions. Other counties have eliminated Probation intake, and court clerks draft petitions.

Probation intake was originally conceived as a place where informal settlements could be reached without the necessity of a court hearing.[27] Where Probation continues

27. Supra, note 20.



to perform a conciliation function at intake, adjustment rates are low and may only serve to delay filing of a petition. While Probation drafts petitions in some counties, Probation officers do not see their role as "legal" and are not trained to draft petitions. They feel the task was "dumped" on them because some judges felt there was a "conflict" in having court personnel draft petitions. In Onondaga, one hearing examiner estimated that fifteen percent of the petitions were being dismissed for failure to state a cause of action, while the Probation petition clerk was unaware of any petition flaws and had received no comments or complaints from the court. Of course, the parties waste months of time and effort each time a petition is dismissed.

Duplication of services by petition clerks, Probation, and BCS leave petitioners confused, frustrated, and angry. In addition, no one at intake is prepared to advise petitioners or respondents of their legal rights. For example, Probation does not advise a petitioner concerning temporary orders of support or the modes of enforcement, leaving these matters up to the judge at the first appearance. As a practical matter, this effectively eliminates temporary orders as an alternative for pro se petitioners, as well as numerous support enforcement options.

In New York City, private petitioners are responsible for having process personally served upon respondents prior to the return date on the summons. Since the appearance rate for the first court date is only fifty to sixty percent, apparently many petitioners have not accomplished service. Petitioners may find serving the summons an insurmountable problem since they are not adequately instructed on the proper procedure, private process servers are expensive, and friends may be unwilling to become involved in a domestic dispute.

Other counties throughout the State handle service by mail. If a respondent does not appear, the local sheriff or police will then attempt to serve the summons at no charge to the petitioner. While this procedure appears to have better results (seventy-five percent appearance on the first return date after mail service), many complain that respondents are entitled to be personally served in the first instance. Also, since individual situations are not considered when the mode of service is chosen, mail service, where impracticable, delays the process for those cases.

Financial disclosure is required by the Family Court Act. However, there is no standard time and place specified



when parties are required to provide complete financial disclosure. In some counties, financial forms and instructions are sent with the summonses. In other counties, the parties are given forms to fill out at the first court appearance. No one offers the parties advice or help in completing disclosure forms, nor are the parties advised that all appropriate information is required. Nor are they warned of the consequences for failure to disclose. Since it may be in the respondent's interest not to disclose, the lack of standard procedures serve to delay and frustrate the process, and is one reason for the repeated adjournments reported in many counties.

If a respondent does not appear after service, it is likely that a Family Court judge will issue a warrant despite the fact it has little chance of being executed. Family Court warrant squads around the state have been eliminated or decimated due to budget cuts. Although warrants are still issued on a regular basis, many never receive any attention from the police. Hundreds or thousands of cases may accumulate over the years. In many counties, after one or two years, they are simply dismissed to clear the dockets, often without notice or explanation to the petitioners. Pro se petitioners are generally unaware that a

warrant is unlikely to be executed or that there may be alternative remedies (e.g., an entry of default or, in enforcment cases, judgments and/or sequestration of property). Respondents are thus inadvertantly rewarded for failing to cooperate.

A number of the largest courts have hearing examiners who may hear IV-D or private cases and make a recommendation to the judge. Most hearings last from five to fifteen minutes. Petitioners sometimes feel that respondents did not bring proper proof of finances and that the hearing did not reveal the truth. They feel that respondents "get away with murder by lying." It may be that when there is no counsel present to question respondent's income and expenses, the level of support award is the minimum. Also, it is apparent that the level of support depends on the judge's or hearing examiner's discretion. Some judges interpret the "means" test as meaning "bare necessities," to prevent the need for public assistance. One hearing examiner indicated that he tries to award support so that both parties are left with the same amount after contributing to the children. Another indicated that she used the DSS formula for cases whenever possible. Others felt the DSS formula was much too high.



Petitioners who do finally receive support orders (after three to nine months and four to eight appearances) may have to start the process over again if the respondent misses payments. This includes a visit to Probation, service of a summons, and multiple adjournments.

After the initial hearing, respondents, on the other hand, may not be advised that failing to pay has serious consequences. Respondents may have reservations about paying because of visitation or other questions that have not been resolved.

Finally, enforcement problems are severe. If respondents do not appear, once again, warrants destined for a "dead file" are issued. Because of this general practice, large numbers of enforcement cases are also dismissed without results. Inadequacy of notice to respondents (mail service and questionable personal service) is often the reason given in counties where inquests are not readily held and default judgments are infrequently entered as alternatives to warrants. While bonds or security used to be required, these are no longer enforcement techniques utilized in Family Court with any frequency.

Many judges confine themselves to reprimanding respondents on their first default (which may result in a petitioner spending one and one-half years to obtain and enforce a $20.00 per week order). Although payroll deduction orders are apparently the most effective enforcement method used in New York today, many judges are adverse to granting them, fearing respondents will lose their jobs. Arrears are often forgiven despite a recent amendment to the statute requiring "good reason" for such a decision. Incarceration for failure to support is unheard of in New York. Because of the difficulties of enforcement, DSS and private petitioners are constantly filing new enforcement petitions on the same case. As one clerk put it, "I feel sorriest for the working woman with children. She gets caught up in Family Court. Everyone knows Family Court is a 'paper tiger,' and that the support order will never be enforced."



## Some Suggestions for Private Cases

### Inadequacy of Pro Se Process

The difficulties experienced by petitioners and respondents in Family Court often stem from the fact that they do not receive legal advice and services. Petitioners must serve the summons, obtain disclosure, and request the appropriate and most expeditious relief. However, they do not have the requisite knowledge, and Probation does not provide legal advice. Similarly, respondents do not always know the consequences of the Probation letter or summons. He often does not know how to fill in disclosure forms and may have counterclaims about which he has not been appropriately advised. (This is particularly true in paternity cases.) Judges must often use their time advising the parties. Obviously, assignment of counsel and conforming the court to the CPLR is one way of re-molding the system. As the Commission previously found in its consideration of practice and procedures under Article 8, many problems for parties concerned with family offenses also stemmed from the

inability of pro se parties to negotiate a complex body of law and a complex court system.

Uniform Intake Proceeding -- Use of Paraprofessionals

If the Family Court Article 4 procedures are to remain pro se, the intake system needs revision:

- Parties should be advised of the law of support at intake;
- All petitioners should be advised of DSS services;
- Whenever possible, duplication between Probation and DSS should be eliminated;
- All intake service should be in the same physical location and coordinated;
- Petitions should be drafted by trained personnel with legal supervision; and
- Federal funds should be sought for intake services provided to any IV-D cases.

Service

- Summons should be served by state personnel. Mail service and alternative service (CPLR) should be options, although petitioners should be advised of the modes of service.



- Financial forms and instructions should be provided with the summons and petitions.
- Respondents should be informed at the time of service that they can seek advice at Family Court intake.
- Return dates should be issued by court clerks, not judges.
- Calendaring should be allowed subsequent to service of a summons to prevent calendaring of cases where service is uncertain.

Enforcement

Court personnel indicated almost unanimously that lack of enforcement of orders was the most serious problem in Family Court. Some suggestions flow from their complaints.

- Warrant squads must be re-established or the use of warrants severely curtailed.
- Alternatives to issuing warrants need to be encouraged in cases where service can be proved, e.g., inquest and entry of judgment, and issuance of temporary orders of support pending respondent's appearance.
- Dismissal of arrearages should be curtailed.
- Support orders should be granted with interest to prevent adjournments.

- The use of payroll deduction orders (PDO) should be expanded to include all sources of income, e.g., trust income or dividends.

- A shortened procedure equivalent to the order to show cause in Supreme Court should be developed for enforcement cases.

Alternative systems for handling private support matters may also be considered. For example, as previously described, a special part with hearing examiners or referees who can hear and determine all support cases is one possibility. A number of models have been developed in other states, including Michigan's Friends of the Court system and California's family dispute centers, which handle support, custody, visitation, and divorce using dispute resolution and mediation techniques. Consideration of these models, however must await further research.

Other Issues

There are a number of other problems that need be addressed. How do we handle custody, visitation, and family offense issues as they relate to IV-D and private support



cases? Some initial questions come quickly to mind: Should support and visitation be interdependent? In IV-D cases? If a family has multiple problems concerning custody of children, support, and visitation, should mediation be attempted? What rights and obligations accrue to fathers in IV-D paternity cases? Custody? Visitation? How should counterclaims be handled? Are the children entitled to counsel? Under what circumstances?

The relationship of Family Court support cases and Supreme Court should be explored. If we find, for instance, that both courts are handling pieces of the same matter, a "friends of the court" model or a dispute resolution center could be utilized. Such a "center" could handle support, custody, visitation, and divorce, and would serve both Supreme and Family Courts, thereby providing us with new possibilities for non-judicial dispute resolution.

## INTERVIEWS CONDUCTED

### Support (Article 4) and Paternity (Article 5)

#### Court Clerks -- New York City and Vicinity

Ray Allman, Chief Clerk
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New York, NY May 7, 1981

Hercules Centioni, Clerk
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Charles Emanuele, Chief Clerk
Family Court, Kings County
283 Adams Street
Brooklyn, NY May 4, 1981

Joseph Filippi, Deputy Clerk
Family Court, Queens County
Parsons Boulevard
Queens, NY May 11, 1981

Raymond Jamet, Chief Clerk
Norman Friedman, Clerk
Family Court, Bronx County
161st Street
Bronx, NY May 19, 1981

Joseph Kenavan, Clerk of the Court
Family Court, Richmond County
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Staten Island, NY June 6, 1981

Thomas Mahon, Chief Law Assistant
R. Clifford Fusco, Deputy Chief Clerk
Family Court, Nassau County
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Westbury, NY June 11, 1981

Court Clerks -- Upstate

Frank Pumillo, Chief Clerk
Family Court, Westchester County
White Plains, NY May 19, 1981

Donald Berkheimer, Clerk of the Court
Family Court, Rockland County
New City, NY June 30, 1981

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James Armour, Clerk of the Court
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Virginia Hall, Clerk of the Court
Family Court, Warren County
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Madelyn Dwyer, Chief Clerk of the Court
Family Court, Onondaga County
Syracuse, NY June 8, 1981

Ronald Seward, Clerk of the Court
Family Court, Monroe County
Rochester, NY June 23, 1981

Frank Boccio, Clerk of the Court
Family Court, Erie County
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Department of Social Services (DSS), Office of Income Support (OIS), and Bureau of Child Support (BCS)

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Also present: Thomas Giroux, Associate Commissioner, Centralized Operations, DSS; Frank Bogurdas, Counsel's Office; and Barry Dorfman, OCS.



Irwin Brooks, Assistant Commissioner
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Also present: Herb Simon (OIS); Frank Olton (BSC); Mike Infranco; Dan Savino; Alan Baer; Bernie Scherman; and Rosemarie Klaus.

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Hearing Examiners

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Rita Sidman, Assistant Deputy Director of Probation
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Westbury, NY June 11, 1981



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## WORKING PAPER ON PATERNITY

### Introduction

In New York State, the number of out-of-wedlock births has been steadily increasing. From 34,798 recorded live births in 1976, the number of out-of-wedlock births has increased to 56,797 in 1980[1] -- a fifty percent increase in just five years!

In 1979, 33,891 new paternity petitions were filed in New York State Family Court; in 1978, 38,150. Of the number of original petitions filed, approximately 30,123 were Department of Social Services (ADC) cases.[2] No statistics are presently available to indicate the actual number of orders of filiation entered or judicially-approved compromises.

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1. 1979 NYS Department of Health Vital Statistics, Tables 24 and 25. 1980 figures supplied by NYS Departemnt of Health, Syracuse Office, from copy now at printers for 1980 volume of Vital Statistics.

2. 1978 NY First Annual Report of the Chief Administrator of the Court (1979). (OCA Report) Table 47.

   1979 NY Second Annual Report of the Chief Administrator of the Court (1980). (OCA Report) Table 48.

Prior to 1962, when the Family Court Act was enacted, jurisdiction over actions concerning children born out of wedlock was vested in the Children's Court outside of the City of New York and in Special Sessions, a criminal court, within the City of New York.[3] According to the Committee notes of the Joint Legislative Committee, which prepared the Act, the purpose of giving the family court jurisdiction over paternity proceedings was "to permit the Family Court to draw upon all its resources in protecting and caring for the innocent child of an illicit relation."[4]

Article 5 incorporated the provisions of prior law, both criminal and civil.[5] For example, putative fathers were not included in the group that could initiate a

3. Comment §511(1) NY Joint Legislative Committee on Court Reorganization, Part II, Family Court.

4. Id. Comment §511(2).

5. Family Ct. Act §524 (issuance of summons); Family Ct. Act §525 (issuance of warrant; Family Ct. Act §531 (respondent shall not be compelled to testify).



paternity proceeding.[6] The procedures for a hearing were designed with the presumption that the father would be the respondent[7] and that it was the father who would be ordered to pay support.[8] The fact that the drafters considered it solely a mechanism for providing support for the child born out of wedlock is reiterated throughout the statute.[9] The original statute is completely silent as to any rights conferred on the father by the entry of an order of filiation. The language of the original statute speaks only of liability and obligation. Nothing in the original statute or in the Committee comments gives any

6. Family Ct. Act §522, as enacted in 1962.

7. Family Ct. Act §§531 and 532, as enacted in 1962.

8. Family Ct. Act §545, as enacted in 1962 (order of support by father).

9. Family Ct. Act §513 (obligations of parents); Family Ct. Act §515 (government obligation to the child); Family Ct. Act §516 (agreement or compromise); Family Ct. Act §522 (persons who may originate proceedings); Family Ct. Act §561 (proceedings to compel support by mother); Family Ct. Act §562 (proceedings to compel support by mother and father); Family Ct. Act §563 (paternity and support proceedings combined; apportionment) (1962).

hint that paternity proceedings were viewed as a status determination at the time that the New York State Legislature authorized this purely statutory proceeding.[10]

Status or Support?

The leading New York case, Commissioner v. Koehler,[11] states that an order of filiation entered in a paternity proceeding is "not a binding adjudication of illegitimacy. It does not establish the status of the

10. State of New York, Joint Legislative Committee on Court Reorganization, Vol. II, The Family Court Act, Article 5.

11. 284 N.Y. 260, 267 (1940). The Court of Appeals has reiterated this understanding of the nature of a paternity proceeding in other decisions. "H.H. v. I.I.", 31 N.Y.2d 154 (1972); Schaschlo v. Taishoff, 2 N.Y. 408 (1957); Commissioner v. Simon, 270 N.Y. 188, rearg. denied, 271 N.Y. 527 (1936), People ex rel. Lawton v. Snell, 216 N.Y. 527 (1916). It should be noted that Koehler was primarily concerned with the evidentiary question of the strength of the presumption of legitimacy when a child is born to a married woman. The court, however, was also concerned that neither the child nor the husband of the mother were necessary parties to the proceeding.



child, nor would it be competent evidence to establish illegitimacy in any proceeding to which others are parties." As recently as 1975, Judge Cooke, writing for the majority of the Court of Appeals in a case concerning the consent to adoption by the father of a child born out of wedlock, Matter of Malpica-Orsini,[12] characterized paternity actions in the traditional manner:

> The vast majority of instances where paternity has been established arise out of filiation proceedings, compulsory in nature, and persons experienced in the field indicate that these legal steps are instigated for the most part by public authorities, anxious to protect the public purse.

Appellate courts have held that paternity proceedings are "primarily intended to insure that the child be financially provided for by the putative father and not by

12. 36 N.Y.2d 568, 573 (1975) appeal dismissed sub nom. Orsini v. Blasi, 423 U.S. 1042 (1976).

the State."[13] The Second Department has stated that "the effect of an order of filiation on the child's status is limited,"[14] but the court has not succinctly outlined the limitation.

In 1976, however, the Legislature amended the Family Court Act in order to allow putative fathers to commence paternity proceedings.[15] One trial court construed this amendment as an indication that the Legislature intended "an order of filiation to establish more than

13. Salvatore S. v. Anthony S., 58 A.D.2d 867, 868 (2d Dept. 1977). It is only fairly recently (1925) that a private party was allowed to bring a proceeding as an individual to seek support for a child born out of wedlock. Duerr v. Wittman, 5 A.D.2d 326 (1st Dept. 1958).

14. Id.; Matter of J., 50 A.D.2d 890, appeal dismissed, 39 N.Y.2d 741 (2d Dept. 1975); People v. Arcieri, 8 A.D.2d 923 (3d Dept. 1959).

15. 1976 Laws of N.Y. Ch. 665, amending Family Ct. Act §523. Trial courts had disagreed on whether or not the putative father of a child born out of wedlock had standing to bring an action to establish his paternity. Alvin B. v. Denise C., 85 Misc.2d 413 (Fam. Ct. King's Co. 1976); Matter of Roe v. Roe, 65 Misc.2d 335 (Fam. Ct. King's Co. 1970); but see Ricky M. v. Sharon V., 49 A.D.2d 1035 (4th Dept. 1975).



simply the issue of child support."[16] Other trial courts have maintained that the purpose of paternity proceedings is to establish liability for the support of the child born out of wedlock.[17] Some courts have dismissed proceedings when the father sought only an order of filiation and no order of support[18] or where a child was already

16. "When property rights, custody, visitation, and parental rights are predicated on the order of filiation, and unwed fathers are granted status to bring the petition themselves, it is clear that the legislature intends the order of filiation to establish more than simply the issue of child support. The statute itself specifies additional powers of the Family Court ... [w]here it is claimed the mother's husband is not the child's father, the Family Court proceeding is, in substance, a determination of illegitimacy." Commissioner v. Lazaro, 99 Misc.2d 408, 410 (Fam. Ct. N.Y. Co. 1979).

17. Kordek v. Wood, 108 Misc.2d 434 (Fam. Ct. Onon. Co. 1981); Matter of Nellenback, 107 Misc.2d 1061 (Sur. Ct. Lewis Co. 1981); Czjak v. Vavonese, 104 Misc.2d 601 (Fam. Ct. Onon. Co. 1980); Matter of Bertrand, 100 Misc.2d 439 (Fam. Ct. Onon. Co. 1979); Cf.: Goodrich v. Norman, 100 Misc.2d 33 (Fam. Ct. N.Y. Co. 1979).

18. Kordek v. Wood, supra, note 17; Edward K. v. Marcy R., 106 Misc.2d 506 (Fam. Ct. King's Co. 1980).

adequately supported by the mother's husband and non-access by the husband was not established.[19] Another trial court has found that paternity proceedings "can be used solely for the purpose of establishing paternity."[20]

In the area of inheritance, where the distinction between affiliation and legitimacy was most clear, the United States Supreme Court has held that a statute that completely bars an illegitimate child from inheriting from the natural father while allowing the child to inherit from the mother is a violation of the Equal Protection Clause of the Fourteenth Amendment.[21] In the case of Lalli v. Lalli,[22] which upheld New York's EPTL §4-1.2, the court made it clear that the child need not be legitimate in order to inherit from his father."[23] Thus, affiliation (as well as acknowledgment and filing with the

19. Czajak v. Vavonese, supra, note 17.

20. Matter of John J.S. v. Theresa L., 99 Misc.2d 578 (Fam. Ct. Bronx Co. 1979).

21. Trimble v. Gordon, 430 U.S. 762 (1977).

22. 439 U.S. 259 (1979).

23. Ibid., at p. 267.



putative father registry) will now serve in New York to qualify a child as a distributee of an intestate father's estate.

The courts are also allowing the child to be a party to any proceeding for wrongful death[24] or to recover the proceeds from a life insurance policy that fails to designate a beneficiary.[25]

Many federal statutes include the out-of-wedlock child in the same category as any other child.[26] However, the child who is merely affililated with the father by a family court order of filiation and who is not legitimated by the subsequent marriage of the parents, does not

24. Matter of Rykowski, 106 Misc.2d 820 (Sur. Ct. Nassau Co. 1981); Matter of Cesario, 103 Misc.2d 1 (Sur. Ct. Bronx Co. 1980); Matter of Diaz, 102 Misc.2d 817 (Sur. Ct. N.Y. Co. 1979); Matter of Brown, 101 Misc.2d 805 (Sur. Ct. Bronx Co. 1979); Matter of Niles, 81 Misc.2d 937 (Sur. Ct. Rensselaer Co. 1975); Matter of Flores, 78 Misc.2d 481 (Sur. Ct. Monroe Co. 1974).

25. Prudential Insurance Co. v. Hernandez, 63 Misc.2d 1058 (Sup. Ct., Sp. Term N.Y. Co. 1970).

26. Death on the High Seas Act, 46 U.S.C. 761; Federal Employee Liability Act, 45 U.S.C. 51; Longshoremen's and Harbor Compensation Act, 33 U.S.C. 902; National Service Life Insurance Act, 28 U.S.C. 701; Veteran's Administration Act, 38 U.S.C. 101.

qualify for the special status treatment granted to legitimate children in immigration proceedings.[27]

The Constitutional Rights of Natural Fathers

In the landmark case of Stanley v. Illinois,[28] an Illinois statute, which denied Stanley as the natural father of three out-of-wedlock children the right to a hearing on his fitness as a custodian of the children upon the death of the children's mother with whom he had lived for eighteen years, was held unconstitutional. The Court found that the statute violated the Due Process Clause of the Fourteenth Amendment. Natural fathers were held to be entitled to notice and a hearing before their children were given to another custodian.

In 1979, the Court declared New York's Domestic Relation Law §111 unconstitutional in that it discriminated against the natural father by requiring the consent

27. Faillo v. Bell, 430 U.S. 787 (1977).

28. 405 U.S. 651.



to an adoption by the mother of a child born out of wedlock but did not require the consent of the father. The Court made it clear that there was no basis for a legislative distinction between mothers and fathers of newborns "where the father has established a substantial relationship with the child and has admitted his paternity."[29] Thus, in situations where the natural father has asserted his relationship with his child, the United States Supreme Court recognizes the rights of the natural father as being equal to the rights of the natural mother. This development represents a major shift in the Court's application of the rights and responsibilities of the natural father of the child born out of wedlock. Thus, denying visitation or custody claims of a father with an order of filiation may raise serious constitutional issues.

29. Caban v. Mohammed, 441 U.S. 380 (1979).

## The Constitutional Rights of Illegitimate Children

In Levy v. Louisiana,[30] the Court held that the construction of a Louisiana statute for wrongful death, which found that the term "surviving child" did not include an illegitimate child, created an invidious discrimination, making the statute unconstitutional. Subsequent Court cases have expanded the notion that illegitimate children are full persons entitled to equal treatment with legitimate children. Unless a classification based on illegitimacy "bears an evident and substantial relation to the particular interests ... [the] statute is designed to serve,"[31] it is unconstitutional.

As the distinction between legitimacy and illegitimacy blurs, the distinction between an order of filiation and a declaratory judgement becomes simply a question of proof, labels, or forum.

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30. 391 U.S. 68 (1968).

31. U.S. v. Clark, 445 U.S. at 899; accord: Trimble v. Gordon, 430 U.S. 762 and Matthews v. Lucus, 427 U.S. 495, 506 (1976). See Parham v. Hughes, 441 U.S. 347 (1979) and Labine v. Vincent, 401 U.S. 532 (1971).



## Problems in the Law of Paternity in New York in 1981

Because of the recognition of the constitutional rights of both illegitimate children and biological fathers of children born out of wedlock, and because of the federal law, which requires states to seek out putative fathers and establish the paternity of children born out of wedlock, the present paternity statute, Article 5 of the Family Court, has become cumbersome, confusing, and antiquated.

### A. Consents and Acknowledgment

Present Article 5 provisions contain no specific authorization for paternity acknowledgements, but it is estimated that a great number of cases (both AFDC and private) are settled by the admission of paternity by the respondent.

Distinctions are not found in the Family Court Act between entry of an order of filiation based on the consent of the parties, a "stipulated settlement," or an acknowledgment, which may or may not result in the entry

of an order. (Acknowledgments may be entered as orders of filiation if the parties appear and respondents are advised of their right to counsel and blood tests.)

Although the constitutionality of "compromise agreements" has been upheld,[32] preconditions for accepting acknowledgments and/or compromises and their consequences to the parties have not been defined. For example, DSS now accepts acknowledgments and files them with the putative father registry. This is sufficient for purposes of intestate inheritance and social security benefits, but not for the Family Court to order support.

B. Contested Paternity Proceedings

A review of the case decisions highlight the problems in Article 5 in contested cases that have preoccupied the courts: the necesary standard of proof, the right to counsel, the statute of limitations, when an order of filiation is appealable, and other matters of procedure and jurisdiction.

32. Bacon v. Bacon, 46 N.Y.2d 477 (1979).



For example, the permissive evidentiary rule that both a husband and wife may testify to non-access in a paternity proceeding[33] has evolved into an apparent rule, at least in the Second Department, that unless both husband and wife do testify to non-access, the presumption of legitimacy cannot be overcome.[34] The emphasis on establishing non-access makes it difficult for the poor woman who has been a party to a "poor man's divorce" to obtain support for her child, for her nominal husband may have left her years before the birth of the child for whom she seeks support. It has also made it difficult for the estranged married woman who does not know of her husband's whereabouts to obtain support if she cannot find him to testify to non-access.

33. Family Ct. Act §531.

34. Commissioner v. Leroy C., 45 A.D.2d 963 (2d Dept. 1974); A. v. M., 39 A.D.2d 706, aff'd, 31 N.Y.2d 935 (2d Dept. 1972); Powell v. Anonymous, 18 A.D.2d 911 (2d Dept. 1963); cf.: Joan B.D. v. Horst B., 65 A.D.2d 592 (2d Dept. 1978); Hanley v. Wilcox, 57 A.D.2d 697 (4th Dept. 1977); People v. Lewis, 25 A.D.2d 567 (2d Dept. 1966).

The effect of the defenses of multiple access also needs clarification in light of conflicting judicial holdings.[35]

In 1981, the Legislature amended Family Court Act §532 so as to allow the results of the human leukocyte antigen (HLA) blood tissue test to be received in evidence to aid in the determination of whether the alleged father is or is not the father of a child when he has not been excluded by other blood tests. This provision removed much of the uncertainty from paternity proceedings.

With the amendment of the statute to allow the HLA test to be admitted in evidence, the question becomes whether or not the mother of the child can compel the putative father to submit to the HLA test. This question should be resolved as well as the question of who is to bear the cost of the tests and the weight to be given to blood test results.

35. Commissioner v. James H., 65 A.D.2d 772, 773 (2d Dept. 1978); Phillips v. Broadwell, 63 A.D.2d 840 (4th Dept. 1978); accord: Stenzel v. Bennett, 49 A.D..2d 1017 (4th Dept. 1975); Snyder v. Davis, 53 A.D.2d 1026 (4th Dept. 1976); Edick v. Martin, 34 A.D.2d 1096 (4th Dept. 1970).



## Conclusion

The Commission should now consider revision of Article 5 and the question of whether or not paternity acknowledgment may be included in the IV-D administrative process.

The proposed IV-D administrative bill does not presently include a provision for "acknowledgments of paternity." Nearly eighty percent of the paternity petitions filed in Family Court are initiated by DSS and between eighty to ninety percent of these paternity petitions are settled by "acknowledgments." Therefore, we estimate that if the IV-D bill included administrative handling of paternity acknowledgments, it would reduce by approximately seventy-five percent the number of paternity cases in Family Court, and the Family Court's paternity caseload should thereby be drastically reduced.

# PROPOSAL FOR VOLUNTARY FOSTER CARE PLACEMENT AND REVIEW PROCEEDINGS IN FAMILY COURT

## I. Introduction

The development of statutory law in the child welfare field has created a critical role for the Family Court in the foster care system. The court's responsibility in voluntary foster care has been to preside as an arbiter at certain key points in the progression of a child through the system, namely: (1) 30 days after the voluntary placement of a child in care; (2) after 18 months in care, and at intervals of two years thereafter; and (3) when the foster care agency or foster family takes legal action to free the child for adoption.

However, many feel that the present statute creates serious obstacles to the achievement of a constructive relationship between the Family Court and other components of the foster care system. In particular:

- At 30-day placement proceedings (SSL §358-a) the court does little more than "rubber stamp" decisions made by the child welfare agencies. The statute does not define a meaningful role for the court.

- Even if a judge should wish to expand the scope of the placement proceeding, there is little or no information available to the court to serve as the basis for a meaningful inquiry.
- In most foster care proceedings there is no one to represent the child.
- The court's first substantive inquiry occurs only at a review hearing (SSL §392) 18 months after placement. Problems discovered at that point may well escape further scrutiny until the next required hearing two years later.
- There is no mechanism for monitoring implementation of court orders issued in foster care proceedings.
- There is no continuity between the placement proceeding (§358-a) and subsequent §392 reviews. Often, for lack of information, there is no continuity from one §392 review to the next. Too many §392 reviews are inconclusive.
- The intervals between foster care reviews are too long.

The Commission suggests that the Family Court Act should clarify and strengthen the judicial function in foster care. It finds support for this in several areas.

First, the foundation for a constructive judicial role has been laid by the Child Welfare Reform Act (CWRA), Laws of 1979, Chapters 610 and 611. This legislation introduced an interrelated series of reforms to the state's child welfare services system, from individual



casework to statewide financing policy. The CWRA clarifies the obligations of public and private child welfare agencies and the performance standards to which they will be held. It also provides for the court a clearer definition of the standards justifying placement than had previously been available, and new information (from the Uniform Case Record) on which to base a substantive proceeding.

A stronger, clearer judicial role in foster care grows naturally out of the framework of the CWRA. It also builds upon the recommendations of other agencies and organizations that have studied the relationship between the Family Court and the child welfare system, notably, the Temporary State Commission on Child Welfare (Pisani Commission), the Mayor's Task Force on Foster Care Services, the Office of the New York City Council President, Statewide Youth Advocacy, the Economic Development Council, and Citizen's Committee for Children.

Second, under current law, SSL §392, the court has the authority to review the appropriateness of the agency's plans, services to the family, and efforts to achieve a permanent home for the child, and to make any order it

deems necessary in furtherance of the child's present and future best interest. The Commission believes that this broad jurisdiction should begin early in the placement, not 18 months later. The placement proceeding should establish the court's jurisdiction with the scope now described in §392, creating a continuing judicial responsibility until the goal of permanence is achieved.

Third, the Commission believes that once the parent places the child, the remaining issues are quite similar to those raised by a PINS or neglect case: essentially, how the disposition serves the child's best interest.[1] The court's dispositional responsibilities should be prescribed for voluntary foster care just as they are in Articles 7 and 10.

These considerations have led the Commission to seek public hearings in order to solicit comments on the proposals described in Sections II and III.

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1. It is widely acknowledged that children in voluntary, PINS, and neglect placements have virtually the same needs and problems, and that the decision to place through SSL §384-a rather than Article 7 or 10 is more likely to reflect local intake practices than any intrinsic differences in the client populations. A large number of voluntary placements have some protective service involvement.



However, the Commission did not decide to pursue this model without first exploring other options that might not place so heavy a burden upon the Family Court.[2] Among the other possibilities considered were:

(1) an independent non-judicial body, analogous to various existing boards, commissions, and ombudsmen that review decisions and actions of state administrative agencies; and

(2) "quasi-judicial" models, in which routine case reviews would be conducted by citizen review panels or hearing examiners, and only contested cases would come before a judge.

The Commission concluded that neither a non-judicial panel nor any of the various "quasi-judicial" devices would be a completely satisfactory substitute for judicial review of foster care placements. An effective non-judicial panel with independent enforcement powers, for example, would require the procedural apparatus to

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2. Alternative Systems for Review of Voluntary Foster Care -- research paper prepared for Commission consideration.

hold formal hearings and implement binding decisions altering or reversing the actions of a foster care agency.[3] As a practical matter, there would appear to be little justification for creating a new body that would so closely resemble a court. The proposed use of hearing examiners, which was discussed in 1978 at public hearings conducted by the Pisani Commission,[4] has been opposed by some on philosophical grounds, as tending to denigrate the importance of foster care compared to other matters on the court's calendar. There would also be certain practical problems -- a method for expediting referrals from judge to hearing examiner and back to judge again, and the relative likelihood of judicial "rubber stamping" versus de novo judicial reconsideration -- which some observers have suggested might simply exacerbate court delays and adjournments.

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3. None of the existing non-judicial review panels in state and local government (primarily in the corrections and mental health systems) that were examined by the Commission has such independent, binding enforcement powers.

4. Hearings on S.7459, Temporary State Commission on Child Welfare, Albany, February 15, 1978.



The Commission noted that the citizen review model, which is attracting growing attention around the country, has so far been used only for relatively small caseloads, and never in a state with a foster care population approaching the size of New York's.[5] Secondly, citizen review has been used in other states primarily to handle court-ordered foster care placements. This means that a court has usually been involved in examining the justification for the initial placement and to some degree in setting the conditions for placement. If New York were to adopt this system, some thought still must be given to the nature of the court's substantive involvement in the initial placement decision -- that is, a revision of §358-a. In this sense, citizen review could not be considered as a total substitute for judicial review, but as a supplement to it. Thirdly, there is some question whether citizen

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5. These are: South Carolina, Maryland, Delaware, Arizona, Tennessee, New Jersey. Ohio has citizen review in some jurisdictions by local option. In Michigan, citizen review is being developed on a demonstration basis in three locations, including Detroit. Of these states, New Jersey may be the closest approximation to New York in the size (11,000-12,000) and characteristics of its foster care population.

review -- a relatively informal, flexible process -- could be constructed to incorporate effective enforcement powers and sanctions. Finally, given the size of New York's foster care caseload, there is no guarantee that the delays and backlogs now so common in Family Court would not be replicated in a citizen review board system, and for many of the same reasons: over-crowded calendars, missing information, non-appearance of essential participants.

## II. Proposed Revision of Foster Care Placement and Review Proceedings

The Commission is proposing for public comment the legislative enactment of a new Article of the Family Court Act, comprising a revision of the present §358-a and §392 of the Social Services Law. This proposed Article is intended to clarify the responsibilities of the Family Court in the oversight of voluntary foster care placements, and to tailor the court's role to the structure and requirements of the Child Welfare Reform Act. Among its principal new features would be the following:



- The initial placement proceeding (now SSL §358-a) would become a substantive hearing at which the service plan and conditions of placement as well as the voluntariness and necessity of placement are considered.

- Pertinent information from the Uniform Case Record (UCR) describing the caseworker's assessment of the family's service needs, the initial service plan, and the visitation plan would be submitted with the petition.

- The child, represented by counsel, would be a legal party to all foster care judicial proceedings.

- The statute would provide a range of specific dispositional orders in furtherance of the service plan and the designated goal of permanence.

- The court would have continuing jurisdiction over the placement after the initial proceeding.

- A date for the first review hearing (now SSL §392) would be set at the initial placement proceeding, to be held no later than one year after the initial proceeding, but earlier in the court's discretion.

- The present parental waiver of hearing in §358-a(5) would be eliminated.

- At every review hearing, the court would be provided with the records and orders of the initial placement and prior review hearings and with summary information from UCR interim case plan assessments.

- The statute would provide a range of judicial sanctions for violations of judicial orders.

An outline of the proposed legislation is presented below. Some points have been explained briefly (comments in brackets) and are discussed at greater length in Section III.

A. Initial Placement Proceeding

(1) Petition. DSS shall file a petition for judicial approval of a voluntary placement within [30-40] days of placement. A copy of the voluntary instrument executed pursuant to SSL §384 or §384-a shall be attached. In addition to information and affidavits presently required by SSL §358-a(2) regarding persons entitled to notice, the petition shall note whether any previous application for court approval of the placement of this child has been made, and shall allege whether the parent placed the child because he or she would be unable to make adequate provision for the child's care at home, and the reason therefor. The petition shall be accompanied by the following information derived from the Uniform Case Record:

- presenting problem (from DSS 3300-H);
- consideration of alternatives to placement (from DSS 3300-S);



- permanency goal and anticipated completion date (from DSS 3301);
- initial service plan (from DSS 3301); and
- visitation plan (from DSS 3302).

[It has been suggested that the deadline for filing be moved to 40 days or longer, to allow reasonable leeway for obtaining information from the UCR, which may not be completed until 30 days after placement. This would be permissible under the new federal legislation, P.L. 96-272 (Adoption Assistance and Child Welfare Act of 1980), which removed the requirement of a judicial proceeding within 30 days as a condition of federal foster care subsidies. See discussion in Section III.]

**N.B.** THE FOLLOWING SECTION ON NOTICE IS PRESENTED IN TWO VERSIONS; SEE SECTION III FOR DISCUSSION.

(2) Notice **(Version A)** . Notice, with a copy of the petition and accompanying documents, shall be served at least 20 days prior to the hearing upon:

- the parent(s) or legal guardian who executed the instrument;

- any parent or legal guardian who did not execute the instrument;
- the child;
- any person entitled to notice pursuant to SSL §384-c ("the putative father law"); and
- such other persons as the court may direct.

A person who signs a voluntary surrender of guardianship and custody pursuant to SSL §384 may at the same time waive the right to service and notice, as is presently provided in §358-a(4).

(2) Notice **(Version B)** . Notice, with a copy of the voluntary instrument executed pursuant to SSL §384 or §384-a, shall be served 7 days after placement upon:

- the parent(s) or legal guardian who executed the instrument;
- any parent or legal guardian who did not execute the instrument;
- the child;
- any person entitled to notice pursuant to SSL §384-c ( the "putative father law"); and
- such other persons as the court may direct.

A person who signs a voluntary surrender of guardianship and custody pursuant to SSL §384 may at the same time waive the right to service and notice, as is presently provided in §358-a(4).



(3) Representation. The court shall appoint representation for the child. As provided in §262 of the Family Court Act, an indigent parent or guardian shall be entitled to court-appointed counsel.

[See Section III for a discussion of additional resources to enhance representation of the parties.]

(4) Hearing. Upon proof of proper service to all parties, the hearing shall proceed on the return date. If an adjournment is granted, the court may temporarily approve the placement and set a new hearing date. At the hearing the court shall consider, among other issues:

- whether the parent(s) or guardian executed the instrument knowingly and voluntarily;
- whether appropriate alternative services and resources have been explored;
- whether a reasonable service plan has been developed, addressing the identified needs of the child and family and a stated goal of permanence within a projected time limit; and
- whether the parent(s) or guardian would be unable to make adequate provision for the child's care at home.

[The waiver of hearing now provided in §358-a(5), signed by the parent at the time of executing the

voluntary placement instrument (§384-a), would no longer be available. However, the hearing could proceed without the parent upon proof of service, unless he or she has requested an adjournment. If an adjournment is granted, a temporary order of placement could be issued, as is presently provided in §358-a(5).]

(5) Disposition of Petition. If the judge is satisfied that the conditions in (4) above have been established by the facts and that, where applicable, the requirements of SSL §384-a have been met, he may find that the child's best interest and welfare would be promoted by placement in foster care and that it would be contrary to the child's welfare to remain at home. He shall thereupon grant the petition, adjourn the proceeding, and set a date for the filing of papers initiating the first foster care review, which shall be no later than one year from the disposition of the placement proceeding, or earlier in the court's discretion. The order of disposition shall state the grounds for finding that placement would promote the child's best interest. The court may issue additional orders of disposition in furtherance of the service plan and goal of permanence, including:



- an order directing discharge from care by a specified date;
- an order directing adoptive placement;
- an order directing the provision of specific services to the child or family within a stated time;
- an order specifying conditions of placement (e.g., terms of parental visitation, proximity to the parent, placement of siblings together);
- an order directing the filing of a neglect petition under Article 10;
- an order directing submission of reports to the court within a stated time;
- any other order in furtherance of the child's best interest.

If the judge is not satisfied that the necessary conditions and requirements have been met and that placement would not be in the child's best interest, he may dismiss the petition and order the child's immediate discharge from care.

(6) Continuing jurisdiction. The court shall have continuing jurisdiction over foster care placements approved in these proceedings. It may rehear the matter at any time it deems desirable, or on the petition of any of the parties.

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(7) Termination of placement. The child must be returned home by the date specified in the approved voluntary instrument without further court order. Every judicial order approving a placement and every other dispositional order must be served on all parties. If the approved instrument or other dispositional order does not fix a date for return, or if the agency does not return the child by the date specified, the child or the parent(s) or guardian may seek an order to show cause in Family Court or a writ of habeas corpus in Supreme Court.

[Most of these provisions are presently contained in §358-a(7), except that the child is not now a party who must be served with orders or who may seek an order to show cause or writ of habeas corpus.]

B. Foster Care Review Proceeding

The review proceeding would incorporate most provisions of the present SSL §392, with the following changes:

(1) The child shall be a party, entitled to notice and representation.

(2) The first review shall be initiated no later than one year from the date of approval of placement,



unless the court sets an earlier date at the placement proceeding. Subsequent reviews shall be held yearly, unless the court sets an earlier date. At the disposition of each review proceeding, the court shall order a date for the next review. As is now provided, the court shall have continuing jurisdiction, and any party may petition for a rehearing at any time.

[There are many different views regarding the exact timing of reviews, but widespread agreement that the present intervals of 18 months and two years are too long. See discussion in Section III.]

(3) Reviews shall be held for voluntarily and court-placed children who have been legally freed for adoption until they are in adoptive placement.

[While full-scale §392 reviews for children in adoptive placement could be disruptive, it might be thought desirable to give the court some means of monitoring the progress of the adoption so that reviews could be resumed if the adoptive placement fails or the legal adoption process is not pursued.]

(4) In clarification of the matters now provided in §392(5-a) as issues to be considered at the review hearing, the court shall inquire into the following:

- implementation of prior dispositional orders;
- changes in the service plan, visitation plan, conditions of placement, and goal of permanence since the last hearing; and
- steps that will be necessary to achieve timely implementation of the goal of permanence.

At every hearing the court shall be provided with the records and orders of all previous hearings. Pertinent information on goals, services, and conditions of placement from the most recent service plan review shall be provided to the court and to all parties.

(5) The present provisions for dispositional orders in §392(7-9) should incorporate the specific orders proposed above for placement proceedings, in particular, the designation of a date or time limit within which the actions ordered (such as discharge or the filing of a termination petition) must be accomplished.



C. Judicial Sanctions for Violations of Court Orders and Statutory Requirements

In addition to its general contempt powers under §156 of the Family Court Act and its power to order the cooperation and assistance of any public officer or agency under §255, the court may order the transfer of supervision to another agency. Where the court finds that a timely petition for approval of placement has not been filed, or that an order of disposition has not been implemented within the time fixed for compliance, or that the child has been continued in care in violation of the statute governing voluntary placements (SSL §384-a), it shall refer the matter to the Commissioner of the Department of Social Services for a determination to withhold state reimbursement of foster care expenditures, pursuant to SSL §153-d.

[It is expected that the appointment of counsel for the child will facilitate enforcement of court orders through motions for sanctions filed on the child's behalf. A statutory provision for a court order transferring supervision of a placement to another agency would have to define specific terms and conditions to minimize the disruption to the child and foster family.]

## III. Discussion

### A. Timing of Placement Proceedings

The timing of filing requirements for placement proceedings is a matter of some controversy.

The argument has been made that if UCR information is to be incorporated into placement petitions as the basis for a substantive hearing on the service plan and goal of placement, the present 30-day deadline for filing petitions must be extended because the UCR itself is not completed until 30 days from placement in some cases. (The 30 days allowed for preparation of the service plan under SSL §409-e may be counted from whichever of the following events occurs first: the date of placement, the date of initial application for preventive or foster care services, the date that a report to the child abuse register is determined to be indicated, or the date of a court commitment of custody or guardianship to DSS. Therefore, the assessment, service plan, and visitation plan might be available in most but not all cases in advance of 30 days from actual placement.)



There are two schools of thought on the suggestion that the present 30-day filing requirement be extended. In one view, the benefits of transforming the placement hearing from a "rubber stamp" into a substantive proceeding will outweigh the disadvantage of a delay in the filing date, particularly if such a delay is made to accommodate the need for preparation of important information. The 30-day filing date was chosen in the first place only to comply with a federal requirement that no longer exists. Assuming administrative enforcement of SSL §409-e requiring the completion of a service plan within 30 days, there is no reason to believe that children would be held in care unnecessarily if the present deadline for filing petitions was extended by a week or two.

The opposing view holds that the placement proceeding still has the function of determining whether the child should be in placement at all and, if so, under what conditions. These are decisions that the court must make early if it is to make them at all. Furthermore, only in a small proportion of cases does the actual placement of the child occur on the same day as the family's first contact with the social services system; the great majority

of voluntary placements are made after some days or weeks of discussions and counseling and the exploration of alternative services. In those relatively few instances in which a voluntary placement does occur as the result of an emergency, the legal paperwork can be coordinated with the caseworker's preparation of UCR forms so that both are ready for filing within 30 days of placement.

The proposal described in Section II-A above allows consideration of a filing requirement extended to 40 days from placement, and provides for notice to the parties at least 20 days in advance of the hearing. This would ordinarily place the hearing at 60 days or more from placement. By emphasizing the substance of the hearing over its speed, the proposal assumes that the focus will be the development of a reasonable plan rather than a reversal of the original decision to place the child in care.

B. Notice and Pre-Hearing Procedure: Versions A and B

The accelerated notice procedure in Version B would entail calendaring, service of notice to the parties, and appointment of counsel for the child and indigent parents almost immediately after placement. The petition with



supporting UCR documents would be served 30-40 days after placement, and the hearing itself held within a few days thereafter. By telescoping all preliminary procedural steps into the first 30 days of placement, it would set the stage for the substantive hearing almost immediately after the completion of the initial service plan. It would also establish the court's jurisdiction and provide representation for the child and parent at an early date, so that the parties would have standing to seek relief if, for example, DSS was dilatory in preparing the service plan or had arranged placement under conditions that the child or parent might wish to contest. Version B is based on the assumption that counsel for the child would look into the child's placement even before the service plan and other UCR information became available, and would monitor the timely filing of the petition and supporting documents by DSS.

The possible drawbacks of Version B are, first, that it would require service twice, which could complicate DSS's burden of paperwork and result in adjournments of hearings if DSS did not accomplish proper service.

Second, because approximately one out of every five children voluntarily placed in care is discharged within the first 30 days, a substantial number of cases would "wash out" after appointment of counsel but before service of the petition and UCR documentation. However, this need not necessarily be considered an inappropriate use of resources if it is believed that the early appointment of counsel might in itself speed the discharge of certain children from care.

The simplified pre-hearing procedure described in Version A, in which notice, service of papers, and appointment of counsel all occur subsequent to the availability of the initial service plan (30-40 days from placement), might be thought preferable if it is believed that the potential advantages of early notice and appointment of counsel would be realized in only a small proportion of cases. The Commission has therefore submitted both versions for public comment to elicit information on the relative advantages and drawbacks of each.



C. Representation

There appears to be widespread support for the idea of representation of the child as a party in all foster care proceedings. The statute would presumably utilize the existing 18-B panels and Legal Aid Societies that provide attorneys for other Family Court proceedings.[6]

It has been suggested that additional resources may be available to enhance the effectiveness of legal representation. Trained lay advocates have been used in a number of capacities, both in New York State and elsewhere in the country, to monitor cases, provide information to the court, arrange services for foster children and their families, and review placements. The concept of citizen participation in the oversight of foster care placements has been advanced not only because it increases the resources available to the court, but also because it provides a broad, "non-legalistic" approach that is believed to be particularly valuable in dealing with the issues that arise in voluntary placements. Some consideration might

6. Pending the Commission's consideration of representation in Family Court as a separate issue.

be given to experimentation -- perhaps through local option on a pilot basis -- with various forms of lay advocacy in foster care proceedings, and to the statutory structure and safeguards that would be necessary to accommodate them.

D. Timing of Review Proceedings

The stipulation of one year as the statutory interval between foster care reviews is to some extent an arbitrary choice. There are those who feel that reviews, particularly in the first years of placement, should be held every six months. Others have suggested that annual reviews may be unnecessary in some cases, especially those of older children for whom neither adoption nor return home is likely. However, one year seems to be the most favored period, with the option of earlier hearings at the court's discretion and the right of any of the parties to seek an interim hearing.

E. Caseloads

One of the major concerns raised by this proposal will be its effect on the caseloads and calendars of the court.



It must be considered whether at least some of the time spent in court proceedings early in a placement would not be regained in the long run (1) by clarifying at the first hearing the issues to be reviewed at later proceedings, and (2) by helping to focus and speed casework that could result in faster termination of care.

Not all placement proceedings need consume large amounts of courtroom time. There will always be a number of cases -- perhaps a considerable number -- in which neither the parent, the child's representative, nor the court itself finds any objection to the placement or the proposed goal, service plan, and dispositional orders. Such cases could be handled expeditiously.

Nonetheless, it is true that as compared to the present perfunctory §358-a proceeding and long intervals between foster care reviews, the proposed new placement proceedings and more frequent reviews would require significantly more of the court's attention than in the past. This is justified by the impact of voluntary foster care placements upon rights of children and families that are traditionally at the heart of the court's concern.

APPENDIX A

NOTICE OF PUBLIC HEARING

NEW YORK STATE TEMPORARY COMMISSION
TO RECODIFY THE FAMILY COURT ACT



Two World Trade Center
Room 6785
New York, New York 10047
(212) 488-8163

P.O. Box 7011
Alfred E. Smith Building
Albany, New York 12225
(518) 455-5077

**NOTICE OF PUBLIC HEARING**

SUBJECT: **FAMILY COURT PROCEEDINGS FOR VOLUNTARY FOSTER CARE PLACEMENT AND REVIEW**

PURPOSE: To Elicit Public Comment on a Proposal to Strengthen Family Court Proceedings for Voluntary Foster Care Placement and Review by a Revision of Social Services Law §§358-a and 392.

DATES: Friday, March 19, 1982, 10:00 a.m.
The Association of the Bar of the City of New York
Meeting Hall
42 West 44th Street
New York, NY

Wednesday, March 24, 1982, 10:0 a.m.
Legislative Office Building -- Hearing Room B
Empire State Plaza
Albany, New York

Tuesday, April 6, 1982, 10:00 a.m.
Hall of Justice -- Surrogate's Courtroom
Civic Center Plaza
Rochester, New York

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Persons wishing to present testimony at any of the above hearings should complete and return the enclosed reply form no later than March 9, 1982 to:

Trudy Hayden, Director of Research
Family Court Act -- TSC
Two World Trade Center -- Suite 6785
New York, NY 10047
212/488-8163

A paper describing the Commission's proposal is enclosed. Witnesses should address their comments to this proposal and to the list of questions on the reverse of this notice. Oral testimony shall be limited to ten minutes. The Commission requests advance receipt of twenty copies of any prepared statement.

APPENDIX B

MEMORANDUM IN SUPPORT OF

LEGISLATION AND THE BILL

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec. 1(e)

**Bill Number:** Assembly _____ Senate _____

**Sponsors:** Member of Assembly: George Friedman

Senators: W. T. Smith

INTRODUCED AT THE REQUEST OF THE TEMPORARY STATE COMMISSION TO RECODIFY THE FAMILY COURT ACT

**Title of Bill:** AN ACT to amend the social services law in relation to debt recovery proceedings

**Purpose or General Idea of Bill:**

To establish an administrative process for the recovery of funds paid for Aid to Families with Dependent Children (AFDC) from relatives who are legally responsible for their support.

**Summary of Specific Provisions:**

A new Article 11 entitled "Debt Recovery Proceedings" would be added to the Social Services Law to create a proceeding for the administrative determination of amounts owed by responsible relatives for repayment of public assistance and care provided under the AFDC program. The bill removes from Family Court all support proceedings initiated by the Department of Social Services pursuant to federal mandate (popularly called "IV-D). In order to accomplish this purpose, the bill provides for the following:

-- The State Department of Social Services would be authorized to hold administrative hearings to determine issues concerning liability for support of AFDC recipients.

-- Hearing proceedings would contain all elements of due process including adequate notice of the hearing, the right to be represented by counsel, pre-hearing discovery procedures, the right to present evidence and call witnesses, as well as other procedures provided by the CPLR.

-- Hearing examiners would make final determinations, which can be docketed in the county clerk's office, so that the administrative system parallels the Family Court structure.

-- A three member Appeals Board would be established to hear appeals from the administrative determination by the hearing examiner.

-- Default Orders would be authorized to be entered and a full range of enforcement techniques would be provided including contingent payroll deduction orders, money judgments, orders of attachment, and liens.

-- Appeals to the Appellate Division consistent with the present appeal process from the Family Court would be established.

-- Parents would be able to continue to utilize the administrative system diminishing the number of cases returning to the Family Court for new determination of support liability after public assistance and care is no longer provided.

Existing Provisions of Law:

Under the present system, social services officials are assigned support rights by recipients of AFDC and social services officials must file a petition in Family Court to obtain Order of Support to reimburse them for the cost of public assistance and care.

Justification for Bill:

The current Family Court case load is some twenty thousand new cases per year and that results in significant judge and clerical time consumption. According to some estimates there are approximately 100,000 IV-D support and support related (modification, enforcement and violation) cases in the Family Court in a particular year. This bill will result in the court as currently constituted having more time to deal with the real problems involving child welfare, foster care placement, juvenile delinquency, etc.

Moreover, the bill will place our state in a posture of, for the first time, being in a position to receive federal reimbursement, to the extent of 75% of our costs incurred in prosecuting these cases. Although the ability to receive such reimbursement has been available up to now, the fact is that OCA has not sought reimbursement for these court proceedings.

Administrative systems nationwide (fourteen states currently utilize an administrative process) have the highest per case collection rate. This is because the administrative process is more efficient than the court process, produces more uniform debt recovery determinations and results in more effective enforcement of support determinations.

Fiscal Implications:

Since New York is not receiving Federal reimbursement for the judicial portion of processing IV support cases, there would be a substantial increase in Federal revenues. Increased collection rates and the lower cost of an administrative system would also result in cost-savings to the State.

Effective Date:

September 1st following enactment.

# STATE OF NEW YORK

S. 8606 A. 10893

# SENATE—ASSEMBLY

March 16, 1982

IN SENATE—Introduced by Sen. SMITH—read twice and ordered printed, and when printed to be committed to the Committee on Social Services

IN ASSEMBLY—Introduced by M. of A. FRIEDMAN, DelTORO, WEPRIN—Multi-Sponsored by—M. of A. BUSH, CONNELLY, HARENBERG, HEVESI, HINCHEY, HIRSCH, HOCHBRUECKNER, HOYT, KOPPELL, LASHER, MONTANO, ORAZIO, PAROLA, PASSANNANTE, SALAND, SCHIMMINGER, SERRANO, SIWEK, F. M. SULLIVAN, VIGGIANO, WEINSTEIN, WINNER—(at request of the Temporary State Commission to recodify the Family Court Act)—read once and referred to the Committee on Child Care

AN ACT to amend the social services law, in relation to proceedings to recover debt incurred for payments made as aid to dependent children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article eleven of the social services law and sections four hundred eighty-four, four hundred eighty-five and four hundred eighty-six are renumbered article twenty and sections one thousand, one thousand one and one thousand two and a new article eleven is added to read as follows:

ARTICLE 11
DEBT RECOVERY PROCEEDINGS



EXPLANATION—Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD2-44-20-326

513. Relief from determinations.
514. Income deduction orders.
515. Appeals to appeal board.
516. Rules governing hearings and appeals.
517. Determinations final.
518. Appeals to court.
519. Exclusive procedure.
520. Notice of arrears; money judgment.
521. Termination of public assistance.
522. Notification; termination of public assistance.

§ 501. Definitions. In this article unless a different meaning is required by the context:

1. "Dependent child" means any person under the age of twenty-one years who is not self-supporting, in the armed forces, married, or otherwise emancipated.

2. "Parent" means a natural or adoptive parent of a dependent child, or a step-parent, when such person has an obligation to support a dependent child who is receiving public assistance.

3. "Assignor" means a person receiving public assistance for a dependent child, who has assigned support rights to a social services district, as required by law.

4. "Debt" means the amount of money owed by a parent to reimburse a social services district for providing public assistance to a dependent child.

5. "Court order" means any applicable order or judgment of any court of competent jurisdiction that expressly requires payment by the parent of a fixed or determinable amount of money for support of a dependent child.

6. "Determination" means the amount of money determined by a hearing examiner to be payable to a social services district and/or an assignor pursuant to a proceeding under this article.

7. "Arrears" means an outstanding unpaid balance due to satisfy a court order of support or a determination made pursuant to this article.

§ 502. Jurisdiction. The department shall have jurisdiction over debt recovery proceedings commenced pursuant to this article.

§ 503. Debt created. The payment of public assistance for a dependent child creates a debt owed by a parent to the social services district for the total amount of such assistance. In no event shall the amount of the debt exceed the total of such assistance paid provided, however, that a determination shall, if the interests of justice or the parent's ability to pay then or in the future appear to require, reduce the debt to a fair and reasonable amount which may be less than the amount of public assistance actually paid. Notwithstanding the preceding sentence if a court order or judgment is in effect the terms of such order shall control as to the amount and other circumstances of support.

§ 504. Powers and duties of social services officials. 1. When no court order is in effect a social services official may pursue the debt in debt recovery proceedings under this article.

2. A social services official shall be empowered to receive and forward directly to the assignor payments made pursuant to a court order or determination that are in excess of the amount of the debt.

§ 505. Powers and duties of the commissioner. The commissioner shall:

1. Appoint hearing examiners to hear and determine issues concerning parents' liability and to enter all determinations on behalf of the commissioner.



2. Hold hearings in accordance with the applicable provisions of the state administrative procedure act and provide, when appropriate, for pre-hearing discovery in accordance with the civil practice law and rules, for the subpoenaing of witnesses, documents, or papers; for the administering of oaths; for the taking of testimony of any person under oath, and in connection therewith, for cross-examination of witnesses and for the production for examination of any books or papers.

3. Establish a board of appeals consisting of three members appointed by him to review determinations of hearing examiners which are appealed in accordance with section five hundred fifteen of this chapter.

4. Establish rules and regulations to carry out the provisions of this article.

§ 506. Establishing the debt. A debt recovery proceeding shall be initiated by a social services district by serving a notice upon the parent by mail or in the manner prescribed for service of a summons in a civil action, with a notice as provided herein. If service is by mail, no determination may be entered on default.

§ 507. Notice of proceeding. The notice of the proceeding shall include:

1. The name of the dependent child or children on whose behalf recovery of public assistance is sought.

2. A statement that the amount of the debt determined shall be based upon the amount of public assistance paid and the parent's ability to support the child considering the income and assets of the parent, the needs of the child and other relevant factors.

3. A statement that the parent has a right to seek and be represented by legal counsel, a relative, friend, or other spokesperson, or represent himself and that if the parent has any questions, the parent may consult an attorney or telephone or visit a social services district office at a given address and telephone number.

4. A statement that if the parent raises a question of paternity the social services district shall commence a proceeding in the family court.

5. A statement that if the parent denies liability, on grounds other than paternity or wishes to contest the amount of money demanded, or has any other defense to the action, the parent must request a hearing.

6. A statement that the parent must request a hearing on the form provided by the social services district within twenty days of its receipt and that the department will notify the parent by mail of the date, time, and place of the hearing.

7. A statement that if the parent fails to request a hearing or fails to appear on the hearing date, a default determination shall be made, and the parent shall be subject to appropriate collection actions, including but not limited to payroll deduction orders, attachment, liens, and other civil remedies.

8. A statement that in case of default by the parent, the debt may be presumed to be the total amount of public assistance and setting forth the periodic payments which may be due in the event of default.

9. A statement that the hearing shall be held in the county of residence of the dependent child unless the parent requests that it be held in the parent's county of residence.

10. A statement that the parent has the right to raise the issues of visitation and/or custody or request orders of protection in a court of law and that these issues shall not be heard at the examiners' hearing.

§ 508. Notice to parent. Notice to the parent shall be served within sixty days from the date the social services district commences payment of public assistance to the child. If the notice is not served within sixty days, the social services district shall lose the right to include as debt, public assistance paid before the date of service unless service could not be made because of a deliberate act or acts by the parent.

§ 509. Determination of debt. The parent must respond to the notice of the proceeding within twenty days. If the parent fails to respond or fails to appear at a hearing and no adjournment has been granted, the hearing examiner upon proof of service shall make a determination, in accordance with the notice, specifying the amount of the debt, the amounts of the periodic payments to be made, and directions on the manner of payment. The parent and the assignor shall be sent a copy of this determination to their respective last known address.

§ 510. Limitations on debt. 1. No debt under this article shall be incurred by any parent for payments of public assistance for a dependent during any period in which the parent is receiving public assistance and care or supplemental security income.

2. The determination or enforcement of the debt shall not be affected by any interference with rights of custody or visitation by the custodian of the child.

§ 511. Examiners' hearings. 1. Hearings shall be held on ten days notice of the same to each parent within thirty days from the time a parent's request is received by the social services district. Where the venue of the hearing has been changed, the hearing shall be held within sixty days of such receipt. The hearing shall be conducted by a hearing examiner in the county of residence of the dependent child, unless the parent has requested a change of venue in which event it shall be held in the county of the requesting parent's residence.

2. The hearing examiner shall determine a fair and reasonable sum to be paid by the parent according to the parent's means, if possessed of sufficient means or able to earn such means, arrears, if any, the amount of debt, the amount of the periodic payments to be made, and directions on the manner of payment. The amount of periodic payments ordered may exceed the debt provided any such excess shall be forwarded directly to the assignor. If a parent has health insurance available to him through an employer or organization that may extend to cover persons on whose behalf the proceeding is brought and when the hearing examiner determines that the employer or organization will pay for a substantial portion of the premium on any such extension of coverage, any determination issued against such parent shall require him to exercise the option of additional coverage in favor of such persons receiving public assistance.

3. The hearing examiner shall enter a written decision containing findings of fact and conclusions of law as to each contested issue as well as the determination based thereon. The hearing examiner shall file the determination, signed by the hearing examiner, with the department.

4. The hearing examiner shall mail copies of the determination to the parent and the assignor at their last known address.

§ 512. Modification of court orders and determinations. 1. At any time after a court order or a determination, a social services official, the parent, or the assignor may request a modification. The party requesting modification shall have the burden of showing a substantial change of circumstances. No modification shall reduce or annul arrears accrued unless the parent shows good cause for failure to request relief from the determination prior to the accrual of arrears.



2. A request for modification shall be in writing on a form provided by a social services district. A hearing on the application shall be held by a hearing examiner within thirty days after the request is received by the social services district. A request for modification shall not stay the existing determination, unless ordered by the hearing examiner.

§ 513. Relief from determinations. A hearing examiner may relieve a parent from a determination or a money judgment based on a determination upon such terms as may be just, on request of the parent upon the grounds of:

1. Excusable default if such request is made within one year after service of a copy of the determination or judgment upon the parent; or

2. Newly discovered evidence, which if introduced would have produced a different result; or

3. Fraud, misrepresentation, or other misconduct of an adverse party; or

4. Lack of jurisdiction to render the determination.

§ 514. Income deduction orders. 1. When a determination is made, it shall order a parent's employer, future employer, former employer, any person owing a debt, the auditor, comptroller, or disbursing officer of any pension fund, the state of New York or any political subdivision thereof, or the United States to deduct from all monies due or payable to such parent the entitlement to which is based upon remuneration for employment, past or present, such amounts as the department may find to be necessary to comply with its determination provided however that any such determination shall provide that no such deduction shall be made unless and until the support collection unit established by the appropriate social services district has determined that such parent's arrears equal or exceed the total amount of monies payable in a specified number of payments determined by the department in the determination and a copy of the income deduction order and determination has been served upon such parent's employer, future employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the state of New York or any political subdivision thereof, or the United States; provided that such parent shall be given notice of such determination at least fifteen days prior to service of such determination on such employer, future employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the state of New York or any political subdivision thereof, or the United States; and if such parent pays all arrearages within such fifteen-day period, such order and determination shall not be served and no deduction shall be required by reason of any such determination, but such payment shall not affect or otherwise limit any determination made as a result of any subsequent delinquencies. Such employer, future employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the state of New York or any political subdivision thereof, or the United States shall deduct the amount as ordered from the monies due or payable and forward it periodically as directed in the order.

2. The limitations and regulations of sections forty-six to forty-eight-a of the personal property law do not apply to debt recovery determinations. Notwithstanding sections forty-six to forty-eight-a of the personal property law, a determination takes priority except as to those deductions made mandatory by law or hereinafter made mandatory,

including labor union dues. A social services district shall require such person to provide such district with their full name, address, and social security number; provided, however, that a social security number may be required only where permitted under federal law.

3. (a) No employer shall discharge or lay off an employee because one or more income deduction orders have been served upon such employer against the employee's wages.

(b) An employee may institute a civil action for damages for wages lost as a result of a violation of this section within ninety days after such violation. Damages recoverable shall not exceed lost wages for six weeks, and in such action, the court also may order the reinstatement of such discharged employee. Not more than ten per centum of the damages recovered in such action shall be subject to any claims, attachments, or executions by any creditors, judgment creditors, or assignees of such employee.

§ 515. Appeals to appeal board. 1. Within thirty days after the mailing or personal delivery of notice of the determination, either a parent who appeared at the hearing or a social services official may appeal to the appeal board by filing a notice of appeal in the local social services district offices, in accordance with such rules as the commissioner shall prescribe. Written notice shall be given to each parent of the right to an appeal to the appeals board and the method for appeal. The notice of appeal shall state the basis for the appeal and a copy of the notice shall be served by mail by the person taking the appeal on every other party who appeared at the hearing.

2. The appeal board may decide any case on the basis of the record or it may in its discretion hear arguments, hold a further hearing, or remand such case to a hearing examiner for such purposes as it may direct. If a further hearing is to be held or argument heard, the board shall fix a time therefor and shall notify all parties affected. The board may affirm or reverse, wholly or in part, or may modify the determination appealed. It shall render its decision within thirty days of the argument, submission, or conclusion of the hearing whichever is last and shall thereupon send written notice together with the reasons for its decision to all parties affected.

§ 516. Rules governing hearings and appeals. 1. The manner in which appeals shall be presented before the appeal board and the conduct of any hearings before the board shall be governed by rules and regulations established by the commissioner.

2. At any hearing held on an appeal, evidence may be offered to support a determination or to prove that it is incorrect. The appeal board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, but shall conduct the hearings and appeals in such manner as to protect the substantive rights of the parties.

§ 517. Determinations final. A determination of an examiner, unless appealed from, shall be final on all questions of fact and law. A determination of the appeal board, unless appealed from, shall be final on all questions of fact and law. Determinations shall be filed by the department in the county clerk's office in the county in which the determination was made. Upon filing, the clerk shall docket the determination in a debt recovery determination docket, and such determination shall have the force and effect of a court docketed order. A central docket of all administrative determinations shall be maintained by the department.



§ 518. Appeals to court. Within thirty days after the mailing or personal delivery of notice of a determination by the appeal board or after docketing of the appeals board determination in the county clerk's office, whichever is later, any party affected thereby who appeared at the appeal before the board may appeal to the appellate division of the supreme court of the judicial department in which the original determination was made. The provisions of the civil practice law and rules apply where appropriate to appeals under this article. Such appeals may be heard in a summary manner. An appeal may be taken from the decision of such court to the court of appeals in the same manner and subject to the same limitations, not inconsistent herewith, as is provided for in a civil action. It shall not be necessary to file exception to the rulings of the appeal board. No bond shall be required to be filed upon an appeal to the appellate division or to the court of appeals.

§ 519. Exclusive procedure. The procedure herein provided for hearings before examiners with respect to any determination and for appeals therefrom, first to the appeal board and thereafter to the courts, shall be the sole and exclusive procedure for debt recovery proceedings. No other rights of the social services districts, parents, children, or other parties who may have the right to recover support under any other provision of law or unreimbursed public assistance in a civil proceeding are modified by this article.

§ 520. Notice of arrears; money judgment. Prior to entry and docketing of a money judgment in the county clerk's office, a social services official shall issue to a parent a notice of arrears, which shall include the terms of the outstanding court order or determination, the amount of arrears, a demand for payment, a statement that the parent may request a modification of the court order or determination, and the grounds upon which such a request may be made. If payment is not received within fifteen days, a social services official may enter a judgment pursuant to rule five thousand sixteen of the civil practice law and rules. If the parent requests a modification within fifteen days, entry of judgment shall be stayed until a determination on the modification request is made. The entry of a money judgment may be enforced by execution or in any other manner provided by law for the collection of a money judgment.

§ 521. Termination of public assistance. Following the termination of public assistance, the department may continue to exercise jurisdiction over the modification, appeal, and enforcement of determinations established by the procedure herein or over court orders, provided the assignor consents in writing. All periodic payments attributable to the period after termination of public assistance are to be paid directly to the assignor by the social services district, except those specifically designated to satisfy arrears on the debt in the determination or court order.

§ 522. Notification; termination of public assistance. When public assistance to the dependent child is terminated, a social services official shall notify the assignor and the parent of the determination and the termination of public assistance. The notice shall include:

1. A statement that the parent or assignor may continue to utilize debt recovery proceedings;

2. A statement that the parent or assignor may choose to pursue any further proceedings in a court of competent jurisdiction;

3. A statement that if no action is taken by the parent or assignor, the determination remains in effect; and

4. A statement that the social services district shall forward payments to the assignor.

§ 2. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

END