

Chapter 1

History of the Family Court Movement and Literature Review

Background

The Family Court Feasibility Study, sponsored collectively by the Supreme Court of Ohio, the Governor's Task Force on the Investigation and Prosecution of Child Abuse and Child Sexual Abuse Cases (hereinafter referred to as the Governor's Task Force), and the Ohio Department of Human Services (DHS), is a natural step in the evolution of Ohio's concern for families that find themselves interacting with the State's system of courts and the law. As in many states, Ohio has had a long history of discussion, debate and proposals to better serve the needs of its citizens in family matters. Over time, this discussion has resulted in a number of changes to various portions of Ohio law and has spawned a series of task forces, study commissions and professional association reports on the relative benefits of consolidating jurisdiction of family matters and developing new judicial structures for better coordinating information, resources and services to Ohio's families. It is not an easy topic to resolve. A brief historical snapshot of the family court movement highlights Ohio's role as a family court pioneer.

History of the Family Court Movement

Shortly after the creation of the nation's first juvenile courts at the turn of the century, two state legislatures began to consider the idea of expanding the breadth of their experiment from a court with jurisdiction over the legal matters of children to one over the law as it pertains to families and their children. The first evidence of this is in a 1912 enactment of the New Jersey legislature which vested county juvenile courts with jurisdiction to hear and determine all domestic relations disputes.¹ Ohio followed in 1914 with a court consolidation from the domestic relations side when their legislature passed a bill that created a Division of Domestic Relations in the Hamilton County Court of Common Pleas with jurisdiction over divorce, alimony matters, delinquency, dependency, neglected and crippled children, adults contributing to or tending to cause delinquency or dependency, and failure to provide support.² Although it was not labeled family division or family court, the Cincinnati court's enhanced Domestic Relations Division of the early 20th century is most commonly credited with achieving the

¹ Acts of the State of New Jersey, 1912, pp. 630-632. Reproduced in Bremner, H. R., *Children & Youth in America: A Documentary History*, Cambridge, MA: Harvard University Press, 1971, pp. 543-544.

² *Employee Orientation Manual: Hamilton County Juvenile Court*, Cincinnati, Ohio, 1973, p.1.

nation's first family court consolidation.³ The Cincinnati Domestic Relations Division's first Judge, Charles W. Hoffman, chaired a National Probation Association committee on domestic relations court in 1918 which issued a report that discussed the need for the juvenile court to become an integral part of the "family court."⁴

With roots in New Jersey and Ohio the idea spread through the 1950s to other urban jurisdictions across the nation such as Des Moines, Iowa; St. Louis, Missouri; Omaha, Nebraska; Wilmington, Delaware, Portland, Oregon; Gulfport, Mississippi; Baton Rouge, Louisiana,⁵ six North Carolina Counties; and eight Ohio counties.⁶ With the drafting of proposed model family court legislation developed in partnership by three national organizations in 1959,⁷ the 1960s saw the establishment of the first state systems of family courts in Rhode Island (1961), New York (1962), and Hawaii (1965).⁸ By 1980, thirteen states were engaged in operating or seriously studying the feasibility of family court

³ Page, R. W. "Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes." *Juvenile and Family Court Journal*, vol. 44, no. 1, 1993; Kephart, W. "The Family Court: Some Socio-Legal Implications," *W.U.L.Q.*, 1955, pp. 62-67; Rubin, T. and Flango, V. *Court Coordination of Family Cases*. Williamsburg, VA: National Center for State Courts, 1992, p. 63; Shepherd, R., Jr. "Family Court: An Idea Whose Time Has Finally Come." *Criminal Justice*, vol. 8, no. 3, pp. 37-38; and Turnbladh, W. "Foreword." *Standard Family Court Act*. New York: National Council on Crime and Delinquency, 1959.

⁴ Hoffman, C. Courts of Domestic Relations, "Proceedings of the National Conference of Social Work (1918)," pp. 125-126 Reproduced in Bremner, H. R., *Children & Youth in America: A Documentary History*. Cambridge, MA: Harvard University Press, 1971, p 543.

⁵ Hurst, H. "Legislative Approaches to Coordination of Child and Family Legal Proceedings." Pittsburgh, PA: National Center for Juvenile Justice, November 12, 1992.

⁶ Turnbladh, W. C. "Foreword." *Standard Family Court Act*. New York: National Council on Crime and Delinquency, 1959.

⁷ Committee on the Standard Family Court Act of the National Council on Crime and Delinquency in cooperation with the National Council of Juvenile and Family Court Judges and the U.S. Children's Bureau, *Standard Family Court Act*. New York: National Council on Crime and Delinquency, 1959, p. 10.

⁸ Page, R. W. "Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes," *Juvenile and Family Court Journal*, vol. 44, no. 1, 1993. Note: a state wide family court was not established in South Carolina until 1977, the 1968 legislation cited in Page's article granted local authority to establish family courts. The New York Family Court does not include the critical jurisdiction over divorce/dissolution and is not cited in Page's article.

consolidation⁹ and two other national standards setting groups joined the authors of the earlier proposed model legislation by addressing the issue of family courts.¹⁰

In the past decade, states increasingly considered the reorganization of their court systems to include family courts. This follows experience with established family courts, as well as the growing recognition in legal, educational, and social services communities alike that “the family should be a primary focus of intervention in response to a range of deviant behavior.”¹¹ By 1996, the number of states operating or seriously considering family courts had risen to 35, with 23 of these having adopted measures that would consolidate, in whole or in part, jurisdictions that involve various family members in different legal proceedings.¹² A number of national organizations currently support movement toward establishment of family courts including the National Council of Juvenile and Family Court Judges,¹³ the American Bar Association,¹⁴ and the Association of Family and Conciliation Courts.¹⁵

The History of Family Courts in Ohio

During the course of site work on the Ohio Family Court Feasibility Study, a number of study participants suggested that Ohio may already have some structural family courts. These individuals,

⁹ Structural family courts were established state-wide in Delaware (1971) and South Carolina (1977); Pennsylvania established structural family courts in the urban jurisdictions of Pittsburgh and Philadelphia (1972); the District of Columbia (1970); New Mexico passed enabling legislation during the seventies but no courts were established; Michigan seriously considered the issue during the seventies in a Governor’s Human Services Commission.

¹⁰ Please see American Bar Association Commission on Standards of Judicial Administration, *Standards Relating to Court Organization*, Standard 1.12. Chicago, IL: American Bar Association, 1974, and the National Advisory Commission on Justice Standards and Goals, Report of the Task Force on Juvenile Justice and Delinquency Prevention, Standard 8.8. Washington, DC: Government Printing Office, 1977.

¹¹ Bazemore, G. and Day, S. “The Return to Family Intervention in Youth Services: A Juvenile Justice Case Study.” *Journal of Sociology and Social Welfare*, vol. 22, no. 3, 1995.

¹² Hurst, H., Jr. and Szymanski, L. A. *Family Courts in the United States 1996: Statute Court Rule, and Practice Analysis*, Pittsburgh, PA: National Center for Juvenile Justice, December, 1996. In the fall of 1996, the state of Michigan joined the cadre of state-wide family court consolidations by passing legislation to create a family division of the Circuit Court (enrolled Senate Bill No. 1052).

¹³ National Council of Juvenile and Family Court Judges. *Children and Families First: A Mandate for America’s Courts*, Reno, NV: National Council of Juvenile and Family Court Judges, 1993, p. 4-5.

¹⁴ American Bar Association, *America’s Children At Risk: A National Agenda for Legal Action, A Report of the American Bar Association Presidential Working Group on the Unmet Legal Needs of Children and their Families*, Chicago, IL: ABA, July, 1993, pp. 53-58.

¹⁵ Milne, A. “Considerations in Establishing a Unified Family Court,” statement submitted to the U.S. Commission on Child and Family Welfare, April 19, 1995.

however, were typically not sure of the degree to which certain Ohio counties had implemented a consolidated family court structure and, at times, their opinions of where in the state these courts existed varied. Project staff found that there was a common lack of knowledge concerning how jurisdiction over the range of family cases is currently organized in Ohio's 88 counties and little awareness that the state is credited as one of the pioneers of the family court movement,¹⁶ and that, in varying degrees, structural family courts exist in a minimum of eight and arguably fifteen Ohio counties.¹⁷

Contrary to the assumptions of some study participants, the state of Ohio does not require a constitutional amendment to create structural family courts. In fact, the state has a long history, beginning in 1914, of experimenting with the consolidation of its domestic relations, juvenile and probate courts and currently provides at least one county (Auglaize County) the flexibility by law to combine their juvenile and probate divisions into the domestic relations division.

The Constitution of Ohio Article IV Section 4 establishes a court of common pleas "and such divisions thereof as may be established by law serving each county of the state." The Ohio Constitution also provides through the Modern Courts Amendment in 1968 that the probate court is a division of the common pleas court. The law that defines the organization, administration and jurisdiction of the common pleas court generally is provided in Title 23 of the Revised Code. From the creation of the juvenile court in 1904 and later the domestic relation court by statute, the law provides that either may be combined with each other or the probate court with the exceptions of Hamilton and Cuyahoga County.¹⁸

At the time of this study, twenty-five counties were individually recognized in the Revised Code 2301.03 as having separate domestic relations divisions of the court of common pleas. Seven of these 25 domestic relations divisions also currently have jurisdiction over juvenile cases, and in one such

¹⁶ The Foreword of the Standard Family Court Act, 1959 credits Ohio with the first family court in Hamilton County and contains the statement, "among such courts [family courts] today are those in eight counties in Ohio...."

¹⁷ Although the court letterhead does not always read, "family court of ____ county," the seven counties with combined domestic relations divisions and juvenile courts consolidate most of what is typically defined as family jurisdiction. The Auglaize County court consolidates every aspect of family jurisdiction except for the jurisdiction over criminal cases related to incidents of intra-familial violence. The seven one judge courts can also be considered family court structures, however, some legal scholars will argue that the jurisdiction is too broad in those courts and that the structural issue in those jurisdictions is related to specialization of a family division.

¹⁸ The juvenile court is a court of record and within the division of domestic relations or probate of the court of common pleas, except that the juvenile court of Cuyahoga and Hamilton county shall be separate divisions of the court of common pleas R.C. 2151.07. The code further establishes in section 2151.08 that the conferral of powers and jurisdiction on juvenile court judges in Hamilton County shall be deemed a creation of a separately and independently created and established juvenile court.

jurisdiction (Auglaize County), the Revised Code establishes that the judge of the probate and juvenile divisions of the court of common pleas to also be the administrative judge of the domestic relations division of the court. An attempt to graphically portray the organization of family jurisdiction in Ohio's 88 counties at the time of the Family Court Feasibility Study is provided in Appendix H.

Additional evidence of recent legislative efforts to consolidate jurisdiction in specific Ohio common pleas courts is reflected in a house bill was passed in 1996 amending section 2301.03 to give the new specialized domestic relations division in Fairfield County concurrent jurisdiction with the probate-juvenile division to hear certain cases including actions that involve an allegation of child abuse, neglect, and/or dependency.¹⁹

Review of the Family Court Literature

The notion of a "family court" has received considerable attention in the twentieth century. There is little consensus, however, concerning the specific goals of a family court. There is even less agreement concerning the best vehicle for family case coordination. For example, is family court best described as a court structure, or a court function, or a state-of-mind among court professionals, or all of the above?

There is wide diversity in the jurisdiction of structural family courts, their operations, and the management structure within which they exist. Traditionally, specialized courts in urban jurisdictions have had jurisdiction over different pieces of a family's legal disputes. However, the basic model of a family court is the consolidation of all, or mostly all, categories of family-related legal matters into one court structure.²⁰ The consolidation of courts into a structural family court essentially involves merging juvenile court and domestic relations courts, although other courts (such as probate) may also be incorporated.

¹⁹ Ohio Rev. Code Ann. section 2301.03. Judges of the divisions of domestic relations -- This statute was amended in 1996 by two separate bills, both of which passed. Harmonization of these two bills is in question. One bill, 1996 S 269, effective July 1, 1996, made no change to division (V) concerning Fairfield County. The other bill, 1996 H 377, effective October 17, 1996, rewrote division (V).

²⁰ Page, R. W. "Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes," *Juvenile and Family Court Journal*, vol. 44, no. 1, 1993.

However, simply identifying a court as a “family court” does not make it one.²¹ For example, “family court” is simply another name for domestic relations court in some states, or a juvenile court in others, or even a specialized domestic violence docket or court in others.²² Additionally, even the consolidation of family cases into a family court can be regarded as insufficient—in the absence of important supporting policies, procedures and services, a consolidated court will meet with limited success.

Case Coordination Issues

I.

States that have implemented or considered family courts have most often identified a lack of case coordination as the primary impetus for change. Problems with case coordination can be organized under three headings: *jurisdictional confusion and overlap*; *resource issues of the courts*; and *difficulties in sharing information between courts*. Solutions to these problems variously employ strategies to consolidate family jurisdiction or otherwise grant authority for a judge to combine certain cases across courts; increase the accessibility of information between courts and increase the likelihood that judges will know about prior or pending matters in other courts with family jurisdiction; and encourage courts to coordinate various social services that may be beneficial for a family.²³

Family court proponents maintain that proper coordination of the court’s handling of family matters recognizes the importance of the family as the primary socializer of its children, acknowledges the developmental nature of children, and the impact of court proceedings on the family.²⁴ As a result, the family—not just the child—becomes the focus of coordinated jurisdiction discussions. The concept of a family court is based on the belief that families come to court for many reasons, that families come back to court frequently, and that a family’s cases can be advantageously coordinated.

A model for family court reform was published in 1959 by a Committee on the Standard Family Court Act of the National Probation and Parole Association (later the National Council on Crime and

²¹ Shepherd, R. “The Unified Family Court: An Idea Whose Time Has Come.” *Criminal Justice*, vol. 8, 1993.

²² Hurst, Jr., H. and Szymanski, L. “Family Courts in the United States, 1996: Statutes, Court Rule, and Practice Analysis.” Pittsburgh, PA: National Center for Juvenile Justice, 1996.

²³ Rubin, T. and Flango, V. *Court Coordination of Family Cases*. Williamsburg, VA: National Center for State Courts, 1992.

²⁴ Szymanski, L.; Homisak, T., and Hurst, H. “Policy Alternatives and Current Court Practice in the Special Problem Areas of Jurisdiction Over the Family.” Pittsburgh, PA: National Center for Juvenile Justice, 1993.

Delinquency) in cooperation with the National Council of Juvenile Court Judges (later the National Council of Juvenile and Family Court Judges) and the U.S. Children's Bureau. The underlying rationale for the Standard Family Court act was framed as follows:

The purpose of a family court...is to protect and safeguard family life in general, and family units in particular, by affording to family members all possible help in resolving their justiciable problems and conflicts arising from their inter-personal relationships, in a single court with one specially-qualified staff, under one leadership, with a common purpose, working as a unit, with one set of family records all in one place, under the direction of one or more specially-qualified judges.²⁵

Prominent in the Act were discussions of serving the "best interests of the family unit," and conserving marriage, if possible.

Family court discussions also typically have included discussions of the importance of rehabilitation to address juvenile delinquency. However, with increases in violent and serious juvenile crime in the late eighties through the early nineties,²⁶ the debate over the potential for family courts to effectively address delinquency has oftentimes been challenged. Some family court reform efforts of the nineties have left delinquency jurisdiction out of the equation (e.g. Louisville, Kentucky). In others, the impetus to change the juvenile court's delinquency jurisdiction have stalled movements toward family courts (e.g. Virginia). In the political climate of the 1990s where states are taking often aggressive legislative or executive action in response to escalating juvenile arrests for violent crimes,²⁷ there is no consensus in the field that the attempt to rehabilitate delinquents, and consider the child and family's best interests are reasonable objectives for courts serving children and families.

There is considerable support in the literature for pursuing rehabilitation in a family court context. A significant relationship exists between family environment and delinquency, although family risk factors are not the only predictors of delinquency.²⁸ Wright and Wright concluded, following their review of the delinquency research, that family risk factors include parents who are negatively involved

²⁵ Committee on the Standard Family Court Act of the National Council on Crime and Delinquency in cooperation with the National Council of Juvenile and Family Court Judges and the U.S. Children's Bureau, *Standard Family Court Act*. New York: National Council on Crime and Delinquency, 1959.

²⁶ The years between 1988 and 1994 saw more than a 50% increase in the rate of juvenile arrests for violent crimes. Snyder, H.; M. Sickmund and E. Poe-Yamagata. *Juvenile Offenders and Victims: 1996 Update on Violence*. Washington D.C.: Office of Juvenile Justice and Delinquency Prevention, 1996.

²⁷ Torbet, Patricia, et al. *State Responses to Serious and Violent Juvenile Crime*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

²⁸ Zigler, E., Taussig, C., and Black, K. "Early Childhood Intervention: A Promising Preventative for Juvenile Delinquency," *American Psychologist*, vol. 47, no. 8, 1992.

or uninvolved with their children, marital discord, and child abuse.²⁹ Recidivism has also been shown to be related to family environment.³⁰ Numerous studies document that children who are victims of abuse or even witness family violence are at high risk for increased aggression and behavioral problems.³¹ Moreover, the effect of family environment on the behavioral, emotional, and social adjustment of children and youth may be seen in domestic relations court cases as well.³² In fact, the potential for delinquency may first be recognized here.³³

Common to many advocates of family courts is the belief that family law and the courts should work to resolve as many of the family's legal problems in as few procedures as possible. Every family court must have jurisdiction over all necessary methods of enforcement: of litigant's rights, contempt, interstate compacts, and all laws involving children or families, e.g., Uniform Reciprocal Support Enforcement Act (URESA) and Uniform Child Custody Jurisdiction Act (UCCJA).

Jurisdictional Issues

2.

In a court system that has not been reorganized into a family court, various cases concerning a family are heard in domestic relations court, juvenile court, criminal court, probate court, etc. Rubin and Flango in their study of three courts in New Jersey, Virginia, and Utah, found strong evidence that the proportion of dysfunctional families who come to court for divorce, abuse and neglect, or delinquency was large enough to justify efforts to coordinate these matters.³⁴

Issues of jurisdictional confusion involve overlapping jurisdiction, unclear jurisdiction, and complications in transferring jurisdiction, each of which impacts case coordination with respect to information sharing and resource allocation. A case may be pending in one court while there is activity on a case involving the same family in another courtroom. There may be confusion as to which court has

²⁹ Wright, K. and Wright, K. *Family Life, Delinquency and Crime: A Policymaker's Guide*, Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1994.

³⁰ Dembo, R., et al. "Predictors of Recidivism to a Juvenile Assessment Center," *International Journal of the Addictions*, vol. 30, no. 11, 1995.

³¹ Hofford, M., et al., "Family Violence in Child Custody Statutes" An Analysis of State Codes and Legal Practice," *Family Law Quarterly*, vol. 29, no. 2, 1995.

³² Arbuthnot, J., et al., "Court-Sponsored Education Programs for Divorcing Parents: Some Guiding Thoughts and Preliminary Data." *Juvenile and Family Court Journal*, vol. 45, no. 2, 1994.

³³ Rubin, T. and Flango, V. *Court Coordination of Family Cases*. Williamsburg, VA: National Center for State Courts, 1992.

³⁴ The study found that conservatively, 33% - 40% of families had been to court multiple times during a five-year time span on one or more family matters. Rubin, T. and Flango, V. *Court Coordination of Family Cases*. Williamsburg, VA: National Center for State Courts, 1992, pp. 7-36.

jurisdiction in a case, and there may be problems in transferring a case from one court to another. Discrete, specialized courts can also result in judges, magistrates and attorneys having inadequate access to information regarding concurrent and past matters. The judge or attorney may be unaware of a related pending matter in another courtroom or may be unaware of the family's prior involvement with the court system. Duplicated efforts in two courts serving the same families may drain judicial and attorney time, dissipate docket time, deplete support staff, strain physical resources, and over-utilize or inappropriately utilize social services. Lastly, forum-shopping can occur wherein litigants or attorneys, anticipating the outcome of their case in one court, attempt to take the case to a different court seeking better results.

Many of these issues may be addressed and resolved without establishing a family court by rewriting legislation and improving court administration and technology. However, some commentators argue that a structural family court can expedite and simplify changes more effectively than simply coordinating separate courts by addressing each issue in the context of a comprehensive system. Yet, even placing case types in a family court or in a family division of a general jurisdiction court is just the beginning of a complex process of case coordination.³⁵

The Standard Family Court Act (1959) recommended the following as a model for family court jurisdiction: all divorce/dissolution/separation/annulment jurisdiction; paternity; any criminal charges for offenses committed against a child by the parent; criminal charges against an adult for deserting, abandoning or failing to provide support; or any criminal misdemeanor domestic violence; mental health commitment of an adult or a juvenile; delinquency; dependency, abuse or neglect including termination of parental rights; adoption; custody; guardianship; youth beyond the control of parent/custodian; Interstate Compact for Juveniles; and judicial consent for marriage, employment or enlistment of a child.³⁶

A more recent recommendation for family court jurisdiction was published by the National Council of Juvenile and Family Court Judges.³⁷ Emanating from the National Family Court Symposium held in October, 1990, the participants essentially reaffirmed the recommendation of the Standard Family

³⁵ Rubin, T. and Flango, V. "Courts and Families: A Time of Change." *State Court Journal*, vol. 17, no. 3, 1993, pp. 27-34.

³⁶ Committee on the Standard Family Court Act of the National Council on Crime and Delinquency in cooperation with the National Council of Juvenile and Family Court Judges and the U.S. Children's Bureau, *Standard Family Court Act*. New York: National Council on Crime and Delinquency, 1959.

³⁷ Katz, S. and Kuhn, J. "*Recommendations for a Model Family Court: A Report from the National Family Court Symposium.*" Reno, NV: National Council of Juvenile and Family Court Judges, 1991, pp. 7-9.

Court Act with regard to jurisdiction except for provisions with respect to criminal cases related to intra-familial violence—there was no consensus for including these matters in model jurisdiction for family courts. The recommendations also added jurisdiction for children in need of service cases; Uniform Child Custody Jurisdiction Act cases, Uniform Reciprocal Enforcement of Support Act cases; civil domestic violence protection, emancipation, conservatorships, name changes and legal-medical issues (e.g. right to die, abortion and living wills).

In a 1993 resolution, the National Council of Juvenile and Family Court Judges' Board of Trustees recommended that the family court handle all family cases relating to juvenile delinquency, dependency, status offenses, paternity, custody, support, mental health, adoption, family violence, and marital dissolution.³⁸

Rubin contends that family court jurisdiction should include at least juvenile delinquency, abuse and neglect, and marriage dissolution.³⁹ He, as well as other authorities⁴⁰ use this criteria to define and establish that a court is in fact a family court. Rubin and Flango maintain that a family court should also have jurisdiction over involuntary termination of parental rights, voluntary termination of parental rights, and adoption, as well as paternity, support, custody and visitation proceedings separate from divorce.⁴¹

Most recently, Hurst, Jr. and Szymanski constructed detailed profiles of each state's jurisdiction with respect to family court statutes, court rule and practice⁴² (Appendix A contains the Family Court Profiles). The analysis clearly demonstrates the variability in jurisdictions from state to state. Their analysis also indicates variance among states as to the level of jurisdiction afforded to family courts. They found that in some states, the family court is a division of the general trial court, in others it is a

³⁸ National Council of Juvenile and Family Court Judges. *Children and Families First: A Mandate for America's Courts*. Reno, NV: NCJFCJ, 1993.

³⁹ Rubin, T. "Should Juvenile Courts Become Family Courts?" *Community Corrections Report*, vol. 15. 1995, pp. 3-5.

⁴⁰ Please see Page, R.W., "Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes," *Juvenile and Family Court Journal*, vol. 44, no. 1, 1993, pp. 1 - 59; and Shepherd, R. "The Unified Family Court: An Idea Who Time Has Finally Come." *Criminal Justice*, vol. 8, 1993, pp. 37-39.

⁴¹ Rubin, T. and Flango, V. "Courts and Families: A Time of Change." *State Court Journal*, vol. 17, no. 3, 1993, pp. 27-34.

⁴² Hurst, H., Jr., and Szymanski, L. *Family Courts in the United States, 1996: Statute, Court Rule, and Practice Analysis*. Pittsburgh, PA: National Center for Juvenile Justice, 1996.

discrete court, and in others the family court is situated at the district or lower level. Most family court authorities recommend that the family court be equal to the highest trial court of general jurisdiction.⁴³

Debate among family court proponents regarding the types of cases encompassed within the jurisdiction of a family court centers primarily around whether domestic violence cases should be included (both temporary and permanent protection orders), and whether various probate cases should be included. Rubin and Flango⁴⁴ outline some of the factors that may impact the decision to include or exclude domestic violence and/or probate cases. While they believe that it is reasonable and consistent to include domestic violent protection orders in a family court, to be effective, the court must be able to coordinate its proceedings with social service agencies and probation departments. With respect to the inclusion of criminal cases within the jurisdiction of a family court, Rubin and Flango note that to do so would extend the family court beyond its role as civil court. If the family court is to hear criminal cases, courtrooms that would permit cases to be heard by a jury would be required. Consideration would also need to be given to the propriety of having the same family court judge hear both the criminal charge of parental abuse and the corresponding civil protection proceeding that alleges parental abuse against the same child.

⁴³ See, for example, National Council of Juvenile and Family Court Judges, *Children and Families First: A Mandate for America's Children*. Reno, NV: NCJFCJ, 1993.

⁴⁴ Rubin, T. and Flango, V. "Courts and Families: A Time of Change." *State Court Journal*, vol. 17, no. 3, 1993, pp. 27-34.

Resource Issues

3.

The issue of resource and courts revolves around better access to and coordination of services to families. By providing access to ongoing support services for the family, a family court can enable the family to better handle subsequent disputes so that future legal intervention may not be necessary.⁴⁵ Judge Andrew Shookhoff comments that while criminal courts serve as part of an overall strategy to reduce violence, they are reactive not preventive.⁴⁶ He asserts that family cases are occasions for the provision of early intervention and prevention services.

In its 1993 resolution in support of structural family courts the National Council of Juvenile and Family Court Judges⁴⁷ recommends that the following services be made available through a family court:

- Family preservation services,
- Physical, mental, educational and substance abuse evaluations,
- Parenting education,
- Medical, mental health and substance abuse treatment,
- Court Appointed Special Advocates,
- Volunteers,
- Citizen advisory groups,
- Alternative dispute resolution services,
- Foster care,
- Residential and day treatment programs,
- Secure detention and alternatives, and
- Secure correctional facilities.

A 1990 study of key issues related to special problem areas of the family law suggested that home assessment services, family violence coordinators and domestic violence programs be coordinated by courts with family jurisdiction.⁴⁸

⁴⁵ Page, R. W. "Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes." *Juvenile and Family Court Journal*, vol. 44, no. 1, 1993, pp. 1-59.

⁴⁶ Shookhoff, A. "Moving Away from an Emergency Room Mentality: An Unorthodox View of the Judicial Role in Violence Prevention," *Journal Health Care Poor Underserved*, vol. 6, no. 2, 1995, pp. 138-143.

⁴⁷ National Council of Juvenile and Family Court Judges. *Children and Families First: A Mandate for America's Children*. Reno, NV: NCJFCJ, 1993, pp. 8-9.

⁴⁸ Szymanski, L., et al. *Policy Alternatives and Current Court Practice in the Special Problems Areas of Jurisdiction over the Family*. Pittsburgh, PA: National Center for Juvenile Justice, 1993.

Page⁴⁹ and Hurst and Kuhn⁵⁰ stress that non-adversarial methods of dispute resolution such as counseling, mediation, arbitration should be made available and their utilization maximized, since the adversarial system of traditional litigation is stressful and typically traumatizes children as well as their families. Dispute resolution would also assist in diverting cases from already overcrowded courtrooms.

The ABA Presidential Working Group on the Unmet Legal Needs of Children and Their Families affirms the value of strategies to better coordinate family cases including structural family courts and the importance of comfortable courthouse environments for families and children.⁵¹ Among other things, their vision for reform addresses the effective use of hearing officers—magistrates, masters, referees—to handle matters such as uncontested divorces and paternity cases that do not require a judge’s oversight and the advantages of alternative dispute resolution for resolving some cases and diverting them from formal court process. They further suggest that family courts should coordinate and help procure social services for families that need them. Comparably, Hurst and Kuhn⁵² in their study of the feasibility of establishing a family court in Kansas, advised the development of an intake and disposition center. Among other functions the center would screen cases prior to filing, provide for non-adversarial resolution, maintain an electronic case management information system and conduct ongoing assessment of resource needs.

Services may be part of the court organization or remain separate from court administration (or both). Sugarman and Byalin⁵³ outline two approaches family courts may use to provide mental health and human services to families: 1) direct service approach or 2) the community organization approach. The former advocates the expansion of court-related services, the latter recommends that the court contract with community agencies and work toward improving relationships between the court and

⁴⁹ Page, R.W. “Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes,” *Juvenile and Family Court Journal*, vol. 44, no. 1, 1993, pp. 1-59.

⁵⁰ Hurst, H. and Kuhn, J. “A Family Department for the District Courts of Kansas: Recommendations for Implementation.” Reno, NV: NCJFCJ, 1993.

⁵¹ American Bar Association. “The Recommended Agenda for Families in the Courts,” *America’s Children at Risk: A National Agenda for Families in the Courts*,” *America’s Children at Risk: A National Agenda for Legal Action, A Report of the American Bar Association Presidential Working Group on the Unmet Legal Needs of Children and their Families*, Chicago, IL: American Bar Association, 1993.

⁵² Hurst, H. and Kuhn, J. “A Family Department for the District Courts of Kansas: Recommendations for Implementation.” Reno, NV: NCJFCJ, 1993.

⁵³ Sugarman, N. and Byalin, K. “Meeting the Family Court’s Need for Mental Health and Human Services: A Comparison of Direct Service and Community Organization Approaches.” *Journal of Psychiatry and Law*, vol. 21, no. 3, 1993, pp. 319-336.

agencies outside the court. To ensure the effectiveness of the latter approach, the court must employ at least one staff person to work as a liaison between the court and community agencies. Hurst and Kuhn⁵⁴ and Page⁵⁵ also suggest optimizing the use of community services, public resources and trained volunteers. The NCJFCJ proposes that many services required for family courts can be provided by the private sector and non-profits.⁵⁶

A component of the resource issue is the need for strong leadership on the part of the judiciary as well as full commitment by all staff to the family court concept and its implementation. Judicial leadership is essential to developing and obtaining resources and providing coordination of the family court system.⁵⁷ The NCJFCJ recommends that the family court be staffed by specialist judges and personnel who are provided continuing education in topics such as family dynamics, child development, rehabilitation, and community accountability. Interdisciplinary education should also be considered.⁵⁸

Information Sharing Issues

4.

Many family court proponents have recommended that foremost among ways to coordinate information in family cases is to assign the same judge to hear all court cases pertaining to the same family. Since the same judge would be aware of all matters involving that family, decisions should be better informed, and conflicting and contradictory rulings would be averted. Conversely, Rubin and Flango⁵⁹ note, that with respect to the concept of one judge/one family: a) the judge's contact with the family may be short and therefore not too illuminating; b) too much familiarity with the family may lead to bias; c) the concept assumes that the same judge will remain with the court for several years; d) some judges sit in multiple locations; and e) some families frequently change locales. In lieu of one judge/one family, they suggest the continuity of attorneys, probation officers, guardian ad litem, and social workers may work as well and be more practical for some family courts. Since several community agencies may

⁵⁴ Hurst, H. and Kuhn, J. "A Family Department for the District Courts of Kansas: Recommendations for Implementation." Reno, NV: NCJFCJ, 1993.

⁵⁵ Page, R.W. "Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes," *Juvenile and Family Court Journal*, vol. 44, no. 1, 1993, pp. 1-59.

⁵⁶ National Council of Juvenile and Family Court Judges. *Children and Families First: A Mandate for America's Children*. Reno, NV: NCJFCJ, 1993.

⁵⁷ Szymanski, L., et al. *Policy Alternatives and Current Court Practice in the Special Problem Areas of Jurisdiction Over the Family*. Pittsburgh, PA: National Center for Juvenile Justice, 1993.

⁵⁸ National Council of Juvenile and Family Court Judges. *Children and Families First: A Mandate for America's Children*. Reno, NV: NCJFCJ, 1993.

⁵⁹ Rubin, T. and Flango, V. *Court Coordination of Family Cases*. Williamsburg, VA: National Center for State Courts, 1992.

be involved with the same family, one family/one probation officer, or one family/one social worker would also help address issues in service duplication.⁶⁰

In combination with procedures to manage court calendars and provide for coordinated intake and disposition, an automated information system and appropriately designed software are vital to ensuring quick and efficient provision of information on related family cases to the court. There is a need to know what other proceedings are pending with regard to a family, and the content of those orders.

Summary

The need to coordinate court actions in family cases is compelling and has been an issue of debate and experiment for most of the twentieth century. Since the Standard Family Court Act in 1959, the country has witnessed slow but steady progress in court reform initiatives variously labeled “family court.” There also has been a proliferation of policy issues and debates that have been closely associated with the goal of improving the court’s handling of family cases (see NCJJ Snapshot, Appendix A). The connections at times are indirect, however, most of the specific discussions concerning “family court” can be organized under three headings: *jurisdictional confusion and overlap*; *resource issues of the courts*; and *difficulties in sharing information between courts*.

As the end of the century approaches and visionaries predict the future of the courts in the twenty-first century, the concept has gained significant momentum — the 1990s has witnessed a veritable explosion of court reform efforts and experiments aimed at better coordination of family cases. However, the reform strategies are as diverse as the fifty states. The only consistency across time and across states has been and continues to be the common goal of improving the court system’s performance in the interest of families.

⁶⁰ Rubin, T. and Flango, V. “Courts and Families: A Time of Change.” *State Court Journal*, vol. 17, no. 3, 1993, pp. 27-34.

Chapter 2

Project Assumptions, Activities and Overview of Project Findings

Project Assumptions

The Family Court Feasibility Study conducted by the National Center for Juvenile Justice was designed to explore the interactions of Ohio families with the judicial system from a number of vantage points, with a stated set of initial assumptions and including as much practitioner input as possible given the study's resources. A set of five assumptions guided our work on this project. This set of assumptions reflects the Center's pre-existing biases regarding family courts, the study of feasibility and the conditions necessary to implement a new family court structure. They include the following:

1. *There is no singular, agreed upon definition of a "family court."* In the evolving world of the development of family courts throughout the country, there is a wide range of opinion regarding what constitutes the purpose, jurisdiction and operation of entities that are named family courts. Some have limited jurisdiction, inferior status and a restricted mission. Others, most notably the State of Hawaii, have a broad-based mission and include jurisdiction not recognized by many as "family court business."
2. *Family court is better described as a set of functions rather than a structure.* Following on the first hypothesis, this assumption suggests that family court business can be conducted through a wide range of structures. Further, it suggests that simply naming a court "family" does not assure that it will operate its functions in a manner consistent with family court principles. There are "family courts" with extremely limited jurisdiction, that operate with separate divisions that are not integrated with regard to information sharing, resource planning or judicial control of cases. There are other courts, not called "family" that have organized their internal functions to maximize intelligence about individual cases, that share common resources, and have attended to family court principles such as "one family, one judge." Ultimately, how a court behaves is more important in developing a family court process, than how it is structured or labeled.
3. *Many more things are possible than feasible. Feasibility is the product of comparing the gain to be made by a change in relation to the cost of producing that change.* Before the study began, it was assumed that it was possible to develop a family court in Ohio. The critical question of the study was whether such a process would produce sufficiently better results so as to warrant the cost and effort necessary to accomplish the change.
4. *A "family court" in Ohio must derive from a consensus among family practitioners regarding: mission, structure and jurisdiction, staffing, organization, cost, resolution of existing legal impediments, interest of impacted groups, and public and professional support.* This relatively long list of necessary pre-conditions served both as a boundary to the study's breadth, and a guide for conducting the investigation. Absent a consensus on these matters, it will be very difficult to establish a uniform family court structure in any state or individual jurisdiction.

5. *The study of the feasibility of a family court must examine all of the above issues in the context of the wide diversity of the state's existing judicial and service practice.* Ohio is currently operating as a series of eighty-eight inter-connected, but largely separate judicial systems. There are no less than six jurisdictional hybrids in Ohio having authority over one or more aspects of family law (See Appendix H). The hybrids have developed over time and established their own judicial and service culture, their own unique processes and adaptations, and many innovative solutions to systemic problems encountered with family matters.

When these five assumptions were presented in public forums and to professional membership associations, there was widespread belief that they represented a fair and reasonable foundation upon which to ground the Family Court Feasibility Study.

Study Design

The study's research design called for project staff to:

1. Collect and analyze statewide caseload data;
2. Conduct detailed site work in 10 selected Ohio counties including Athens, Clark, Clermont, Cuyahoga, Erie, Franklin, Hamilton, Jefferson, Morgan and Wyandot Counties;
3. Participate in a series of regional focus groups and public hearings (five each) designed to allow for community input into, and gauge public support for, the family court initiative;
4. Interact with a range of professional membership organizations whose constituency had a vested interest in the study including the Ohio Juvenile Court Judges Association, the Ohio Domestic Relations Judges Association and the Ohio Association of Court Magistrates;
5. Conduct two mail surveys, the first of which was sent to all judges and magistrates requesting their input on issues related to the handling and coordination of family cases in Ohio courts and the appropriateness of establishing a family court system in the state. The second survey was distributed to a large sample of professionals working in the juvenile justice and child protective services systems to measure their opinions and attitudes regarding a range of issues related to the judicial handling of child abuse, neglect and dependency cases; and
6. Conduct a review of Ohio statutes, court rules and case law governing judicial proceedings on the range of family matters over which Ohio courts have jurisdictional authority.

Statewide Data Collection

1.

The original study design anticipated the availability of statewide data to describe the structure, cost, and operation of the family law enterprise and its components. Data was requested from the Department of Human Services, the Supreme Court, Ohio Family and Children First, and others, to

ascertain caseloads, worker complements, case processing times, and costs for the various pieces of “family” jurisdiction.

While some of the data exists in aggregate form in various offices of state government, it was an early finding of the study that much of the detailed data necessary to produce meaningful analyses was not routinely kept. Caseload data from the local courts submitted on a monthly basis to the Supreme Court provides a relatively comprehensive picture of the aggregate amount of family matters filed with the court. It further provides some detail regarding workload for these cases on a county-by-county basis. However, there is no comprehensive statewide data system that allows for case tracking or monitoring case time frames. Instead, state officials, especially within the Supreme Court and the Department of Human Services, were able to identify point-in-time analyses for some aspects of case processing, for a subset of counties. These studies were reviewed to gain some understanding of the overall process.

Cost data proved equally elusive. The aggregate cost of the court system in Ohio is a composite of State, local and special project funding. There is no central repository for these costs, except in the location from which they originate. The same is true for service delivery. Once again, there are special studies examining a portion of the cost picture that were made available to the study team.

What was possible was to use Supreme Court data to derive a fairly accurate picture of the total volume of cases by case type. While some definitional problems exist in this data set, it is quite valuable in not only measuring overall Ohio family business, but in comparing across counties with similar or differing structures.¹ These data are presented in Chapter 3.

Intensive Study Sites

2.

An initial study design decision involved the selection of a sample of counties as intensive study sites, where the study team could visit to collect data, observe court processes and interview a wide range of professionals to gain an understanding of the system as well as solicit opinions regarding family courts and needed change.

An early error in the study occurred when the study team, in concert with the Governor’s Task Force on Child Abuse and Child Sexual Abuse sent letters of inquiry to judges in each of Ohio’s eighty-

¹ There are some variations, however, in how individual courts count and report new filings to the Supreme Court. These variations to a large degree revolve around how individual courts differentiate between new case filings and a new filing on a reactivated cases and, secondly, whether to consider each offense on a official complaint as a separate case.

eight counties asking if they would be willing to serve as intensive study sites. The response was unexpectedly rapid and overwhelming. A positive response was received from almost all counties, with some expressing a strong desire to be included in the sample. It was clear from this exercise that there was a great deal of interest and investment in the Family Court Feasibility Study.

After reviewing the responses, a second round of decisions led to selecting a sample of ten counties that were representative of size, geography, court structure, resources and interest in family court structures. These initial decisions were made jointly by the study team and the Governor's Task Force. A second round of letters was sent to the presiding judges of the juvenile, domestic relations, common pleas, probate and municipal courts, describing the purpose of the work to be conducted in the intensive study sites, the requirements for participation, a request for a "host" to be named to assist the study team, and an assurance that courts would jointly make time and information available for the feasibility study activities. In each instance, the ten selected sites responded positively, indicating a desire and willingness to participate. The ten intensive study sites included Athens, Clark, Clermont, Cuyahoga, Erie, Franklin, Hamilton, Jefferson, Morgan and Wyandot Counties.

During a period of time from February, 1996 through October, 1996 teams of two or three researchers from the National Center for Juvenile Justice worked with the designated "host" to establish a series of interviews and observations in each of the courts responsible for some part of the family jurisdiction. Initial materials were gathered to better understand the local court function and culture, and structured interview guides were constructed and tested to ensure uniformity in the site visit process. For a twelve-month period of time, site visitors were almost constantly in one county or another completing the interview/observation/data collection process. Site visits often included a structured exit interview with relevant parties to review the study team's findings and impressions and to clarify any remaining uncertainty that arose during the visit. In the larger counties, multiple visits, ranging from two to five days were scheduled to include at least a sampling of each type of relevant court and ancillary service professional. In each county, at a minimum, the following court and court-related professionals were contacted and interviewed:

- Judges - Juvenile Domestic Relations, Probate, and Municipal Courts,
- Magistrates - Juvenile, Domestic Relations, Probate, and Municipal Courts,
- Court Clerks,
- Court Administrators,
- Probation Chiefs, Supervisors and Line Probation Staff,
- Detention Directors and Line Staff,
- Legal Counsel (court-appointed and privately retained),

- Prosecutors,
- County Counsel,
- Director and Line Staff - Children's Services,
- Child Support Enforcement Administrative Staff,
- Domestic Violence Personnel (Shelter, Victim Assistance),
- CASAs and Guardian Ad Litem, and
- Law Enforcement Personnel.

Additionally, as suggested by the "host," others involved in special programs or functions were added to the interview list. No one wishing to participate in the study process was denied an opportunity to meet with and discuss opinions with the study team.

On return to the Center in Pittsburgh, team meetings were held to discuss emerging issues, further refine and broaden study questions, summarize county profiles and begin to describe findings of importance to this report. Individual field notes were generated for each interview and observation and were sorted and catalogued into county files. All relevant available data concerning each county was compiled along with the field notes to produce quite complete and comprehensive summaries of each site's function, structure and opinions.

In all, more than 120 days of project staff time were spent on-site, with more than 300 Ohio family law practitioners involved in direct interviews. Additional time was spent in telephone follow-up interviews and fact finding to complete each county's dossier.

The site visits provided the framework for all of the subsequent interpretation and findings of the study. The intensive investigation carried on at the local level was, perhaps, the most influential component of the feasibility study and shaped this report. It was also apparent from the site visits, that the diversity of Ohio practice was great; no two site counties behaved in an identical manner in family law matters. Each had developed their own style, culture, practice and operation crafted around the common denominator of law and rules, but varying widely in the interpretation and, especially, the implementation of those laws and rules.

Focus Groups and Public Hearings

3.

A joint decision between the study team and the Governor's Task Force was to modify original plans to conduct a large number of early public hearings across the State regarding issues involving families in courts. Instead, it was decided to bifurcate the process, holding five focus groups early in the study period and a series of public hearings later, after initial findings could better inform those hearings.

(Appendix B contains a listing of study participants; Appendix C contains selected comments by study participants.)

It was decided that the focus groups should involve invitees from a wide range of court and ancillary service agencies, public officials, school, mental health and law enforcement personnel. Five locations across the state were selected to hold the group meetings and a master list of invitees was developed by the Supreme Court and others.

During a five-week period from April 25, 1996 to May 23, 1996, the focus groups were held weekly in one of the five locations. Each focus group consisted of an introductory period where the feasibility study and the task for the day were described by project staff and State officials. Participants were then gathered into small discussion groups, with the task of identifying current strengths and weaknesses of the existing system of courts and service entities for families. For the weaknesses, they were further instructed to develop potential solutions that would mediate the weaknesses, while not undermining the existing strengths.

The discussion, for each group, was observed and recorded by graduate students from Ohio State University. Immediately following the discussion, the student observers met with the project director to identify key issues that arose from the discussion. These findings were categorized into strengths, weaknesses and potential solutions and recorded by the project director. An immediate feedback session followed this discussion and involved the entire audience gathered for the focus group. In this manner, participants could review their own contributions as well as those from sub-groups with whom they did not participate. The feedback session was informal and allowed for additional discussion, clarification and expansion of the themes captured during the small group discussion. These comments were also recorded.

Finally, each of the student observers refined their notes and wrote summaries of their small group's discussion, having them available for project review by the next week's focus group. These summaries were made a part of the study files and were reviewed for content in preparation for the site visits and in developing subsequent structured interview guides and questionnaires.

The focus groups served as the earliest point of issue disclosure, and while not detailed enough to derive full solutions, pointed the study team to important areas requiring further inquiry. They also provided a forum for a broad range of stakeholders who might otherwise not have been directly contacted by the study team. They served to broaden both the geographic as well as the professional input into the study. As the final group was concluding, it was apparent that similar issues were emerging from each,

that there were dominant themes that were raised from one end of the State to the other. While differences existed in the detail, issues involving coordination, jurisdiction, information sharing and resources were repeated in each of the five focus groups.

A series of five public hearings was scheduled for the period from October 9, 1996 to November 6, 1996. These hearings were held in public facilities, during evening hours, to provide for convenient access to the public. Notices and invitations were issued to insure that the meetings were known to occur.

At each hearing, a panel of state officials was present to take testimony, both written and oral, and to question the respondents coming before the hearing. The study team was represented as an observer at each of the hearings. All hearings were video tape recorded to provide a permanent record of the proceedings.

While generally not well attended, the testimony presented by those in attendance was useful in highlighting specific instances where court processes were not best serving the needs of families. Much of the testimony involved instances of jurisdictional conflict or delay in domestic relations matters involving children. While often single incidents, the hearings, taken as a whole, were useful in both identifying detailed problems in some jurisdictions and validating prior study findings and impressions regarding more broad-based issues.

Association Meetings

4.

Ohio has a strong network of professional membership organizations that meet regularly to share information, conduct training, and involve themselves in policy and legislation regarding matters affecting the court and its related service organizations. In keeping with the study's goal to maximize practitioner input, representatives from the study made an effort to contact all relevant professional groups seeking an invitation to make an initial presentation about the purpose and execution of the feasibility study, to seek guidance around issues to be addressed, and to ask cooperation during subsequent phases of the work.

Contacts and presentations were made with the three major judicial associations central to the study: Ohio Juvenile Court Judges Association, Ohio Domestic Relations Judges Association, and the Ohio Association of Court Magistrates. At the initial meeting, project staff were given an open forum in which to discuss the plans for the study. Subsequent meetings for each of these groups were used to

update progress, present initial impressions and, more recently, to preview the study's major findings and the direction of the recommendations.

This close interaction with the professional associations allowed for a wealth of expert input at each stage of the study, the nurturing of a collaborative relationship between effected professionals and the study team, and critical feedback concerning the directions the study was taking. In fact, a number of issues that were actively pursued during the course of the study were originated by judges or magistrates early in the process.

Additional meetings were held with regional planning bodies, mediation and parent education groups, as well as the regular meetings with the Governor's Task Force.

Through this process, face-to-face contact was established with more than 400 court and court-related professionals who might otherwise not have had direct input into the study's findings, impressions or recommendations.

Mail Surveys

5.

Two mail surveys were developed for distribution to a large audience of court and court-related personnel. The first, the Family Court Feasibility Study, was sent to all judges and magistrates in Ohio. Approximately 650 surveys were mailed. The survey requested opinions regarding the adequacy of information, resources, court order enforcement and coordination in cases involving family members. It further asked questions about the perceived desirability of a separate family court structure and about a jurisdiction's interest in further "experimenting" with family court functions as a pilot site. The results of the Family Court Feasibility Survey were used to support the discussion of issues related to jurisdiction, information sharing and resources. (Appendix G contains general frequencies from the Family Court Feasibility Survey.)

A second survey, the Ohio Court Improvement Project (CIP) Survey, was prepared for a much broader sample of court and child protection professionals, specifically designed to address problems in the court processing of child maltreatment cases, and those cases destined for permanent custody status. This survey was distributed because of the emphasis, within the Family Court Feasibility Study, on Ohio's dependency population and practice. (Appendix E contains CIP Project Survey frequencies.) The sample for the Ohio Court Improvement Project Survey includes:

- Juvenile court judges;

- Juvenile court magistrates with child abuse, neglect and dependency docket responsibilities;
- Juvenile court administrators and administrative staff responsible for the processing of child abuse, neglect and dependency cases;
- District DHS and local child protective services administrators, supervisors and caseworkers;
- Child protective services attorneys and assistant county attorneys responsible for prosecution of child abuse, neglect and dependency cases;
- Court-appointed attorneys representing parents in dependency and permanent custody cases;
- Guardians ad litem for children in dependency and permanent custody proceedings;
- Court Appointed Special Advocates (CASAs);
- Private providers and foster parents servicing maltreated children; and
- Chairpersons of local Family and Children First Councils.

While limited in scope and detail, the results from these two instruments serve to validate and give generalized support for the findings from the other components of the study. They further alerted the professional community of the execution of the study and invited their input.

Legal Analysis

6.

Throughout the course of the feasibility study, a separate, but related task was underway at the offices of the National Center for Juvenile Justice in Pittsburgh. The Center's legal staff, using published materials, legislative documents and Westlaw, completed an analysis of all portions of Ohio law impacting family matters. Relevant legislative cites were searched, case law examined and new legislative proposals analyzed.

Legal materials and cites were grouped into subject areas, thus bringing together all relevant law pertaining, for example, to custody decision making. This process was necessary not only to inform project staff about the provisions of law, but also to allow for an examination of particular sections identified as creating conflict or ambiguity in practice. Results from this examination inform subsequent chapters on jurisdiction, information sharing and resources contained in this report.

7. *Summary*

Taken as a whole, the components of the Family Court Feasibility Study provide the information necessary to understand current practice, its diversity at the local level, the strengths and weaknesses of the existing system, the collective opinion regarding change, and the barriers to be overcome to enact that change. These activities have also served to focus attention by professional groups and individual practitioners on the problems with family practice in the courts, and led to many lively discussions at meetings and in group discussions. It is the belief of the study team that the design accomplished its mission in maximizing practitioner input and engaging Ohio professionals in the examination.

Overview of Project Findings

A wide range of issues related to the judicial handling of “family” cases were identified during the course of the Ohio Family Court Feasibility Study. Interviewees were often very resolute in their assessment of what was working, what was not, where improvements were necessary, and the degree to which the establishment of a family court would enhance the judicial handling of the various types of cases over which such a court would assume jurisdiction.

Throughout the course of the study, the team encountered, almost without exception, support for many of the principles upon which the family court movement is grounded including information and resource sharing, coordination of service delivery, continuity of judicial orders, and a “family” focus for intervention. This belief is held by judges, magistrates, attorneys, service providers, CASAs, administrators; in short, all groups involved in family law practice.

Regarding the specific question of the establishment of a new, separate Family Division of Court of the Common Pleas, there appears to be a “dome of support,” where acceptance of a family court is greater as one moves further outward and upward from the court itself.

This is not to say that support for a family court among the judiciary was absent. A number of judges and magistrates expressed considerable interest and support for the notion of a family court. The results of our statewide survey reveal that more than 60% of the 223 responding judges and magistrates

stated that they believe a family court structure would improve the efficiency and effectiveness of dealing with family cases in the Ohio court system.²

We found varying degrees of support among judges and magistrates interviewed during the site visits to the ten selected counties. Support among the judiciary for a family court was strongest in sites that already had consolidated juvenile and domestic relations jurisdictions, namely, Clark, Erie and Franklin Counties. In Clermont County, the domestic relations and juvenile/probate divisions share a new facility designed to combine these courts if the county so desires. The study sites of Morgan, Wyandot, Athens and Jefferson Counties moderately support a “family court concept,” focusing primarily on issues relating to functions such as information sharing, access to program resources, rather than specific structure. Opposition to a family court was strongest in Cuyahoga and Hamilton Counties.

Judges and magistrates not favorably disposed towards the establishment of a family court generally felt that the current judicial system for dealing with the range of family matters was sufficiently capable of meeting the needs of the general public as long as sufficient resources (i.e., personnel and services) were provided to meet the ever-increasing caseloads.

These individuals offered a number of arguments that suggested a decrease in the effectiveness of judicial intervention in family matters if consolidation of jurisdictions under an umbrella family court were to occur. The most frequent concern involves the degree of specialization necessary to expertly conduct just a portion of family law business. Specialization is seen by many in Ohio (particularly in the larger urban courts), as a major strength of the system that has been supported for years by the Supreme Court and the judiciary as a whole. It is seen as a progressive component of the court system, and is highly valued. Whether describing the complexity of law, the inter-relationship with external agencies, or simply the “clinical” practice of jurisprudence, many jurists believe that to force a broadening of jurisdiction would diminish their ability to perform expertly on a wider array of different case types.

² An additional 53 judges and magistrates participated in the survey but did not respond to this survey item. In total, 276 judges and magistrates participated in the Family Court Feasibility Study survey. This represents approximately 42% of the 650 such survey questionnaires mailed to judges and magistrates.

A second argument often made in considering family court consolidation concerns implementation. Especially in larger jurisdictions, there is little practical belief in the ability to maintain a “one family, one judge” standard.³ Additional concerns that were raised involve the logistics of implementing a family court, the re-tooling necessary, the spatial and housing requirements of a family court, the difficulty in re-structuring administrative responsibility, and the problem of determining judicial and administrative authority. Some jurists also felt that establishing umbrella family courts in Ohio’s largest urban areas would result in massive judicial bureaucracies that would be unwieldy, difficult to manage and that these public institutions would not be able to keep the concerns of families paramount and serve these families in a user friendly manner as envisioned in the literature.

Summary of Major Findings

Four major themes emerged that are critical to NCJJ’s analysis and to subsequent efforts to improve jurisdiction over and coordination of family matters in Ohio. These four themes include the following:

1. Ohio statutes governing family matters are a relatively uncoordinated, scattered and confusing body of law;
2. Resource constraints were considered a major impediment limiting the effectiveness of the various courts that have jurisdictional responsibility over matters involving the family;
3. The general state of the Ohio court system’s information tracking and sharing capacity is not sufficient to support a family-focused judicial system; and
4. Strong judicial leadership and support at the state and local level are necessary for Ohio to continue to develop and maintain a family-focused court system.

These issues are discussed sequentially in subsequent chapters of this report. Chapter 4 examines Ohio statutes governing the judicial handling of the range of legal proceedings involving the family and identifies areas of jurisdictional overlap and confusion. Chapter 5 examines nine resource deficits most frequently identified by individuals interviewed during the course of the project and by focus group participants. Chapter 6 discusses a number of issues related to the court system’s ability to collect and share critical case information.

³ The concept of assigning one judge to hear all matters involving a family is a frequently espoused goal of the family court movement. Please see Linda Szymanski, *Policy Alternatives and Current Court Practice in the Special Problem Areas of Jurisdiction Over the Family*, National Center for Juvenile Justice, Pittsburgh, PA, 1993.

The issue of strong judicial leadership is left for the last chapter of the report and is combined with the summary of major project recommendations. These recommendations address steps that should be considered at the state and local level to improve coordination of legal proceedings on matters involving the family. They stop short of recommending the statewide establishment of a family court system but encourage continued experimentation with the consolidation of family matters at a local level.

Lastly, recommendations to improve the juvenile courts handling of child abuse, neglect and dependency cases will be included in the final chapter. Findings from the Court Improvement Project (CIP) Survey (summarized in Chapter 7) and from NCJJ's limited site work in this area are used to inform these recommendations. Relative to many other states, Ohio appears to be doing a commendable job in this area. Much of the credit for this should go to those individuals and juvenile courts that were in the vanguard in the passing of pioneering legislation in 1989 that clearly defines the role of the juvenile court in these proceedings, established firm times frames for the completion of judicial proceedings on these cases, and limits the amount of time a victimized child can remain in temporary placement. The analysis of CIP survey results, however, has identified areas in which continued vigilance and improvements are warranted.

The Family Court Feasibility Project Reports

In April, 1997, NCJJ submitted a summary report to the Supreme Court of Ohio and the Governor's Task Force detailing the major findings of the Ohio Family Court Feasibility Study. This *Summary of Major Recommendations Report* includes a series of global recommendations intended to improve the efficiency and effectiveness of court processes involving family matters. This summary report is intended for wide distribution to the hundreds and thousands of practitioners across Ohio who are involved in legal and service provision functions to families. Its primary purpose is to focus the discussion regarding families in court, and to provide guidance for further development of Ohio's system of law and service provision.

This final report of the Ohio Family Court Feasibility Project contains a detailed description of project findings and specific recommendations for improving the coordination of legal proceedings involving delinquency, dependency, unruly, divorce and dissolution, child custody, visitation, child support, adoption, guardianship and domestic violence. It is the result of an in-depth examination of court and service interactions involving family matters. The final report provides considerable

quantitative and qualitative detail about the current system, detailed results from practitioner surveys, and specific guidance regarding legal changes that were suggested in the interim report.

Taken together, these two reports represent the synthesis of interviews, observation, data collection, document review and legal analysis involving more than 2,000 Ohio professionals and citizens involved as practitioners or clients in the system of courts established to resolve family matters.

Chapter 3

Case Processing of Family-Related Cases Within the Courts of Common Pleas

In 1995, almost two out of three cases filed, transferred in, or reactivated by Ohio's Courts of Common Pleas were family-related.¹ These 511,000 cases were processed through the Juvenile, Domestic Relations, and Probate Divisions of the Court of Common Pleas. This chapter provides a frame of reference for understanding the trends in the volume and nature of family-related cases² processed through Ohio's Courts of Common Pleas. In so doing, this chapter presents analysis of statewide data on family-related cases as provided by the Supreme Court of Ohio for the years 1990 and 1996.

Methodology

Analysis of family-related cases is presented within the context of three Courts of Common Pleas Divisions: Juvenile, Domestic Relations, and Probate. Statewide data on domestic violence cases filed in Municipal Court were unavailable so limited analysis of these cases has been provided for Franklin County only. Family-related cases are analyzed by specific case type and within one of five county population groups.³ County groupings are intended to allow distinctions between courts by the size of

¹ This chapter analyzes data on the Courts of Common Pleas family-related cases filed, transferred in or reactivated as well as cases pending at years end for the years 1990 and 1996. However, information on the Courts total cases in 1996 was unavailable at the time of this report's writing. Consequently, 1995 data was used to identify family-related cases as a proportion of all Court of Common Pleas cases. Given 1990-1995 trends, however, it is expected that the family-related proportion of these cases would be somewhat greater in 1996 than in 1995.

² Family-related cases identified in this chapter include the following case types:
Juvenile Court: delinquency; traffic; dependency/abuse and neglect; unruly; adult; motion for permanent custody; custody and change of custody and visitation; support enforcement and modification; parentage; URESA; others.
Domestic Relations Court: termination of marriage with children; termination of marriage without children; dismissal of marriage with children; dismissal of marriage without children; change of custody; visitation enforcement and modification; support enforcement and modification; domestic violence; URESA; Paternity, others.
Probate Court: guardianship of minors; adoptions, delayed registration and correction of birth; name change.
Municipal Court: domestic violence misdemeanors (however, no state-level data available).

³ Groupings of counties by population include the following:

- >750,000: Cuyahoga, Franklin, Hamilton (3)
- 250,000-750,000: Butler, Lorain, Lucas, Mahoning, Montgomery, Stark, Summit (7)

the total population served. To assess the overall volume of family-related cases in each county group, absolute numbers of cases have been provided. Case rates have been calculated to allow a comparison of caseloads between courts with consideration to the court's size. For the purpose of this analysis, a case rate is defined as the number of cases per 10,000 persons in the population.⁴ Data elements used for this analysis were chosen to assess the flow of cases into the system (i.e. new cases filed, transferred in or reactivated) and to assess possible difficulties in processing by case type (i.e. cases pending at year's end).

The analysis presented in this chapter should be used to help the reader obtain a general frame of reference for interpreting the scope and nature of family-related cases in the Courts of Common Pleas. More specific application of the analysis is cautioned due to pre-existing limitations and possible reporting inconsistencies of county-level data (e.g. unit of count differences, data processing limitations, and reporting differences from year to year, etc.).⁵

Juvenile Court

New Cases Filed, Transferred In, or Reactivated

I.

In 1996 there were only slight variations between the five county groupings in the overall rates of new juvenile court cases filed, transferred in, or reactivated (Table 3.1). Courts serving populations between 250,000 and 750,000 had the lowest overall case rates (299) while courts serving populations between 50,000 and 100,000 had the highest over case rates (374.5). Case rates for delinquency and traffic cases filed, transferred in, or reactivated in 1996 were greater among smaller than larger counties

-
- 100,000-250,000: Allen, Clark, Clermont, Columbiana, Fairfield, Green, Lake, Licking, Medina, Portage, Richland, Trumbull, Warren, Wayne, Wood (15)
 - 50,000-100,000: Ashtabula, Athens, Belmont, Darke, Delaware, Erie, Geauga, Hancock, Huron, Jefferson, Lawrence, Marion, Miami, Muskingum, Ross, Sandusky, Scioto, Senaca, Tuscarawas, Washington (20)
 - <50,000: Adams, Ashland, Auglaize, Brown, Carroll, Champaign, Clinton, Coshocton, Crawford, Defiance, Fayette, Fulton, Gallia, Guernsey, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Jackson, Knox, Logan, Madison, Meigs, Mercer, Monroe, Morgan, Morrow, Noble, Ottawa, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Shelby, Union, VanWert, Vinton, Williams, Wyandot (43)

⁴ National Center for Juvenile Justice population estimates, 1997

⁵ There are some variations in how individual courts count and report new filings to the Supreme Court. These variations to a large degree revolve around how individual courts differentiate between new case filings and a new filing on a reactivated cases and, secondly, whether to consider each offense on a official complaint as a separate case.

in 1996. In contrast, case rates for dependency/abuse and neglect and support enforcement were generally greater among courts serving populations of 750,000 or more than among others. In fact, these case rates were almost three times greater among courts serving populations exceeding 750,000 than among those serving populations less than 50,000 (40.0 vs. 13.7).

Table 3.1: Number of Juvenile Court Cases Filed, Transferred In, or Reactivated Per 10,000 Persons, 1996					
	County Size				
	<50K	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total	361.9	374.5	353.3	299.0	352.5
Delinquency	106.1	125.6	99.3	81.8	87.5
Traffic	130.2	118.1	117.4	100.4	101.5
Dep/A&N	13.7	15.4	18.0	19.9	40.0
Unruly	34.6	41.9	27.1	14.6	16.9
Adult	6.1	4.2	4.0	4.1	3.3
Motion perm cstdy	1.0	0.8	1.4	1.8	1.9
Cust/visit change	9.4	9.6	17.0	12.0	9.2
Support enforce/mod	28.7	25.0	42.0	26.4	67.2
Parentage	24.3	23.3	24.6	28.6	23.2
URESA	1.5	0.7	0.1	8.5	1.3
Others	6.2	10.1	2.3	0.9	0.5

Note: Details may not add to totals due to rounding.

While the proportion of new cases filed, transferred in, or reactivated was greatest among juvenile courts serving the largest counties in both 1990 and 1996 (Table 3.2), growth in the number of these cases was highest among courts serving smaller populations (Table 3.3). For example, between 1990 and 1996 growth in the number of new cases filed, transferred in, or reactivated by juvenile courts serving a population of 50,000-100,000 persons was more than double the increase among courts serving populations of more than 750,000 persons (46% vs. 18%).

Table 3.2: Proportion of Juvenile Court Cases Filed, Transferred in, or Reactivated by County Size, 1990 and 1996				
County Size	1990		1996	
	# of Cases	% of Total	# of Cases	% of Total
Total	310,594	100%	372,802	100%
<50,000	35,396	11	50,159	13
50,000-100,000	36,813	12	53,611	14
100,000-250,000	55,875	18	72,500	19
250,000-750,000	85,572	28	82,211	22
>750,000	96,938	31	114,321	31

Note: Details may not add to totals due to rounding.
 Note: See Appendix D for detailed table of the number of cases by case type.

Among courts within each of the five county groupings, the largest increase in the number of new filings, transfers, or reactivations of juvenile court cases occurred among cases involving support enforcement and modifications. Increases in support enforcement/modification filings ranged from 68% in counties with populations of 250,000-750,000 to 1433% in the state's largest counties (Cuyahoga, Franklin and Hamilton Counties.) On a statewide level, support enforcement/modification filings increased more than five fold (526%).

Custody and visitation filings also increased considerably during this between 1990 and 1996. Increases in such filings ranged from 27% in the Ohio's medium-large counties (counties with populations of 250,000-750,000) to an average of 162% in the state's three largest counties. Statewide, juvenile court custody/visitation filings increased by almost 80% during this period.

	<50,000	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total	42%	46%	30%	-4%	18%
Delinquency	62	63	33	-10	-9
Traffic	15	16	11	0	3
Dep/A&N	44	29	25	-5	99
Unruly	25	38	10	-24	-13
Adult	144	49	18	-23	511
Motion Perm Cstdy.	38	16	33	12	140
Cust/visit change	91	93	93	27	162
Support enforce/mod	359	904	429	68	1433
Parentage	40	23	-10	-17	-27
URESAs	716	23	-69	-10	-53
Others	-16	86	-46	-79	-97

Among all county groups, traffic and delinquency cases accounted for more than one-half of all cases filed, transferred in, or reactivated by juvenile courts in both 1990 and 1996 (Table 3.4). However, between 1990 and 1996, the proportion of delinquency cases grew among smaller counties (i.e. those <50,000-250,000) while declining somewhat among larger counties (i.e. those between 250,000-

750,000). In contrast, traffic cases declined as a proportion of total cases for all counties except those with populations between 250,000 and 750,000. Among all county groupings, new filings, transfers, or reactivations involving support enforcement or modifications grew as a proportion of the juvenile court caseload. Motions for permanent custody and URESA cases accounted for the smallest proportion of the new cases filed, transferred in or reactivated among all court groupings in both 1990 and 1996. In courts serving populations of more than 750,000 persons, dependency/abuse and neglect and support enforcement/modification cases accounted for a somewhat higher proportion of all juvenile court cases than courts serving smaller counties in 1996.

Table 3.4: Proportion of Juvenile Court Cases Filed, Transferred In and Reactivated by Case Type, 1990 and 1996

	County Size										
	<50,000		50,000-100,000		100,000-250,000		250,000-750,000		>750,000		
	1990	1996	1990	1996	1990	1996	1990	1996	1990	1996	
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Delinquency	26	29	30	34	27	28	29	27	32	25	
Traffic	44	36	40	32	39	33	32	34	33	29	
Dep/A&N	4	4	5	4	5	5	7	7	7	11	
Unruly	11	10	12	11	9	8	6	5	7	5	
Adult	1	2	1	1	1	1	2	1	0	1	
Motion perm cstdy	0	0	0	0	0	0	1	1	0	1	
Cust/visit change	2	3	2	3	3	5	3	4	1	3	
Support enforce/mod	2	8	1	7	3	12	5	9	1	19	
Parentage	7	7	7	6	10	7	11	10	11	7	
URESAs	0	0	0	0	0	0	3	3	1	0	
Others	3	2	2	3	2	1	1	0	7	0	

Note: Details may not add to totals due to rounding.

Cases Pending at End of Period

2.

The rates of juvenile court cases pending at the end of 1996 was greatest among courts serving counties of between 50,000-100,000 persons (88.4) and lowest among courts serving populations of less than 50,000 (53.2) (Table 3.5). However, the number of cases pending at the end of 1996 varied by case type. Pending delinquency, traffic, unruly and parentage cases were most likely among courts serving populations of between 50,000-100,000 than others. However, pending dependency, abuse and neglect

cases were more likely among courts serving populations of more than 750,000 and pending support enforcement cases were most likely among courts serving populations of between 100,000-250,000.

	County Size				
	<50K	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total	53.2	88.4	53.8	64.1	62.1
Delinquency	16.0	27.7	14.1	18.5	13.0
Traffic	9.6	13.4	9.1	9.5	8.6
Dep/A&N	3.0	4.0	3.2	5.8	7.2
Unruly	4.2	10.2	3.3	2.9	3.1
Adult	1.3	1.7	0.8	1.1	1.6
Motion Perm Cstdy.	0.2	0.4	0.3	1.1	0.9
Cust/visit change	2.3	4.1	2.9	5.4	3.9
Support enforce/mod	7.1	8.7	10.3	5.7	7.9
Parentage	7.9	15.3	9.3	11.0	13.4
URESA	0.4	0.1	0.0	3.0	2.3
Others	1.3	2.7	0.4	0.2	0.3

Note: Details may not add to total due to rounding.

The proportion of juvenile court cases pending at the end of 1996 was greatest among courts serving the largest counties (Table 3.6). However, growth in the number of cases pending was highest among courts serving smaller populations (Table 3.7). In fact, juvenile court cases pending at the end of 1996 declined 13% among courts serving populations between 250,000-750,000 while increasing 112% among courts serving populations of less than 50,000.

County Size	1990		1996	
	# of Cases	% of Total	# of Cases	% of Total
Total	49,048	100%	68,829	100%
<50,000	3,485	7	7,377	11
50,000-100,000	6,062	12	12,653	18
100,000-250,000	6,371	13	11,034	16
250,000-750,000	20,290	41	17,617	26
>750,000	12,840	26	20,148	29

Note: Details may not add to totals due to rounding.
 Note: See Appendix D for detailed table of the number of cases by case type.

The largest increase in the number of cases pending among courts serving the three smaller county groupings occurred among juvenile court cases involving support enforcement and modifications. Among juvenile courts in counties with populations between 50,000 and 100,000, pending support enforcement/modification cases grew by 1100% between 1990 and 1996. Among Ohio's smallest counties, the number of support enforcement/modification cases pending at the end of the year increased by 618% during this six year period. In the three largest counties, the pending support enforcement/modification caseload grew by 198% between 1990 and 1996.

Juvenile courts also experienced considerable increases in the number of custody and visitation cases pending during the six year period under consideration. The percent increases ranged from 149% in counties with populations between 250,000-750,000 to 242% in counties with populations of 50,000 to 100,000.

Table 3.7: Changes in the Number of Juvenile Court Cases Pending at the End of 1990 and 1996					
	County Size				
	<50,000	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total	112%	109%	73%	-13%	57%
Delinquency	169	118	43	35	120
Traffic	103	80	61	-23	123
Dep/A&N	108	54	85	87	68
Unruly	85	98	-9	3	32
Adult	360	153	26	10	926
Motion Perm Cstdy.	92	148	79	280	15
Cust/visit change	174	242	206	149	238
Support enforce/mod	610	1100	528	34	198
Parentage	5	40	54	-61	-12
URESAs	267	33	-96	1	254
Others	44	320	-36	-94	-88

The greatest proportion of juvenile court cases pending at the end of 1996 involved a delinquency case among courts serving each of the five population groups (Table 3.8). Delinquency cases constituted between 21% and 31% of the pending juvenile court caseloads across the five population categories. Delinquency cases represented the largest percentage of the juvenile court caseload in counties with populations between 50,000-100,000 (31%) and the smallest percentage of the overall juvenile court caseload in the state's three largest counties (an average of 21%).

Table 3.8: Proportion of Juvenile Court Cases Pending at the End of 1996										
	County Size									
	<50,000		50,000-100,000		100,000-250,000		250,000-750,000		>750,000	
	1990	1996	1990	1996	1990	1996	1990	1996	1990	1996
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Delinquency	24	30	30	31	32	26	18	29	15	21
Traffic	19	18	18	15	18	17	17	15	10	14
Dependency/A&N	6	6	6	5	6	6	4	9	11	12
Unruly	9	8	12	12	12	6	4	5	6	5
Adult	1	2	2	2	2	1	1	2	0	3
Motion Perm										
Cstdy.	0	0	0	0	1	1	0	2	2	1
Cust/visit change	3	4	3	5	3	5	3	8	3	6
Support										
enforce/mod	4	13	2	10	5	19	6	9	7	13
Parentage	30	15	26	17	20	17	38	17	38	22
URESAs	0	1	0	0	0	0	4	5	2	4
Others	4	2	2	3	2	1	4	0	7	0

Note: Details may not add to totals due to rounding.

Domestic Relations Court

New Cases Filed, Transferred In, or Reactivated

I.

In 1996, the case rate of domestic relations court cases filed, transferred in, or reactivated was greatest among courts serving counties with populations of between 100,000-250,000 (163.6) and least among courts serving counties with populations of more than 750,000 (94.8) (Table 3.9). With the exception of courts serving counties with populations of more than 750,000, case rates among all court groupings were highest for cases involving support enforcement and modifications.

	County Size				
	<50,000	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total	148.5	136.1	163.6	117.8	94.8
Term mar w/child	22.7	22.1	22.3	20.0	18.5
Term mar w/o child	13.5	14.3	14.5	15.6	13.2
Diss mar w/child	13.2	11.9	11.1	8.5	7.4
Diss mar w/o child	13.1	12.8	12.3	10.5	9.9
Custody change	9.6	8.8	9.8	7.0	6.0
Visit enforce, modif	3.6	4.2	4.6	3.8	3.3
Supprt enforce, modif	53.5	41.9	61.3	24.7	11.1
Domestic violence	3.8	5.3	6.5	12.3	4.4
URESAs	5.6	6.3	7.4	1.0	5.7
Paternity	0.3	1.1	3.2	0.2	0.0
Others	9.6	7.3	10.6	14.4	15.3

Note: Details may not add to totals due to rounding.

In 1996, the proportion of domestic relations court cases filed, transferred in, or reactivated was greatest among courts serving populations of between 100,000-250,000 and least among courts serving populations of between 50,000-100,000 (Table 3.10). While slight increases in the number of cases filed, transferred in, or reactivated were seen among courts serving smaller counties (i.e. <50,000 and 50,000-100,000), declines were seen among courts serving larger counties (i.e. those 100,000->750,000) (Table 3.11). Most notably were declines in the number of cases among courts serving counties of more than 750,000 (-33%).

County Size	1990		1996	
	# of Cases	% of Total	# of Cases	% of Total
Total	152,103	100%	136,788	100%
<50,000	19,597	13	20,585	15
50,000-100,000	18,160	12	19,484	14
100,000-250,000	34,683	23	33,577	25

250,000-750,000	33,811	22	32,403	24
>750,000	45,852	30	30,739	23
Note: Details may not add to totals due to rounding.				
Note: See Appendix D for detailed table of the number of cases by type.				

With the exception of courts serving counties of more than 750,000 persons, the greatest growth in the number of new filings, transfers, or reactivations of domestic relations court cases occurred among cases involving domestic violence. Domestic violence filings increased by 403% in counties with populations between 100,000 and 250,000, increased by 263% in counties with populations of less than 50,000, and by 155% in counties with populations of 50,000-100,000. Domestic violence filings decreased by 27% in Ohio's three largest counties. Statewide, domestic violence filings in domestic relations courts increased by 76% between 1990 and 1996.

Domestic relations court cases involving support modification and enforcement increased among the courts serving the three smaller county groupings while remaining stable or declining among courts serving the two larger county groupings. Statewide, the number of support enforcement and modification filings in domestic relations courts decreased by 9.3% during the six year period between 1990 and 1996. Change of custody and visitation enforcement/modification also decreased by a similar amount on a statewide level.

	County Size				
	<50,000	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total	5%	7%	-3%	-4%	-33%
Term mar w/child	-7	-12	-3	-15	-30
Term mar w/o child	-1	-3	-15	-6	-18
Diss mar w/child	-14	-14	-14	-13	-33
Diss mar w/o child	-1	-1	-3	-11	0
Custody change	-5	13	16	-14	-13
Visit. Enforce, modif	-28	-6	-20	1	-37
Supprt enforce, modif	30	34	25	0	-72
Domestic violence	263	155	403	118	-27
URESA	-19	13	-11	-50	196%
Paternity*	**	**	**	**	**
Others	-8	-17	-42	-15	-13

** Since 1990 data collection did not specifically identify paternity cases, changes were not calculated.

In 1996, one out of three domestic relations court cases filed, transferred in, or reactivated involved support enforcement or modifications among courts within the three smaller county groupings (Table 3.12). While support enforcement and modification cases represented a larger proportion of domestic relations cases in 1996 than in 1990 among courts serving populations of <50,000-750,000, these cases represented a smaller proportion of cases among courts serving populations of more than 750,000 (12% in 1996 vs. 29% in 1990).

	County Size									
	<50,000		50,000-100,000		100,000-250,000		250,000-750,000		>750,000	
	1990	1996	1990	1996	1990	1996	1990	1996	1990	1996
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Term mar w/child	17	15	20	16	14	14	19	17	19	20
Term mar w/o child	10	9	12	11	10	9	13	13	11	14
Diss mar w/child	11	9	11	9	8	7	8	7	8	8
Diss mar w/o child	9	9	10	9	8	8	10	9	7	10
Custody change	7	6	6	6	5	6	7	6	5	6
Visit. enforce, modif.	3	2	4	3	3	3	3	3	4	3
Supprt enforce, modif	29	36	25	31	29	37	20	21	29	12
Domestic violence	1	3	2	4	1	4	5	10	4	5
URESA	5	4	4	5	5	5	2	1	1	6
Paternity*	0	0	0	0	0	0	0	0	0	0
Others	7	7	7	6	11	8	14	12	12	16

* 1990 data collection did not specifically identify paternity cases. Proportion of 1996 paternity cases in "other".

Cases Pending at End of Period

2.

The rates of domestic relations court cases pending at the end of 1996 was greatest among courts serving counties of between 100,000-250,000 persons (51.7) and lowest among courts serving populations of more than 750,000 (23) (Table 3.13). However, pending case rates varied by case type. Domestic relations court cases involving support enforcement and modification were more likely to be

pending at the end of 1996 among courts within the smaller county groupings than among others. In fact, support enforcement and modification cases were four times more likely to be pending among courts serving populations of between 50,000-100,000 than among those serving more than 750,000 (12.2 vs. 3.9).

Table 3.13: The Number of Domestic Relations Court Cases Pending at the End of 1996 per 10,000 Persons					
	County Size				
	<50K	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total	38.7	45.3	51.7	35.9	23.0
Term mar w/child	11.7	12.6	12.8	11.7	7.2
Term mar w/o child	5.6	6.9	6.9	7.0	4.2
Diss mar w/child	1.8	1.7	2.0	1.3	0.6
Diss mar w/o child	1.6	1.7	1.6	1.3	0.9
Custody change	2.9	3.0	4.2	1.8	1.3
Visit. Enforce, modif	1.1	1.4	1.7	1.0	2.1
Supprt enforce, modif	10.3	12.2	13.0	5.3	3.9
Domestic violence	0.3	1.1	1.1	1.3	0.3
URESA	0.6	1.4	2.0	0.1	1.1
Paternity	0.1	0.8	0.9	0.1	0.0
Others	2.2	2.7	5.7	5.0	1.4

Note: Details may not add to totals due to rounding.

The proportion of domestic relations court cases pending at the end of 1996 was greatest among courts serving populations of between 100,000-250,000 (27%) and least among courts serving populations of less than 50,000 (13%) (Table 3.14).⁶

Table 3.14: Proportion of Domestic Relations Court Cases Pending at the End of by County Size, 1996		
	# of Cases	% of Total
Total	39,804	100%
<50,000	5,363	13
50,000-100,000	6,480	16
100,000-250,000	10,619	27
250,000-750,000	9,876	25
>750,000	7,466	19

Note: See Appendix D for detailed table of the number of cases by case type.

⁶ Complete 1990 data for pending domestic relations court cases was not available at the time of report writing and could not be included in this analysis.

Approximately, 2 out of 3 cases pending in domestic relations court at the end of 1996 involved either a termination of marriage with children, a termination of marriage without children, or support enforcement or modifications among courts within each of the five court groupings (Table 3.15).

	County Size				
	<50,000	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total	100%	100%	100%	100%	100%
Term mar w/child	30	28	25	33	31
Term mar w/o child	14	15	13	19	18
Diss mar w/child	5	4	4	4	3
Diss mar w/o child	4	4	3	4	4
Custody change	7	7	8	5	6
Visit enforce, modif	3	3	3	3	9
Supprt enforce, modif	27	27	25	15	17
Domestic violence	1	2	2	4	1
URESAs	2	3	4	0	5
Paternity	0	2	2	0	0
Others	6	8	13	14	6

Note: Details may not add to total due to rounding.

Probate Court

New Cases Filed, Transferred In, or Reactivated

1.

In 1996, probate courts serving populations of more than 750,000 had the highest number of family-related cases filed, transferred in, or reactivated per 10,000 persons while courts serving populations of between 250,000-750,000 had the lowest (14.9 vs. 11.8) (Table 3.16). This higher case rate among courts serving more than 750,000 may largely be attributed to the higher rates among cases involving a name change. In fact, family-related probate court cases filed, transferred in, or reactivated were more than twice as likely to involve a name change in these larger counties than courts serving counties with less than 50,000 persons (6.6 vs. 2.7).

	County Size				
	<50,000	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total family related	13.6	12.0	13.8	11.8	14.9
Minor guardianships	3.6	2.8	4.3	3.1	3.5
Adoptions	5.6	4.6	5.4	4.4	3.6
Delayed reg/corr of birth	1.7	1.6	0.9	0.7	1.2
Name change	2.7	3.0	3.2	3.6	6.6

Note: Details may not add to totals due to rounding.

In 1996 the proportion of probate court, family-related cases filed, transferred in, or reactivated was greatest among courts serving populations of more than 750,000 (33%) and least among those serving populations of between 50,000-100,000 (12%) (Table 3.17). However, between 1990 and 1996, the number of these cases grew most in courts serving both these largest and smallest counties (Table 3.18). Between 1990 and 1996, the number of probate court, family-related cases grew 12% among courts serving more than 750,000 and 11% among courts serving less than 50,000. It should be noted that family-related cases were only 15% of the all probate court cases filed in the state of Ohio in 1995.⁷

County Size	1990		1996	
	# of Cases	% of Total	# of Cases	% of Total
Total	13,940	100%	14,466	100%
<50,000	1689	12	1876	13
50,000-100,000	1787	13	1726	12
100,000-250,000	2763	20	2828	20
250,000-750,000	3402	24	3229	22
>750,000	4299	31	4807	33

Note: Details may not add to totals due to rounding
Note: See Appendix D for detailed table of the number of cases by case type.

⁷ The total number of probate court cases filed, transferred in, or reactivated was not available for 1996 at the time of this report's writing.

Growth in the number of family-related cases was greatest among cases involving a name change in courts serving both less than 50,000, between 50,000-100,000, and more than 750,000. Declines were seen in courts serving the five population groups among cases involving a delayed registration or correction of birth.

	County Size				
	<50,000	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total family related	11%	-3%	2%	-5%	12%
Minor guardianships	30	-10	22	0	5
Adoptions	8	-2	3	-10	-17
Delayed reg/corr of birth	-28	-20	-40	-9	-2
Name change	36	14	-1	-2	48

With the exception of courts serving counties of more than 750,000, the greatest proportion of family-related probate court cases filed, transferred in, or reactivated in both 1990 and 1996 involved an adoption (Table 3.19). About one out of four family-related, probate court cases involved a minor guardianship in both 1990 and 1996 among courts within all five county groupings.

	County Size									
	<50,000		50,000-100,000		100,000-250,000		250,000-750,000		>750,000	
	1990	1996	1990	1996	1990	1996	1990	1996	1990	1996
Total family-related	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Minor guardianships	23	26	25	23	26	31	25	26	25	23
Adoptions	42	41	38	38	39	39	39	37	33	24
Delayed reg/corr of birth	19	13	16	13	11	6	6	6	9	8
Name change	16	20	22	25	24	23	30	31	33	44

Note: Details may not add to totals due to rounding.

Cases Pending at End of Period**2.**

The rate of family-related probate court cases pending at the end of 1996 was greatest among courts serving populations of between 100,000-250,000 (21.2) and lowest among those serving populations of 250,000-750,000 (Table 3.20).

Table 3.20: The Number of Family-Related Probate Court Cases Pending at the End of 1996 per 10,000 Persons					
	County Size				
	<50,000	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total family related cases*	20.3	17.7	21.2	15.2	17.1
Minor guardianships	17.9	16.1	18.9	13.7	15.7
Adoptions	2.4	1.6	2.3	1.5	1.4

Note: Details may not add to totals due to rounding.
* Data on pending delayed registration/correction of birth and name change cases not available.

The proportion of guardianships of minors and adoption cases pending at the end of both 1990 and 1996 was highest among courts serving counties of more than 750,000 (Table 3.21). Growth in the number of cases pending at the end of the year was highest among courts serving counties of less than 50,000 (28%) and more than 750,000 (25%) and lowest among courts serving counties with populations of between 100,000-250,000 (13%) (Table 3.22).

Table 3.21: Proportion of Minor Guardianships and Adoption Cases Pending at Year End, 1990 and 1996*				
County Size	1990		1996	
	# of Cases	% of Total	# of Cases	% of Total
Total	16,079	100%	19,453	100%
<50,000	2,195	14	2,811	15
50,000-100,000	2,056	13	2,536	13
100,000-250,000	3,853	24	4,362	22
250,000-750,000	3,526	22	4,175	21
>750,000	4,449	28	5,569	29

Note: Details may not add to totals due to rounding.
Note: See Appendix D for detailed table of the number of cases by case

type.

* Data on pending delayed registration/correction of birth and name change cases not available.

Growth was seen in the number of minor guardianships pending at the end of 1990 and 1996 among courts within each of the five county groupings. Among probate court cases involving adoptions, growth was seen only among those courts serving populations of less than 50,000 and populations of between 100,000 and 250,000.

	County Size				
	<50,000	50,000-100,000	100,000-250,000	250,000-750,000	>750,000
Total family related*	28%	23%	13%	18%	25%
Minor guardianships	28	28	12	21	30
Adoptions	32	-11	28	-2	-11

* Data on pending delayed registration/correction of birth and name change cases not available.

Minor guardianships represented the majority of probate family-related cases pending at the end of both 1990 and 1996 among courts within each of the five county groupings (Table 3.23).

	County Size									
	<50,000		50,000-100,000		100,000-250,000		250,000-750,000		>750,000	
	1990	1996	1990	1996	1990	1996	1990	1996	1990	1996
Total family-related*	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Minor guardianships	89	88	88	91	90	89	88	90	88	92
Adoptions	11	12	13	9	10	11	12	10	12	8

* Data on pending delayed registration/correction of birth and name change cases not available.

Municipal Court

Statewide data on domestic violence cases filed in Municipal Court was unavailable. The following analysis of these cases was provided by Franklin County Municipal Court. In 1995, 8,487 domestic violence cases were filed in Franklin County Municipal Court (Table 3.24). This represents an 183% increase over the number of domestic violence cases filed in this court in 1994 and an 172% over 1990. As a result, the domestic violence proportion of all misdemeanor cases filed in this court grew from 8.5% in 1994 to 21.8% in 1995.⁸

Table 3.24: The Number of Domestic Violence Charges Filed in Franklin County Municipal Court in 1996*			
	# of Domestic Violence Charges	# of Misdemeanor Charges Filed	Domestic Violence % of Misdemeanor
1990	3,109	32,126	9.7%
1992	3,046	28,942	10.5%
1993	2,882	29,344	9.8%
1994	2,758	35,614	7.7%
1995	2,998	35,252	8.5%
1996	8,487	38,835	21.9%

* Includes violations of protection orders.
Source: Franklin County Municipal Court

Concluding Remarks

This chapter provides a summary analysis of statewide data on family-related cases filed in the Juvenile, Domestic Relations and Probate Divisions of the Court of Common Pleas for the years 1990 and 1996. The analysis presented in the preceding pages provides general frame of reference for interpreting the scope and nature of family-related cases in the Courts of Common Pleas. However, the reader is cautioned regarding using these data for making more detailed inferences due to pre-existing limitations and possible reporting inconsistencies in the data provided by to the Supreme Court by the various divisions of the Court of Common Pleas in the individual counties (e.g. unit of count differences, data processing limitations, and reporting differences from year to year, etc.).

⁸ This large increase in the number of domestic violence cases between 1994 and 1995 may be related to the provision of RC 2935.03(B)(3)(b) establishing arrest as the preferred course of action in domestic violence situations.

Given these caveats, five general findings are noteworthy and point to changing trends in how families are constituted and the forum in which family issues are resolved. These findings point to the continuing blurring of jurisdictional boundaries between the juvenile and domestic relations courts which is discussed in detail in the following chapter.

1. Filings for all types of cases in Ohio's *juvenile courts* increased by approximately 20% during the last six years from 310,594 filings in 1990 to 372,802 filings in 1996. The number of pending juvenile court cases also increased by 40% during this period. At the same time, *domestic relations* filings decreased by 10% from 152,103 in 1990 to 136,788 in 1996.
The largest increase in *juvenile court* new filings, transfers and reactivations occurred among
2. cases involving support enforcement and modification. Between, 1990 and 1996, the number of such cases filed increased more than five-fold from 8,592 cases in 1990 to 45,231 in 1996. During this same period, *juvenile court* filings on custody and visitation matters increased by almost 80%.
During this same six year period, the number of support enforcement and modification
3. filings in *domestic relations courts* decreased by 9.3% from 40,119 in 1990 to 36,370 in 1996. Change of custody and visitation enforcement/modification filings also decreased by a similar amount (9.7%) during the period.
With the exception of courts serving counties of more than 750,000 persons, the greatest
4. growth in the number of new filings, transfers, or reactivations in *domestic relations court* cases occurred among cases involving domestic violence. Statewide, domestic violence filings in *domestic relations courts* increased by 76% between 1990 and 1996.
Criminal domestic violence filings in the Franklin County Municipal Courts also increased
5. dramatically between 1990 and 1996. During this period, criminal domestic filings increased by 273% from 3,109 such filings in 1990 to 8,487 in 1996.

Chapter 4

Jurisdictional Issues Involving Court Proceedings in Family Cases

Ohio statutes governing the judicial handling of various types of legal proceedings involving the family are not centralized or coordinated in one section of the Ohio Revised Code (see Figure 4.1). Discussions with judges, magistrates, attorneys and others, as well as the study team’s own analysis lead to the conclusion that Ohio law concerning family matters is a relatively uncoordinated, scattered and confusing body of law. This appears to have occurred over time as statutory provisions in one realm of family jurisdiction have been modified with seemingly insufficient attention paid as to how these code changes impact (or are consistent with) other section(s) of Ohio law relative to family concerns. A further implication of the diffusion of family law in Ohio statutes is that it has hampered the consideration of coordinated and consolidated solutions to common or overlapping problems. Nearly every individual interviewed during the site work phase of the project believed that some type of family law revision was necessary to better coordinate the range of legal proceedings involving the family in Ohio.

Figure 4.1: Chapters of Ohio Revised Code That Address Various Types of Legal Proceedings Involving The Family	
Type of Family Case	Chapter of Ohio Revised Code
Abused, Neglected & Dependent Children	2151; 2931; 5103
Termination of Parental Rights and Permanent Surrender	2151; 5103
Delinquent, Unruly and Truant Juveniles and Juvenile Traffic	2151
Paternity	2151; 3111; 2105
Adoption	3107; 5103
Adult and Juvenile Guardianships & Conservatorships	2101; 2111
Name Change	3105
Right to Die, Living Wills	2101
Divorce/Dissolution/Annulment/Legal Separation	3105
Marital Property Distribution	3105
Spousal Support	3105; 3115
Child Custody	2151; 3105
Child Support	2151; 3105; 3109; 3115
UCCJA	2151, 3105, 3109
URESAs	2151; 3105; 3115
Domestic Violence Protection Orders	1901; 1907; 2945; 3113
Domestic Violence	1901; 1907; 3113

Source: Linda Szymanski, *Statute Analysis: Ohio Family Court Jurisdiction*, National Center for Juvenile Justice, Pittsburgh, PA. 1996.

Jurisdictional Overlap and Confusion in Legal Proceedings Involving the Family

The scattering of statutory provisions governing legal proceedings on family matters throughout the Ohio Revised Code impacts a wide range of professionals (e.g., the judiciary, attorneys, social services, court administration, etc.) who rely on the Code to provide direction regarding how legal decisions on family matters are made. Almost every judge, magistrate, court administrator, attorney, social service provider, and family advocate interviewed during the course of the Ohio Family Court Feasibility Study identified areas of jurisdictional overlap and confusion among courts with jurisdiction over family matters (i.e., juvenile, domestic relations, probate and municipal/county courts). The degree to which these individuals believed that jurisdictional overlap and confusion impacted the timely, efficient, thorough and effective handling of these cases by these courts varied. For some, statutory inconsistencies impacted only a small number of unique cases and that, while bothersome and time-consuming, they represented a very small percentage of the courts' overall caseload. For others, statutory overlap and confusion was a more central issue that highlighted a range of concerns regarding the courts' mission, function and effectiveness with respect to family matters.

The area of jurisdiction most frequently cited for overlap between courts can be loosely characterized as the jurisdiction over paternity, custody, support and visitation determinations.¹ The

¹ For the purpose of discussion in this report, the jurisdictional grouping of paternity, custody, support and visitation encompasses:

- I) the original jurisdiction of the juvenile court to determine paternity of any child alleged to have been born out of wedlock pursuant to sections 3111.01 to 3111.19 of the Ohio Revised Code [RC 2151.23(B)(2) and RC 3111.06]; to hear and determine the custody of any child not a ward of another court [RC 2151.23(A)(3)]; and to hear and determine a request for an order for support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence or an action for support brought under Chapter 3115 of the Revised Code [RC 2151.23(A)(11)]; or to hear and determine an application for an order for the support of any child, if the child is not a ward of another court in the state [RC 2151.23(B)(4)].
- II) the common pleas, domestic relations division (if county has) or court of common pleas jurisdiction to order the disposition care and maintenance of the children of a marriage in a divorce, annulment, or legal separation proceeding [RC 3105.21].
- III) the jurisdiction of juvenile court to make custody and visitation determinations in the course of dependency and delinquency proceedings and the attendant requirement to address issues of paternity and to subsequently address support [RC 2151.36].
- IV) the requirement (with 3 exceptions) for the child support enforcement agency to enter an administrative finding related to parentage before an action can be filed in any other court [RC 3111.22].
- V) the jurisdiction of the probate court to accept acknowledgments of paternity [RC 2105.18] and the

second most frequently cited area of jurisdictional overlap involved domestic violence issues. Two areas of concern were identified with respect to domestic violence - jurisdictional overlap between criminal and civil remedies and the initiation of domestic violence proceedings in either domestic relations or municipal/county courts and their impact on other pending family matters including divorce, custody, delinquency, or child abuse, neglect and dependency matters.

To a lesser extent, respondents in the study sites questioned the placement of jurisdiction over adoptions in the probate court. These individuals generally maintain that adoptions are often preceded by extended child protection action in juvenile court including permanent custody proceedings and that it does not make much sense to separate jurisdiction over such cases between juvenile and probate court. Additionally, some interviewees maintained that the probate court is generally detached from decision making that considers the child's best interests.

A last area of jurisdictional overlap and confusion mentioned by some respondents revolved around concurrent criminal actions against parents for the physical or sexual abuse of a child and corresponding child protective proceedings in juvenile court. Issues were raised regarding the coordination of these cases in the two courts, the lower burden of proof in child protection proceedings, and the expedited manner in which the juvenile court is required to process these cases.

Jurisdictional Issues Involving Paternity, Custody, Support and Visitation

I.

Depending on their job responsibilities, interviewees often separated paternity, custody, support and visitation issues and/or focused their response on case anecdotes that characterized their negative experience with one aspect of this area of family law. Respondents with job responsibilities that demanded a more global perspective of court jurisdiction and related problems of overlap usually referred to this whole area as "custody" jurisdiction. Common observations grouped under this broad heading included:

- Jurisdiction over paternity is shared by three different courts (juvenile, domestic relations and probate courts) and the county's child support enforcement agency;
- Statutory provisions for the certification of custody issues to juvenile court can be confusing and complicated and these provisions can be abused to the detriment of families by pushing difficult cases into another court;

jurisdiction of probate court appoint a guardian of a minor when found necessary on its own motion or on application by any interested party [RC 2111.02].

- Jurisdiction in Uniform Child Custody Jurisdiction Act (UCCJA) cases and potentially related Uniform Reciprocal Support Act (URESA) cases do not make sense;²
- Guardianships of minors (person) in probate court are a third route for custody determinations and create potential for conflicting orders, manipulation of the court and, for many, appear to overlap with private custody actions filed in juvenile court;
- Issues of child support enforcement and the rapid evolution of child support enforcement agencies have created additional layers of process and an “extra dimension” of decision making overlap related to paternity and support issues.
- Given current societal trends that are re-defining the concept of the family and the centrality of the marriage, coupled with the escalating costs of a divorce, the placement of jurisdiction for private custody determinations in juvenile court may not be in the best interest of serving families in court.

It was easy for most respondents directly involved in day-to-day court operations of juvenile, domestic relations, or probate courts to describe specific incidents of “custody” overlap that created problems for them in terms of confusion over jurisdiction, cumbersome process, or conflicting orders from different courts. Most of these anecdotes involved complicated familial arrangements (e.g., many children; unsettled paternity issues; and separations, followed by divorces and new marriages).³ Some case examples were further complicated by issues of a parent’s criminal behavior or severe substance abuse, borderline dependency situations, unruly or delinquent children in the family, and domestic violence issues.

When asked to estimate the frequency of the “custody” overlap, court officials often characterized their specific case examples (e.g., certification, guardianships, paternity, UCCJA) as infrequent or as isolated problems which pale in the shadow of more significant issues of day-to-day court operation. This characterization of the frequency of case-specific custody overlap was even true in the largest jurisdiction, Cuyahoga County, and most of the time it was presented as a case flow

² UCCJA cases are those in which two states have custody cases pending on a child and decisions must be made as to which state will assume jurisdiction of the matter. These cases are primarily in domestic relations court [RC 3109.22 and 3105.011] but juvenile court has jurisdiction if a party files in that court [RC 2151.23(F)(1)]. URESA cases can be heard in juvenile court [RC 2151.23(B)(3)] or the domestic relations division of court of common pleas (if county has) or court of common pleas [RC 3105.011] or any trial court of record [RC 3115.01; 3115.08].

³ A veteran family law attorney in Hamilton County provided the following example of an overlap scenario. “A married couple is divorced by the domestic relations court and support orders are issued for the children. Later, the couple reunites and is married but in the meantime the mother has had a child out of wedlock to another man. After a few years of a second marriage the couple separates and because they cannot afford another divorce they bring the case for private custody to juvenile court. Of course there are old domestic relations orders for support from the divorce, a child born out of wedlock and great potential for confusion and overlapping support orders.” The attorney characterized this anecdote as common — people get married and divorced and married again and divorced again and have children inside and outside of the marriage.

management issue. In other instances these infrequent case examples were exaggerated in terms of their impact because of the turmoil it created for court officials -- the contentious custody battles of divorcing spouses that get certified to juvenile court are a prime example. The certifications of these cases by domestic relations court may not be a frequent occurrence but they often involved cases that are costly in terms of their emotional toll on the hearing officer and their consumption of docket time.

Some interview respondents also cited general areas of duplication or jurisdictional controversy in the area of paternity, custody, support and visitation. These officials were much more likely to characterize their example as chronic problems. Their issues primarily revolved around the child support enforcement agency's interface with two different courts for paternity and support issues and the placement of jurisdiction over private custody determinations in juvenile court. Respondents frequently framed these debates in terms of the costs of administrative process and resource duplication, court performance in the interest of families (mostly in terms of case continuity, and public confusion/alienation); the potential for manipulation by aggressive attorneys and unequal access to the courts based upon affluence and/or social standing.

Overlapping/Shared Jurisdiction Over Paternity

a.

Paternity issues necessarily accompany substantive determinations of custody, support and visitation. Paternity can be established in various forums including in probate court with a journalized acknowledgment of paternity but this court is limited in making determinations regarding custody, support and visitation which are juvenile and domestic relations court functions. The juvenile court has original jurisdiction over paternity actions except in instances in which an action for divorce, dissolution or legal separation has been filed and a question arises regarding the parent-child relationship between one or both parties to these proceedings. However, once paternity and support have been established in juvenile court, the father would have to file a separate juvenile court action to request custody and/or visitation.

Lastly, paternity can be established through an administrative order of the local child enforcement agency if the alleged father and natural mother voluntarily submit to genetic testing and agree to be bound by the results of these tests. If paternity is established, an administrative order for payment of child support can be issued. However, at any stage in these administrative proceedings, the mother or father can object to a determination by bringing action in the juvenile court within 30 days.

Custody and visitation issues related to this administrative order cannot be addressed through this administrative body. These issues are typically resolved in separate juvenile court proceedings.

Of the respondents who had specific comments concerning jurisdiction overlap in paternity matters, most of them identified concerns regarding different standards for paternity determinations in the courts and child support enforcement agency and the potential for different findings in different courts to create confusion. For example, several respondents questioned the acknowledgments of paternity in probate court and its relevance to subsequent divorce proceedings or juvenile court custody or dependency actions. A prosecutor for support and paternity matters in the juvenile court of Cuyahoga County noted that people often go to probate court to file for an acknowledgment of paternity when they have already had a more conclusive test ordered in another court, typically a DNA test by the juvenile court. Other objections were related to state laws governing child support enforcement that require an administrative process for paternity in a child support enforcement agency (CSEA) prior to any court hearing on the matter in juvenile court for parties on public assistance.

Additionally, magistrates from a large Ohio juvenile court expressed their frustration regarding their ability to make enforceable paternity determinations during the course of child protective proceedings. Their frustration focuses specifically on Title 31 of the Ohio Revised Code which requires that an official paternity action be filed as a separate matter in juvenile court. Furthermore, prior to filing of this pleading with the juvenile court, a paternity action must first proceed through an administrative process established by the local child enforcement agency. These magistrates argue that paternity determinations are often integral to child protection proceedings and that these proceedings are very time sensitive. Often times, due to the exigent nature of their cases, they find themselves in the position of making essentially unenforceable paternity determinations. They maintain that some provisions should be provided in the code to permit them to circumvent the cumbersome CSEA administrative procedures and to allow paternity determinations made during the course of a child protective hearing carry the full weight of the law.

b. Certification of Custody Issues From Domestic Relations Court

A number of interviewees noted the confusing nature of statutes related to certification. Ohio Revised Code sections 3109.06 and 2151.23(C) require consent of the juvenile judge prior to certification while RC 3109.04(D)(2) states that the juvenile court must accept certification if the

domestic relations court finds that custody to neither parent is in the best interests of the child. Revised Code sections 3109.06 and 2151.23(C) do not require such a determination.

At the same time, it appeared that all of the study site courts had established clear policies for handling these cases and most respondents characterized the certifications as appropriate and infrequent.⁴ Court administrative personnel in both the domestic relations and juvenile courts responsible for the processing of these case transfers were least likely to consider them a problem. The procedures were generally clear and straightforward. Juvenile court judges and magistrates, however, were most likely to raise issues concerning the practicality of this process and its potential for abuse. It was clear that the juvenile court judiciary generally do not relish receiving certification cases from domestic relations court because they often involve aggressive parents who are fighting over children in a contentious divorce (e.g., fabricating reports to child protection services). In essence, the statutory provisions for certifications are controversial in that neither court wants to objectively sort the accusations of dueling parents and at the same time be liable for the best interest of a child(ren). However, some juvenile court hearing officers did cite case examples that involve issues of true neglect or abuse and believed they were in the best position to make a custody decision in these cases. They also observed that the certification cases most often represent instances where the demands of the case have outstripped the domestic relations court's access to assessment, intervention, and case management resources.

c. UCCJA and URESA Cases

With regard to cases that fall under the Uniform Child Custody Jurisdiction Act, some interview respondents noted that attorneys forum shop between juvenile and domestic relations divisions because neither court has exclusive jurisdiction if the court in the other State defers to Ohio. Therefore it is possible for one family to have their Uniform Child Custody Jurisdiction Act case decided in domestic relations court while the Uniform Reciprocal Support Act case is heard in juvenile court. This arrangement of jurisdiction can be confusing for attorneys who handle these cases.

d. Guardianships of Minors in Probate Court

⁴ An interview respondent responsible for processing custody certifications to juvenile court in Cuyahoga County estimated an average of ten certifications per month and clear protocol for handling them. In cooperation with the Hamilton County Domestic Relations Court, the Hamilton County Juvenile Court in the Summer of 1996 was establishing process to have the local child protection agency substantiate neglect or abuse situations prior to accepting a certification. Juvenile court hearing officers were pleased with the potential for this arrangement to prevent abuse of the certification power.

Most interviewees did not have a problem with guardianships of minors, especially those working in the juvenile court. However, key probate and domestic relations officials provided examples where the jurisdiction can be confusing and create problems, albeit most of them characterized the problems as manageable. They maintain that, outside of probate court, there was generally a lack of knowledge on the part of many people including attorneys and magistrates concerning the difference between private custody jurisdiction in juvenile court and guardianships in probate and the purpose of their placement in separate courts.⁵

Some interviewees believed that the probate court is ill equipped to handle guardians who return to their court when a placement goes awry because of a child's incorrigibility (but in which an unruly complaint has not been filed in juvenile court) and that the courts generally lack the technology and information linkages for probate court to systematically check for pending or prior custody matters in domestic relations or juvenile court when a guardianship is filed. Finally, respondents noted that parties to a private custody case in juvenile court might access probate court's guardianship jurisdiction to make a change in custody, rather than file in juvenile court, because probate court can typically hear the case much faster.⁶

The inability for probate court to easily verify court activity in urban jurisdictions caused some respondents to surmise that the guardianship jurisdiction and probate court's user friendly format create the potential for families to manipulate the system when there is a divorce decree with custody orders in domestic relations court. This often occurs as parents attempt to manipulate enrollment of children in certain school districts. Probate administrators and clerks confirmed that school is a common motivation for guardianship filings and noted they are cyclical with August and May being big months. They also indicated that the deception in some of these cases can be attributed to families who require solutions to legitimate issues of critical interest to their children but do not have the time or perhaps the money for a

⁵ A probate magistrate in one of the large urban counties said that legal custody in juvenile court and probate guardianships are synonymous.

⁶ A probate court respondent from one of the large urban counties provided an example of the potential use of the guardianship jurisdiction and its potential for abuse. He observed that the county child protective services agency had, in the past, guided many of the extended family members in their voluntary (non-court involved) cases to probate court for guardianships when it became clear that the parent(s) would not be able to care for the child(ren) because of the ease with which guardianship could be obtained. The agency has abandoned the practice and currently encourages extended relatives in these cases to file a private custody action in juvenile court so the agency can sustain their involvement and support for the family.

motion to change custody in domestic relations court.⁷ Most probate officials proudly observe that the public receives quick and courteous resolution to the issue in their court at reasonable cost and were quick to indicate that manipulation of the guardianship jurisdiction in their court was usually related to a deficiency in another court (e.g., cost, timeliness). In a partial acknowledgment of this observation, more than one domestic relations judge expressed a need and desire to grant custody to third parties (most often grandparents) through their court because of the frequent need to quickly and cheaply change custody arrangements that both parties agree are in the best interest of the child.

With regard to respondents who identified problems with guardianship jurisdiction in probate court, many believed that the problems could be greatly reduced or eliminated with enhanced information sharing between courts through management information technology.⁸ Even those working outside the probate courts were apt to note the probate courts' inexpensive and convenient handling of these matters and its benefit to the public. While they stressed their efficient handling of guardianships, probate court officials generally recognized this area as their most troublesome in terms of jurisdictional overlap and confusion.

e. Child Support Enforcement Agencies and the Juvenile and Domestic Relations Courts

Respondents' opinions varied concerning the evolution through the '80s and '90s of child support enforcement agencies in the U.S. and in Ohio. Most respondents agreed that child support enforcement has increased through the substantial Title 4D funding allocated to child support enforcement and the statutory requirements for counties to establish local child support enforcement agencies (CSEAs). Many respondents noted that the work these enforcement agencies have generated has outstripped court resources in both juvenile and domestic relations courts and there is some resentment harbored by many for additional procedural requirements contained in the statutes (e.g.,

⁷ A probate court respondent in Cuyahoga County provided the following example of the most troublesome overlap which he estimates occurs twice a month, "A couple gets divorced in domestic relations court and a grandmother applies in probate for guardianship of one of the children. Both parents agree because they desire for the child to be enrolled in a particular school. The probate court must attend to the domestic relations custody order and that court's jurisdiction before granting a guardianship. The respective courts in Cuyahoga County have worked an arrangement for guardianship filings - if the third party is a non-relative the domestic relations court waives jurisdiction and leaves the matter to probate under the procedure established for guardianships; if the third party is a relative, the probate court refers the party to domestic relations court to file a motion for custody.

⁸ A domestic relations judge in Cuyahoga county noted that by enhancing the case information sharing capacity between the domestic relations and probate courts, they could cooperate to better handle guardianship filings for children with prior custody orders from a divorce in domestic relations court -- many of these cases are best heard by the judge who handled the divorce.

separate hearings for paternity, support establishment and visitation where one was sufficient in the past.)

Regardless of their opinion on the advantages associated with the establishment of local CSEAs, most respondents agreed that the duplication of support enforcement efforts in two courts based upon marital status is confusing and wasteful and can lead directly to conflicting support orders.⁹ Child support enforcement officials and prosecutors in particular shared this sentiment and would welcome a consolidation of the issues in one or the other court - most opting for consolidation in domestic relations because of their sophistication with alternative custody arrangements, such as shared parenting and its affect on support calculations.

Another issue that surfaced during discussions of child support enforcement agencies is the weight of administrative orders. Many child support enforcement agency officials would like for the findings to carry the weight of a court order. In some jurisdictions in which site work was conducted, court staff, as a matter of standard practice will automatically review these administrative findings and issue court orders if these reviews are found to be accurate. This routinely occurs in the Court of Common Pleas in Wyandot County¹⁰ and the Court of Common Pleas, Domestic Division in Cuyahoga County.¹¹

f. Private Custody Jurisdiction in Juvenile Court

Many interview respondents considered the placement of private custody jurisdiction in juvenile court to be problematic. A frequently cited problem concerns different standards for support in domestic relations and juvenile courts which influence how child support is calculated. For example, a CSEA official stated that domestic relations court preferred their calculations engross for all children in the

⁹ Child support calculations differ between juvenile and domestic relations court and often require special staff assigned to each court from the child support enforcement agency, from the prosecutor (often through child support enforcement agency contracts) and court services support staff (employed by the courts).

¹⁰ All CSEA administrative orders are filed with the court in Wyandot County, therefore any CSEA action is on the court record which saves the court tremendous time down the road. After agreements and determination are made, an attorney for child support enforcement prepares a complaint, an answer of the defendant and a waiver of service of summons and hearing. The attorney files all of this paper with the court on the day of the administrative hearing. Within 30 days, if there are no objections, the signed court orders go out under a Consent Judgment Entry. It is through this process that the child support enforcement agency findings carry the weight of the court in this county. Since they have been doing it they have only had 3 objections.

¹¹ For every administrative hearing, the office of Child Support Services in the Cuyahoga County Domestic Relations Court drafts orders that are signed by a domestic relations judge to support the administrative finding. Support Services also reviews the administrative findings for proper and correct calculations.

family whereas juvenile court typically requires support to be established by child.¹² Attorneys claimed that juvenile court judges and magistrates are much less likely to consider shared parenting arrangements because they frequently do not examine in detail the allocation of parental responsibility such as continuing contact schedules for a non-residential parent. Similarly these respondents noted that juvenile court was less likely than domestic relations court to attach orders for health insurance to parents. In short, many respondents believed that juvenile court does not handle custody issues as well in terms of detail as domestic relations court.

On the flip side, many of these same juvenile court critics blamed the attorney culture of domestic relations court for the overlap (bifurcation) of the child custody/support jurisdiction and were thankful for an option for people who cannot afford a \$5,000 divorce to get fundamental issues of custody and support settled. They were likely to note that a number of separating married couples use the juvenile court private custody alternative to circumvent domestic relations because child custody and support issue can be settled quicker and at much less cost. They were also likely to say that in some instances the current overlap is used by attorneys and their clients to manipulate the system by hopefully stacking the cards for a divorce.

Other critics attacked the custody jurisdiction of juvenile court by challenging the logic of placing jurisdiction over private custody for separating married couples (not a legal separation) in juvenile court when many of these people quickly find themselves in domestic relations court for resolution of the same issues (once they save enough money for a divorce). For a number of respondents (including the most experienced in these matters), the current bifurcation of child support and custody has created a “second class” forum for people who need to access the courts to get out of bad relationships. They termed it “second class “ because of procedural differences between domestic relations and juvenile courts including different standards for calculating support and settling custody issues. The second class relationship is reinforced by statutory provisions that limit the ability of separating couples (married or not) to directly file a parenting action in juvenile court without first proceeding through a CSEA administrative action. Married couples can have the domestic relations court consider this issue as part of a divorce proceeding.¹³ Some interviewees interpreted this to mean

¹² Respondents indicated that these differences are tied to the fact that, historically, siblings who are the subject of juvenile court custody and support actions are less likely to live in the same home than siblings who are the subject of a custody and support action arising from a divorce/dissolution action filed in domestic relations court.

¹³ No one can bring a parentage action before requesting an administrative determination of the existence or nonexistence of a parent and child relationship from the child support enforcement agency of the county in which the child or the guardian or legal custodian of the child resides [RC 3111.22(A)(1)] ... except for three exceptions

that people with money and state-sanctioned marriages can access the courts for a determination that carries the weight of law; whereas people without money or couples who have not chosen to sanction their union with marriage must participate in an administrative process that can be (and is often) appealed in court.

A final issue cited by interview respondents as a source of confusion in private custody matters concerns the point at which the jurisdiction of the juvenile court “ends.” That is, how far does it extend beyond the closure of a case? This issue is particularly relevant to domestic relations court judiciary who typically must rely on the accuracy of uniform custody affidavits to be informed of pending and prior juvenile court actions because linkages and technology do not generally exist to systematically query for past cases in juvenile court except through child support records.¹⁴ Respondents indicated that the domestic relations courts in urban jurisdictions are frequently unaware of prior juvenile court custody matters related to either private custody cases that have been settled in the distant past or a child abuse, neglect and dependency action that has been closed (family reunited).

Jurisdictional Overlap Involving Domestic Violence Issues

2.

Court action on domestic violence matters was the second most frequently cited area of jurisdiction overlap for professionals in the ten study sites of the Ohio Family Court Feasibility Study. However, it was a distant second to the collective area of overlap in paternity, custody, support and visitation jurisdiction. The most common concerns over the court coordination of domestic violence cases included:

- The potential for public confusion between the criminal and civil remedies for domestic violence and their placement in two separate courts.
- The limitations of the municipal court to do more in the way of social and treatment interventions in domestic violence cases.

one of which is if an action from divorce, dissolution of marriage, or legal separation or an action requesting or requiring the payment of child support has been filed in a court of common pleas and a questions as to the existence or nonexistence of a parent-child relationship arises, the court in which the original action was filed must retain jurisdiction to determine the existence or nonexistence of the parent-child relationship without an administrative determination being requested from a child support enforcement agency [RC 3111.22(A)(2)].

¹⁴ A primary job responsibility for a clerk in one of the urban domestic relations courts is to screen all new divorce filings involving children for previous juvenile court history. She accomplishes the task through limited access to the automated child support enforcement agency management information. If there is any doubt about prior custody and support orders on a case, she requests an entry relinquishing custody from juvenile court. Despite the access to automated information, the process of identifying the cases is time consuming.

- The power of a civil protection order and the significance of *ex parte* custody decisions that are granted with the protection order on other court proceedings in juvenile court or in domestic relations court.
 - The frequent overlap of spousal domestic violence and pending or past child abuse, neglect, dependency, delinquency, custody and divorce/dissolution proceedings.
 - Problems in the courts related to domestic violence jurisdiction outside of the husband/wife situation such as violence between unmarried couples who are living together, or children against parents.
- a. *Criminal vs. Civil Remedies*

Several interview respondents indicated that the primary damage from the jurisdiction overlap in domestic violence matters is the confusion it causes for the public. Most municipal court judges noted that underlying an incident of domestic violence are usually potentially volatile issues of custody, support and/or child visitation. Often these matters are pending in either domestic relations or juvenile court, but not always. Regardless, parties to domestic violence criminal proceedings often want to address their custody and visitation issues in municipal/county court but cannot and it either confuses or angers them. Likewise, it frustrates some of the municipal court judges who were interviewed during the course of the project. These judges would like to be able to address these issues, particularly if a related matter is not pending in another court.

There is no consensus, however, among municipal court judges regarding the desire to intervene in these matters. Most municipal judges interviewed believed it was appropriate to refer the parties to domestic relations or juvenile court to address these corollary matters. A municipal court judge who has presided over a specialized domestic violence docket in Hamilton County observed that criminal proceedings are charged with emotion and the separation of custody, support and visitation matters in another court at a later time may be preferable because few judges can remain objective while considering the case of a severely bruised victim the morning after the incident. He suggested that to address custody and visitation issues during the criminal action might lead to emotional decisions on the part of the hearing officer because the courtroom is charged with emotion.

In most of the study sites a domestic violence coordinating council is active and is a resource for protection and counsel of domestic violence victims. The contact with victims by these organizations appears to be much more systematic in a criminal action than it is when there is no arrest and a victim chooses to file in domestic relations court for a civil protection order. In at least one of the study sites, the county's domestic violence coordinating council was exploring the possibility of a liaison from the

local women's shelter to work at the domestic relations court to provide information to women who come seeking civil remedies for a volatile domestic situation.

Some interviewees from the large urban jurisdictions were concerned with the issue of tracking temporary restraining orders and civil protection orders by law enforcement¹⁵ and in establishing protocols for law enforcement to systematically share this information with courts hearing family cases. Juvenile court officials were most likely to provide specific case examples of the court making custody or visitation orders in child abuse, neglect and dependency proceedings without knowledge of a civil protection order or temporary restraining order. Without reliable information sharing between the courts or between the courts and law enforcement, attorneys become the primary means for information transfer for the courts. If the attorneys fail to adequately communicate with their clients or the case is *pro se*, the hearing officer is susceptible to potentially damaging errors with regard to custody and visitation orders.

b. Municipal Court Limitations to Addressing Domestic Violence

All of the municipal court judges we spoke with during the site studies were under considerable pressure from their domestic violence docket and most urban municipal courts were debating the best method for docketing these cases (e.g., special dockets vs. general assignment). Several were also considering the intervention resources required to responsibly dispose of these cases (e.g., aggression management, substance abuse treatment).¹⁶ Municipal court access to effective social service programs was a source of debate in some of the study sites -- what is the proper role of municipal court in the treatment issues of domestic violence victims and perpetrators.

Tensions regarding the judicial handling of domestic violence were evident in all study site municipal courts and particularly prevalent in the large urban jurisdictions. Most municipal court judges expressed frustration with the criminal domestic violence docket. Their frustration stemmed from the explosion in domestic violence cases, their inability to access the range of services necessary to effectively address the underlying issues and the overlap of these cases with other family cases in juvenile and domestic relations courts.

¹⁵ All law enforcement agencies must establish and maintain an index for protection orders and the approved consent agreements delivered to the law enforcement agencies [RC 3113.31(F)(2)]. However the statute does not require the automation of the information or systems to notify courts.

¹⁶ The term "therapeutic justice" has been used to characterize family courts, and refers to the court's access to a continuum of community and public services and its commitment to address family problems beyond adjudicating the case. Most of the municipal courts studied for the Ohio Family Court Feasibility study were struggling with their responsibility and capacity to intervene with social service interventions.

A number of experienced municipal court judges opposed the consolidation of any criminal jurisdiction in either a domestic relations court or a consolidated family court. They feared that this would result in the decriminalization of these cases. But, at the same time, they frequently expressed frustration over what they viewed as their inability to take advantage of a golden opportunity to address problem behavior during the crisis (e.g., offender in jail). Some of these judges, particularly in the large urban counties, were actively attempting to marshal social service resources for criminal domestic violence cases.

Notable among municipal court judges interviewed by project staff, were the judges who welcomed the consolidation of domestic violence issues in either a specialized domestic violence court or a family court because of the frequent overlap of these cases with other family cases in domestic relations and juvenile court.

Some municipal court judges also expressed frustration with this docket and stated that they would be more than happy to let it go. For these judges consolidation was an opportunity to rid themselves of a very troublesome docket. In the words of one judge, “I would miss that area of jurisdiction like I would an abscessed tooth.” The primary reasons for disliking the docket was the emotional nature of the offense, the lack of good case investigations, and the “danger zones” for exploring any issue of property or custody.

c. Civil Protection Orders and Custody Issues Pending in Other Courts

Some interviewees expressed concern over what they perceive as the ability of attorneys and parties to a divorce action to stack the deck and gain an advantage in the divorce proceedings by first applying for a civil protection order with *ex parte* orders for custody, support and visitation.¹⁷ The group most likely to express this concern were judicial officers from specialized domestic relations courts responsible for issuing civil protection orders and who may subsequently preside over a divorce for the same family. These judges, magistrates and court administrators consider this to be a problem even though provisions exist in state statutes that discourage such practices. Ohio statutes preclude the attaching of custody or visitation orders to a civil protection order if past or pending custody or visitation

¹⁷ A family member may petition the domestic relations division for protection of themselves or another household member from acts of domestic violence. The filer is permitted to request an *ex parte* order to be considered the day of filing in which it is possible to issue orders of protection, eviction or vacation, custody, visitation, support, orders for counseling, restraining orders, and other relief that the court considers equitable and fair [RC 3113.31].

cases have been filed. Additionally, civil protection orders terminate no later than sixty days after the filing of an action for divorce, dissolution, or separate maintenance by the petitioner or respondent.¹⁸

While acknowledged to be a problem in domestic relations court, it is potentially a more pressing problem in juvenile court custody cases. Since requests for civil protection orders are filed in domestic relations court, that court's judiciary typically has this information at their disposal at the time the divorce is filed. However, this is not the case for custody matters filed in juvenile court. In general, though, juvenile court officials as well as private attorneys were less likely to have a problem with the jurisdiction over civil protection orders beyond the need to systematically know of their existence.

d. Domestic Violence Issues are Integral to Much of the Family Jurisdiction

Many respondents acknowledged that domestic violence issues are often a primary causative factor contributing to a family's involvement with the courts in a child victimization/maltreatment, delinquency, private custody and/or divorce matter. In urban jurisdictions where courts were specialized, domestic violence issues and their prevalence in a wide range of family matters were often considered a driving force among supporters of court consolidation. Domestic violence issues, along with chronic substance abuse issues, frequently were an interviewee's most compelling examples of the legal system being too narrow and independently focused on the immediate issues that bring a family to court.¹⁹

Finally, a few respondents also suggested that jurisdiction over domestic violence might be best handled by allowing the courts to selectively consolidate cases when they considered it in the child's best interest. For example, the municipal court would retain *original* jurisdiction over the criminal misdemeanor domestic violence. However, this court could have the ability to transfer the case to the domestic relations or juvenile court if a matter was pending in either court that involved a child. One attorney observed that victims might be more willing to prosecute if the issue would be considered in the forum that is trying to address the problems of the family and these courts would benefit from being able to jail people for not participating in a court-ordered treatment regimen.

e. Problems with Domestic Violence Outside of Spousal Abuse

¹⁸ RC 3113.31(E)(1)(d); RC 3113.31(E)(3)

¹⁹ Most professionals who believed that problems existed in the judicial handling of domestic violence matters supported recommendations to improve information sharing between courts and some supported court consolidation as the best way to develop a more holistic approach to judicial handling of family matters. However, a few respondents used the same reasoning to suggest looking into the notion of a specialized domestic violence court similar to the one that is receiving much attention in Dade County, Florida.

For some interviewees, the primary domestic violence issues were not necessarily issues of spousal violence but of violence between couples living together with children, or violence perpetrated on parents by their children. Some municipal court judges observed that domestic violence issues where paternity has not been established are difficult for the courts to address. A municipal court judge in Hamilton County estimated one-third of the domestic violence docket is comprised of people who are not married but are living together with children. This hearing officer believed that cases may be more appropriately handled in juvenile court but does the best she can to address the situation with the tools at her disposal, specifically, short-term incarceration and victim services.

The issue of aggressive children abusing their parents or caretakers was an issue for some interviewees from the Cuyahoga County Juvenile Court. In this county, an assistant county prosecutor had interpreted the preferred arrest policy in domestic violence cases to include children who abuse their parents.²⁰ This interpretation of the law has had considerable impact on juvenile detention trends. Data provided by the Cuyahoga County Juvenile Court indicate that the most prevalent current reason for admission to secure detention was domestic violence.²¹ Some interview respondents saw this blanket policy as problematic stating, “the word is on the street that if your child is giving you a hard time, call the police and they will take them away for a few days.” Some respondents also referenced a November 21, 1996 opinion of the Attorney General of Ohio which contradicts the local interpretation in Cuyahoga County.²² Other Cleveland respondents said that the interpretation is an effective policy that imparts to the juvenile court a serious intervention to curb aggressive behavior before it escalates into other acts of serious delinquency.²³

None of the respondents in the other study sites described a similar issue related to domestic violence because their prosecutors did not interpret preferred arrest policies to include children who abuse their parents. The interpretation of new domestic violence statutes in Cuyahoga County provides a

²⁰ Assistant Prosecuting Attorney, Patrick J. Murphy, Opinion issued in a March 20, 1995 letter to Richard T. Graham, Director of Legal Services, Cuyahoga County Juvenile Court.

²¹ In March 1997 there were 120 new charges processed by the Cuyahoga County Juvenile Court which required secure detention; 38 of the admissions on new charges were based upon misdemeanor domestic violence complaints and 8 were felony assault (family) complaints (source: Cuyahoga County Juvenile Court monthly intake statistics).

²² According to Attorney General, Betty Montgomery, Opinion No. 96-061 addressed to the Honorable William F. Schenck, Greene County Prosecuting Attorney, Xenia, Ohio, the provisions of RC 2935.03(B)(3)(b) establishing arrest as the preferred course of action in domestic violence situations are not applicable to juveniles.

²³ The Cuyahoga County Juvenile Court in partnership with the County Division for Youth Services has developed a system to assess the aggressive behavior of youth detained under the domestic violence preferred arrest policy and present the assessment at the detention hearing.

good example of how significant changes in one area of family law can produce unpredictable results across the courts with family jurisdiction -- results that might not be anticipated by legislative analysts because of the separation of the family code and the specialization of the courts. Further it demonstrates how issues of domestic violence permeate all courts with family jurisdiction in Ohio.

An emerging issue that has domestic violence implications concerns the abuse of aging parents by their adult children. Issues of elder abuse are currently in the jurisdiction of the probate courts of Ohio.²⁴ Few respondents expressed any concern over the handling elder abuse in probate court other than those who observed that as advances in medicine continue to prolong life, elder abuse will become a more prominent issue for the courts. A precursor to this movement in family law can be observed in Ohio in the area of the visitation rights of grandparents. A number of respondents were concerned about this issue and its treatment by the legislature in the future. It is an issue for all courts with custody jurisdiction so it transcends cases in probate, juvenile and domestic relations courts.

Adoption

3.

Some of the professionals interviewed during the course of the site work for the Ohio Family Court Feasibility Study believed that the placement of adoption jurisdiction in probate court was inappropriate.²⁵ Few, however, could provide case specific examples of how the adoption jurisdiction was problematic.²⁶ Nearly all of the opinion against the placement of adoption jurisdiction in probate court came from professionals working in the juvenile court or child protective services and their argument was based upon issues of case continuity and closure for the portion of those adoptions preceded by child protective action in juvenile court and permanent custody being granted to a county

²⁴ Ohio's Elder Abuse law is found under chapter 5101 of the Public Welfare code. Ohio Rev. Code Ann. section 5101.60, defines "abuse" as: the infliction upon an adult by himself or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish. "Adult" is defined as any person sixty years of age or older. These actions are heard in the probate court in the county where an adult resides and upon petition by the county department of human services, the probate court may issue an order authorizing the provision of protective services on an emergency basis [RC 5101.69].

²⁵ Original and exclusive jurisdiction over adoption proceedings is vested specifically in the probate court [RC 3107].

²⁶ The sole case example came from juvenile court professionals in Hamilton County and involved the adoption of a child who had previously been involved in a protective case in which the court granted permanent custody to the Agency. The adoption petition in Hamilton County is not filed with probate court until one week before the case is ready for finalization, so a juvenile court magistrate had provided judicial oversight for the adoption process. The finalization therefore is essentially a formality for the cases that come from the child protection agency. At the finalization hearing, however, the probate magistrate personally objected to the adoption and caused much turmoil as the respective courts fought over the issue. Officials in both the Hamilton County Probate Court and Juvenile Court characterized this example a traumatic but isolated incident.

child protection agency.²⁷ Some respondents also suggested that the placement of adoption jurisdiction in a court that is primarily charged with managing money may not serve the best interest of children which traditionally is the domain of juvenile court.

Support for placement of the adoption jurisdiction in probate courts came primarily from probate judges and court administrators who observed that a fresh perspective at this juncture in child welfare/maltreatment with potentially long and painful protective histories is in the child's best interest. While they agree that the adoption jurisdiction is different from much of the court's other caseload, probate court leaders from all study sites stated that they placed special emphasis on the efficient administration of these cases and called into question the ability of juvenile court to efficiently process the cases (in urban jurisdictions) because they are overwhelmed with serious and emergent delinquency and child abuse, neglect and dependency cases. Probate officials also cautioned that any consideration of removing adoption jurisdiction from their court should accurately measure the current proportion of the court's adoption workload because it is a very small portion of total workload and should not cause them to lose any resources if it were removed. This latter issue seemed to be what alarmed probate officials the most about losing adoption jurisdiction -- they might lose important court resources with a negligible workload reduction.

The Coordination of Criminal and Protective Actions in Child Abuse and Neglect Cases

4.

Very few professionals interviewed during the course of site work for the Ohio Family Court Feasibility Study indicated that problems existed with respect to the coordination of child protective proceedings and corresponding criminal actions against one of the parents. This topic nonetheless deserves some attention because it has been an important issue in other major family case coordination efforts in the country (e.g., New Jersey).

When asked about criminal versus protective cases that are generated from the same incident of abuse, a veteran assistant prosecutor in one of the three large urban jurisdictions described his problems with the overlap. He observed that the burden of proof required in juvenile court protective hearings makes the child abuse or neglect complaint easier to prosecute than in criminal court. Further, juvenile court child protective hearings are expedited in that adjudication and disposition must occur within 90

²⁷ In Cleveland in 1995, 335 adoptions were filed and 351 disposed. Of those cases, about 50% were public adoptions, 41% were either stepparent, relative or independent adoptions and only 9% were adoptions through private adoptions agencies. Similarly, in Hamilton County the probate administrator estimated that about half of the yearly adoption filings involved adoptions through the county protective services agency.

days of a child’s removal or the complaint is dismissed (without prejudice) whereas the criminal case typically progresses at a much slower pace.²⁸ For these reasons, criminal prosecutors know to watch carefully what happens in juvenile court because they can and will use a stipulation to the facts of the complaint to prosecute the defendant. Defense attorneys in both courts are aware of this jeopardy and often discourage the parent from working with the court and the child protective services agency on a reunification plan. Therefore it is this particular attorney’s perception that (depending on the jurist) the protection process is either placed on hold until the criminal matter is resolved or the juvenile court proceeds and either adjudicates the facts of the complaint or accepts a stipulation to at least some of the allegations. In either case, the findings in juvenile court can potentially contribute to the success of the prosecution in criminal court. Furthermore, if the defendant refuses to cooperate with the agency and work on the case plan because criminal matters are still pending — this may potentially be grounds for the initiation of permanent custody proceedings in which the defendant’s parental rights are subject to termination.²⁹

Miscellaneous Issues

5.

Some additional issues of jurisdiction were mentioned by a very small proportion of interviewees and did not readily fit into one of the above jurisdictional grouping. These are, however, worthy of inclusion in this chapter and include the three following observations:

- A few respondents mentioned problems related to the placement of jurisdiction over name changes in probate court.³⁰ Subsequent to paternity determinations the confirmed father and the mother of the child often desire to have the child’s name changed to reflect parentage. Since paternity determinations are made in the course of both juvenile court and domestic relations court proceedings, the need often presents itself in these settings. However, the hearing officers refer the parties to probate court for a name change. In the opinion of some

²⁸ Project staff identified no local efforts in the study sites to expedite the criminal process when a corresponding complaint for protection is pending in juvenile court. Further, most study sites indicated that the legal record in a protective proceedings can be used by a prosecutor against a parent in their criminal case and frequently is used in the interest of a conviction.

²⁹ In this particular jurisdiction the attorney indicated that the magistrates usually work with cooperative parents to essentially put the case on hold by making a legal finding of “dependent” and avoid explicit findings of fact in the adjudication order. In the interim the child waits in placement with a temporary disposition of temporary custody to the agency.

³⁰ Probate court has jurisdiction over name changes [RC 2717.01]. The court of common pleas or its domestic division has jurisdiction to restore names after a divorce [RC 3105.16] or after a marriage has been declared void [RC 3105.34].

- professionals, the referral to another court can confuse and alienate parties to the case and affect their willingness to cooperate with the court in subsequent hearings.³¹
- According to a municipal court judge in Hamilton County, the issue of criminal charges for child endangering and its proper placement in the courts has been considered by the legislature at least three times that the judge can remember. Most recently the jurisdiction was transferred from juvenile court to municipal court except for one aspect which remains in juvenile court³² which can cause considerable confusion - especially for law enforcement.
 - Interference with Custody³³ is another criminal charge heard by municipal courts and, according to the same judge, is likely to have related actions pending in other courts. According to the judge the neighbor/stranger cases are easy to handle, it is the familial cases that are difficult and are often clouded with a domestic relations or juvenile court history. She concluded that as long as nobody is injured, the latter category of cases are probably better heard in the court where the original custody decision was made.

Concluding Remarks

Nearly every individual interviewed during the site work phase of the project indicated that some type of family law revision was necessary to better coordinate family cases. Generally, these interviewees fell into two categories — those who believed that specific sections of the Ohio Revised Statutes needed revision and those who recommended a comprehensive examination and integration of Ohio statutes governing family matters. Most interviewees fell into the former category advocating one or more specific modifications to the Ohio Revised Statutes. In varying degrees, three courts (domestic relations, juvenile and probate) and one administrative body (the local child support enforcement agency) share jurisdiction over these matters and, depending on individual case circumstances, an action can be filed and orders generated in one body that leads to and/or impacts subsequent filings and rulings in another judicial forum.

The most frequently cited recommendation was to simplify and clarify the maze of statutory regulations governing jurisdictional and procedural issues related to paternity, child support, custody and visitation. The next most commonly cited area where statutory revisions were recommended involve domestic violence proceedings. That is, to better blend the jurisdictional authority and procedural

³¹ A probate magistrate in Hamilton County observed problems related to overlap in the area of name changes: “Sometimes people in juvenile cases desire name changes after a paternity determination. However, juvenile court will not make a name change and refers the matter to our court. It upsets people that they have to go to another court.”

³² Juvenile Court has exclusive original jurisdiction to hear and determine all criminal cases charging adults with violation of any section of chapter 2151 of the Revised Code [RC 2151.23(A)(5)].

³³ Criminal Interference with Custody [RC 2919.23].

remedies for domestic violence of municipal/county and domestic relations courts and to facilitate better communication between these entities.

A number of interview respondents also disagreed with the placement of adoption jurisdiction in the probate court. The prevalent argument was that its placement in probate court disrupts the logical closure of certain abuse, neglect and dependency cases that proceed to permanent custody and ultimately adoption. Juvenile court judges and magistrates were most likely to recommend that jurisdiction over adoption proceedings on these cases be given to their court.

A second category of interviewees, while also citing deficiencies in the family law statutes, advocated a sweeping examination and consolidation of Ohio statutes that reference family law. For the most part these individuals were experienced judges or attorneys who presented compelling arguments for their opinion. Their collective observations include:

- The family law has evolved over years and encompasses hundreds of statute revisions and case law interpretations, most of which were only considered in the context of the title in which they appear or to which they apply.
- The complexity of family law serves the interest of attorneys rather than families - citing the exorbitant cost of family litigation, and the virtual requirement in some areas of jurisdiction for attorney representation (e.g., divorce).
- The over-reliance, tantamount at times to abuse, of the most user friendly courts, juvenile and probate, to handle paternity/custody/support/visitation issues in lieu of the domestic relations court which is attorney driven (i.e. the probate and juvenile courts often pride themselves in their efficient handling of custody related issues, but the juvenile court in urban areas is overwhelmed by the burden of that caseload).
- The rapid evolution of local child support enforcement agencies and its poor interface with the law that defines family jurisdiction (e.g., prosecutors in urban areas maintain two sets of attorneys to process support — one for juvenile and one for domestic relations court).
- The alienation of the public in urban centers with regard to court access and family law.
- General confusion between county jurisdictions concerning the organization of family law in the courts (e.g., Ohio has some structural family courts, but few professionals could name them with certainty).

Project staff concur with the latter cohort of interviewees. We believe it is feasible and useful for Ohio to undertake the drafting of a clear, coherent and relatively concise family code that incorporates relevant existing law; eliminates duplication, overlap, confusion; and encourages the consideration of a coordinated approach to family matters. The establishment of a consolidated family code advances Ohio's development in considering more integrated approaches to family law practice. In addition to cleansing existing statutes of their ambiguities and conflicts, a fresh Family Law Statute

would require thoughtful consideration of who is best suited to deal with the myriad of family matters coming to the court, and where resources that are more similar than disparate can be shared among courts. It would have the further benefit of establishing a single entity of law upon which service provision planning could occur. A guiding principle of this work should be the clarification and simplification of a family code which is understandable to Ohio families. There was consensus that the current law is not very family-friendly and better serves the interest of attorneys than that of Ohio's families.

It is recognized that this recommendation leads to a daunting task that is beset by many difficult decisions and with the potential for unintended consequences if not constrained. It is, however, the best way to advance the agreed upon principles of family court practice so often encountered by the study team without forcing a major structural solution inconsistent with the beliefs of many, if not the majority, of court professionals in Ohio.

The Supreme Court of Ohio, in cooperation with the Ohio General Assembly and the Governor's Task Force should convene a Family Code Revision Commission, with the specific intent of drafting an Ohio Family Law Statute that integrates components of the existing code into a simplified and clear text. This Commission should be comprised primarily of judges and magistrates responsible for the various family law dockets but should also have representation from the Ohio General Assembly, members of the Governor's Task Force, and the Ohio Bar Association. We anticipate that this task would take approximately one year and that the actual powers and duties of the Commission be developed by the Supreme Court of Ohio with approval by the Task Force.

Chapter 5

Resource Issues In Courts With Family Jurisdiction

A wide range of professionals interviewed during the on-site component of the Ohio Family Court Feasibility Study identified problems in the area of resources available to the court system for families involved in on-going litigation. Resources were frequently defined in terms of physical plant deficiencies; the need for additional judges, magistrates and administrative support staff; the expansion of court based programs and services (e.g., alternative dispute resolution, custody evaluation, probation, *pro se* litigant centers); improved court access to social service intervention and support services (e.g., child protection service, mental health services, substance abuse services); and expanded access to court-appointed counsel. The nine resource deficits most frequently identified by both interviewees and focus group participants in their order of prevalence were:

- Assistance to the public in *pro se* litigation and other issues related to improving the general public's access to the court system on family matters;
- Hearing officer resources, specialization and training;
- Physical plant problems and constraints;
- Support services for domestic violence;
- Appointment of Guardian ad Litem;
- Adequate court-based resources to effectively handle unruly juveniles;
- Availability of mental health interventions for juveniles and other family members;
- Access to investigation and assessment services; and
- Expansion of alternative dispute resolution and mediation programs.

Although many people could identify resource deficits that decrease the effectiveness of courts with family jurisdiction, less than one quarter of the respondents characterized this issue as the most pressing problem confronting the system. Jurisdiction overlap/confusion and information sharing problems usually superseded discussions of resource deficiencies. Likewise, for most individuals, solutions for improved family case coordination and judicial effectiveness focused on statutory and court rule modifications that clear up jurisdictional deficiencies and/or enhancements of the court system's information transfer capability. It is important to note, however, that for some respondents the topic of families in courts and the inadequacy of resources was the departure point for the richest explanations of court reform in the interest of families. Discussion of resources and courts, more than the subject areas of jurisdiction and information sharing, elicited among the most experienced respondents, historical reference to the development of courts in Ohio, societal trends and court culture.

Assistance to the Public: Improving the Court's Handling of Pro se Litigants

I.

The issue of *pro se* litigants and its corollary, improved public access to courts with jurisdiction over family matters, were the predominant resource issues identified during site interviews and in focus group discussions. Many professionals working in juvenile and domestic relations courts identified problems related to the court handling of *pro se* litigants. Increases in *pro se* activity in recent years have placed new demands on the courts in all of the study sites. Most study site courts had developed some procedures to assist *pro se* litigants. In the larger urban courts, legal departments often shouldered this responsibility. In smaller courts, the clerk's office was typically assigned this responsibility. These clerks often prominently posted signs in their offices which demonstrated their angst over their untenable position in being required to draw distinctions between where assistance on procedural questions ended (which is appropriate) and advice on legal questions began (which is not permissible).

A number of issues were identified ranging from 1) the stress that *pro se* litigants place on the courts with family jurisdiction; 2) the virtual requirement in some forums of counsel and the absence of subsidized legal assistance, and 3) the perceived dominance of private attorneys in the court milieu and the limitations this poses for increased public access to courts with family jurisdiction.

a. The Tremendous Stress that Pro Se Litigants Produce in Courts of Family Jurisdiction

Interview respondents from judges to family law attorneys, from clerks of court to their support staff were quick to point to the tremendous stress that *pro se* litigants place on the courts. Hearing officers most often portrayed their concern in terms of the costs that the courts incur with respect to the additional docket time required for *pro se* cases as well as the problems uniformed and ill-prepared lay litigants create for hearing officers with respect to courtroom decorum and procedures. Several judges and magistrates identified this issue as one of critical importance to the future of the courts with family jurisdiction in Ohio. Some felt that the issue had been avoided because of the costs involved in identifying real solutions, including the impact such solutions may have on the legal profession and the legal culture surrounding court litigation of family matters.

Court administrators, legal department administrators, court staff responsible for the timely processing of child support matters, and court clerks most often portrayed their stress in terms of the upward spiraling volume of inquiries their offices receive from *pro se* litigants, the amount of time daily

they devote to servicing *pro se* questions, and the unhealthy ambivalence that arises from a desire to help people navigate the system while continually cautioned to avoid unintentionally providing legal advice.

Some court officials and attorneys favored solutions that increase legal assistance through the use of *pro se* litigation centers/clinics, rather than enhance court-based capacity to guide people through the process. These respondents viewed the legal assistance solution as more likely to provide adequate service for users, in that staff from these clinics would typically have the expertise to do more than merely show people how to complete a court form and removes the court from the position of drawing fine lines between procedural guidance and legal advice. Most of these respondents also regarded the increased pressure to do something about *pro se* litigant issues as a way to channel resources to revitalize legal aide centers which have declined in the past decade.

b. Access to Counsel

Several interviewees focused their comments on the virtual requirement for competent counsel in most areas of family law and the corresponding absence of legal assistance for less affluent citizens who can ill afford the cost of an attorney. The most prevalent of such comments focused on the need for competent counsel in divorce proceedings (including post-decree custody matters) and the need for counsel in domestic violence proceedings. These respondents generally characterized the current system of family justice as one that 1) requires competent counsel for a chance at an equitable divorce; 2) continues the requirement to adjust custody arrangements for as long as children have not reached the age of majority; 3) provides little to nothing in the way of legal aide for parties whose budget will not support attorney fees; and 4) promotes reliance on attorneys to navigate complicated court processes and procedural norms. Respondents further observed that even in amicable situations or instances in which there are no custody or property issues, the requirement of counsel to maneuver through the domestic relations legal maze limits the general public's access to courts (even for the more affluent, middle class citizens).

The second most frequent observation regarding access to counsel came from respondents in the smallest study sites, Morgan and Wyandot counties (i.e. counties with only one judge who is responsible for cases filed with the Court of Common Pleas). In these jurisdictions the limited number of attorneys practicing family law was an important issue. In Morgan County, for example, the attorney pool was limited to seven and most respondents noted that the limited availability to counsel more than any other factor limits citizen access to the court. A Morgan County interviewee commented that a complicated

child victimization/maltreatment case can exhaust the county's entire attorney pool and require that the court search for additional counsel in the surrounding counties.

c. Court Culture

Issues of court culture were often intertwined with discussions regarding problems in how family matters are handled in Ohio courts. For a small cadre of experienced lawyers and attorneys, the root of the problem ultimately points to the dominance of the private bar in the domestic relations court milieu and the inability of the traditional legal culture to adapt to the changing nature of the family in American society. These individuals argue that the placement of child custody jurisdiction in juvenile court, guardianship in probate court, and the civil protection options available in domestic relations court have provided an outlet for those who need to remove themselves from a relationship (sometimes a dangerous relationship) but do not have the money and/or time to access more mainstream legal options available in domestic relations court to divorcing couples. Therefore, poor and nontraditional families turn to inferior private custody alternatives available to them in juvenile, probate and domestic relations court to decide important issues of custody, support and visitation. Some interviewees maintain that this has resulted in the evolution of two separate systems of justice that are based upon relative affluence and/or the need for the expeditious resolution of a custody matter. One of the judges interviewed observed that family court reform will accomplish little and might make matters worse for families if is not focused first on simplifying the Ohio Revised Code as it pertains to family jurisdiction with a primary goal of minimizing the costs to people who must come to court to address important family issues.

Hearing Officer Resources, Specialization, Leadership and Training

2.

A large number of interviewees and focus group participants were interested in discussing issues related to the availability of hearing officers, the need for specialization in areas of family law, requirements for training and experience for the family bench, and the judiciary's appropriate role as leaders for system reform.

Increasing judicial workloads was one of the most frequently cited and important resource issues mentioned by individuals interviewed during the course of the Ohio Family Court Feasibility Study. Interviewees frequently expressed concern regarding the burgeoning caseloads in juvenile court in private custody matters as well as delinquency, unruly and child victimization/maltreatment caseloads

and in municipal/county court domestic violence filings.¹ Given the limited availability of local and state funding, most courts turned to expanding the use of magistrates who are responsible for specialized dockets in a particular area of family jurisdiction.

a. Specialization

In a matter closely related to the increasing use of magistrates, the majority of interviewees were of the opinion that specialization was critical for the judiciary to process their current caseload. The use of specialized dockets appeared to be closely correlated with the size of the court but in varying degree were evident in all but one county (Morgan County).² Interviewees frequently referred to the ever changing and increasingly complex body of family law in Ohio as a requirement for specialization. Most respondents considered the various revised code chapters that pertain to family law, court rules that define procedure, and family case law as impossible for one professional to master and continuously monitor.

Many interviewees not only believed that a judge or magistrate needed to focus solely on one general area of family law (i.e., juvenile, divorce/dissolution or probate) but that specialization was also often imperative within these general categories. Domestic relations court often had magistrates and (to a lesser degree) judges specializing in child custody and support matters, contested and non-contested matters, or pre- and post-decree filings. In juvenile courts, specialized magistrates were often assigned to child custody, delinquency and child victimization/maltreatment dockets.

For many, the virtual requirement of specialization in areas of family law was a primary obstacle for considering a consolidated family court. There were some notable exceptions (including a few judges and magistrates) but they were rare in comparison to the vast majority of judicial officers and others who viewed specialization as an absolute necessity.

The common perception that specialization is the key to efficient family case processing in Ohio, caused few respondents in the urban or medium sized jurisdictions to support a one family-one judge

¹ Increases in criminal domestic violence charges are the result of amendments to the Ohio domestic violence law that establish a preferred arrest policy for domestic violence in the State [per RC 2935.03(B)(3)(b)]. Local domestic violence coordinating councils and state task forces have also increased public awareness concerning domestic violence issues and have increased public knowledge of the legal remedies for domestic violence.

² The three largest urban court systems (Cuyahoga, Franklin and Hamilton Counties) use specialized magistrates for most types of cases filed in their respective juvenile, domestic relations and probate courts. Even in Morgan County, the judge has indicated the need to secure funding for a part-time magistrate to assist him in handling a specialized docket.

case assignment system often associated with the family court movement.³ That is not to say that respondents did not find the ideal of a single hearing officer handling all of a single family's cases attractive. Few interviewees, however, considered it an attainable goal for urban courts.⁴ The perceived efficiencies of specialization most often outweighed the perceived advantages of consolidated courts and judges and magistrates handling the full range of family matters. The partial exception to the rule were the smallest rural counties that have only one judge assigned to their Court of Common Pleas who hears all family cases in addition to criminal and civil matters. Professionals in these study sites considered their one-judge system a strength and referred to this practice as evidence of a family court system already existing in their jurisdiction. However, both of the one-judge study sites had developed or were considering the use of magistrates to relieve some of their family caseload burden.

b. Leadership

Most interviewees and focus group participants agreed that judicial leadership is essential to promote the growth of resources and processes which will help the court work in the interest of families. Further, interview respondents often attribute current court successes or failures to effective judicial leadership or the lack thereof. With only two exceptions in over 300 personal interviews, respondents were encouraged by the Supreme Court, Department of Human Services and Governor's Task Force initiative to explore issues of family case coordination. Most respondents expressed a need for continued state-level leadership in this area with hopes that it will generate initiatives for public and professional education on topics of family law and family case coordination; initiatives to identify, refine and transfer innovative practice across county borders; and increased training opportunities for court officers. Additionally, several respondents were of the opinion that a primary impetus for system reform lies with court leaders and that state leadership is critical to identifying, informing, motivating and coordinating the judiciary as leaders for court enhancement.

c. Training

Most individuals interviewed during the on-site component of the project considered the training and experience of the judiciary in areas of family law to be adequate, if not excellent. This perception

³ Szymanski, L., et. al., "One Family-- One Judge--An Ideal." In Policy Alternatives and Current Court Practice in the Special Problem Areas of Jurisdiction Over the Family. Pittsburgh, PA: National Center for Juvenile Justice, 1993.

⁴ On the other hand there was widespread support for the assignment of the same judicial officer for the life of a case to improve both the quality and consistency of dispositional and post-dispositional orders.

may be attributable in part to the fact that judges are not rotated between different divisions of the Court of Common Pleas in Ohio and are elected for six-year terms to a specific division. Some of the judges in the interview sites had twenty years plus experience on a family law bench which almost all respondents from their particular jurisdiction identified as a strength.

Although most respondents recognized the qualification of judges as high, a few indicated that their vision and expertise was sometimes too narrowly focused in family law and duplicated the technical knowledge of their magistrates. These respondents frequently observed that the widely accepted use of specialized magistrates in courts with family jurisdiction should permit judges to develop a more general sense of family law without sacrificing the advantages of in-court experts for particular case types. This suggests that judges require a broad foundation of knowledge in family law to act as effective leaders for the court in community forums and further that it is a requirement to effectively develop and manage the hearing officer resources at their disposal.

Facility Issues

3.

Physical plant limitations were cited by a number of interviewees as a significant obstacle to the improved coordination of family cases. For example it was difficult for respondents in Cuyahoga County to imagine the scale of a “family courts facility” in their jurisdiction -- so difficult that it caused several interviewees to state that it would be impossible to co-locate the courts with family jurisdiction in a single complex. On the other hand, Franklin and Hamilton Counties have, for the most part, located courts with family jurisdiction in the same facility.⁵ Most respondents in both of these jurisdictions cited efficiencies that have resulted including increased convenience to the public and the pooling of certain amenities including central information desks, public cafeterias/concessions and facility security that present a more positive posture to the general public. Respondents in these sites also believed that being located in the same court complex facilitated and encouraged information sharing and general inter-court relations. In fact, a judge in one of the sites felt that locating the courts with family jurisdictions in the same facility as a good compromise that increased public access while maintaining the benefits of specialized courts.

⁵ The Hamilton County Juvenile Court and the Hamilton County Domestic Relations Court are both located in a single facility that was extensively renovated by the respective courts in the early 1990s. The Franklin County Court of Common Pleas divisions, including the Domestic Relations and Juvenile Branch, the Probate Branch and Municipal Court have been co-located since 1990 in a new Government Center complex.

Non-court interviewees from urban counties who regularly conduct business with the courts (e.g., attorneys, caseworkers, law enforcement, etc.) typically desired that all courts with family jurisdiction in a county be located in the same facility or complex, that these courts have adequate and efficient building security, ample and reasonable parking, good access to public transportation routes, and a central information/reception desk at the entrance to direct people to the correct division, floor and/or office.

Facility issues also constrained the vision in some of the smaller jurisdictions, particularly those occupying a facility that is steeped with history and has been the nucleus of a county seat for decades. Although these facilities were well maintained, they typically were running out of space for files and staff. For good reason, most respondents could not foresee any physical plant changes that did not include continued use of the current courthouse. The vision for facility enhancements in the smallest jurisdictions was along the lines of technology enhancements to address file storage issues, small office annexes for court service staff, and/or a new family court service facility to co-locate court-based and county family services.

Support Services for Domestic Violence

4.

In the past twenty years domestic violence issues have become an increasingly important part of court business across the country and in Ohio. As data in Chapter 3 indicates, the number of domestic violence cases filed in domestic relations and municipal courts between 1990 and 1996 has grown at a dramatic rate. All ten study sites involved in the Ohio Family Court Feasibility Project were grappling with issues related to defining the appropriate role of the court in handling domestic violence and how to best address its pervasive nature.

All study sites had developed local domestic violence coordinating councils. In conjunction with state task forces and initiatives, this area of jurisdiction is likely to continue to evolve in the Ohio courts into the next century and continue to create impetus for dramatic change.⁶ There was common sentiment that a fundamental solution for better coordination of family cases requires that domestic violence issues be effectively addressed across the courts.

⁶ A goal of the Ohio Domestic Violence Task Force is “to increase the coordination between and among all domestic violence entities, including but not limited to courts, prosecutors, law enforcement agencies, and domestic violence service providers within each community and within the State of Ohio, to prevent needless procedural conflicts and to make optimal use of community resources.”

There was division on the issue of whether criminal cases stemming from misdemeanor charges of domestic violence should be included in any structural family court pilot experiments. However, there was common support for efforts to coordinate information across courts with regard to domestic violence and increase the capacity of the courts, where appropriate, to address family dysfunction with intervention resources that are carefully administered as to never jeopardize the safety or position of a victim. The solutions that study participants offered to better coordinate courts around domestic violence issues were typically based upon information sharing or resource development/sharing. Many proponents of pilot efforts in Ohio to coordinate information or resources across courts suggested that domestic violence issues be the “spearhead” of such efforts because it is a prominent issue in the community and in all specialized courts with family jurisdiction. For that reason it is most likely to consolidate support for general court reform and innovation as long as these pilot efforts avoid combining any criminal jurisdiction in a structural family court.

Guardian ad Litem

5.

A vehicle for improved family case coordination for some interviewees involved expanding the use of guardian ad litem (GALs) in family matters involving custody decisions. Hearing officers recognized the ability of a well-trained and experienced GAL to assemble critical information concerning a family including a family’s prior and current involvement with courts of family jurisdiction. Some judges and magistrates referred to GALs as impromptu family case managers or family case ombudsmen and would like to see an expansion of their use to coordinate cases that cross-cut juvenile, probate and domestic relations court boundaries.

This appears feasible even within a specialized court system as long as guardian ad litem are on the appointment lists of all courts that handle family matters. However, the appointment of a GAL in domestic relations court is typically contingent on the ability of the family to pay for such an appointment. Even if financially able, parents may resist the appointment of a GAL as an added expense that is not necessary or may be threatened with the idea of an independent advocate for their children.

Some hearing officers were sympathetic to the resistance of some parents to a GAL in an already expensive divorce proceeding and, in the alternative, advocated a family case manager or ombudsman position or unit be created to serve as a liaison between specialized courts with the responsibility for coordinating information on all family cases, including gathering information from outside agencies (e.g.,

CSEA, child protective services, and service providers). Others advocated the requirement for a GAL in all domestic relations filings that involve children and for the county to pay for the function with parents contributing on a sliding scale fee basis.

Adequate Court-Based Resources to Effectively Handle Unruly Juveniles

6.

Many interviewees were concerned with the court system's current handling of unruly and aggressive juveniles who are brought to the attention of juvenile courts for unruliness and on allegations of domestic violence. Many juvenile court respondents indicated that they were too overwhelmed with the explosion of private custody, serious delinquency and child victimization/maltreatment cases in the early 1990s to devote much attention to unruly children and youth referred to the court on domestic violence charges. Several respondents indicated that the unruly cases were once the primary business of the juvenile court and remain the cases most likely to be impacted. There was some resentment on the part of many juvenile court officials that their other caseload demands, notably private custody, have pulled resources away from the unruly and minor delinquency dockets. This sentiment was pervasive across all study sites and not just limited to the large urban jurisdictions. Many officials in domestic relations, probate and municipal courts recognized overwhelming caseloads in juvenile courts and expressed concerns over its cost to society in terms of children who escalate into more serious delinquent behavior or situations of severe victimization/maltreatment because the court could not direct resources to them at their first referral.

Availability of Mental Health Interventions for Juveniles and Other Family Members

7.

A pervasive deficit that interview respondents across the study sites identified was the availability of out-patient and in-patient mental health treatment services for juveniles in the absence of state commitments for minors that the juvenile court may identify.⁷ The observations were most prevalent among juvenile justice professionals but were echoed in other courts with family jurisdiction and included the need to expand access to mental health services to adults or family members with diagnosed mental health or substance abuse issues.

⁷ Per section 2151.23(A)(4) of the Revised Code, if the juvenile court has probable cause to believe that a child otherwise within their jurisdiction is a mentally ill person subject to hospitalization by court order, as defined in section 5122.01 of the Revised Code, the juvenile court can exercise jurisdiction given the probate division of the court of common pleas in Chapter 5122 of the Revised code.

8. *Access to Investigation and Assessment Services*

Some interview respondents observed that courts with family jurisdiction have a similar need for ready access to custody investigations and psychological assessments. In varying degree, the domestic relations, probate and juvenile courts have individually addressed this issue with the development (expansion) of court-based programs or have increased access to these services through development of cooperative arrangements with outside agencies. However, there has been little done to share access to these services by the courts.

Notwithstanding issues of turf, hearing officers in juvenile court frequently desired access to quality custody investigations for their delinquency and private custody caseloads in a jurisdiction where the resource is well developed by the domestic relations courts. Conversely hearing officers in specialized domestic relations courts frequently required access to psychological assessment services that are well developed in the jurisdiction's juvenile court. Along the same lines, court officials in domestic relations and probate courts often expressed a need for a closer relationship with child protection and probation agencies to conduct follow-up case management in divorce or guardianship cases involving children. Domestic relations judges noted that this resource deficit severely limits their ability to provide on-going oversight to insure that court orders are being adhered to. The only way they can access case management services for difficult divorce cases is to declare both parents unfit for custody and certify the case to juvenile court.

A number of interviewees suggested that courts with family jurisdiction should share court-based investigation and assessment resources. By way of illustration, the Protective Services Department of the Franklin County Domestic Relations and Juvenile Court currently coordinates investigation and assessment services for both juvenile and domestic relations cases. Most respondents from the Franklin County Domestic Relations and Juvenile Court felt that this was a strength of their system and would not have been possible if the juvenile and domestic relations jurisdictions were located in separate court divisions.⁸

⁸ The Franklin County Domestic Relations and Juvenile Court supports a Protective Services Department to conduct investigations for custody decisions in divorces or private custody case as well as abuse or neglect cases. The Department also conducts psychological evaluations for delinquency cases. The office is staffed with 16 social workers and 5 clerks.

In contrast, however, some officials from specialized courts were happy with their access to investigation and assessment services and attributed their success in establishing adequate resources to their special focus and leadership. They suggested that the sharing of resources or the development of a resource pool might dilute these efforts and that turf issues might arise as each court vies to control the pool.⁹ They also suggested that resource pools could lead to a waste of resource on cases that do not absolutely require an expenditure.

The smallest jurisdictions were likely to define better family case management in terms of access to social service resources and better coordination of those efforts. This issue was more important than the creation of a family court or information sharing issues. Efforts to coordinate all social service resource on a multi-county level by establishing a regional base for funding was suggested by some interviewees, but issues of transportation frequently frustrated the vision. Transportation was routinely viewed as a critical resource constraint in rural jurisdictions that impeded delivering services to families.

Expansion of Dispute Resolution Programs

9.

Many of the study sites had recently developed dispute resolution programs and were in the process of refining or expanding these services. Most of the new programs were for divorce mediation, private mediation of property, and/or resolution of custody issues. In almost every jurisdiction where the service was available, interviewees agreed that these programs should be expanded. There were also individuals who felt that mediation and/or dispute resolution should be expanded into other areas such as minor delinquency cases. A few respondents even desired the expansion of dispute resolution programs into domestic violence and child abuse, neglect and dependency matters. However, the expansion into these areas was opposed by many officials who argued that these cases are inappropriate for dispute resolution. Some interviewees were generally opposed to the concept of dispute resolution and mediation because these programs create additional procedural layers a family must penetrate prior to finally having their case heard by a judge. Despite some opposition, most of the more than 300 interview

⁹ An experienced juvenile court administrator in one of the urban study sites observed that his court and the domestic relations court could benefit from mutual resources however there is a fundamental obstacle to this theory for which he used the analogy of a copier -- though they may share a copier both courts are still responsible for their product, so the domestic relations court will set the copier on one mode and the juvenile court is likely to set it on another and when it is time to buy a new copier both courts will want to control the purchase to insure the new copier has the features they require. The administrator concluded by noting that at one time the domestic relations and juvenile court had shared the same visitation schedule, then one day the domestic relations court decided (or was required) to make their schedule very complicated. Juvenile Court was not compelled to adopt the new schedule and retained the original form.

respondents advocated at least conservative efforts to establish and expand dispute resolution options in delinquency, unruly, private custody and divorce proceedings.

Concluding Remarks

Resource constraints was a very salient issue to a wide range of interviewees and focus group participants and these concerns were not limited to those individuals working in a particular court. That is, juvenile court representatives were not necessarily more inclined to identify this as a problem than their counterparts in domestic relations and probate courts. A compelling argument for the establishment of a family court focuses on the potential ability of such a court to garner the necessary resources to assist a family in crisis regardless of how that family has come into contact with the court. While most respondents were not sold by this argument or believed that other logistical and jurisdictional issues outweighed this potential strength, they were not dissuaded from stating that efforts should be initiated at the state and local level to expand the resource pool in a number of the areas discussed in this chapter. To some, the pooling of resources may be feasible but statutory changes may be necessary. NCJJ's analysis suggests that the impediments to expanding the resources available to all courts with family jurisdiction and the possible pooling of resources across court is primarily a funding issue. Some additional statutory provisions may need to be made to facilitate this but these concerns are secondary.

Chapter 6

Information Sharing Between Courts

Interviews and site observations suggest that the general state of the Ohio court system's information tracking and sharing capacity is not sufficient to support the improved coordination of family law cases. During the study team's site visits, few individual courts appeared to have good information about their own caseload let alone the capacity to readily share this information in an accurate and timely manner with other courts in their county or throughout the state. A number of automation and information initiatives are underway at local levels and the Supreme Court is providing limited direction and coordination to some of these efforts. Court automation is often an expensive and difficult task to undertake, particularly for small to medium-sized jurisdictions with little or no technical and financial support from the state. Given the mobility of families and the increasing likelihood that some or all members of the family will be party to judicial proceedings in a variety of venues, a strong argument can be made for the state through the Supreme Court to provide leadership, direction, and coordination to these efforts and to interject some consistency across local initiatives that are currently underway or are being planned for the near future.

More than half of the respondents interviewed during site work for the Ohio Family Court Feasibility Study indicated problems related to sharing information between specialized courts that handle family cases. Several of the respondents who identified barriers to efficient information sharing, considered this problem area as the most critical to the coordination of family cases and ranked it above solutions involving court reorganization, clarifying jurisdictional overlap/confusion, or expanding court access to intervention resources for families. Court Improvement Project (CIP) survey results also suggest that the deficiencies in the juvenile court's ability to track child abuse, neglect and dependency cases was a problem. Overall, 42.1% of the respondents to this survey considered the lack of automated case flow tracking and aging reports as a moderate to serious problem in their jurisdiction.¹

Issues related to the sharing of information were most frequently cited as a concern for the specialized courts of Ohio's largest urban jurisdictions (i.e., Cuyahoga, Franklin and Hamilton Counties). As the size of the jurisdiction decreased, so did the frequency of interview respondents citing information

¹ Findings from the CIP Survey are discussed in detail in Chapter 6. Prosecuting attorneys, CASAs and respondents grouped in the composite *Other* category (members of the Ohio Foster Care Association and local Family and Children First Councils) were the most likely to indicate that the lack of these was problematic (55.2%, 70.8% and 69.0%, respectively). Judges and magistrates were the least likely to indicate that this area was a problem (27.7%).

sharing as a primary obstacle to family case coordination. Predictably, information sharing problems in counties under 100,000 population were limited to information sharing across counties or states. Even in large urban jurisdictions like Hamilton and Franklin Counties, the co-location of courts in a single facility decreased the frequency of information sharing problems.² Respondents working in the Cuyahoga County courts were the most likely to report problems with information sharing and were also the most likely to believe that solutions in this area were most critical to improved family case coordination. They viewed information sharing deficiencies as problematic not only with regards to the coordination of family cases across courts but also as a coordination problem for the various types of family cases *within* their own respective courts. Across the 10 study jurisdictions, the most commonly cited barriers to information sharing in their order of frequency were:

- Technological concerns related to the development of a functional, user-friendly and integrated automated court information management system;
- Turf barriers at both the county and court level that complicate efforts to develop comprehensive information management systems and to facilitate the efficient transfer of information across courts; and
- The use of Uniform Child Custody Affidavits to inform the court of prior and pending court cases involving the family.

Technology Concerns

1.

Technology concerns were the most frequently cited obstacles to information sharing between specialized courts with family jurisdiction. These concerns ranged from the general lack of an efficient automated information management system within a court, to the inability for their respective systems to generate anything other than the most rudimentary case flow tracking reports (including the inability to generate a comprehensive summary history profile of a child's or family's prior or current involvement with the court), to the inability to access case history information on a family that cross-cut courts in the same county and, ultimately, within the state.

At least four of the ten counties selected as study sites were in the process of enhancing their management information technology (e.g. Clark, Clermont, Franklin, and Hamilton Counties). In every case the expense and complexities associated with these enhancements limited the planners' vision to the

² The Domestic Relations and Juvenile Courts of Hamilton and Clermont Counties share a newly renovated or constructed facility. All of the Common Pleas divisions and the Municipal Court in Franklin County occupy the same new facility complex. Overall, most interview respondents in these three jurisdictions indicated that the co-location enhanced information sharing across the courts.

particular area the court was trying to address with at best a postponed agenda to visit system linkage and information sharing in the future.³

On one level, many interview respondents considered technology as a way to buy or “plug-in” family case coordination and accordingly blamed problems related to family case coordination on the lack of sufficient county and state funding available to adequately fund the development of state-of-the-art information technology. This straightforward but relatively simplistic view of the problem and its solution was particularly prevalent among parties working outside of the courts (e.g. private attorneys, social service providers). It was most frequently stated in terms of state-wide systems for information transfer. One respondent exclaimed, “I know the technology exists because huge corporations like banks are able to instantly transfer information across the country.” While on the surface this statement is attractive, it does not consider the costs of establishing and supporting such systems in the private sector and ignores the formidable turf issues that exist between courts and agencies in 88 fiercely independent counties. In contrast, key court officials, while recognizing the importance of automation in improving case tracking and coordination, were much more likely to acknowledge the formidable political, funding and technological hurdles that must be addressed in improving the current state of court automation in their respective counties.

Turf Barriers

2.

Interview respondents frequently referred to technology and turf barriers in the same breath. At times, the distinctions between the two and how they impacted the coordination of family cases became blurred. Turf issues with regard to sharing information were most apparent in urban courts and by far the highest frequency of such problems were reported in the Cuyahoga County courts. Three specific obstacles to information sharing that were characterized as turf issues were 1) the laws and rules regarding the confidentiality of certain records, 2) activity in some jurisdictions of County Information

³ For example, The Hamilton County Juvenile Court has developed arguably the most sophisticated and efficient automated information system to track child abuse, neglect and dependency cases in the nation and is currently in the process of completing enhancements that will allow for even more efficient case tracking as well as the automated generation of minute entries. These minutes entries will be generated in the courtroom and will be available to all parties at the conclusion of the hearing. At the same time, this court has a separate automated system to track delinquency and unruly cases. The two respective systems have only very limited interface capabilities and any linkages to other automated systems (Domestic Relations and Probate Courts, CSEA and the county’s local child protective services agency) have not yet been developed.

Boards, and 3) the specialization of the clerk function in *ex officio* capacities separate from the elected Clerk of Courts for the local Court of Common Pleas.

a. Confidentiality Concerns

In the information sharing turf wars between specialized courts and closely related social service agencies, respondents indicated confidentiality is the weapon of choice. Sometimes it is wielded by clerks out of a desire to limit their responsibility or dispense with a cumbersome chore. Other times it is wielded by court or agency administrators who, in the absence of clear statute guidance, establish restrictive or cumbersome policies that do not consider routine procedures for restricting sensitive parts of the record like social histories or psychological evaluations. For example, the project team's examination of Ohio laws related to the confidentiality of juvenile court legal records appears to make their availability to parties in a related family proceeding in another court dependent on the policy established by the presiding juvenile court judge. This interpretation is consistent with site observations which noted wide discrepancies between jurisdictions concerning the access to the legal record in juvenile proceedings. Similarly, access to the records for adoption and guardianship proceedings in probate court is set by the judge who presides over that court. Unlike juvenile court records, there was less variance in the control of these records between jurisdictions. Adoptions in particular, were generally closed to inspection by parties to a case of the family in another court.

NCJJ's examination of statutes related to the confidentiality of divorce and domestic violence records indicates that they are open for public inspection. The record can be examined and copied but cannot be removed from the clerk's office. Qualitative information collected in the 10 study sites indicates variability in the access to these records in terms of the staffing of the clerk's office, facility constraints, and even something as simple as convenient access to a copier. In varying degree, it appears that the availability of these records depended on personal relationships developed by professionals over time. In the absence of clear policy on the issue, it appears that it was often safer and easier for clerks to limit their involvement by claiming the material is confidential or to require a party to file a motion for access and have it approved by the judge. In the words of a certified custody mediator in one of the study sites, "everyone errs in favor of confidentiality and protection of an individual's rights to the detriment of effective case management by the courts," or in the words of a juvenile court administrator, "the access to juvenile court records is an ambiguous issue -- who knows what the restrictions are."

The statutes related to the confidentiality of court records in areas of family jurisdiction are found in Titles 21 and 31 of the Ohio Revised Code. There are also various applicable court rules, both state and county. In order to facilitate information-sharing, some thought needs to be given to the issue of clarifying state statutes and court rules on the confidentiality of court records. Interested parties need to know what records they can and cannot have and what the procedures are for obtaining them. A summary of Ohio statutes and court rules that reference confidentiality of court records is provided in Figure 6.1

Figure 6.1: Statutes Referencing Confidentiality of Court Records By Type of Court Proceedings		
<u>TYPE OF PROCEEDING</u>	<u>CITE(S)</u>	<u>SUMMARY</u>
Adoption	Rule 20, Courts of Common Pleas, Rules of Superintendence	Adoption files are confidential. Access to those files may be authorized by the judge.
Delinquency, Child Abuse, Neglect and Dependency, Guardian ad Litem	Ohio Rev. Code Ann. 2151.14; Rules 32 and 37, Rules of Juvenile Procedure	<p>Probation department reports and records are considered confidential information and shall not be made public.</p> <p>The court may, for good cause shown, deny inspection or limit its scope to specified portions of the social history or medical report.</p> <p>No public use can be made by any person, including a party, of any juvenile court record, except by order of court.</p>
Divorce, Dissolution of Marriage	Ohio Rev. Code Ann. sections 149.43, 2303.20	A clerk of court of common pleas is required to make copies of public records available.
Domestic Violence	Ohio Rev. Code Ann. sections 149.43, 2303.20	A clerk of court of common pleas is required to make copies of public records available.
Guardianship (if appointed by probate court)	Rule 20, Courts of Common Pleas, Rules of Superintendence	Copies of any open records may be obtained at a cost per page as authorized by the judge.

By way of illustration, we provide samples of suggested language taken from the Court of Common Pleas Rules of Superintendence (Rule 2d) and from the Montgomery County Rules of the Domestic Relations Division of the Court of Common Pleas (Rule 4.04).

- Files of _____ proceedings are confidential. Access to these files may be authorized by the judge. A citation for contempt is the penalty for improper use of confidential information.
- Removal of Court Records. No person except a judge of the court of common pleas, magistrate or representative of either shall remove any documents or case files from the custody of the clerk of courts.
- Examination of Court Records. Upon request, the clerk of courts must allow any person to examine, but not remove, any original document or case file that is maintained by its office. Examination shall be allowed during regular business hours.
- Duplication of Court Records. Upon request and the payment of a photocopy fee, the clerk of courts must provide copies of any original document maintained by its office. Copies will be provided during regular business hours within a reasonable period of time as determined by the clerk of courts. A reasonable period of time shall be based upon the extent of the request with efforts toward a 24-hour response time.

Several interview respondents suggested the Supreme Court exercise a leadership role in clarifying confidentiality issues in the family jurisdiction and to provide training to key officials regarding the regulations governing access to various court records. They would encourage that these regulations be so widely distributed that it would become difficult for confidentiality rules to be misapplied and for confidentiality concerns to unnecessarily constrain information flow between courts and others that have a legitimate interest in the record.

b. Turf Issues Related to the Development of Automated Information Management Systems

A number of interviewees indicated that County Data Boards in their respective jurisdictions are often a formidable obstacle to the courts' development of more sophisticated automated information management system and to the networking of these systems to facilitate the transfer of case information across court systems. The boards are commissioned to coordinate data systems in a county and are assembled by the county auditor and the board's secretary is the head of the data center. However, court officials cannot sit on the data board so they cannot influence its decisions. One respondent indicated that because the county auditor is a primary figure on the board, a board often sets an agenda to limit

system improvements because of the associated costs. In this capacity they can be a formidable political barrier to development of necessary automated court system enhancements.⁴

c. Specialization of the Clerking Function

In several of the study sites the presiding judge of the juvenile court, the probate court or the combined probate/juvenile court is the *ex officio* clerk of the court (e.g. Hamilton and Cuyahoga Counties). In all of these jurisdictions the judge had appointed a clerk to manage information and this official was independent of the elected Clerk of the Common Pleas Court. For some, the answer to information sharing between courts was not to consolidate the courts but to consolidate the clerking function under the Clerk of Courts -- remove the *ex officio* title of the special common pleas courts. In the alternative, some interviewees suggested the establishment a “family file” of the legal record by the Clerk of Courts of Common Pleas to which the independent divisions of court would systematically contribute copies of the legal record on family cases.⁵

Use of Uniform Child Custody Affidavits

3.

The most common means of information transfer between courts cited by interviewees relied primarily on attorneys to identify pending matters and prior court history in other courts. In fact, in custody matters including probate guardianships of minors, attorneys or applicants are required to report matters pending in other courts in an affidavit, the Uniform Child Custody Affidavit.⁶ Interview

⁴ One high-level court official in Cuyahoga County reported that it is difficult to even buy a computer let alone establish information sharing systems between the courts. He characterized the Data Board as a “stone wall” that any communication improvements will have to go through.

⁵ For many years, the Hamilton County Juvenile Court’s independent Clerk’s Office maintained a combined legal record of domestic relations and juvenile proceedings. The system was a final vestige of the combined Domestic/Juvenile Court that once existed in Hamilton County and was abandoned in the late 1980s.

⁶ Attorneys representing clients in divorce/dissolution matters in domestic relations courts and private custody cases in juvenile court must complete a Uniform Child Custody Affidavit to identify other parties interested in custody of a child and action pending in other courts. The Uniform Child Affidavit [RC: 3109.27] requires that the affidavit be filed in all child custody proceedings, excluding complaints for neglect, dependent and abused children. Each party has a continuing duty to inform the court of any parenting proceeding concerning the child of which the party obtained information during the proceeding. The following information is required:

- a. child's present address
- b. child's address within last five years
- c. name and address of each persons with whom child has lived during past five years
- d. any other litigation involving parental rights and responsibilities for the care of the child
- e. any information on pending parenting proceeding concerning the child
- f. whether any other party claims parentage, custody, visitation rights to the child
- g. parties' previous conviction for or guilty plea to child abuse or neglect.

respondents who observed few or no problems with information sharing between courts often cited the requirement of attorneys to complete the Uniform Child Custody Affidavit as an adequate arrangement to address a fundamental area of court overlap around paternity, custody, support issues. The professional perception of the adequacy of the arrangement corresponded with the size of the jurisdiction and the number of specialized courts. Critics of this system for family case coordination cited a number of problems associated with the court's reliance on these affidavits including concerns related to:

- Attorneys completing the task (e.g. attorneys treat it like a formality):
- Variability in the ability of attorneys to effectively communicate with their clients to explain the significance of the affidavit and ascertain their client's current and past involvement in other courts;
- The ability of clients to remember and understand past court cases, attach significance to them and bring them to the attention of their attorney; and
- The potential attorney costs associated with researching these matters.

Other critics also believed that the accuracy of the affidavits suffers in *pro se* cases and that many juvenile and probate custody filings are often filed without the assistance of an attorney. While it is true attorneys or *pro se* litigants usually have a vested interest in identifying matters pending in other courts or prior court history, this is not always the case and can lead to delays in case process as a judge unravels conflicting orders and movements in other courts.

Concluding Remarks

Interview data and experiences in other states clearly indicate that information sharing is a key to achieving coordinated court processes and minimizing jurisdictional conflicts. This is true within courts, among courts, and between courts and service providers. Short of mandating a new family court structure, the development of good management information is, perhaps, the most powerful tool to be used in better servicing families in courts. This is true, not only on a case basis, but also in the area of management reporting that can be used to track the overall progress of the court in improving its practice. A strong argument can be made for the state through the Supreme Court to provide leadership, direction, and coordination to these efforts and to interject some consistency across local initiatives that are currently underway or are being planned for the near future.

Without a guiding rubric, however, the mere automation of individual courts for their own internal purposes has the strong potential to lead to the automated equivalent of the Tower of Babel. Early decisions must be made concerning the types of information to be collected and how these data are

to be shared (e.g., under what circumstances, at whose request, and for what purpose). Additionally, specifications should be developed to identify the types of caseload, aging, and statistical reports these systems should be able to generate and the types of summary court history information that should be available on families and individual family members involved in court proceedings in the various judicial venues. While this is difficult work, it is essential to the future design of information system capacity.

As part of these efforts, project staff recommend the expansion of a pilot juvenile data network initiated by the Supreme Court in 1992 to give Ohio's juvenile courts the ability to share case filing and disposition data on the various types of cases that fall under this court's jurisdiction (including delinquency/unruly cases, neglect, abuse and dependency cases, permanent custody cases, juvenile traffic, paternity, custody, URESA, etc.).⁷ Included in the design of this pilot system was the development of a statewide name index that gave individual juvenile courts the ability to determine if a juvenile involved in a court proceeding in their court was currently, or had previously been, involved in a juvenile court proceeding in another Ohio county. While juvenile courts did not have direct access to case-level data of other juvenile courts, the index would identify specific proceedings involving a child and would facilitate the sharing of this information between juvenile courts via phone or correspondence. We suggest that the network be expanded to include all family-related cases in juvenile, domestic relations and probate courts. This expanded family court data network could be designed and field-tested as part of a pilot site effort.

While automation is the best solution, there are additional mechanisms that should be pursued to facilitate the access of and transfer of information by the courts. Counties can establish a "family" clerk that has joint responsibility for records from multiple courts concerning the same family. Either with or without an actual structured "family" record, this consolidation of function can lead to "one-stop-shopping" for relevant information vital to a new legal proceeding. A second option suggested by some interviewees addresses the information retrieval function rather than the storage and maintenance function by designating a "family" information specialist whose responsibility it is to see that all relevant information is gathered from disparate sources when a new family legal proceeding is initiated.

⁷ Please see Patricia McFall Torbet and Gregory J. Halemba, *Plan for a State-wide Juvenile Court Reporting System in Ohio: Recommendations of the Juvenile Data Definition Task Force*, Pittsburgh, PA: National Center for Juvenile Justice, February, 1993.

Whatever the option chosen, additional resources spent on assuring accurate, timely and complete information is an investment well made, and will reduce the subsequent cost of court involvement as well as improve the effectiveness of the intervention.

Chapter 7

Ohio Court Improvement Project Findings

As part of the Ohio Family Court Feasibility Study, the National Center for Juvenile Justice was enlisted to conduct an assessment of Ohio's juvenile court system's handling of child abuse, neglect and dependency cases. The role and responsibilities of the juvenile court in the handling of dependent, neglect and abuse cases has expanded dramatically since the passage of the Federal Adoption Assistance and Child Welfare Act (Public Law 96-272) in 1980 and the resulting changes in state laws necessitated by the Act.¹ Juvenile courts now take a far more active role in the decision-making and oversight of child maltreatment cases. However, Public Law 96-272 created a range of procedural expectations of the judiciary without anticipating the resources that would be required by the court and the service delivery system to meet these mandates. As a result, juvenile courts and child protective service systems throughout the country have had difficulty meeting the mandates of the Act and, at the same time, keeping up with the sharp increase in child abuse, neglect and dependency filings.

The pressures exerted on Ohio's juvenile court and child protective service system parallel that of national trends. In 1995, there were 105,910 reports of alleged child neglect and abuse, up 11% from 95,240 in 1991 (see Table 7.1). Out-of-home placements also grew by a corresponding amount (12%) from 27,606 in 1991 to 30,863 in 1995.

Indicator	1991	1993	1995	Percent Increase
Neglect and Abuse Reports	95,240	107,582	105,910	11%
Out-Of-Home Placements	27,606	28,434	30,863	12%
New, Reactivated and Transferred Filings in Juvenile Court	21,162	27,139	27,006	28%
New Permanent Custody Motions Filed in Juvenile Court	940	1,470	1,217	29%
* Sources: Public Children Services Association of Ohio, <i>The Child Protection Mission: Safe Children and Stable Families, A Factbook (1996-1997)</i> and <i>The Challenge Continues: Strengthening Ohio's Families, A Factbook (1994-1995)</i> . The Supreme Court of Ohio, <i>Ohio Courts Summary - 1991, 1993 and 1995</i> .				

¹ Ohio passed a comprehensive set of statutes in 1989 (Senate Bill 89) that clearly delineates the juvenile court's responsibilities, dispositional options and time lines for court action in child victimization/maltreatment cases. Some statutory revisions were made to these requirements in 1996.

The number of new, transferred or reactivated child abuse, neglect and dependency cases filed in the state's 88 juvenile courts increased by 28% during this five-year period from 21,162 such filings in 1991 to 27,006 filings in 1995. The courts experienced a parallel increase in the number of new filings of permanent custody motions requesting that the court terminate the parental rights of children who have been legally determined to be abused, neglected or dependent. Between 1991 and 1995, the number of new permanent custody motions filed with the court increased from 940 to 1,217, a 29% increase.

The Ohio Court Improvement Project Survey

It is within such an environment that the Ohio Department of Human Services and the Supreme Court of Ohio availed itself of funds made available by the federal government through the U.S. Department of Health and Human Services' Court Improvement Project to examine the judicial handling of the state's abused, neglected and dependent children. In 1993, Congress passed the Omnibus Budget Reconciliation Act (Public Law 103-66) which established a new grant program through which funds were made available to all 50 states to assess and improve their court system's handling of child maltreatment cases. Funding was provided for a four-year period.

First-year funding was dedicated for statewide assessments of the court system's handling of dependent, neglect and abuse cases. Specifically, these assessments were to examine the degree to which courts have met statutory obligations associated with the passage of the Adoption Assistance and Child Welfare Act (Public Law 96-272) and to comply with state and federal statutes that define judicial responsibilities in these cases. These assessments were designed to provide documentation of the court's functioning and resulted in a series of recommendations that would serve as a blueprint for implementing required changes. The remaining three years of CIP funding were dedicated to supporting the implementation efforts identified during the first-year assessment.

A major component of the Ohio Court Improvement Project assessment was the administration of a mail survey to a wide variety of professionals working in the juvenile justice and child protective services systems to gauge their opinions and attitudes regarding a range of issues related to the judicial handling of child abuse, neglect and dependency cases including those cases in which motions for permanent custody have been filed. This chapter summarizes the results of this survey. Key individuals surveyed included juvenile court judges and magistrates, juvenile court administrators, child protective services (or assistant county) attorneys responsible for the prosecution of child abuse, neglect and dependency cases, court-appointed attorneys assigned to represent parents in these proceedings, guardian

ad litem (GALs) appointed by the court to protect the best interests of children in these proceedings, local child protective services caseworkers, supervisors and administrators, District DHS directors, court-appointed special advocates (CASAs), Ohio Foster Care Association members, and local Family and Children First Councils' directors and coordinators.

Methodology and Survey Response Rates

I.

Each of Ohio's 88 counties were represented in the survey. All juvenile court judges were included in the survey as well most juvenile court magistrates who preside over a child abuse, neglect and dependency docket. Additional survey questionnaires were sent to the presiding juvenile court judge to distribute to their juvenile court administrator, court-appointed attorneys representing parents and guardian ad litem (GALs) appointed to protect the best interest of children in these proceedings.² Survey questionnaires were also sent to the vast majority of child protective services (or assistant county) attorneys responsible for the prosecution of these cases, to all District DHS directors and to directors of the 88 county child protective services (CPS) agencies (either county divisions of DHS or local children services bureaus) as well as a sample of local CPS administrators, supervisors and caseworkers. Directors of local CASA programs received survey questionnaires and were asked to distribute them to a selected number of their volunteers. Lastly, mailing lists of local Family and Children First Council chairpersons, coordinators and members of the Ohio Foster Care Association were obtained through the Ohio Supreme Court and all individuals on these lists were provided survey questionnaires.

In all, a total of 1,907 survey questionnaires were mailed to the above individuals. The overall survey response rate was 44.7% with 852 survey questionnaires returned (Table 7.2). Caseworkers were the most likely to return survey questionnaires (78.6%). Between 56-57% of all survey questionnaires distributed to GALs, local CPS administrators and prosecuting attorneys were also returned. Ohio Foster Care Association representatives, CASAs and Families First Council members were the least likely to respond (9.8%, 22.1% and 25.9%, respectively).³

² The number of survey questionnaires sent to the presiding juvenile court judges for court-appointed attorneys and GALs varied by the size of the county.

³ The low response rate for CASAs may be at least partially attributable to the fact that in some counties CASAs are appointed as GALs. In instances in which a respondent indicated that they serve as both GAL and a CASA, the individual was considered a GAL for the purposes of this survey. Additionally, in some counties an attorney may be appointed to represent parents in one case and to serve as a child's GAL in another. In these instances, the respondent was also considered a GAL.

Table 7.2: Survey Response Rate by Type of Respondent

Type of Respondent	Mailed	Received	Response Rate
Judge/Magistrates	256	105	41.0%
Prosecuting Attorneys	130	73	56.2
Court-Appointed Counsel or Parents	215	63	29.3
Guardian ad Litem (GALs)	193	110	57.0
Local CPS Caseworkers	215	169	78.6
Local CPS Supervisor/Administrator and District DHS Directors	306	173	56.5
Juvenile Court Administrators	101	51	50.5
Court-Appointed Special Advocates (CASAs)	226	50	22.1
Ohio Foster Care Association Members	122	12	9.8
Family and Children First Council members	143	37	25.9
Miscellaneous and Unidentified Respondents	n/a	2	n/a
Totals	1907	852	44.7%

The reader is cautioned that the *overall total response percentages* for the various survey items presented in the subsequent analysis are heavily weighted towards the response tendencies of the larger survey populations. Project staff believed it was important to have the CIP survey as all-inclusive as possible. However, this creates some difficulties in interpreting overall survey results because on one end of the spectrum there are relatively few CASAs, juvenile court administrators, court-appointed attorneys for parents and prosecuting attorneys included in the analysis when contrasted to the considerably larger number of child welfare administrators, supervisors and caseworkers who responded to the survey. Overall response rates reflect these differences in the size of the various respondent categories. While overall response rates are presented in the subsequent tables, the analysis will focus primarily on response rates on the various survey items within these individual respondent categories.⁴

II. Satisfaction with the Juvenile Court's Handling of Child Abuse, Neglect and Dependency Cases

Overall, most respondents were satisfied with the juvenile court's handling of child abuse, neglect and dependency cases. Only 15.8% of all respondents indicated that they were dissatisfied or somewhat dissatisfied with their juvenile court handling of these cases (Table 7.3). Juvenile court

⁴ A general frequency distribution of responses to all items of the CIP survey is provided in Appendix A.

administrators and judges/magistrates were the least likely to express some dissatisfaction (2.0% and 3.8%, respectively), while CASAs and a composite *Other* category of Ohio Foster Care Association, Family and Children First Council members and miscellaneous respondents were most likely to indicate that they were dissatisfied or somewhat dissatisfied with their court's handling of these cases (26.0% and 35.2%, respectively).

The levels of dissatisfaction increased somewhat for child abuse, neglect and dependency cases in which a motion for permanent custody⁵ was filed (22.4% overall) with judges and magistrates the least likely to express dissatisfaction (3.8%) and CASAs the most likely (38.6%). CPS administrators, supervisors and caseworkers were also relatively more likely to express at least some dissatisfaction in their court's handling of permanent custody cases (31.0%) as were respondents grouped in the composite *Other* category (34.0%).

Table 7.3: Percentage of Respondents Dissatisfied or Somewhat Dissatisfied with the Juvenile Courts' Handling of Child Abuse, Neglect and Dependency Cases by Type of Respondent¹

Dissatisfied/Somewhat Dissatisfied With Juvenile Court's Handling of:	Judges/Magistrates	Prosecuting Attorneys	Appointed Counsel/GAL	CPS	Court Admin.	CASA	Other ²	Totals ³
Child Abuse, Neglect and Dependency Cases	3.8% (105)	11.0% (73)	10.6% (170)	20.7% (338)	2.0% (51)	26.0% (50)	35.2% (54)	15.8% (841)
Permanent Custody Cases	3.8 (104)	14.7 (68)	17.7 (164)	31.0 (306)	7.8 (51)	38.6 (44)	34.0 (50)	22.4 (787)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court's handling of these cases multiply the numbers in parentheses by the associated percentages. For example, 4 judges/magistrates (105 x 3.8%) indicated that they were dissatisfied or somewhat dissatisfied with the court's handling of child abuse, neglect and dependency cases.

² Includes Ohio Foster Care Association members, Family and Children First Council members and miscellaneous respondents.

³ "Don't know" responses were treated as missing values for this analysis.

The percentage of respondents expressing dissatisfaction with the juvenile court's handling of child abuse, neglect and dependency cases and permanent custody cases varied little when controlling for the size of the respondent's county (see Table 7.4). Respondents from Ohio's smallest counties

⁵ All subsequent references in the text to permanent custody cases refer to the entire range of child abuse, neglect and dependency case in which a motion for permanent custody has been filed.

(populations of under 50,000)⁶ were most likely to express some dissatisfaction (17.0%) and respondents from counties with populations between 50,000 to 100,000⁷ were the least likely (14.4%). Overall, 16.0% of respondents from the state's largest counties (with populations of above 750,000)⁸ and medium-large counties (populations between 250,000 and 750,000)⁹ also expressed at least some dissatisfaction with the judicial handling of child abuse, neglect and dependency cases.

Table 7.4: Percentage of Respondents Dissatisfied or Somewhat Dissatisfied with the Juvenile Courts' Handling of Child Abuse, Neglect and Dependency cases by County Population

Dissatisfied/Somewhat Dissatisfied With Court's Handling of:	Greater than 750,000	250,000 to 750,000	100,000 to 250,000	50,000 to 100,000	Less than 50,000	Totals²
Child Abuse, Neglect and Dependency Cases	16.0% (125)	16.0% (150)	15.6% (179)	14.4% (167)	17.0% (218)	15.9% (839)
Permanent Custody Cases	22.8 (114)	29.5 (146)	21.3 (164)	22.7 (154)	17.9 (207)	22.4 (785)
<p>¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court's handling of these cases multiply the numbers in parentheses by the associated percentages.</p> <p>² "Don't know" responses were treated as missing values for this analysis.</p>						

Greater variation was found when examining the frequency with which respondents from different size counties indicated that they were dissatisfied or somewhat dissatisfied with their court's handling of permanent custody cases. Respondents from Ohio's medium-large counties were most likely to express at least some dissatisfaction (29.5%); respondents from the smallest counties were least likely (17.9%). Slightly more than one in five respondents from the state's largest, medium (100,000-250,000

⁶ As of the 1990 Census, Ohio had 43 counties with populations of less than 50,000.

⁷ There are 20 Ohio counties with populations between 50,000 and 100,000.

⁸ Ohio's three largest counties, Cuyahoga, Franklin and Hamilton Counties, have populations of more than 750,000.

⁹ Butler, Lorain, Lucas, Mahoning, Montgomery, Stark and Summit Counties have populations between 250,000 and 750,000.

population)¹⁰ and medium-small counties indicated that they were at least somewhat dissatisfied with their court's handling of permanent custody cases (22.8%, 21.3% and 22.7%, respectively).

Satisfaction with the Timeliness, Fairness and Thoroughness of Juvenile Court Proceedings

III.

The survey also requested that respondents rate their level of satisfaction on specific attributes traditionally associated with the court process. That is, respondents were queried regarding their satisfaction with the timeliness, fairness and thoroughness of juvenile court proceedings on child abuse, neglect and dependency cases and on such cases in which motions for permanent custody were filed. Response rates on the later two attributes (fairness and thoroughness) were consistent with rates generated on the previous overall measure of satisfaction found in Table 7.3. Overall, 14.1% of respondents indicated at least some dissatisfaction with the fairness of court proceedings on child abuse, neglect and dependency cases (see Table 7.5). A slightly smaller percentage (13.3%) expressed dissatisfaction with the court's fairness in handling permanent custody cases. With respect to thoroughness, 20.0% of all respondents expressed at least some level of dissatisfaction with respect to child abuse, neglect and dependency cases. For permanent custody cases, 15.6% of respondents indicated that they were dissatisfied or somewhat dissatisfied with their court's performance on this measure.

However, respondents generally were more likely to express at least some dissatisfaction when considering their court's performance with respect to timeliness. Overall, slightly more than one-third of all respondents (33.6%) indicated that they were dissatisfied or somewhat dissatisfied with the timeliness of proceedings on permanent custody cases in their juvenile court including 50.0% of all CASAs, 46.3% of all CPS administrators, supervisors and caseworkers, and 31.4% of all prosecuting attorneys. Among juvenile court judges and magistrates, dissatisfaction rates were considerably lower (9.9%).

Slightly more than a quarter of all respondents (25.8%) expressed at least some dissatisfaction on this measure for child abuse, neglect and dependency cases. CASA respondents again were the most likely to be dissatisfied (40.0%), as were *Other* respondents (39.6%). Among CPS respondents, 32.0% indicated at least some level of dissatisfaction with the timeliness of court proceedings on child abuse,

¹⁰ Fifteen Ohio counties have populations between 100,000 and 250,000 including Allen, Clark, Clermont, Columbiana, Fairfield, Green, Lake, Licking, Medina, Portage, Richland, Trumbull, Warren, Wayne and Wood Counties.

neglect and dependency cases as did 26.0% of all prosecuting attorney respondents. Dissatisfaction rates were again markedly lower among juvenile court judges and magistrates (6.8%).

Table 7.5: Percentage of Respondents Dissatisfied or Somewhat Dissatisfied with the Timeliness, Fairness and Thoroughness of the Juvenile Court’s Handling Child Abuse, Neglect and Dependency Cases by Type of Respondent¹

Dissatisfied/Somewhat Dissatisfied:	Judges/ Magistrates	Prosecuting Attorneys	Appointed Counsel/GAL	CPS	Court Admin.	CASA	Other²	Totals³
<u>Court’s Timeliness in Handling:</u>								
Child Abuse, Neglect and Dependency Cases	6.8% (103)	26.0% (73)	17.4% (172)	32.7% (339)	17.6% (51)	40.0% (50)	39.6% (53)	25.8% (841)
Permanent Custody Cases	9.9 (101)	31.4 (70)	26.7 (165)	46.3 (298)	16.0 (50)	50.0 (44)	34.8 (46)	33.6 (774)
<u>Court’s Fairness in Handling:</u>								
Child Abuse, Neglect and Dependency Cases	2.9% (102)	13.9% (72)	8.7% (173)	18.4% (337)	4.0% (50)	20.4% (49)	29.6% (54)	14.1% (837)
Permanent Custody Cases	2.0 (101)	12.9 (70)	12.0 (166)	17.3 (294)	3.9 (51)	17.8 (45)	23.4 (47)	13.3 (774)
<u>Court’s Thoroughness in Handling:</u>								
Child Abuse, Neglect and Dependency Cases	5.9% (101)	13.9% (72)	13.9% (173)	25.7% (338)	6.0% (50)	35.4% (48)	38.5% (52)	20.0% (834)
Permanent Custody Cases	3.9 (102)	11.6 (69)	11.4 (166)	22.0 (295)	6.1 (49)	22.7 (44)	25.0 (44)	15.6 (769)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court’s handling of these cases multiply the numbers in parentheses by the associated percentages.

² Includes Ohio Foster Care Association members, Family and Children First Council members and miscellaneous respondents.

³ “Don’t know” responses were treated as missing values for this analysis.

No discernible pattern was identified when examining respondent dissatisfaction with court timeliness and thoroughness when controlling for county population (See Appendix F, Table 1). However, consistently higher rates of dissatisfaction with court timeliness in permanent custody proceedings were found among respondents from counties with populations of 100,000 or more than for smaller counties, particularly the 43 smallest counties with populations of less than 50,000 (see Table

7.6). For permanent custody cases, 32.4% of respondents from the three largest counties, 46.9% of respondents from the Ohio's seven medium-large counties, and 35.6% of respondents from the 15 medium sized counties indicated at least some dissatisfaction with court timeliness. Overall, 38.8% of respondents from these three county groupings stated that they were dissatisfied or somewhat dissatisfied with the timeliness of their juvenile court's processing of permanent custody motions. Among respondents from the small-medium counties (populations between 50,000 - 100,000), 32.0% expressed at least some dissatisfaction with regard to the court's timeliness in permanent custody cases, and slightly less than one quarter of all respondents from the state's smallest counties (24.5%) expressed at least some dissatisfaction on this measure of court performance.

With respect to the court timeliness on child abuse, neglect and dependency cases, dissatisfaction rates varied less but respondents from the small-medium and smallest counties were less likely to state they were dissatisfied (24.7% and 19.4%, respectively) than respondents from the state's largest, medium-large, and medium sized counties (29.3%, 34.6% and 25.0%, respectively).

Table 7.6: Percentage of Respondents Dissatisfied or Somewhat Dissatisfied with the Timeliness of the Juvenile Courts' Handling of Child Abuse, Neglect and Dependency, Cases by County Population

Dissatisfied/Somewhat Dissatisfied With the Court's Timeliness in:	Greater than 750,000	250,000 to 750,000	100,000 to 250,000	50,000 to 100,000	Less than 50,000	Totals ²
Child Abuse, Neglect and Dependency Cases	29.3% (123)	34.6% (153)	25.0% (180)	24.7% (166)	19.4% (217)	25.9% (839)
Permanent Custody Cases	32.4 (111)	46.9 (147)	35.6 (160)	32.0 (150)	24.5 (204)	33.7 (772)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court's handling of these cases multiply the numbers in parentheses by the associated percentages.

² "Don't know" responses were treated as missing values for this analysis.

Ability of the Juvenile Court to Comply with Ohio Statutory Time Requirements

IV.

Ohio has been in the forefront with respect to enacting legislation (Senate Bill 89) that places clear time limits on the completion of various types of court proceedings on child abuse, neglect and dependency complaints and on the length of time a child can remain in temporary custody. Recent (1996) legislation also places time limits on the completion of court proceedings on motions for permanent custody. Additionally, Senate Bill 89 limits the court's use of long-term foster care as a dispositional/permanent plan option for victimized/maltreated children. These legislative requirements require the court to :

- Conduct a shelter care hearing within 72 hours of a child's removal from the home;
- Conduct an adjudication hearing within 60 days of the filing of the complaint with the juvenile court;
- Conduct a disposition hearing within 90 days of the filing of the complaint with the court;
- Complete all proceedings and issue an order disposing of a motion for permanent custody within 200 days of the motion filing date;
- Limit the time a child remains in temporary custody to one year (from the time of removal or filing of the complaint with the juvenile court whichever is earlier) with the possibility of up to two additional six-month extensions;¹¹
- Limit the use of long-term foster care as a permanent plan option to older children and children with significant special needs;¹² and
- Conduct an annual review hearing within one year of the filing of the complaint or placement in shelter care whichever is earlier.

¹¹ Ohio statutes state that a juvenile court can only grant up to two six-month extensions if clear and convincing evidence is presented to the effect that there has been significant progress on the case plan and that there is reasonable cause to believe that there will be family reunification or other permanent placement within the period of extension. Please see Paula Shrive and Barbara Seibel, *Ohio Deskbook of Juvenile Court Procedures on Child Abuse, Neglect and Dependency*, Prepared for the Ohio Association of Juvenile and Family Court Judges (1988)

¹² Ohio Revised Code section 2151 only permits the court to place a child in long-term foster care if it finds by clear and convincing evidence that such placement is in the best interest of the child and that one of three conditions exists. First, that the child has physical, mental or psychological needs which render him/her unable to function in a family-like setting. Secondly, that the parents have significant physical, mental or psychological problems which render them unable to care for the child and that adoption is not in the best interest and that the child retains a significant and positive relationship with a parent or relative. Lastly, long-term foster care may be appropriate for a child 16 years of age or older who is unwilling to accept or adapt to a permanent placement and who is in an agency program preparing the child for independent living. Please see Shrive and Seibel, *Ohio Deskbook ...*, pp. 129-132.

Survey respondents were queried as to how successful they believed their juvenile courts were in meeting the above statutory requirements. As reflected in Table 7.7, respondents believed that Ohio juvenile courts, for the most part, have been successful or somewhat successful in meeting these requirements.¹³ Upwards of 85% of all respondents indicated that their courts were at least somewhat successful in meeting all of the above statutory requirements with the exception of the 200 day time limit on completing proceedings on permanent custody motions. For the latter, 74.1% indicated that their courts were successful or somewhat successful in meeting this requirement.¹⁴ Successful and somewhat successful response rates in the mid 90 percentiles were found on the shelter care hearing and annual review hearing items (96.5% and 94.8%, respectively). Little variation in response rates was found across respondent types with the exception of the items referencing statutory requirements that limit placement on temporary custody status to two years and the use of long-term foster care as a permanent plan option. In these instances, response rates from CASA respondents were considerably lower than for other respondents particularly on the long-term foster care item. That is, while 67.5% of CASAs indicated that their courts were successful or somewhat successful in limiting the use of long-term foster care, successful/somewhat successful response rates for other respondent categories ranged from 83.9% (CPS administrators, supervisors and caseworkers) to 97.1% (judges and magistrates). Successful and somewhat successful response rates for the composite *Other* respondent category also were consistently lower on these two measures.¹⁵

Table 7.7: Percentage of Respondents Indicating That Their Juvenile Court has been “Successful” or “Somewhat Successful” in Meeting Ohio Statutory Requirements Related to the Judicial Processing of Child Abuse, Neglect and Dependency Cases by Type of Respondent¹

¹³ Response rates also did not vary considerably when controlling for county population. Please see Appendix B.

¹⁴ It is not surprising that the successful response rate is lower for this statutory requirement. Permanent custody proceedings are the most contentious and difficult decisions that courts face in child victimization/maltreatment matters. Furthermore, this time requirement was only enacted in the past year and Ohio juvenile courts are just now in the process of adjusting to the 200 day time limit. On the other hand, the 200 day limit is a fairly generous limit and one would expect that juvenile courts should, in most cases, complete all permanent custody proceedings within this time frame without statutory prodding. Hamilton County (Cincinnati) has established an internal policy requiring that proceedings on permanent custody motions be completed within 90 days.

¹⁵ Additional survey items addressed these concerns and are discussed in later sections of this chapter.

Juvenile Court has been Successful or Somewhat Successful in Meeting the Following Statutory Requirements:	Judges/ Magistrates	Prosecuting Attorneys	Appointed Counsel/GAL	CPS	Court Admin.	CASA	Other²	Totals³
Conduct a Shelter Care Hearing Within 72 Hours of Removal	100.0% (103)	97.2% (72)	98.2% (164)	94.6% (331)	96.1% (51)	95.5% (44)	96.9% (32)	96.5% (797)
Conduct an Adjudication Hearing Within 60 days of Complaint Filing	98.1 (103)	83.6 (73)	86.3 (168)	85.1 (328)	94.1 (51)	91.7 (48)	90.6 (32)	88.0 (803)
Conduct a Disposition Hearing Within 90 days of Complaint Filing	99.0 (103)	88.9 (72)	88.8 (170)	85.7 (328)	92.0 (50)	83.3 (48)	93.3 (30)	88.9 (801)
Complete All Proceedings and Issue an Order Disposing of a Motion for Permanent Custody within 200 Days	87.9 (99)	74.6 (67)	76.6 (145)	64.1 (251)	93.6 (47)	71.1 (38)	72.4 (29)	74.1 (676)
Limit Temporary Custody to 2 Years (includes two 6 month extensions)	96.1 (103)	90.4 (73)	91.6 (166)	84.2 (316)	89.8 (49)	73.9 (46)	65.8 (38)	86.7 (791)
Limit the Use of Long Term Foster Care as a Permanent Plan Option to Older and Special Needs Children	97.1 (102)	87.3 (71)	89.7 (145)	83.9 (299)	93.5 (46)	67.5 (40)	64.1 (39)	85.8 (742)
Conduct Annual Review Hearing within 1 Year of Complaint Filing or Shelter Placement (whichever earlier)	99.0 (103)	97.2 (72)	97.0 (167)	91.0 (322)	100.0 (51)	97.8 (45)	91.2 (34)	94.8 (794)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court's handling of these cases multiply the numbers in parentheses by the associated percentages.

² Includes Ohio Foster Care Association members, Family and Children First Council members and miscellaneous respondents.

³ "Don't know" responses were treated as missing values for this analysis.

Juvenile Court and Child Protective Service System Characteristics That

V.

Impact the Judicial Handling of Child Abuse, Neglect and Dependency Cases

The quality of judicial proceedings in child abuse, neglect and dependency cases is impacted by a wide range of juvenile court and child protective services system characteristics including the number of such cases requiring judicial intervention, the court's desire/ability to exercise judicial oversight, case flow management arrangements that facilitate case flow and case monitoring, the availability and delivery of services, the training and experience of professionals involved in these cases, and the level of resources available to the court and the child protective services system to effectively intervene in the lives of victimized children and their families.

A number of questions about these issues was incorporated into the CIP survey. Respondents were asked to assess the degree to which specific organizational and procedural arrangements were thought to present problems in their court for the handling of child abuse, neglect and dependency cases. For each item listed, respondents were asked to indicate whether it was "not a problem," a "minor" problem, a "moderate" problem, or a "serious" problem. In all, 55 such items were included in the survey.¹⁶ The remaining sections of this chapter will closely examine those items that respondents most frequently indicated were a "moderate" to "serious" problem for their court. The analysis of these items is divided into five major sections related to:

1. Case flow management;
2. The timing of critical judicial events on these cases;
3. The delivery of services;
4. Court oversight of service delivery; and
5. Training and experience of those intervening in these cases;

For the most part, this summary will examine response rate differences for these organizational and procedural items across different respondent types. Differences in response rates across geographical boundaries are only briefly examined. Appendix F contains a comprehensive set of data

¹⁶ This survey is adapted from a similar survey that was used to measure attitudes regarding a range of issues related to delays in the judicial processing of delinquency cases. Please see Jeffrey Butts and Gregory J. Halemba, "Delays in Juvenile Justice: Findings from a National Survey," *Juvenile and Family Court Journal*, 1994, Vol. 45, No. 4, pp. 33-46.

tables examining differences in the frequency with which problems were noted across different counties in Ohio. In general, moderate to serious problems in most of the organizational and procedural items contained in the survey were not as frequently noted in the smaller counties than in their larger urban counterparts.

1. Case Flow Management

The survey contained numerous items that tapped the ability of the juvenile court to facilitate the timely processing of its cases and to effectively monitor its case flow. Items examining the availability of sufficient resources (most specifically, personnel) and the size of the court's caseload are included in this grouping. These two issues directly impact the juvenile court's ability to effectively manage the flow of its child abuse, neglect and dependency cases. In all, response rates for 15 such items are summarized in Table 7.8.

One of the calendaring measures proved to be the most problematic for many respondents. Overall 48.9% of all respondents indicated that the amount of time waiting for hearings to commence was a moderate to serious problem in their courts. CPS respondents and prosecuting attorneys were most likely to indicate that this was a problem (58.5% and 52.8%, respectively). Almost half of all CASAs and court-appointed counsel/GALs also indicated too much waiting time was a moderate to serious problem (48.9% and 46.8%, respectively). Judges/magistrates and juvenile court administrators were considerably less likely to indicate that this was a problem (31.4% and 25.5%, respectively). Survey results, however, do not suggest that the scheduling of multiple hearings in the same time slot is a primary reason for hearing time delays. Only 28.8% of all respondents indicated that such stacking of hearings was a problem in their court. CPS respondents were the most likely to indicate that this was a moderate to serious problem (34.6%).

In general, judges and magistrates were somewhat less likely to indicate that moderate to serious problems existed on most of the case flow management items contained in Table 7.8. The exceptions were on two closely related items - the number of judges and the amount of docket time available to provide active oversight on child abuse, neglect and dependency cases. On the later issue, 45.1% of all judges and magistrates indicated that insufficient docket time was problematic. In addition, 38.5% of responding judges and magistrates indicated that not enough judicial officers was a moderate to serious problem in their courts. Among all respondents, this item on available docket time was the fourth most frequently cited case flow management problem area (39.3%).

Slightly more than four in ten judges and magistrates (40.2%) believed that the high volume of delinquency cases in their court was a moderate to serious problem that limited the amount of hearing time available for child abuse, neglect and dependency cases. A considerable percentage of CPS, CASA and *Other* respondents also believed likewise (43.2%, 48.5% and 56.8%, respectively). Overall, the volume of delinquency cases was the third most frequently cited case flow management problem area (41.1%).

Table 7.8: Percentage of Respondents Indicating a “Moderate” to “Serious” Problem in Case Flow Management Issues Related to the Juvenile Court’s Handling of Child Abuse, Neglect and Dependency Cases By Type of Respondent¹

Moderate to Serious Problem Noted in the Following Case Flow Management Areas:	Judges/ Magistrates	Prosecuting Attorneys	Appointed Counsel/GAL	CPS	Court			Totals ³
					Admin.	CASA	Other ²	
Not Enough Judges and Magistrates to Preside Over These Cases	38.5% (104)	32.8% (67)	40.0% (165)	31.8% (314)	32.0% (50)	44.4% (45)	47.6% (42)	36.1% (787)
Insufficient Docket Time to Provide Active Oversight	45.1 (102)	35.4 (65)	38.9 (157)	34.7 (294)	28.6 (49)	56.1 (41)	61.0 (41)	39.3 (749)
Insufficient Court Staff to Effectively Manage Case Flow	30.5 (105)	38.6 (70)	30.1 (166)	29.1 (299)	40.0 (50)	46.5 (43)	55.0 (40)	33.4 (773)
Too Many Continuances Granted	29.1 (103)	24.6 (69)	27.1 (166)	44.3 (316)	43.1 (51)	77.3 (44)	47.4 (38)	38.9 (787)
Lack of Guidelines for the Granting of Continuances	17.3 (104)	24.3 (70)	22.7 (163)	39.5 (271)	32.0 (50)	69.7 (33)	34.5 (29)	31.7 (720)
Scheduling of Multiple Hearings in the Same Time Slot	22.9 (105)	21.1 (71)	29.6 (169)	34.6 (312)	14.6 (48)	25.0 (44)	31.0 (29)	28.8 (778)
Too Much Time Spent Waiting In Court for Hearings to Commence	31.4 (105)	52.8 (72)	46.8 (171)	58.5 (325)	25.5 (51)	48.9 (47)	50.0 (36)	48.9 (807)
Delays in the Distribution of Minute Entries	13.7 (95)	21.2 (66)	20.9 (153)	30.5 (292)	23.4 (47)	34.2 (38)	33.3 (27)	25.2 (718)
Inadequate/Slow Service of Process	35.2 (105)	26.8 (71)	22.2 (153)	23.0 (283)	29.4 (51)	39.5 (38)	45.5 (22)	27.0 (723)
Lack of Automated Case Flow Tracking and Aging Reports	27.7 (101)	55.2 (58)	39.7 (121)	40.8 (240)	38.3 (47)	70.8 (24)	69.0 (29)	42.1 (620)
Unable to Early On Identify Time Consuming Cases	23.5 (102)	26.9 (67)	35.4 (161)	37.8 (294)	41.7 (48)	56.4 (39)	59.4 (32)	36.5 (743)
Large Backlog - Child Abuse, Neglect and Dependency Cases	13.3 (105)	24.3 (70)	27.5 (160)	23.5 (310)	14.0 (50)	37.5 (40)	42.4 (33)	24.0 (768)
Large Backlog - Permanent Custody Cases	17.5 (103)	17.1 (70)	23.6 (140)	20.7 (271)	10.2 (49)	24.2 (33)	42.9 (28)	20.7 (694)
High Volume of Delinquency Cases Limit Available Hearing Time	40.2 (102)	33.9 (62)	36.7 (147)	43.2 (278)	37.3 (51)	48.5 (33)	56.8 (37)	41.1 (710)

High Volume of Child Custody	29.7	15.3	20.7	21.0	24.0	31.4	35.3	23.2
Cases Limit Available Hearing Time	(101)	(59)	(150)	(262)	(50)	(35)	(34)	(691)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court's handling of these cases multiply the numbers in parentheses by the associated percentages.

² Includes Ohio Foster Care Association members, Family and Children First Council members and miscellaneous respondents.

³ "Don't know" responses were treated as missing values for this analysis.

The lack of automated case flow tracking and aging reports was the second most frequently cited moderate to serious problem among respondents (42.1%). Prosecuting attorneys, CASAs and respondents grouped together in the composite *Other* category were the most likely to indicate that the lack of these was problematic (55.2%, 70.8% and 69.0%, respectively). Judges and magistrates were the least likely to indicate that this area was a problem (27.7%).

The item with arguably the greatest range of responses had to do with the granting of continuances. Overall, 38.9% of all respondents indicated that this was problem in their court. CASAs were by far the most likely to indicate that the granting of too many continuances was a moderate to serious problem in their court (77.3%), while judges/magistrates, prosecuting attorneys and court appointed counsel/GALs were the least likely (29.1%, 24.6% and 27.1, respectively). Among CPS administrators, supervisors and caseworkers, 44.3% indicated that the frequent granting continuances was a problem.

The Timing of Critical Case Events

2.

Data presented earlier indicates that approximately one-quarter of all respondents were dissatisfied with the timeliness of the court's handling of child abuse, neglect and dependency cases and about one-third of all respondents expressed dissatisfaction with the timeliness of court proceedings on permanent custody motions (see Table 7.5). On the flip side, the overwhelming majority of respondents also indicated that their juvenile courts are successful or somewhat successful in meeting most statutory time requirements established by the state legislature (see Table 7.7). In this section, additional data are presented examining the timeliness of court-related events that shed some light on these seemingly inconsistent findings, particularly with respect to permanent custody proceedings. Data presented in Table 7.9 summarize response patterns on the degree to which various respondents believed that their court's were experiencing moderate to serious problems with respect to eight measures of court timeliness.

Overall, few respondents indicated that the amount of time between a child’s emergency removal from the home to the initial (shelter care) hearing on the case was a moderate to serious problem (15.0%). A higher percentage of respondents believed that the length of time needed by the court to complete adjudication and initial disposition of these cases was a moderate to serious problem in their jurisdiction. This increase was consistent across all respondent categories and was most pronounced among CASA respondents.¹⁷ Overall, 26.4% of respondents indicated that the time to adjudication and initial disposition was problematic. This later response rate is somewhat at odds with data presented in Table 7.7 that indicates 88-89% of all respondents believed their courts were successful in meeting adjudication and dispositional statutory time requirements on child abuse, neglect and dependency cases.

Table 7.9: Percentage of Respondents Indicating a “Moderate” to “Serious” Problem in Issues Related to the Timeliness of the Juvenile Court’s Handling of Child Abuse, Neglect and Dependency Cases by Type of Respondent¹

Moderate to Serious Problem Noted in the Following Issues Related to the Timeliness of Case Processing:	Court							Totals ³
	Judges/ Magistrates	Prosecuting Attorneys	Appointed Counsel/GAL	CPS	Admin.	CASA	Other ²	
Time Elapsed Between Emergency Placement and Initial Hearing	9.7% (103)	13.0% (69)	14.9% (168)	13.9% (323)	19.6% (51)	14.9% (47)	36.8% (38)	15.0% (799)
Time Needed to Reach Adjudication and Initial Disposition	22.5 (102)	27.5 (69)	23.1 (169)	25.9 (320)	24.5 (49)	39.6 (48)	40.5 (37)	26.4 (794)
Child Abuse, Neglect or Dependency								
Complaint Dismissed & Re-Filed Due to expiration of 90 Day Time Limit	27.2 (103)	25.4 (67)	29.4 (160)	26.7 (315)	30.6 (49)	25.0 (44)	29.6 (27)	27.5 (765)
Frequency of Review Hearings by Court to Examine Case Progress	7.8 (102)	11.8 (68)	10.7 (168)	13.8 (305)	9.8 (51)	18.2 (44)	17.6 (34)	12.3 (772)
Timely Completion of Annual Review Hearing	10.0 (100)	9.5 (63)	10.5 (153)	18.4 (283)	5.9 (51)	26.8 (41)	30.6 (36)	15.0 (727)
Timely Filing of Motion for	15.5	10.3	23.2	25.7	17.0	57.5	48.6	24.6

¹⁷ That is, 39.6% of CASA respondents believed that the time needed to complete adjudication and initial disposition was problematic in their court as opposed to 15.0% of CASA respondents who believed that the time from removal to the initial (shelter care) hearing was a moderate to serious problem.

Permanent Custody	(103)	(68)	(155)	(292)	(47)	(40)	(35)	(740)
Delays in the Completion of Permanent Custody Proceedings	37.5 (104)	46.2 (65)	35.6 (163)	52.4 (288)	29.2 (48)	61.9 (42)	55.6 (36)	45.3 (746)
Time Children Remain in Placement	35.3 (102)	44.1 (68)	48.2 (168)	46.4 (317)	46.0 (50)	77.3 (44)	74.4 (43)	48.4 (792)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court's handling of these cases multiply the numbers in parentheses by the associated percentages.

² Includes Ohio Foster Care Association members, Family and Children First Council members and miscellaneous respondents.

³ "Don't know" responses were treated as missing values for this analysis.

These seemingly disparate findings can be reconciled by further examination of state statutes that establish dispositional time frames for child victimization/maltreatment cases. Ohio statutes require that the juvenile court reach disposition on a child abuse, neglect and dependency complaint within 90 days of the filing of the complaint with the court. If not, the complaint is dismissed but can be re-filed. This provides a very clear incentive to the court and other parties to the case to move these cases along in a timely manner while providing the juvenile court and the child welfare agency with an alternative in difficult cases without endangering the well-being of an alleged victimized child. During our site visits, some concerns were raised, particularly by court-appointed attorneys and GALs in the larger counties, that this option is more frequently utilized than legislatively intended and that courts should better monitor the frequency of these re-filings.

Data presented in Table 7.9 reveals that 27.5% of all respondents believed the re-filing of child abuse, neglect and dependency complaints due to the expiration of the 90-day time limit for disposition was a moderate to serious problem in their court. Response rates on this item were very consistent across all respondent categories. Court administrators were most likely to indicate that this practice was problematic (30.6%) and CASAs and prosecuting attorneys the least likely (25.0% and 25.4%, respectively). Furthermore, survey results presented in Table 7.10 appear to be consistent with our site visit findings in that 57.6% of all respondents from the State's three largest counties and 37.3% of respondents from the state's seven medium-large counties stated that the re-filing of complaints is a moderate to serious problem while this practice was considerably less frequently cited as a problem in the medium, medium-small, and smallest counties (13.0%, 25.0% and 15.9%, respectively).

Data presented in Table 7.9 reveal that the most problematic phase of court proceedings on victimized children involves the severing of parental rights. Almost half of all respondents indicated frustration with the delays in the completion of permanent custody proceedings (45.3%) with CASAs the mostly likely (61.9%). CPS administrators, supervisors and caseworkers were also likely to consider this a moderate to serious problem in their jurisdiction (52.4%). Not surprisingly, data in Table 7.10 reveal that delays in the completion of permanent custody proceedings were most frequently cited as problematic among respondents from the three largest counties (67.3%) and least likely to be considered as problematic for respondents from the state's smallest counties (27.0%).

These data suggest that while almost three-quarters of respondents believed that their courts were successful or somewhat successful in meeting the new statutorily mandated 200-day time limit for completion of permanent custody proceedings that, perhaps, 200 days is too generous an amount of time for all but the most exceptional cases.

Table 7.10: Percentage of Respondents Indicating a “Moderate” to “Serious” Problem in Issues Related to the Timeliness of the Juvenile Court’s Handling of Child Abuse, Neglect and Dependency Cases by County Population

Moderate t Serious Problem Noted in the Following Issues Related to the Timeliness of Case Processing:	Greater than 750,000	250,000 to 750,000	100,000 to 250,000	50,000 to 100,000	Less than 50,000	Totals²
Time Elapsed Between Emergency Placement and Initial Hearing	25.2% (119)	20.0% (145)	8.6% (174)	16.0% (156)	10.3% (203)	15.1% (797)
Time Needed to Reach Adjudication and Initial Disposition	43.2 (118)	35.1 (148)	16.2 (173)	28.8 (153)	17.5 (200)	26.5 (792)
Child Abuse, Neglect or Dependency						
Complaint Dismissed & Re-Filed Due to Expiration of 90 Day Time Limit	57.6 (118)	37.3 (142)	13.0 (162)	25.0 (152)	15.9 (189)	27.5 (763)
Frequency of Review Hearings by Court to Examine Case Progress	19.0 (116)	9.1 (143)	11.0 (164)	13.9 (151)	10.7 (196)	12.3 (770)
Timely Completion of Annual Review Hearing	16.3 (104)	13.0 (138)	10.3 (155)	19.1 (141)	16.6 (187)	15.0 (725)
Timely Filing of Motion for Permanent Custody	37.5 (112)	27.7 (137)	20.4 (152)	22.4 (147)	20.0 (190)	24.7 (738)
Delays in the Completion of Permanent Custody Proceedings	67.3 (107)	62.9 (143)	39.9 (153)	41.4 (152)	27.0 (189)	45.3 (744)
Time Children Remain in Placement	59.0 (117)	63.4 (145)	45.2 (166)	46.5 (159)	36.0 (203)	48.5 (790)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court’s handling of these cases multiply the numbers in parentheses by the associated percentages.

² “Don’t know” responses were treated as missing values for this analysis.

Even though respondents did not consistently feel that moderate to serious problems existed in all phases of court proceedings involving abused, neglected and dependent children, survey results indicate that many respondents were frustrated with the impact of these proceedings on achieving

permanency. Overall, 48.4% of all respondents indicated that the length of time children remain in placement is a moderate to serious problem in their jurisdiction. Among CASAs, the response rate rose to 77.3%. Among survey participants in the *Other* respondent category, 74.4% indicated that the time children remain in placement was problematic.

3. *Delivery of Services to Victimized Children and Their Families*

While the timing and quality of court proceedings have an impact on the amount of time victimized children remain in temporary placements, frustration with the latter typically also reflects problems in the delivery of services to these children and their families. Survey results presented in Table 7.11 are consistent in this regard. Almost half of all respondents (49.0%) cited the lack of necessary services as a moderate to serious problem in their jurisdiction. Judges and magistrates were the most likely to indicate that service availability was a problem (63.0%), as were CASAs and *Other* respondents (55.6% and 60.0%, respectively). While response rates were lower (44.1%), this frustration was also evident among CPS administrators, supervisors and caseworkers.

Approximately four in ten respondents (39.7%) also believed that the timely provision of services to children and parents was problematic. CASAs, court-appointed counsel/GALs and the judiciary were most likely to indicate that moderate to serious problems existed in this area (53.3%, 49.7% and 49.0%, respectively). CPS administrators, supervisors and caseworkers were the least likely to indicate that timely service provision was a problem (29.9%).

A similar response pattern was elicited when respondents were queried regarding the degree to which they believed that the lack of continuity and follow through in case planning and provision of services to the family was a problem. Overall, 37.1% of all respondents indicated that this was a moderate to serious problem. A large percentage of CASAs and *Other* respondents believed that this was the case (72.7% and 60.9%, respectively). Among judges and magistrates, 44.0% believed that the lack of continuity and follow through was problematic, as did 46.7% of court appointed counsel and GALs. Response rates for CPS respondents and prosecuting attorneys were considerably lower (24.8% and 23.5%, respectively).

Survey data suggests that the lack of sufficient foster care resources is a serious deficiency in many jurisdictions. This item elicited more moderate to serious problem responses than any other of the 54 items included in the CIP survey. More than seven out of every ten respondents (71.2%) indicated that the lack of foster homes was a problem in their jurisdiction. Among judges and magistrates, 73.5% indicated that this was a problem, as did 69.0% of CPS respondents. An overwhelming percentage of CASA and *Other* respondents also believed likewise (87.2% and 88.5%, respectively). Data presented in Appendix B reveals that response patterns to this survey item did not vary a great deal when controlling for county population. Respondents from the state's largest and medium large counties were somewhat

more likely to indicate that the lack of foster care resources was a problem (75.0% and 81.1%, respectively than their counterparts from the medium, medium-small and smallest counties (66.1%, 73.5% and 64.6%, respectively).

Table 7.11 Percentage of Respondents Indicating a “Moderate” to “Serious” Problem in the Delivery of Services to Maltreated Children and their Families by Type of Respondent¹

Moderate to Serious Problem Noted in the Delivery of Services to Children and Parents:	Judges/ Magistrates	Prosecuting Attorneys	Appointed Counsel/GAL	CPS	Court Admin.	CASA	Other²	Totals³
Lack of Necessary Services to Children and Parents	63.0% (100)	45.6% (68)	49.7% (169)	44.1% (331)	38.3% (47)	55.6% (45)	60.0% (50)	49.0% (810)
Services Made Available to Parents and Children in a Timely Manner	49.0 (100)	32.4 (71)	49.7 (169)	29.9 (328)	36.2 (47)	53.3 (45)	54.3 (46)	39.7 (806)
Lack of Continuity and Follow Through in Planning and Provision of Services to the Family	44.0 (100)	23.5 (68)	46.7 (169)	24.8 (322)	34.7 (49)	72.7 (44)	60.9 (46)	37.1 (798)
Lack of Sufficient Foster Care Resources	73.5 (98)	62.1 (66)	67.1 (152)	69.0 (336)	73.3 (45)	87.2 (47)	88.5 (52)	71.2 (796)
Inability to Identify and Recruit Sufficient Adoptive Homes	67.8 (90)	57.4 (61)	63.4 (131)	50.8 (317)	71.4 (42)	75.0 (44)	77.6 (49)	60.1 (734)
Delays in Completion of Court-Ordered Investigations, Assessments and Reports	47.1 (104)	43.7 (71)	48.2 (166)	20.9 (301)	40.0 (50)	59.6 (47)	55.6 (36)	37.5 (775)
Timely Submission of Case Plan by Caseworkers	18.6 (102)	29.0 (69)	33.5 (170)	11.0 (319)	39.2 (51)	28.3 (46)	44.1 (34)	22.6 (791)
Quality of Case Plan	36.3 (102)	30.0 (70)	50.0 (172)	15.8 (317)	46.8 (47)	56.5 (46)	70.3 (37)	33.9 (791)
High Turnover Among Caseworkers	57.8 (102)	68.1 (69)	64.7 (170)	48.8 (330)	52.1 (48)	83.0 (47)	84.1 (44)	59.0 (810)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court’s handling of these cases multiply the numbers in parentheses by the associated percentages.

² Includes Ohio Foster Care Association members, Family and Children First Council members and miscellaneous respondents.

³ “Don’t know” responses were treated as missing values for this analysis.

The inability to recruit sufficient adoptive homes was the second most frequently cited service delivery problem. Overall, 60.1% of all respondents indicated that this was a moderate to serious problem in their county. Approximately three quarters of all CASAs and *Other* respondents cited this issue as problematic (75.0% and 77.6%, respectively), as did 67.8% of the judiciary. Among CPS respondents, 50.8% believed that problems existed relative to the local service community’s inability to find adoptive homes for all children for whom placement on permanent custody was appropriate.

Almost six in ten respondents (59.0%) believed that local child protective service agencies are experiencing difficulties in retaining caseworkers. The vast majority of CASAs and *Other* respondents believed that this was a moderate to serious problem in their jurisdiction (83.0% and 84.1%, respectively) as did most judges/magistrates, prosecuting attorneys and court-appointed counsel/GALs (57.8%, 68.1% and 64.7%, respectively). CPS administrators, supervisors and caseworkers were the least likely to indicate that this was a problem (48.8%).¹⁸

Juvenile Court Oversight of Service Delivery

4.

Considerable differences in response rates exist on survey items related to the court’s oversight of the delivery of services to victimized/maltreated children and their families (see Table 7.12). More than half of CASAs and *Other* respondents indicated that the lack of court oversight of case planning and provision of services to the family was a moderate to serious problem (55.6% and 66.7%, respectively). Among court-appointed counsel and GALs, slightly more than a third (34.3%) believed that this was a problem in their jurisdiction. In contrast, only 21.8% of judges/magistrates, 23.9% of prosecuting attorneys, 24.7% of CPS staff and 25.5% of court administrators believed that lack of court oversight was a problem. Data in Table 7.13 further reveals that respondents from Ohio’s largest and medium-large counties were more likely to consider court oversight a problem (43.6% and 42.0%, respectively) than respondents from medium, medium-small and smallest counties (27.7%, 27.7% and 18.7%, respectively).

While response rates were lower, similar differences were found in the item addressing the amount of time spent in court hearings examining issues related to reasonable efforts. Only one in ten

¹⁸ Caseworkers were considerably more likely to see turnover as a problem than were CPS administrators and supervisors (57.4% versus 40.5%).

(10.0%) prosecuting attorneys indicated that this was a problem, as did 13.3% of judges and magistrates, 14.3% of CPS respondents and 15.6% of court administrators. Among CASAs and *Other* respondents, considerably higher response rates were found (35.6% and 37.5%, respectively). Slightly more than a quarter of all court-appointed counsel and GALs (27.1%) believed that the amount of time spent in hearings examining issues related to reasonable efforts was a moderate to serious problem. This pattern continued when examining the degree to which various respondent types believed that minute entries generated by the court do not adequately address reasonable efforts or provide sufficient specificity regarding what is required of parents and with respect to the services to be provided by child protective services.

Table 7.12 Percentage of Respondents Indicating a “Moderate” to “Serious” Problem in the in the Juvenile Court’s Oversight of Case Planning and the Provision of Services to the Family by Type of Respondent¹

Moderate to Serious Problem Noted in the Following Court Oversight of Planning/Service Delivery Areas:	Judges/ Magistrates	Prosecuting Attorneys	Appointed Counsel/GAL	CPS	Court			Totals ³
					Admin.	CASA	Other ²	
Lack of Court Oversight of Case Planning and Delivery of Services	21.8% (101)	23.9% (67)	34.3% (166)	24.7% (316)	25.5% (47)	55.6% (45)	66.7% (42)	30.4% (784)
Insufficient Time Spent in Hearings Examining Reasonable Efforts	13.3 (105)	10.0 (70)	27.1 (170)	14.3 (314)	15.6 (45)	35.6 (45)	37.5 (32)	18.8 (781)
Minute Entries Do Not Adequately Address Reasonable Efforts Issues	14.4 (97)	22.7 (66)	30.2 (159)	14.9 (302)	18.2 (44)	35.9 (39)	38.2 (34)	21.2 (741)
Minute Entries do Not Specifically Address Services Provided by CPS	15.6 (96)	16.7 (66)	23.6 (157)	16.7 (294)	20.9 (43)	35.0 (40)	36.4 (33)	20.2 (729)
Minute Entries Do Not Specifically Address What Is Required of Parents	15.6 (96)	21.2 (66)	25.2 (163)	24.7 (300)	20.5 (44)	36.6 (41)	44.4 (36)	24.7 (746)
Overuse of Long Term Foster Care as a Permanent Plan Option	19.8 (101)	36.4 (66)	32.4 (145)	34.4 (317)	36.2 (47)	75.6 (41)	65.2 (46)	36.4 (763)
Lack of Coordination of These Cases with Other Family-Related Filings in Juvenile, DR, or Muni/County Courts	33.0 (100)	41.9 (62)	40.4 (156)	46.9 (303)	37.0 (46)	80.0 (35)	68.4 (38)	45.3 (740)

- ¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court's handling of these cases multiply the numbers in parentheses by the associated percentages.
- ² Includes Ohio Foster Care Association members, Family and Children First Council members and miscellaneous respondents.
- ³ "Don't know" responses were treated as missing values for this analysis.

Ohio statutes generally limit the use of long-term foster care as a permanent plan option to those children who are not considered adoptable for very specific reasons.¹⁹ This statutory provision is consistent with good practice guidelines for the judicial handling of child abuse, neglect and dependency cases as promulgated by the National Council of Juvenile and Family Court Judges which states that:

¹⁹ Specific statutory criteria for the use of long-term foster care as an appropriate permanent plan option are provided in footnote # 12.

“Long-term foster care is a relatively impermanent solution for children, both as a practical matter and in terms of the legal protections connected to the child’s caretakers. Permanent or long-term foster care should only be selected when higher priority options are demonstrated impractical.”²⁰

Table 7.13: Percentage of Respondents Indicating a “Moderate to “Serious” Problem in the the Juvenile Courts’ Oversight of Case Planning and the Provision of Services to the Family by County Population¹

Moderate to Serious Problem Noted in the Following Court Oversight of Planning/Service Delivery Areas:	Greater than 750,000	250,000 to 750,000	100,000 to 250,000	50,000 to 100,000	Less than 50,000	Totals²
Lack of Court Oversight of Case Planning and Delivery of Services	43.6% (117)	42.0% (143)	27.7% (166)	27.7% (159)	18.7% (198)	30.4% (783)
Insufficient Time Spent in Hearings Examining Reasonable Efforts	29.6 (115)	25.0 (144)	14.5 (166)	20.8 (154)	10.5 (200)	18.9 (779)
Minute Entries Do Not Adequately Address Reasonable Efforts Issues	34.5 (110)	27.3 (132)	14.9 (161)	19.3 (140)	16.3 (196)	21.2 (739)
Minute Entries do Not Specifically Address Services Provided by CPS	35.1 (111)	25.2 (131)	12.2 (156)	18.4 (136)	16.0 (194)	20.2 (728)
Minute Entries Do Not Specifically Address What Is Required of Parents	42.5 (113)	26.5 (136)	14.6 (158)	27.1 (140)	19.8 (197)	24.7 (744)
Overuse of Long Term Foster Care as a Permanent Plan Option	50.5 (107)	41.7 (144)	34.1 (164)	38.8 (147)	25.5 (200)	36.5 (762)
Lack of Coordination of These Cases with Other Family-Related Filings in Juvenile, DR, or Muni/County Courts	66.1 (109)	52.3 (130)	42.2 (166)	47.1 (140)	30.4 (194)	45.3 (739)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court’s handling of these cases multiply the numbers in parentheses by the associated percentages.

²⁰ National Council of Juvenile and Family court Judges, *Resource Guidelines - Improving Court Practice in Child Abuse and Neglect Cases*, Reno, Nevada: NCJFCJ (1995).

² “Don’t know” were treated as necessary values for this analysis.

Interview data, reviews of placement patterns and recent legislative initiatives (including the passage of the 1996 Adoption Bill) suggest that the use of long-term foster care as a permanent placement option has increased in recent years and that a number of children are placed in long-term foster care because of the difficulty in finding adoptive homes for hard-to-place children.²¹ Survey data also suggest that misuse of long-term foster care is a problem in some jurisdictions. Overall, 36.4% of all respondents indicated that the overuse of long-term foster care was a moderate to serious problem in their county. CASA and *Other* respondents were by far the most likely to indicate such a problem existed (75.6% and 65.2%, respectively). In contrast, less than one in five judges/magistrates (19.8%) indicated that the overuse of long-term foster care was a problem. Data in Table 7.13 reveals that respondents from Ohio’s largest counties were considerably more likely to indicate that long-term foster care usage patterns were problematic than respondents from Ohio’s smallest counties (50.5% versus 25.5%, respectively).

An issue central to the family court debate was also frequently cited as a problem. Overall, 45.3% of all respondents stated that the lack of coordination of child abuse, neglect and dependency cases with other family-related cases in juvenile, domestic relations, and municipal/county courts was a moderate to serious problem in their jurisdictions. CASA and Other respondents were again by far the most likely to indicate that this was a problem (80.0% and 68.4%, respectively) with judges/magistrates the least likely (33.0%). Close to half of all CPS administrators, supervisors and caseworkers also considered the lack of coordination with other family cases as a problem (46.9%). The lack of coordination was most frequently considered a problem in the state’s largest counties (66.1%), and least likely to be considered a problem in the smallest counties (30.4%).

Training and Experience

5.

²¹ Please see Public Children Services Association of Ohio, *The Child Protection Mission: Safe Children and Stable Families, A Factbook (1996-1997)*, pg. 4. The authors state, “The Adoptions Bill ... goes a long way towards preventing the misuse of long-term foster care. It prevents placements of children in long-term foster care simply because an adoptive home does not exist at the time. It also allows for greater movement out of long-term foster care, provides for better facilitation practices for foster-to-adopt cases and requires timely court decisions for permanency cases.”

Data provided in Table 7.14 indicate that issues related to the training and experience of the various participants in judicial proceedings on child abuse, neglect and dependency cases were not considered to be a problem for most respondents. Overall, 17.5% of all respondents indicated that the training and experience of judges/magistrates was a moderate to serious problem in their jurisdiction. The training and experience of GALs was the most frequently cited problem area (28.6%). In general CPS administrators, supervisors and caseworkers were the most likely to indicate that training and experience were a problem with respect to judges/magistrates (25.0%), prosecuting attorneys (36.8%) GALs (42.0%) and CASAs (35.9%).

Table 7.14: Percentage of Respondents Indicating a “Moderate” to “Serious” Problem in the Training and Experience of Judges/Magistrates, Prosecuting Attorneys, Court Appointed Legal Counsel for Parents, Guardian ad Litem, and CASAs by Type of Respondent¹

Moderate to Serious Problem Noted in the Training and Experience of:	Judges/ Magistrates	Prosecuting Attorneys	Appointed Counsel/GAL	CPS	Court			Totals ³
					Admin.	CASA	Other ²	
Judges/Commissioners	1.9% (104)	21.4% (70)	9.6% (166)	25.0% (308)	18.0% (50)	13.6% (44)	28.9% (45)	17.5% (787)
Prosecuting Attorneys	16.7 (102)	14.7 (68)	14.9 (161)	36.8 (310)	27.1 (48)	33.3 (39)	34.1 (41)	26.7 (769)
Court-Appointed Legal Counsel for Parents	16.7 (102)	18.8 (69)	16.0 (163)	25.3 (296)	19.1 (47)	28.9 (38)	36.1 (36)	21.8 (751)
Guardian ad Litem	12.5 (104)	17.4 (69)	14.8 (169)	42.0 (305)	27.7 (47)	34.8 (46)	40.5 (37)	28.6 (777)
CASAs	5.8 (69)	24.3 (37)	13.4 (82)	35.9 (167)	15.6 (32)	2.1 (47)	30.8 (26)	21.3 (460)

¹ Numbers in parentheses indicate the total number of cases from which percentages were calculated. To calculate the number of respondents who expressed at least some dissatisfaction with the court’s handling of these cases multiply the numbers in parentheses by the associated percentages.

² Includes Ohio Foster Care Association members, Family and Children First Council members and miscellaneous respondents.

³ “Don’t know” responses were treated as missing values for this analysis.

Concluding Remarks

Overall, most CIP survey respondents were fairly satisfied with the juvenile court’s handling of child abuse, neglect and dependency cases. Approximately 15% of respondents stated that they were dissatisfied or somewhat dissatisfied with their court’s handling of child abuse, neglect and dependency cases. For permanent custody cases, dissatisfaction levels rose to 22.4%. When queried specifically on the timeliness of proceedings on these types of cases, dissatisfaction levels increased to 25.8% for child abuse, neglect and dependency cases and 33.6% for permanent custody cases.

The analysis of CIP survey data also reveal that many respondents were frustrated with a number of organizational and procedural arrangements related to the court's handling of child abuse, neglect and dependency cases and the child protective services system response to these cases. These frustrations were evident in the frequency with which respondents indicated that moderate to serious problems existed with respect to the flow of cases through the court process, the timing of critical judicial events on these cases - particularly on cases progressing to severance of parental rights proceedings, the delivery of services to victimized children and their families, and in the amount of oversight exercised by the court in how these services were delivered.

This review of the degree to which problems existed in different organizational and procedural arrangements identified some differences among respondent populations. For example, approximately three-quarters of CASAs indicated that the granting of too many court hearing continuances was a moderate to serious problem in their jurisdiction as contrasted with approximately 25-30% of the judiciary, prosecuting attorneys and court-appointed counsel/GALs. In general, however, the frequency with which problems were cited were remarkably consistent across the major respondent populations. Table 7.15 lists the five most frequently cited issues of greatest concern to judges and magistrates, prosecuting attorneys, court-appointed counsel/GALs, CPS staff, juvenile court administrators, CASAs and the composite grouping of Other respondents (comprised primarily of members of the Ohio Foster Care Association and local Family and Children First Councils).

A review of these lists reveals some consistent themes. Foremost is the recognition that problems related to the delivery of services to victimized children and their families is most frequently seen as a moderate to serious problem for all respondent populations. Sufficient foster care resources was the most frequently cited problem for all respondent types with the exception of prosecuting attorneys. For these respondents, sufficient foster care resources was the second most frequently cited area in which a moderate to serious problem exists. The inability to identify and recruit sufficient adoptive homes for all children for whom placement on permanent custody is appropriate made the top five list of all respondent categories with the exception of CASAs. For CASAs, the issue of recruiting sufficient adoptive homes was the seventh most frequently cited problem issue.²² High caseworker turnover also made the top five list for all respondent types. In all, issues related to service delivery and the time children remain in

²² The sixth most frequently cited problem area among CASAs was a closely related item, the overuse of long-term foster care as a permanent plan option.

placement comprised more than 80% of the available slots in Table 7.15 - an average of over four per respondent category.

Issues regarding court case flow management arrangements are among the top five most frequently cited items for three respondent populations (i.e., prosecuting attorneys, CPS staff and CASAs). Time waiting for hearings to start was the second most frequently cited issue for CPS administrators, supervisors and caseworkers and the fifth most frequently cited issues for prosecuting attorneys. The granting of too many continuances was the fourth most frequently cited moderate to serious problem cited by CASAs. The lack of automated case flow reports also made the top five list for prosecuting attorneys.

Table 7.15 Five Issues of Greatest Concern In Rank Order (“Moderate” to “Serious” Problem Noted) by Type of Respondent

Judges/ Magistrates	Prosecuting Attorneys	Appointed Counsel/GALs	CPS	Court Administration	CASA	Other
Sufficient Foster Care Resources	High Caseworker Turnover	Sufficient Foster Care Resources	Sufficient Foster Care Resources	Sufficient Foster Care Resources	Sufficient Foster Care Resources	Sufficient Foster Care Resources
Sufficient Adoptive Homes	Sufficient Foster Care Resources	High Caseworker Turnover	Time Waiting for Hearings to Start	Sufficient Adoptive Homes	High Caseworker Turnover	High Caseworker Turnover
Lack of Necessary Services	Sufficient Adoptive Homes	Sufficient Adoptive Homes	Completion of PC Proceedings	High Caseworker Turnover	Coordination with Other Family Cases (Tie)	Sufficient Adoptive Homes
High Caseworker Turnover	Lack of Automated Case Flow Reports	Quality of Case Plans (Tie)	Sufficient Adoptive Homes	Quality of Case Plans	Too Many Continuances (Tie)	Time Children Stay in Placement
Timely Availability of Services	Time Waiting for Hearings to Start	Lack of Necessary Services (Tie) Timely Availability of Services	High Caseworker Turnover	Time Children Stay in Placement	Time Children Stay in Placement	Quality of Case Plans

Two other critical issues made the top five list of at least one of the respondent groupings. Problems associated with the timely completion of permanent custody proceedings appeared on the top five list for CPS (third) but was an issue frequently cited by all respondents except court administrators. Lastly, the lack of coordination of child abuse, neglect and dependency cases with other family-related cases in juvenile, domestic relations and municipal/county courts was the third most frequently cited problem area for CASAs.

Chapter 8

Leadership, Implementation and Major Project Recommendations

Throughout the course of the study, the team encountered considerable support for many of the principles upon which the family court movement is grounded including information and resource sharing, coordination of service delivery, continuity of judicial orders, and a “family” focus for intervention. There was, however, considerably less unanimity about the value of a family court as the structure within which those principles should take life. There appears to be a “dome of support,” where acceptance of a family court is greater as one moves further outward and upward from the court itself.

This is not to say that support for a family court among the judiciary was absent. A number of judges and magistrates expressed considerable interest and support for the notion of a family court. Judicial support for a family court was more evident among respondents to the statewide Family Court Feasibility Study Survey than among judges and magistrates interviewed during site visits to the ten selected counties. Generally, support for a family court among the judiciary in these counties varied and was strongest in study sites that already had consolidated juvenile jurisdiction in a domestic relations court. Judges and magistrates ambivalent or not favorably disposed towards the establishment of a family court generally felt that the current judicial system for dealing with the range of family matters was sufficiently capable of meeting the needs of the general public as long as sufficient resources (i.e., personnel and services) were provided to meet the ever-expanding caseloads.

These individuals offered a number of arguments that suggested a decrease in the effectiveness of judicial intervention in family matters if consolidation of jurisdictions under an umbrella family court were to occur. The most frequent concern involves the degree of specialization necessary to expertly conduct just a portion of family law business. Additionally, many judicial respondents felt that family court consolidation was not logistically practicable, particularly in the larger jurisdictions.

Four major themes emerged during the course of the project that were examined in detail in this report. These four themes include the following:

1. Ohio statutes governing family matters are a relatively uncoordinated, scattered and confusing body of law;
2. Resources constraints were considered a major impediment limiting the effectiveness of the various courts that have jurisdictional responsibility over matters involving the family;

3. The general state of the Ohio court system's information tracking and sharing capacity is not sufficient to support a family-focused judicial system; and
4. Strong judicial leadership and support at the State and local level are necessary for Ohio to continue to develop and maintain a family-focused court system.

The first three issues are discussed sequentially in Chapters 4-6 of this report. The fourth, strong judicial leadership is saved for this chapter because of its central role in implementation efforts that we envision will emerge from this project. Nearly all individuals interviewed and those participating in the focus groups felt that strong judicial leadership and support are necessary for Ohio to continue its efforts to improve the coordination legal proceedings involving the family.

Strong Judicial Support/Leadership are Essential to a Family-Focused Court System

In reviewing the history of the family court movement in Ohio, from the establishment of the first family court in the nation in Cincinnati to the present Governor's Task Force, it is clear that attention to these matters typically surfaced when strong judicial support and leadership were present. The same is true in individual jurisdictions, where some are organized around many established family court principles, while others are still largely independent systems of family justice. If Ohio is to maintain and accelerate its progress in this area, continuing support and leadership at the state level will be needed to assist those counties expressing a desire to initiate court reform through the creation of a family court structure or implementation of program components consistent with the consolidation and coordination of the various family law dockets.

The role of the Supreme Court of Ohio, working closely with the Ohio General Assembly and the judiciary is central to this effort. Forceful leadership can be exercised by the Supreme Court to improve the coordination and consolidation of family law dockets in a number of ways including:

- In cooperation with the Ohio General Assembly and the Governor's Task Force, convene a Family Code Revision Commission to draft a consolidated and simplified Ohio Family Law Statute;
- Appoint a standing committee with sufficient funding and staffing to permit its members to establish general policies and procedures regarding the further coordination and consolidation of family law dockets in Ohio and to provide oversight and overall direction to statewide efforts to further these objectives;
- Establish a Family Court Services Office within the Supreme Court of Ohio to provide technical assistance and training in this area, to function as an information clearinghouse to local courts, and to direct and coordinate State-funded efforts to field test family court principles in selected pilot counties; and

- Proceed with the development of pilot/demonstration sites to test family court principles that incorporate a rigorous evaluation design.
 - a. *Convene a Family Code Revision Committee*

The Supreme Court of Ohio, in cooperation with the Ohio General Assembly and the Governor's Task Force should convene a Family Code Revision Commission with the specific intent of drafting an Ohio Family Law Statute which integrates components of the existing code into a simplified and clear text. This Commission should be comprised primarily of judges and magistrates responsible for the various family law dockets but should also have representation from the Ohio General Assembly, members of the Governor's Task Force, and the Ohio Bar Association.

Project staff believe it is feasible and useful for Ohio to undertake the drafting of a clear, coherent and relatively concise family code that incorporates relevant existing law; eliminates duplication, overlap, and confusion; and encourages the consideration of a coordinated approach to family matters. The establishment of a consolidated family code advances Ohio's development in considering more integrated approaches to family law practice. In addition to cleansing existing statutes of their ambiguities and conflicts, a fresh family law statute would require thoughtful consideration of who is best suited to deal with the myriad of family matters coming to the court, and where resources that are more similar than disparate can be shared among courts. It would have the further benefit of establishing a single entity of law upon which service provision planning could occur. A guiding principle of this work should be the clarification and simplification of a family code which is understandable to Ohio families.

It is recognized that this recommendation leads to a daunting task that is beset by many difficult decisions and with the potential for unintended consequences if not constrained. It is, however, the best way to advance the agreed upon principles of family court practice so often encountered by the study team without forcing a major structural solution inconsistent with the beliefs of many, if not the majority, of court professionals in Ohio. We anticipate that this task would take approximately one year and that the actual powers and duties of the Commission be developed by the Supreme Court of Ohio with approval by the Task Force.

b. Appointment of a Standing Committee to Direct Statewide Efforts

Time-limited commissions and task forces, while oftentimes successful in initiating change, have little ability to maintain, nurture and enhance that change in perpetuity. The only adequate method for ensuring continuous growth is to have the topic of focus embedded in an ongoing operational entity. In this instance, since judicial leadership is the key to change, the appropriate entity is the Supreme Court. A standing committee of the Supreme Court directly charged with policy and oversight responsibilities demonstrates not only strong central commitment to the family court concept, but also supports and enhances the commitment of a broad range of local judges and magistrates.¹

For such an institutionalized function to operate efficiently, however, a staff function is required and must be supported within the Supreme Court. The primary role of this staff function would be to ensure that the committee meet regularly and is provided the information it needs to make reasoned and strategic decisions relative to their charge of setting general policies and procedures regarding the further coordination and consolidation of family law dockets and in providing oversight to statewide efforts to further these objectives.

In the near term, the Governor's Task Force and its close working relationship with the Supreme Court can fulfill this role. However, at some point soon, the responsibility and authority for pursuing family court principles in the Ohio court system will need to be shifted from this appointed body to a standing Supreme Court committee.

c. Establishment of a Family Court Services Office

The Supreme Court of Ohio should consider establishing a Family Court Services Office to assist local courts in their efforts to better coordinate and consolidate various family law dockets. This office would also be the logical entity to direct and coordinate state-funded efforts to field test family court principles in selected pilot counties. The Florida and California Supreme Courts both have such offices that provide training and technical assistance to local courts in issues related to coordination of family court dockets and in spearheading pilot efforts to improve the administration of family law in these courts.²

¹ Florida in the 1990s took a similar approach with the Chief Justice appointing a Family Court Steering Committee to oversee efforts in that State to consolidate family law dockets.

² A Statewide Office of Family Court Services was established by statute in 1984 in the Administrative Office of the Court of the Judicial Council of California. By statute, the office is responsible for statewide coordination of services to:

Throughout the course of the feasibility study, project staff identified considerable variation in judicial organizational structures and practices between counties. In varying degree, individual courts have been innovative in their attempts to adjust their existing structural and case processing arrangements to more efficiently and effectively handle their various family law dockets.³ It appears that, for the most part, these local structural and case processing arrangements are contemplated and implemented independent of the Supreme Court unless legislation needs to be introduced to effect such changes. It is envisioned that staff from the Family Court Services Office would become more involved in these matters and be a primary source of technical assistance.

Additionally, Supreme Court staff from the newly created office would be in a position to document these local adaptations, innovations and experiments and could make this knowledge available to other Ohio jurisdictions through written summaries and through their on-going technical assistance

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- evaluate family laws and program for the purpose of shaping public policy;
 - implement mandatory mediation and custody laws;
 - administer programs of research grants;
 - establish and implement an uniform statistical reporting system; and
 - administer a training program for non-judicial court personnel that provide mediation and family court services.

In 1991, Supreme Court Order 588So.2d586 established a Family Law Division in each of the 20 Circuits of Florida. As there was little incentive for the courts to reorganize, the implementation of functional family divisions was sporadic among the circuits. To address this issue, in 1994 the Supreme Court of Florida by court order created a Family Court Steering Committee (FCSC) to coordinate the development of family court initiatives in the circuit courts of the state. The mission of FCSC is “to provide an integrated, coordinated response to family members in need of court intervention that will maximize the use of available court and community-based resources for the constructive, expeditious resolution of such matter.” The steering committee has a number of stated objectives including to:

- consolidate resources to judges and to court personnel to help with family cases and to increase the availability of these resources;
- increase the orientation and training opportunities for judges and court personnel handling family matters;
- develop strategies that ensure effective participation of pro se parties throughout the court process;
- facilitate the exchange of ideas and information throughout the state about innovations and developments in assisting families in need of court intervention;
- develop model guidelines, standards and procedures for use by the circuit courts as they serve families in need of court intervention; and
- ensure that rules of the court, statewide administrative policy and legislative policy support the family court initiative.

³ Clark County, for example, recently re-structured their court system with the Clark County Juvenile Court becoming a section of the Domestic Relations Division of the Clark County Common Pleas Court (effective 1/1/95) in the hopes of realizing closer coordination of the adult domestic relations and juvenile dockets. While the adult and juvenile sections of this domestic relations court operate fairly independently, with traditional domestic relations and juvenile case dockets, the current organizational arrangement gives the presiding judge the ability as necessary to assign any type of case (adult or juvenile) to any of the division judges. Clerking responsibility for the division, however, are separated with the Clerk of the Court responsible for adult section cases and the juvenile clerk responsible for juvenile cases.

function. The diversity at work in Ohio, while meeting local needs, is lost as a means to advance the field as a whole without a determined effort to transfer these local experiences from one site to another. Without this capacity, innovations become simply part of the local court culture. Alternatively, developing a statewide function with the specific task of documenting and transferring local innovations can result in movement statewide based on the wisdom and experiences of Ohio's most effective jurisdictions. Ohio can be proud of its system of local justice, but can further its collective practice by purposefully planning to make maximum use of its own innovation.

d. Pilot/Demonstration Sites to Field Test Family Court Principles

As indicated above, there are a number of counties that have restructured or are considering restructuring their operations to better respond to family matters coming before them. This includes not only structural reorganization of the domestic relations, juvenile and probate dockets to allow for greater flexibility in assigning judiciary to overlapping cases, but also with regards to the range of support services available to families that transcends the natural boundaries between these dockets. Traditionally, the access and availability of a wide range of support services to families in crisis including indigent defense, assessment/evaluation, and intervention services have been very limited within the domestic relations and probate arenas, particularly when contrasted with similar families involved with the juvenile court. Additionally, a number of courts are considering their options regarding how to enhance the transfer of information across these dockets and to improve their ability to manage the flow of cases through the use of new procedures or protocols and through substantial investments in new automated information systems.

This desire and recognized need for court reform of the various family law dockets at the local level should be encouraged and supported at the state level. It is also logical that the State provide some direction and consistency to these reform efforts. The original plans of the Supreme Court and the Governor's Task Force called for the development and evaluation of four pilot sites where new practices could be tested, documented and, if successful, promulgated elsewhere. At an early point, a decision was made to suspend this plan until the results of the feasibility study were available.

Since that decision, there has been more than casual interest by many jurisdictions in the potential for becoming one of the pilot sites. In some instances specific proposals have been formulated awaiting a determination to proceed. Further, these and other jurisdictions provide a wealth of diversity in population, existing practice, resources and geography, leading to a naturally-occurring laboratory in

which to test a wide range of family court principles. Finally, recognizing the need for measurement, the study team has found great interest among potential pilot sites in developing the capacity to gauge their performance in an objective way. In addition to advancing Ohio's collective knowledge of family court principles, the establishment of pilot sites meets a number of additional needs. That is, pilot testing of family court principles in a designated number of local jurisdictions:

- Allows interested counties to proceed in establishing new ways of doing family business without a legislative mandate that they must do so;
- Provides an environment for experimentation, where errors can be made and corrected;
- If successful, increases the number of court professionals with knowledge of and belief in family courts and/or strategies to coordinate family law cases;
- Serves as a testing and observation setting that can inform and guide the drafting of a consolidated Family Law Statute and provide much needed information regarding difficult decisions sure to be encountered in that effort; and
- Maintains the momentum of previous work, including this study, to continue to explore new approaches to the vexing problems of families and the law.⁴

Pilot sites should be selected based on their diversity in terms of size, plans for integration of family court functions, existing structure and ability to produce data to be used in evaluating their efforts. Specifications that could lead to a competitive process for site selection can be developed or existing information derived from this phase of the feasibility study can be used to invite the most appropriate jurisdictions to participate. The pilots should be established with the expectation that measurement would occur for at least three years, with regular feedback reports to the Task Force and the Supreme Court. Training and technical assistance in establishing pilot sites should be provided by knowledgeable experts both within Ohio and nationally. The culmination of the pilot process should be a statewide conference to discuss the outcome, review lessons learned and pitfalls to avoid, and to move to the next logical stage of system development.

⁴ This approach has been adopted by a number of States including Maryland, New Hampshire, California, Montana and Minnesota.

Concluding Remarks

This final chapter on the Ohio Family Court Feasibility Study Report focuses on the central role that strong judicial leadership will have in continuing efforts to improve the coordination of legal proceedings involving the family. A number of major statewide initiatives are recommended and we anticipate that the impetus for each will be provided by the State's judicial leadership through the Supreme Court.

On a final note, the observations, findings and recommendations in this report are not originally those of the study team, but rather represent a composite of the best thinking on this subject by a vast array of professionals who are confronted daily with deriving better solutions for broken and distressed families. This report, then, is a summary of the Ohio court system's beliefs about its role with families and its ability to do as it was intended. It is the hope of the National Center for Juvenile Justice that the report will forward the cause of families in the court system, and bring about change that increases the likelihood that a family's interaction with the court will produce a positive outcome.

Major Family Court Recommendations

1. The Supreme Court of Ohio, in cooperation with the Ohio General Assembly and the Governor's Task Force on the Investigation and Prosecution of Child Abuse and Sexual Child Abuse should convene a Family Code Revision Commission, with the specific intent of drafting an Ohio Family Law Statute which integrates components of the existing code into a simplified and clear text.
2. The Supreme Court of Ohio should assume a strong leadership and support role to further the improved coordination and consolidation of family law dockets and to assist those counties expressing a desire to initiate family court reform by:
 - a. Appointing a standing committee with sufficient funding and staffing to permit its members to establish general policies and procedures regarding the further coordination and consolidation of family law dockets in Ohio and to provide oversight and overall direction to statewide efforts to further these objectives;
 - b. Establishing a Family Court Services Office within the Supreme Court of Ohio to provide technical assistance and training in this area, to function as an information clearinghouse to local courts, and to direct and coordinate state-funded efforts to field test family court principles in selected pilot counties; and
 - c. Proceeding with the development of pilot/demonstration sites to test family court principles that incorporates a rigorous evaluation design.

3. The Supreme Court of Ohio should request additional resources to expand its current automation plans and should develop a family-based strategy for information sharing, leading to a coordinated management information system design.

Court Improvement Project (CIP) Recommendations

Findings from the Court Improvement Project (CIP) Survey (summarized in Chapter 7) and from our limited site work in this area are used to inform the following recommendations that specifically address the juvenile courts' handling child abuse, neglect and dependency cases in Ohio. Relative to many other states, Ohio appears to be doing a commendable job in this area. Much of the credit for this should go to those individuals and juvenile courts that were in the vanguard in the passing of pioneering legislation in 1989 that clearly defines the role of the juvenile court in these proceedings, established firm times frames for the completion of judicial proceedings on these cases, and limits the amount of time a victimized child can remain in temporary placement.

1. Assist local courts in developing software to track and closely monitor child abuse, neglect and dependency cases. The Hamilton County Juvenile Court has arguably the most sophisticated and efficient case tracking system for these types of cases and can be used as a prototype for the development of similar automated systems in other Ohio counties. We would, however, encourage local courts to install one automated system that will track all juvenile court case types (including delinquency and unruly cases, child abuse, neglect and dependency cases, and child custody cases).
2. To identify local juvenile courts that are having difficulties in routinely meeting times frames for completion of adjudication and initial disposition on child abuse, neglect and dependency cases and to work with these courts to address these concerns.
3. Encourage courts to initiate the necessary calendaring and case flow management steps necessary to reduce the amount spent waiting for hearings to commence including limiting the stacking of multiple hearings in the same time slot hearings and to establish and enforce firm policies on the granting of continuances.
4. Assist local efforts to expand their foster care networks to ensure that sufficient foster care options exists to provide a safe, stable and supportive foster home for all victimized children in need of such a placement.
5. Assist local efforts to identify and recruit adoptive homes for all children for whom placement on permanent custody status is appropriate including children who are currently placed on long-term foster care status because of the unavailability of adoptive homes.
6. Expand the use of CASAs to all 88 Ohio counties. This may include examining the feasibility of providing statewide funding and logistical support for local CASA organizations including at least partial state funding for local program start-up and on-going operations.
7. Conduct a comprehensive study in selected counties, possibly in conjunction with the family court pilot sites, to determine the unmet resource needs of the juvenile court to effectively

handle its child abuse, neglect and dependency caseload. This study should include and examination of the resources necessary to effectively prosecute these cases, for child protective services to service these children and their families, and to ensure adequate representation/advocacy for all parties to these proceedings. Lastly, this study should include an examination of the service needs and the availability of services to victimized/maltreated children and their families.