



Judicial Council of California

Administrative Office of the Courts

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TO: Members of the Judicial Council

FROM: Family and Juvenile Law Standing Advisory Committee
Hon. Leonard Edwards and James D. Garbolino, co-chairs
Family Law Subcommittee
Hon. James D. Garbolino, Chair
Michael A. Fischer, Counsel

DATE: June 28, 1995

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

Summary

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

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

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

Background

The child support enforcement system

Title IV-D was added to the Social Security Act in 1975.⁹¹⁶⁸ As modified over the years, these provisions strongly encourage the establishment of a child support enforcement program in each state by the following means:

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

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

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

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

Early establishment of support orders increases the chances that the child will not become a recipient of AFDC. Once AFDC is paid early establishment ensures that the taxpayers are reimbursed as soon as possible to the extent the noncustodial parent is able to pay.⁰

"Vision for Excellence"

In June, 1992, Governor Wilson unveiled a ten point plan to improve the child support enforcement program ("Vision Report"). The Vision Report was "a business plan for improving the Child Support Enforcement Program in California and making it an integral part of the Governor's welfare reform strategy."¹²⁰¹¹ The plan recommended maximizing "the use of cost-effective technology to support the business functions of the Program. Included are a clear

⁹¹⁶⁸ Social Security Act Amendments of 1975, sections 451-460. For a history of this involvement see Goldberg, *Child Support Enforcement: Balancing Increased Federal Involvement with Procedural Due Process*, 19 Suffolk U.L.Rev. 687, 689-692 (1985).

⁰ Report at p. 12.

¹²⁰¹¹ Vision Report at p. v.

commitment to implement statewide automation and enhance electronic links among entities involved in Program administration.⁷⁰

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

[A] Governor's Task Force [be convened], including representatives from the Judicial Council, the Attorney General's Office and the Department of Social Services as well as appropriate District Attorney and local program manager representatives, to make recommendations regarding appropriate structure and funding for the determination of child support matters, including support order establishment and enforcement.¹⁸⁶⁶⁰

Statewide Automated Child Support Systems (SACSS)

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

[C]ounties that have become automated report similar results [increases of court cases of between 200 and 300 percent in one year] after conversion to the new computer systems. Once SACSS is installed and is fully functional, it is expected that many of the cases now backlogged will begin moving into the court system.⁰

Other factors are also expected to increase this effect.²²⁹⁴⁵

The Task Force

As noted in the Report:

The Governor's Child Support Court Task Force was created in 1993. Its mission is to study the process of establishing and enforcing child support orders in California's courts, and to make recommendations concerning the creation of an efficient, humane, and effective process for the expedited handling of child support cases as required by federal law.⁰

Members of the Task Force are listed immediately after the title page of the Report. As can be seen from the listing, the membership was expanded beyond that originally mentioned in the

⁰ *Id.*, at p. ii.

¹⁸⁶⁶⁰ *Id.*, at p. 16.

⁰ *Report* at pp. 35-36.

²²⁹⁴⁵ *Report* at pp. 34, 36-37.

⁰ *Report* at p. 5.

Vision Report to include representatives of the County Clerk's Association, the California Judges Association, various legislators and advocacy groups. Staff to the council's Family and Juvenile Standing Advisory Committee attended Task Force meetings and reported on developments to that committee. At appropriate times, members of the committee attended Task Force meetings.

Federal requirements

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

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

Federal law also provides that two-thirds of the administrative cost of the child support enforcement program will be paid for by the federal government. Although the federal government will pay two-thirds of the cost of an administrative referee or of a subordinate judicial officer hearing child support matters, it will not pay any portion of the costs of a judge hearing child support matters. This includes the cost of the courtroom staff of the judge.

Summary of the proposal

The recommendations made by the Task Force have significant effects on the court system. Attempts have been made, during the development of the recommendations, to ensure that the program will be administered locally where appropriate, and that the cost will be revenue-neutral to the judicial branch. Preliminary discussions with staff of the Department of Finance indicate support for the idea that the one-third part of the cost that is not paid for by the federal government will come from the state general fund rather than from state trial court funding or other parts of the judicial branch budget. Since the benefits from this increased effort in child support enforcement will flow to the general fund²⁴⁹¹⁶, this position is appropriate. Indeed, it is doubtful if this proposal will go forward unless the Department of Finance is supportive of using the state general fund to finance it.

²⁴⁹¹⁶ The Vision Report indicated that the child support enforcement program generates a total net return on investment to all levels of government of about 15 percent, in addition to substantial welfare savings due to cost avoidance. In Fiscal Year 1991-92 it is estimated that \$106 million was returned to the state General Fund on an investment of \$33 million. *Vision Report* at p. 2
Report at pp. 6-10.

The Executive Summary of the Report provides a good overview of the recommendations.⁰ These recommendations are not reprinted here but are, as appropriate, discussed below in the analysis of issues.

Issues

Administrative versus judicial establishment and enforcement

The Task Force, at an early state, explored the desirability of an administrative system of child support enforcement.⁰ Approximately 20 states use an administrative system. The proponents of an administrative system urge the following advantages:

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

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

- It is undesirable to add another forum to a system that is already overly fragmented and frustrating to the parties
- There are concerns about the impartiality of a system that is part of the agency enforcing the order
- There would be duplication of systems and a need to provide one system for the private cases and another for the IV-D cases

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

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

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

⁰ Report at pp. 6-10.

⁰ In 1993, a measure was introduced in the Legislature seeking the establishment of an administrative enforcement process. (Sen. Bill No. 407, 1993 Legislation.) This bill was not passed. A similar measure is pending currently. (Sen. Bill No. ??????).

on the very ground that this was an appropriate function of the court.

Use of commissioners

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

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

The use of commissioners and referees as temporary judges in place of superior court judges as a means to effect cost economies is unsound in principle and unlikely to achieve significant fiscal results in practice.⁰

The discussion in the annual report noted that use of commissioners and referees as temporary judges offends principles of separate of powers and judicial independence,⁰ and that the use of commissioners and referees results in a perception that the matters being heard have secondary status.¹ This perception was noted as being particularly pronounced in regard to family and juvenile law matters.

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

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

The commissioner's recommendation goes to a judge for review. Code of Civil Procedure section 640.1(c)-(f).

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

⁰ 1984 Judicial Council Annual Report, p. 41.

⁰ *Id.*, at pp. 37-38.

¹ *Id.*, at p. 38.

Under the proposal, there will be a significant proportion of the cases in which the commissioner will sit, by stipulation, as a temporary judge. Indeed the task force recommends that the commissioner be given statutory authority to make final orders in all issues related to district attorney child support cases to the extent that such authority is constitutional. And, in contested cases, where they may be a right to judicial review by the court, review would not be required in every case.

The proposal envisions that the parties be advised prior to the beginning of the hearing that the commissioner will be sitting as a temporary judge and that any order will be final unless either parties requests a trial de novo by a judge either at the conclusion of the hearing, or within a specified number of days after an order or judgment is entered.⁰ It appears, though, that this case presents a reason for an exception to the council's policy regarding use of commissioners and referees.

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

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

Blanket disqualification of a commissioner⁰

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

The hiring and training of a child support commissioner for most counties (and the sharing of commissioners among those counties without an adequate caseload to utilize a commissioner full

⁰ While it might be presumed that a losing side, in almost every case, would request a rehearing in front of a judge, this is not the case based on the experience of those states who have similar systems.
⁰ The council has opposed proposals to permit the preemptory challenges of judges on the grounds that delay would result. (See Judicial Council Legislative Guidelines and Precedents, p. 5, at fn. 25.)

time) provides the child support enforcement system with a valuable resource to accomplishing its goals. Yet this system may also create a situation where the impartiality and independence of the commissioner may be subject to the whim of the district attorney family support division.

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

Code of Civil Procedure section 170.6(1) provides:

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

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

In the case of IV-D child support enforcement, the district attorney is always an attorney in the case. Thus, it is permissible under this section that the district attorney may file a blanket affidavit under section 170.6 to permanently disqualify a commissioner from hearing IV-D child support cases. Since this commissioner was specially hired and specially trained solely or primarily to hear IV-D child support cases, and since the pay of the commissioner is available only to the extent that the commissioner is involved in IV-D matters, the district attorney has a life-or-death power over the commissioner.⁰

In addition, the existence of an unfettered power to remove the child support commissioner would work a significant disruption to the child support enforcement system. The commissioners are to receive particularized education and training. Their calendars, thus, are not easily susceptible of being taken over by judges or other commissioners or referees. A substantial number of 170.6 challenges by the district attorney will have the inevitable result of frustrating the expedited process.

Several district attorneys have expressed concerns that without the power to disqualify a commissioner on a blanket basis, they run the risk of having a commissioner who may not apply

⁰ It should be noted that the council's position in this instance, is more strongly opposed than its traditional opposition to peremptory challenges to a judicial officer. The factors involved in this case are far more serious in regard to judicial independence and fairness than in other cases involving the peremptory challenge of a judicial officer.

the child support laws in accordance with what that district attorney believes is proper. They state that the threat of a blanket disqualification can cause a commissioner to change position on an issue. Of course this is the very problem with the blanket disqualification.

Under the system of separation of powers upon which our government is based, the authority to review and discipline judicial officers resides in the judicial branch. {CITE??} There are a number of provisions concerning this authority, in addition to the general authority of the appellate courts over decisions by the trial courts:

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

A judge shall be disqualified if any one or more of the following is true:

...

(6) For any reason ... (B) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (c) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

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

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

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

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

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

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

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

Training of commissioners

The Report envisions:

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

The legislature should delegate to the Judicial Council the responsibility for developing minimum education requirements and standards for training. Actual training programs could be provided by appropriate organizations designated by the Judicial Council.⁰

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

(a) ... The Judicial Council shall coordinate the implementation and operation of the child support commissioners in every county. These duties shall include, at a minimum,:

...

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

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

⁰ Report at p. 49.

Streamlined, uniform rules and forms

The Report states:

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

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

...

The lack of uniform procedures can also create a perception that the system is not fair....

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

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

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

Friend of the court

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

- **Educational and outreach materials about the child support process and the child support**

^o Report at p. 57.

^o Cites to the forms.

^o Report at pp. 72-78.

enforcement program

- Assistance to parents, individually or in group settings, in completing necessary forms
- Alternative dispute resolution services including mediation of child support matters

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

The report suggests that the program be implemented as part of a statewide expansion of the highly successful Family Law Facilitator program currently in operation in San Mateo and Santa Clara counties.⁰ Federal IV-D funding would then be sought for the child support functions of those offices. The report notes that the courts will experience some cost savings by using a federal and state general fund financed commissioner instead of a trial court funding financed commissioner or judge. Some of these savings could also be used to help fund this program. In return, the program is likely to lower the cost of processing cases in the courts.⁰

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

Presumed income and set asides

The Report notes that there should be a presumption established as to the income of a non-custodial parent who does not appear at the hearing. This presumption would be the actual income of the parent, if known, no income of the parent is either incarcerated, known to have no income or assets, or is receiving public assistance. In other cases, a statewide presumption of an amount of income would be applied.

There was significant disagreement among the members of the task force concerning the amount of income that should be presumed. Some argued for minimum wage while others urged a standard of one-and-one-half times the average annual wage.⁰

The Report notes:

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

⁰ See discussion of these programs in the Report at pp. 38-39.

⁰ Preliminary data from the Maricopa County (Arizona) program involving a court-funded self-help center for family law matters shows the center's activities resulted in a measurable decrease in court clerk time spent handling filings by unrepresented litigants.

⁰ This later amount, for California, would be over \$44,000 per year.

wage is too high.

...

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

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

Additional duties of Judicial Council

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

- Funding: The plan of cooperation required for federal funding will be between the Department of Social Services and the Judicial Council. The council would then provide the funding for the commissioners to the local courts. This would change the present system in some counties where the district attorney is the conduit for the funding. Funding would also be provided for the council's costs for this system.
- Uniform rules, forms, and procedures: This issue is discussed above.
- Mandatory training: This issue is discussed above.
- Technical assistance: This task would include dissemination of federal and state requirements and claiming procedures to ensure that federal funding is being used and claimed appropriately.
- Qualifications for commissioners: The council would, through rules of court, establish minimum qualifications for child support commissioners.
- Hiring procedures: Child support commissioners would be hired by and would be employees of the local courts. The council would establish procedures for hiring commissioners.

^o Report, at p. 63.

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

- **Caseload and staffing standards:** In order to determine the amount of funding each county will need for commissioners and staff, the council would develop standards to determine how many commissioners are needed in a court and how the court obtains approval for those positions
- **Resource sharing:** Smaller counties may not be able to fully utilize a commissioner. These counties would either need to allocate the time the commissioner spent on IV-D cases or would need to share the commissioner with other counties. The council would provide assistance for sharing of a commissioner between counties and for other ways counties can share resources used for child support enforcement.
- **Statistics:** The council, in conjunction with the Department of Social Services, would collect statistics on private and IV-D child support cases for use in analysis and planning for the future needs of the system.

Conclusion

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

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

1. Conditionally approve the Report of the Governor's Child Support Court Task Force;
2. File with the Task Force, as a concurring opinion, the section of this memorandum appearing under the heading "Blanket disqualification of a commissioner"
3. Delegate to the advisory committee the authority to review changes made to the draft report and either approve the changes or refer them to the council as the committee deems appropriate; and
4. Delegate to the advisory committee the authority to work with the Task Force in the development of the legislative program and recommend to the Policy Coordination Committee appropriate action on the proposed legislation.

**Title IV-D Child Support Enforcement
Commissioner Workload, Qualifications,
and Allocation
Support Staff Minimum Levels**

Future Statistical Studies

Judicial Council of California

May 1997





Judicial Council of California

Administrative Office of the Courts

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TO: Mr. Bion M. Gregory, Legislative Counsel
Mr. Gregory P. Schmidt, Secretary of the Senate
Mr. E. Dotson Wilson, Chief Clerk of the Assembly

FROM: William C. Vickrey, Administrative Director of the Courts

DATE: May 28, 1997

SUBJECT: Report on Child Support Commissioner Required By
Family Code Section 4252

The enclosed report on Commissioner Workload, Qualifications, and Allocation; Support Staff Minimum Levels; and Future Statistical Studies, includes the following matters:

- Establishes the minimum qualifications for a commissioner as requiring five years' practice and experience in family law matters that may include Title IV-D child support matters (see pp. 1-2 of the report);
- Requires that commissioners receive ongoing education pursuant to a plan to be jointly developed by the Judicial Council's Family and Juvenile Law Advisory Committee and the Center for Judicial Education and Research (see p. 2 of the report);
- Establishes a workload of 250 cases per week for a commissioner hearing Title IV-D child support matters (see pp. 4-9 and 16-17 of the report);
- Establishes a minimum support staff figure of one courtroom clerk, one bailiff, four file clerks, and one court reporter (see pp. 5 and 11-12 of the report);

- **Allocates the funding for the 50 commissioner positions based on the active pending caseload of Title IV-D child support cases in each county (see p. 10 of the report); and**
- **Directs the Family and Juvenile Law Advisory Committee to develop statistics that would facilitate the prediction of caseload and the resources needed to work with this caseload (see pp. 15-16 of the report).**

If you have any questions on this report please contact Michael Fischer, Attorney, at (415) 396-9130.

Enclosure

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I. Introduction

This report is prepared pursuant to Family Code section 4252, which provides, in part:

(b) The Judicial Council shall do all of the following:
(1) Establish minimum qualifications for child support commissioners.

...
(2) Establish caseload, case processing, and staffing standards for child support commissioners on or before April 1, 1997, which shall set forth the maximum number of cases that each child support commissioner can process. These standards shall be reviewed and, if appropriate, revised by the Judicial Council every two years.

This report was prepared by the Family Law Subcommittee of the Judicial Council's Family and Juvenile Law Advisory Committee, the body charged with implementing Statutes of 1996, chapter 957 (Assembly Bill 1058). The report has been approved by the Judicial Council. The members of the Family Law Subcommittee are listed in Appendix A. The subcommittee was assisted by the AB 1058 subcommittee, which consisted of some Family Law Subcommittee members and additional advisory members. The members of this AB 1058 subcommittee are listed in Appendix B.

This report is preliminary in nature, and the statistics currently available concerning workload for family law commissioners is sparse. The cooperative agreement between the Judicial Council and the Department of Social Services, which is the primary implementation document for AB 1058, provides that the council is to recommend to the Department of Social Services methods to gather statistical information that can be used to predict future needs of the child support enforcement system. This report also serves this recommending function, in part. It is anticipated that the council will provide more specific data concerning workload in time for the fiscal year 1998-99 budget process.

II. Minimum qualifications for commissioner

A judge of the superior court must have at least 10 years of practice prior to the appointment. (See Cal. Const., art. 6, § 15.) A judge of the municipal court requires five years of practice and can, if assigned as a judge of the superior court, hear family law matters.

The appointment of commissioners to hear family law matters is sometimes viewed critically because it can lead to the appearance of providing less importance to those cases than to the cases heard by a judge. It should be noted, though, that in many superior courts currently using commissioners for family law matters, the commissioner is a highly qualified individual who not only has the same length of practice experience as a superior court judge, but also has extensive family law experience and expertise, both before taking the bench and afterwards. These commissioners are highly specialized and experienced family law adjudicators.

Whatever the policy reasons for and against the appointment of commissioners, however, the federal government will not provide funding for superior court judge who hear child support matters, nor will it provide funding for the support staff for that judge. It will, however, provide two-thirds of the funding for a commissioner hearing child support matters, and it will provide funding for that commissioner's support staff as well. Thus, AB 1058 requires the use of commissioners to hear these matters.

Since a municipal court judge is assignable to hear family law matters, it would be appropriate to set the same requirement for a commissioner, with the added provision of experience in family law matters that may include Title IV-D child support matters. This will also permit the more rural counties to find a commissioner. A court is, of course, free to impose additional qualification standards.

In addition, AB 1058 requires that commissioners receive ongoing education (Fam. Code, § 4252(b)(2)). The Family and Juvenile Law Advisory Committee is studying the form and content of appropriate education for these commissioners and will be developing a program for them in conjunction with the Center for Judicial Education and Research. Each commissioner hired under this program will be required to participate in such education programs as are specified by these two groups.

III. Department of Social Services 1994 Survey

In April 1994, the Department of Social Services surveyed counties to determine how much time was spent hearing Title IV-D child support matters. In the counties that responded to the survey, it was indicated that approximately 750 hours per week was spent by judges and commissioners in hearing these matters.

The workload figures did not include reports from the counties listed in Table 1. These non-reporting counties had a total active caseload in 1994 of 197,787 cases.

Table 1 - Counties Not Responding to 1994 Workload Report

County Name	1994 Active Caseload
Butte	9,757
Glenn	1,209
Kings	7,489
Lassen	671
Los Angeles	156,835
Mariposa	618
San Benito	1,471
Santa Cruz	5,217
Shasta	11,564
Trinity	829
Tuolumne	2,127
Total Caseload	197,787

The total active caseload for *all* counties for 1994 was 814,165, so the workload of 750 hours represents a workload for an active caseload of 616,378 (814,165 – 197,787). Assuming that workload is best related to the active caseload, this results in a workload for all counties of 991 hours in 1994. Extrapolating this data to the end of June 1996 (with a total active caseload of 1,157,174) results in a workload of 1409 hours per week. A child support commissioner must also be involved in reviewing and signing default orders, overseeing the processing of papers, and participating in general court activities. Accordingly, the commissioner's case-related time available is 30 hours a week, which involves six hours of hearings each day. The 1,409 hours thus needed, based strictly on the 1994 figures, would result in a need for 47 commissioners.

These figures, though, are likely to be understated for several reasons:

- 25 percent of the counties responding to the 1994 survey reported that there was a delay in the court's ability to hear Title IV-D cases, and in only two of the 12 counties reporting a delay was the length of the delay less than four weeks.
- The figures are totals and do not take into account the extra time required because some courts do not have a full-time workload for a commissioner. In the smaller counties, a commissioner might not have sufficient workload for a full or even a half day of hearings, or must travel to several counties resulting in a loss of potential hearing time.

- The figures do not take into account the added hearing time and contested proceedings that are likely to result from the reforms enacted by AB 1058¹ and federal welfare reform (The Personal Responsibility and Work Opportunity Reconciliation Act of 1996).²

IV. Informal 1997 Telephone Survey

The Administrative Office of the Courts conducted a telephone survey of eight courts that already employ a child support commissioner. These counties stated that they were handling, on average, 323 child support enforcement cases a week per full-time commissioner. Most of the counties did not have statistics concerning how many of the cases involved establishing a child support obligation, how many involved enforcement action, and how many involved modification of an existing order. Sacramento County noted that approximately one-half of its cases are establishment, one-quarter are modifications, and one-quarter are enforcement. That county also noted that modifications take two to three times as long as the other two types of cases. The number of cases per week handled in each county is shown in Table 2. Some counties also establish default judgments by declaration while others calendar the default matters for a hearing. This can result in different amounts of time spent in establishing a default.

Table 2 - Number of Cases Handled Per Week

County	No. of Cases Per Week
Fresno	225-250
Los Angeles	300-500
Sacramento	325
San Diego	500
San Francisco	200
San Mateo	500
Solano	150-300
Stanislaus	200
Average	323

Each county was also asked about the support staff that was used in each courtroom or otherwise in the clerk's office to support the work of the courtroom.

¹ Because the proposed default judgment is now served with the petition, it is anticipated that more answers are likely to be filed since the noncustodial parent is likely to be better aware of the amount that is probably to be ordered in his or her case. In addition, the availability of the facilitation office also means that persons who wish to contest the proceedings will now be better informed of the procedures and how to use them.

² Under this act, the recipient parent has a greater incentive to cooperate in the establishment of a support obligation and, thus, more cases are likely to be filed seeking support.

The numbers reported by each court, based on support staff per full-time-equivalent (FTE) commissioner position is given in Table 3.

Table 3 - Support Staff Per Full-Time-Equivalent Commissioner Position

County	Courtroom Clerks	Bailiffs	File Clerks
Fresno	2	1	5
Los Angeles	2	1	8
Sacramento	2	1	4
San Francisco	1	1	5
San Mateo	1	1	4
Solano	1	1	4
Average	1.5	1	5

As can be seen from Table 3, the workload of a child support commissioner courtroom is very paper intensive resulting in the need for extensive support staff. For example, there are three orders that generally result from each establishment case – the child support order itself, the health insurance assignment, and the wage assignment. In addition to the support staff listed in Table 3, some courts also have secretaries from the district attorney’s family support division who type up orders in the courtroom at the conclusion of each hearing.

There is reporting of the proceedings in all courtrooms surveyed. With the recent decision of the superior court in *California Court Reporters Association, et. al v. Judicial Council, et al.*, enjoining the council from authorizing or causing the expenditure of public funds on electronic recording, each court is likely to require the use of a court reporter as well.

The workload figures given in Table 2, above, vary from court to court based on a variety of factors. In most courts, the cases are reviewed in advance of the hearing. In some cases, the commissioners reported that the workload was heavy and some took cases home to review them the evening before the hearing.

In some of the courts, there is a significant number of non-English-speaking defendants. The council is considering a recommendation to survey the language needs of the courts in these cases. For the present, the number of different languages and the relative unavailability of interpreters result in fewer cases being handled per day. In addition, since the custodial parent is now able to be a party in this action, the burden of providing interpreting services for a number of different languages and dialects is likely to increase.

Another variable factor is the level of acrimony in each case either between the parents or between the payor parent and the district attorney’s office. Practices in

district attorney family support divisions vary from county to county concerning how aggressively cases are handled. While more aggressively handled cases may result in a greater number of cases being settled without court process, those cases that do go to court may take more court time. This is another issue that will be recommended for future study to determine the effect on case processing.

The workload figures gathered to date all involve activities prior to the implementation of Assembly Bill 1058. Several issues involved in that legislation are likely to have an effect on the commissioners' workload, although it is not yet known what the effect will be. The following parts of Assembly Bill 1058 will be recommended for further study to determine the effect on workload:

- The custodial parent as a party**
- Presumed level of support**
- Easy set-aside of defaults (as to the order amount)**
- Greater knowledge of litigants due to the facilitation offices**
- Administrative issuance of earnings assignments and writs of execution³**

Another workload issue that is not reflected in the above processing information concerns defaults. In Solano County, statistics kept by the Child Support Referee indicate that (1) during the first 14 months of the program in that county, nearly 800 cases per month went by default requiring a signed order, and (2) processing these cases took approximately six hours per month of referee time. In Los Angeles, approximately 4,000 cases per month go to judgment by default, all needing some commissioner review and a signature. The council is considering collecting statistics on this subject and studying the matter further to determine the most efficient manner of handling these cases.

V. Court estimates of need

A questionnaire was sent to each county by the Administrative Office of the Courts asking them several questions concerning AB 1058, including questions concerning the commissioner workload and support staff. A copy of the questionnaire is attached as Attachment C. The results of the questionnaire concerning commissioners are summarized below.

³ While there will be less paperwork per case for the courts, there are likely to be an increased number of hearings resulting from this procedure.

A. Number of cases per commissioner

Courts were asked to estimate the maximum number of cases a commissioner can handle and whether there should be a different standard for establishment, modification, and enforcement cases. Twenty-one counties responded giving an actual number of cases that can be handled per commissioner. These responses are summarized in Table 4, below, and show that on average the responding counties believe a commissioner should be able to process 242 cases per week.

Table 4 - Maximum Number of Cases per Week

County	Maximum Number of Cases per Week
Alameda	200
Contra Costa	200
Fresno	300⁴
Imperial	300
Kings	240
Los Angeles	340
Madera	200
Marin	200
Merced	150
Napa	100
Orange	200
Placer	225
Sacramento	267
San Benito	400
San Francisco	160
San Joaquin	250
Santa Clara	250
Santa Cruz	200
Sonoma	375
Tulare	250
Ventura	275
Average	242

⁴ This assumes DA support staff to work with the parents to attempt to reach an agreement prior to the court hearing.

Counties generally expressed great uncertainty as to the number of cases a commissioner could handle on average. A preliminary list of variables that are not yet known are as follows:

- How many cases will be contested, especially given the new provisions of AB 1058 (e.g., providing a copy of the proposed judgment with the petition)
- How many parties are represented by counsel (and the effect of the family law facilitators)
- Effect of number of support staff provided for commissioner including document examiner and clerks
- The level of acrimony between the parents in a case
- Whether a commissioner is part time or full time
- Policies of the district attorney family support division
- The mix of establishment, modification, and enforcement cases
- Effect of custody and visitation issues and restraining orders now that the custodial parent is a party under AB 1058
- Impact of State Licensing Information Match (SLIM), especially drivers' licenses.⁵

Counties were also asked whether establishment hearings should be given a different weight than enforcement hearings. In the initial hearing in a case, there are several issues involved, including whether the respondent/defendant is the parent of the child and what the proper amount of support is under the guideline. These issues are normally not part of an enforcement action. Of those courts responding to this question:

- Eleven stated that establishment, modification, and enforcement actions should all be given the same weight

⁵ Stanislaus County reports an increase of five cases per week attributable to the SLIM program, and San Diego County notes that 15 out of the 50 cases on calendar per day have involved SLIM issues over the last six months. Sacramento County also notes an increase in cases due to the SLIM program. These figures may drop off once the initial cases are handled but it may take several years until this occurs.

- Six courts stated establishment takes the greatest amount of time
- Two courts said enforcement takes the greatest amount of time
- Two courts noted that enforcement and modification take more time than establishment
- One court said modification took the greatest amount of time.

The various responses show that without substantial data-gathering, it is not known whether establishment, enforcement, or modification takes more time. This data cannot be determined at present and must also await an accurate method to determine what mix of workload any particular court is likely to receive in any particular year from its Title IV-D cases. However, the collection of data on this subject in the future could prove fruitful as a means of more accurately determining the number and, especially, the distribution of commissioners.

B. Number of commissioners needed and able to be accommodated

Each court was also asked how many commissioners it believed was needed to handle its Title IV-D workload taking into account not only the workload itself but the ability of the court to accommodate the commissioners and support staff. The results are summarized in the third column of Table 5. Those courts whose entry is blank did not submit an estimate.

The numbers presented in Table 5 represent estimates of court executives and in many cases are based on the understanding of what the procedures will require rather than experience under the new system. Also, some courts either did not include a request or did not respond to the questionnaire. The second column of Table 5 takes the full requests received, extrapolates a statewide figure using active Title IV-D caseload, and then reallocates the number of commissioners to each county based on the statewide figure. In addition, a minimum value of .3 commissioner is used for the smallest counties.

The total commissioners thus allocated in this method work out to be approximately 49.4. (Fifty commissioners are provided for in the budget.)

Table 5 - Commissioners Requested and Potential Allocation

County	Caseload ⁶	Alloc. ⁷	Request	County	Caseload	Alloc.	Request
Alameda	48,103	1.9	0.60	Orange	73,686	2.8	2.00
Alpine	111	0.3		Placer	6,030	0.3	0.60
Amador	1,608	0.3	0.30	Plumas	762	0.3	0.25
Butte	8,582	0.3	1.00	Riverside	80,119	3.1	3.00
Calaveras	1,919	0.3	0.30	Sacramento	35,237	1.3	2.00
Colusa	821	0.3		San Benito	2,400	0.3	0.05
Contra Costa	38,666	1.5	1.00	San Bern.	41,584	1.6	1.00
Del Norte	3,024	0.3		San Diego	54,751	2.1	1.00
El Dorado	8,720	0.3	0.40	San Fran.	28,302	1.1	1.00
Fresno	61,224	2.3	3.00	San Joaquin	32,532	1.2	1.00
Glenn	1,715	0.3		San Luis Obispo	6,991	0.3	0.50
Humboldt	6,158	0.3		San Mateo	14,447	0.5	0.65
Imperial	7,907	0.3	0.60	Santa Barb.	21,364	0.8	0.50
Inyo	1,540	0.3		Santa Clara	49,128	1.9	2.00
Kern	50,318	1.9		Santa Cruz	5,196	0.3	0.50
Kings	9,132	0.3	1.00	Shasta	15,807	0.6	2.00
Lake	3,377	0.3	0.12	Sierra	160	0.3	
Lassen	1,529	0.3		Siskiyou	4,015	0.3	0.30
Los Angeles	226,752	8.8	9.00	Solano	16,348	0.6	
Madera	5,765	0.3	0.55	Sonoma	18,320	0.7	0.87
Marin	3,840	0.3	0.50	Stanislaus	25,495	0.9	2.00
Mariposa	794	0.3		Sutter	5,211	0.3	
Mendocino	4,110	0.3		Tehama	4,321	0.3	0.50
Merced	13,858	0.5	0.60	Trinity	1,075	0.3	
Modoc	739	0.3		Tulare	26,837	1.0	1.00
Mono	224	0.3	0.20	Tuolumne	3,139	0.3	0.40
Monterey	13,470	0.5		Ventura	35,077	1.3	1.00
Napa	4,231	0.3	0.60	Yolo	9,051	0.3	0.50
Nevada	5,261	0.3	0.40	Yuba	6,271	0.3	

⁶ Caseload is based on active caseload reported by the district attorney and consists of the cases for which a non-custodial parent has been located and a support order established or reserved. It is submitted that this figure represents the most useful figure for estimating workload of a court because active cases represent not only those cases that will generate enforcement action, but represents a good method of determining the number of new establishment cases a court is likely to get in any particular year. The statewide total is 1,157,254.

⁷ The allocation figure is based on total caseload of the counties responding to the questionnaire divided by the total number of positions requested. In addition, a minimum of 3 commissioner has been established for the very smallest counties which takes into account the issues concerning less than full calendars and the need for travel between counties.

It is anticipated that the allocation of commissioners will generally be based on this table. In some cases, a county may not need the full number of positions allocated to it. In that event, it is recommended that the amount not utilized by that county be allocated to another county that needs the additional amount, subject to an overall allocation of 50 total FTE positions. Other modifications may be made based on supplemental data received.

C. Support staff, equipment, and facilities

The workload of a commissioner under Title IV-D is very paper intensive. Considerably more paper goes through the court and needs to be processed than in the average case. And the amount of paper is likely to increase as additional federal requirements are imposed and the requirements of AB 1058 appear.

As indicated above, the average full-time equivalent commissioner position utilizes the following support staff: courtroom clerks – 1.5; bailiffs – 1; file clerks – 5, court reporters⁸ – 1.5. These numbers appear appropriate. Nonetheless, it would appear that some courts are able to function with somewhat less than the number of support staff indicated here perhaps due both to the types of cases brought by the district attorney and the degree of assistance provided to the litigants by various existing organizations. Thus an appropriate minimum level of support staff would consist of the following:

- one courtroom clerk
- one bailiff
- four file clerks
- one court reporter

Different courts will require different amounts of support because establishment, modification, and enforcement cases tend to generate different amounts of paperwork. In some of the counties, currently, the number of support positions is less than specified above, and in others the numbers are greater. The reasons for this disparity in need for support staff may be explained by the differences in the

⁸ Pursuant to the decision in *California Court Reporters Association, et al. v. Judicial Council, et al.*, each court is likely to require the services of one-and-one-half court reporters. Since the Judicial Council will be distributing the money to the trial courts, this distribution will be subject to the council's directive that the courts not utilize any of the state money for electronic recording. Discussions with present Title IV-D commissioners, funded through the district attorney offices, indicated that the use of electronic recording is very efficient in these courtrooms and that the commissioner would require more than one court reporter because court reporters require more frequent breaks than the commissioner does.

makeup of cases. It is not yet known how significant these differences are and, consequently, this issue will be studied further.

It should be noted, though, that the amount provided for each full-time equivalent commissioner position, namely \$600,000 per year including the salary of the commissioner, while more than the amount provided generally for each judicial position, is still less than the amount provided for in some counties for the existing Title IV-D commissioner position funded through the district attorney's office. These counties will suffer a reduction in service (which is likely to result in fewer cases processed) unless some method is developed to provide them with the funding they currently receive. (See letter from Sacramento Courts Executive Officer Michael Roddy attached as Attachment D.)

The council will be studying the amount of support staff used in various counties in an effort to provide a more definite figure to the Legislature on the amount of support staff needed to properly handle the Title IV-D caseload in a county.

VI. District attorney Title IV-D caseload

The Title IV-D caseload of the district attorneys' family support divisions throughout the state provides the cases that become the calendars to be heard by the child support commissioners. There are statistics concerning how many existing active cases each county has and the number of new establishment cases each county brings each year.⁹ These numbers are presented in Table 6, which shows the total active caseload, the number of new establishment actions, and the percentage of total cases that the establishment represents. The variation in percentage of new establishment cases from county to county is probably due to one or more of the following causes:

- The population make-up of the county
- The internal workings of the district attorney's office
- The ability of the court to hear cases
- The local legal culture
- Whether the county has recently begun to aggressively seek new establishment cases

⁹ The statistics are preliminary data supplied by the Department of Social Services and based on the July 1995 to June 1996 fiscal year.

Table 6 - Total Active Title IV-D Caseload and New Cases

County	Cases	New	New %	County	Cases	New	New %
Alameda	48,103	5,213	10.8%	Orange	73,686	9,772	13.3%
Alpine	111	0	0.0%	Placer	6,030	1,624	26.9%
Amador	1,608	298	18.5%	Plumas	762	112	14.7%
Butte	8,582	482	5.6%	Riverside	80,119	14,752	18.4%
Calaveras	1,919	363	18.9%	Sacramento	35,237	8,231	23.4%
Colusa	821	97	11.8%	San Benito	2,400	301	12.5%
Contra Costa	38,666	4,857	12.6%	San Bern.	41,584	4,240	10.2%
Del Norte	3,024	219	7.2%	San Diego	54,751	16,240	29.7%
El Dorado	8,720	1,145	13.1%	San Francisco	28,302	3,665	12.9%
Fresno	61,224	9,399	15.4%	San Joaquin	32,532	6,891	21.2%
Glenn	1,715	423	24.7%	San Luis Ob.	6,991	2,021	28.9%
Humboldt	6,158	1,060	17.2%	San Mateo	14,447	4,621	32.0%
Imperial	7,907	2,010	25.4%	Santa Barbara	21,364	5,286	24.7%
Inyo	1,540	148	9.6%	Santa Clara	49,128	6,923	14.1%
Kern	50,318	4,695	9.3%	Santa Cruz	5,196	751	14.5%
Kings	9,132	1,365	14.9%	Shasta	15,807	1,271	8.0%
Lake	3,377	893	26.4%	Sierra	160	41	25.6%
Lassen	1,529	200	13.1%	Siskiyou	4,015	840	20.9%
Los Angeles	226,752	28,373	12.5%	Solano	16,348	3,295	20.2%
Madera	5,765	757	13.1%	Sonoma	18,320	2,568	14.0%
Marin	3,840	1,097	28.6%	Stanislaus	25,495	5,051	19.8%
Mariposa	794	147	18.5%	Sutter	5,211	626	12.0%
Mendocino	4,110	622	15.1%	Tehama	4,321	240	5.6%
Merced	13,858	2,218	16.0%	Trinity	1,075	92	8.6%
Modoc	739	90	12.2%	Tulare	26,837	7,414	27.6%
Mono	224	36	16.1%	Tuolumne	3,139	409	13.0%
Monterey	13,470	3,493	25.9%	Ventura	35,077	8,066	23.0%
Napa	4,231	572	13.5%	Yolo	9,051	1,266	14.0%
Nevada	5,261	365	6.9%	Yuba	6,271	687	11.0%
				Total	1,157,154	187,933	16.2%

The existing caseload of active Title IV-D matters presents a workload for the court in two ways. One way is enforcement actions taken by the district attorney or resistance to enforcement actions taken by the paying parent. Counties are not currently required to report on enforcement action taken by those counties.

Table 7 includes statistics from those counties voluntarily providing information regarding enforcement actions and includes court-related enforcement.¹⁰

Table 7 - Enforcement Actions

County	Total Cases	Enforcement actions	Enforcement actions as percentage of total cases ¹¹
Alpine	111	2	1.8%
Amador	1,608	1,015	63.1%
Calaveras	1,919	306	15.9%
Colusa	821	20	2.4%
Contra Costa	38,666	112,967	292.2%
Del Norte	3,024	122	4.0%
El Dorado	8,720	281	3.2%
Fresno	61,224	19,450	31.8%
Glenn	1,715	351	20.5%
Humboldt	6,158	436	7.1%
Imperial	7,907	129	1.6%
Inyo	1,540	527	34.2%
Kings	9,132	1,627	17.8%
Lake	3,377	1,081	32.0%
Lassen	1,529	14	0.9%
Los Angeles	226,752	6,376	2.8%
Mariposa	794	999	125.8%
Mendocino	4,110	222	5.4%
Merced	13,858	16,875	121.8%
Modoc	739	5	0.7%
Mono	224	13	5.8%
Napa	4,231	734	17.3%
Nevada	5,261	31	0.6%
Orange	73,686	2,031	2.8%
Placer	6,030	2,114	35.1%
Riverside	80,119	1,254	1.6%
Sacramento	35,237	10,210	29.0%
San Benito	2,400	590	24.6%

¹⁰ These items include criminal failure to support, contempt, writs of execution, judgment debtor examinations, and other unspecified enforcement actions.

¹¹ In many cases the enforcement percentage is greater than 100% because, on average, in that county, each active case had more than one enforcement action taken in that regard.

Table 7 - Enforcement Actions (continued)

County	Total Cases	Enforcement actions	Enforcement actions as percentage of total cases
San Diego	54,751	179	0.3%
San Francisco	28,302	3,146	11.1%
San Joaquin	32,532	108	0.3%
San Luis Obispo	6,991	2,853	40.8%
San Mateo	14,447	67	0.5%
Santa Barbara	21,364	90	0.4%
Santa Clara	49,128	3,283	6.7%
Shasta	15,807	280	1.8%
Solano	16,348	43	0.3%
Sonoma	18,320	17,811	97.2%
Stanislaus	25,495	4,543	17.8%
Tuolumne	3,139	52	1.7%
Ventura	35,077	2,318	6.6%
Yuba	6,271	172	2.7%
Total	928,864	214,727	23.1%

Table 7 indicates that the present caseload figures collected on enforcement actions are not useful in predicting workload. More detailed information about the type of enforcement proceeding, and the court time associated with that proceeding, is needed in order to use enforcement data as a partial predictor of workload.

The second aspect of the existing Title IV-D caseload consists of modifications. Federal law requires review and consideration of modification for existing child support orders periodically or upon request of either party. The effect of this provision on a court's workload is unknown although it is anticipated that it will be substantial. The council is recommending that the courts maintain statistics on this subject to assist in future workload recommendations.

VII. Suggestions for future data-gathering

There are a number of caseload-related statistics that could be useful in attempting to more accurately predict caseload and number of commissioners for each county. These have been mentioned throughout this report and are summarized here. The council will be developing, through its Family and Juvenile Law Advisory Committee, a recommended method for collecting and analyzing these statistics. A report from the committee on this subject is expected this year.

The subjects for study include the following:

- The number of hearings set in the court for establishment cases, enforcement cases,¹² and modification cases.
- The average amount of court time utilized for each contested establishment, enforcement, and modification case.
- The percentage of hearings set that result in contested proceedings in establishment, enforcement, and modification cases.
- The number of default establishment cases processed and the amount of court and support staff time spent processing the defaults.
- The effect on the number of contested cases and the length of time for hearing cases regarding either the level of acrimony involved in the case or the language needs of one or more of the participants in the case.
- The amount of support staff required to handle the paperwork generated by the Title IV-D caseload.

VIII. Analysis and recommendations

The key statistic, which is presently missing, is determining the number of hearings or other court-related time that each active Title IV-D case generates each year and the number of hearings or other court-related time that each establishment action generates. The council is directing the Family and Juvenile Law Advisory Committee to develop a system to collect these statistics over the next 18 months in order to better determine the actual need for commissioners.

Nonetheless, if either the existing experience indicated in the informal telephone survey of 323 cases per commissioner per week, or the court questionnaire recommended value of 243 cases per commissioner per week, is used, this results in the following number of minutes per case:

Number of cases per week	30 hours per week case time	40 hours per week case time
243 cases	7.4 minutes/case	9.8 minutes/case
323 cases	5.5 minutes/case	7.4 minutes/case

¹² For enforcement cases, the study should include a breakdown of the various types of enforcement actions. This recommendation is part of every suggestion including collection of enforcement case data made in this report.

It should be noted that several of those courts surveyed by telephone indicated that the workload expressed in the survey was a very heavy workload. Given the importance of these cases to both the individual payor and the recipient, it would seem appropriate to ensure that an adequate amount of time is provided for hearing each case, and that a workload of 250 cases per commissioner per week is not unreasonable. This will still result in less than 10 minutes being provided for each case that goes to court hearing.

Because there is no method at present for determining the number of calendared hearings likely to result from a given active caseload, it is suggested that the workload of 250 cases per commissioner per week be used as a method of defining the workload of the commissioner (rather than a means of allocating commissioners or determining the need on a county-by-county basis). The analysis conducted above indicates that there is a need for at least 50 commissioners within the existing Title IV-D child support enforcement system. It is expected that the allocation noted above will, except in the very small counties where the allocation amount is .3 commissioner, result in a workload that will exceed 250 cases per week. Commissioners will be asked to keep workload statistics so that both the need for and the appropriate allocation of commissioners can be kept current with the caseload demands.



**Appendix A
Family Law Subcommittee Members**

**Hon. Mary Ann Grilli, Chair
Judge of the Santa Clara County Superior Court**

**Hon. William Anderson, Jr.
Commissioner of the Riverside County Superior Court**

**Hon. Morrison England, Jr.
Judge of the Sacramento Municipal Court**

**Hon. Paul Gutman
Judge of the Los Angeles County Superior Court**

**Hon. Susan Harlan
Judge of the Amador County Superior Court**

**Mr. Paul Hokokian
Deputy District Attorney, Fresno County**

**Ms. Deanna L. Jang
Attorney at Law, San Francisco**

**Mr. John Paulson
Attorney at Law, Auburn**

**Ms. Sherri Pedersen
Executive Office, Monterey County Superior Court**

**Mr. Ronald Rosenfeld
Attorney at Law, Beverly Hills**

**Ms. Jan Shaw
Director, Mediation Investigative Services, Orange County**

**Hon. Marguerite L. Wagner
Judge of the San Diego County Superior Court**

**Ms. Kate S. Yavenditti
Attorney at Law, San Diego**

Appendix B
AB 1058 Subcommittee Members

Hon. Mary Ann Grilli
Judge of the Santa Clara County Superior Court

Ms. Leora Gerschenson
Attorney at Law, San Francisco

Mr. Paul Hokokian
Deputy District Attorney, Fresno County

Mr. Charles Mandel
Assistant District Attorney, Los Angeles County

Hon. Lynne Meredith
Commissioner of the Stanislaus County Superior Court

Mr. Lee Morhar
Attorney, Department of Social Services

Mr. George Nielsen
Assistant District Attorney, San Francisco City and County

Ms. Christine Patton
Court Executive, Santa Cruz County Trial Courts

Hon. Harry Powazek
Commissioner of the San Diego County Superior Court

Ms. Jan Shaw
Director, Mediation Investigative Services, Orange County

Hon. Neil Shepherd
Commissioner of the Sacramento County Superior Court

Ms. Kate S. Yavenditti
Attorney at Law, San Diego

**Adopted Allocations for June, 1997 and Fiscal Year 1997-98 Child Support
Commissioner and Family Law Facilitator Funding**

County	FTE Alloc.	Commissioner June 1997	Facilitator June 1997	Commissioner FY 1997-98	Facilitator FY 1997-98
Alameda	1.9	\$95,000	\$94,050	\$1,140,000	\$308,560
Alpine	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Amador	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Butte	0.5	\$25,000	\$24,750	\$300,000	\$81,200
Calaveras	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Colusa	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Contra Costa	1.5	\$75,000	\$74,250	\$900,000	\$243,600
Del Norte	0.3	\$15,000	\$14,850	\$180,000	\$48,720
El Dorado	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Fresno	2.3	\$115,000	\$113,850	\$1,380,000	\$373,520
Glenn	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Humboldt	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Imperial	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Inyo	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Kern	1.9	\$95,000	\$94,050	\$1,140,000	\$308,560
Kings	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Lake	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Lassen	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Los Angeles	8.8	\$440,000	\$435,600	\$5,280,000	\$1,429,120
Madera	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Marin	0.3/0.5	\$15,000	\$24,750	\$180,000	\$81,200
Mariposa	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Mendocino	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Merced	0.5	\$25,000	\$24,750	\$300,000	\$81,200
Modoc	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Mono	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Monterey	0.5	\$25,000	\$24,750	\$300,000	\$81,200
Napa	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Nevada	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Orange	2.8	\$140,000	\$138,600	\$1,680,000	\$454,720

* If one number is listed this is the allocation for both commissioner and facilitator. If two numbers are listed the first is for the commissioner and the second is for the facilitator.

Attachment A

County	FTE Alloc.	Commissioner June 1997	Facilitator June 1997	Commissioner FY 1997-98	Facilitator FY 1997-98
Placer	0.4	\$20,000	\$19,800	\$240,000	\$64,960
Plumas	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Riverside	3.1	\$155,000	\$153,450	\$1,860,000	\$503,440
Sacramento	1.3	\$65,000	\$64,350	\$780,000	\$211,120
San Benito	0.3	\$15,000	\$14,850	\$180,000	\$48,720
San Bern.	1.6	\$80,000	\$79,200	\$960,000	\$259,840
San Diego	2.1	\$105,000	\$103,950	\$1,260,000	\$341,040
San Francisco	1.1	\$55,000	\$54,450	\$660,000	\$178,640
San Joaquin	1.2	\$60,000	\$59,400	\$720,000	\$194,880
San Luis Ob.	0.3	\$15,000	\$14,850	\$180,000	\$48,720
San Mateo	0.5	\$25,000	\$24,750	\$300,000	\$81,200
Santa Barb.	0.8	\$40,000	\$39,600	\$480,000	\$129,920
Santa Clara	1.9	\$95,000	\$94,050	\$1,140,000	\$308,560
Santa Cruz	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Shasta	0.6	\$30,000	\$29,700	\$360,000	\$97,440
Sierra	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Siskiyou	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Solano	0.6	\$30,000	\$29,700	\$360,000	\$97,440
Sonoma	0.75/0.7	\$37,500	\$34,650	\$450,000	\$113,680
Stanislaus	0.95	\$47,500	\$47,025	\$570,000	\$154,280
Sutter	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Tchama	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Trinity	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Tulare	1.0	\$50,000	\$49,500	\$600,000	\$162,400
Tuolumne	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Ventura	1.3	\$65,000	\$64,350	\$780,000	\$211,120
Yolo	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Yuba	0.3	\$15,000	\$14,850	\$180,000	\$48,720
Total	49.8/49.95	\$2,490,000	\$2,472,525	29,880,000	\$8,111,880

If one number is listed this is the allocation for both commissioner and facilitator. If two numbers are listed the first is for the commissioner and the second is for the facilitator.

Judicial Council of California

**CALIFORNIA'S CHILD
SUPPORT COMMISSIONER
SYSTEM:**

An Evaluation of the First
Two Years of the Program



May 2000

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS



EXECUTIVE SUMMARY

The child support commissioner system, which consists of child support commissioners and family law facilitators, was implemented in 1997 by Assembly Bill 1058 (Speier) (Stats. 1996, ch. 957) to further the goal of making the child support system speedy, efficient, conflict reducing, cost effective, and accessible to families. This report constitutes findings of the evaluation of the child support commissioner system, mandated by Assembly Bill 2498 (Runner) (Stats. 1998, ch. 249).

Eleven counties (which account for 61 percent of California's population) were selected to evaluate the child support commissioner system in depth. Court data was collected and analyzed from the study counties that had automated systems. Six focus groups composed of child support commissioners, family law facilitators, and district attorneys from the study counties were conducted by independent, non-Judicial Council researchers to provide qualitative data on program strengths and weaknesses, barriers to optimal program performance, and strategies to overcome barriers and improve the program.

In addition, all counties' child support commissioners and family law facilitators were surveyed to document local changes or enhancements to Title IV-D child support court and family law facilitator resources, facilities, services, and procedures as a result of AB 1058. Information on child support commissioner and facilitator professional qualifications and experience and professional development activities also was collected. Customer satisfaction data was also analyzed.

After two years of statewide implementation, the following were found to be strengths of the child support commissioner system:

- Systemwide structural changes to the child support system have taken place that build courts' capacity to process child support cases: child support commissioners are established in all California counties but one, and family law facilitator offices are in place in every county. Changes in forms and

procedures as a result of AB 1058 also have increased efficiencies in how cases are processed.

- Child support commissioners and family law facilitators have many years of specialized experience: on average, commissioners as a group practiced family law approximately 13 years, and family law facilitators practiced family law approximately 12 years, before assuming their new roles in this program.
- Families' access to the child support process has been significantly increased by the family law facilitators' assistance and information.
- Speed and efficiency in processing child support cases in courts were improved as a result of the assistance provided by the family law facilitators. Also, because child support commissioners are dedicated to hearing IV-D cases, they have the knowledge, expertise, and consistency that allow them to institute efficiencies in their courts.
- Conflict between parties was reduced as a result of family law facilitators' efforts to educate litigants on the child support process, and as a result of efforts made by many facilitators to help parents work out child support agreements.
- Good working relationships among district attorneys, child support commissioners, and family law facilitators have led to greater efficiency and less conflict among these system partners.
- Focus group participants reported that the child support system is fairer as a result of the child support commissioner system because of efforts made by child support commissioners to give time and attention to Title IV-D matters and by the assistance that family law facilitators provide to noncustodial parents.
- Available data on customer satisfaction shows an almost totally positive response.

- Focus group participants perceived the child support commissioner system to be cost effective because of the efficiencies it created in the overall child support system. The child support commissioner system also builds on existing resources, and two-thirds of its program costs are federally funded.
- The education and training opportunities provided by the Judicial Council contribute to the professional development of child support commissioners and family law facilitators and encourage more uniformity and the development of best practices.

Weaknesses of the child support commissioner system itself centered on the lack of uniform procedures across counties, which was identified as an impediment to fairness, access, and efficiency. Also, some role conflict among district attorneys, child support commissioners, and family law facilitators was noted. Finally, the filing fees and the economic consequences of missing work to attend court were viewed as barriers to greater participation in the child support process, particularly with respect to low-income parents.

Other weaknesses identified by focus group participants affected the optimal performance of the child support commissioner system but were not directly attributable to it. They centered on the lack of a statewide automated child support information system and the consequences of federal penalties associated with the lack of such a system; large arrearages that are difficult, if not impossible, for low-income obligors to pay; the complexity of child support issues in contrast to the ability of many unrepresented litigants to resolve them without substantial help; and the low status of child support in courts and in district attorney offices. As an outcome of the evaluation process itself, we found that improvements are needed in court data systems to generate reliable management information.

This evaluation concludes that the objectives of the child support commissioner system are being met, and that courts, through efforts to streamline the process and help litigants through it, play a significant part in improving the overall child support system. That larger system is influenced by much more than what occurs in court, however.

Key recommendations are intended to encourage certain structural changes to improve system efficiency, particularly with respect to system automation and uniformity.

1. The Judicial Council has put in place a process for defining, collecting and reporting data from courts to the Administrative Office of the Courts: the Judicial Branch Statistical Information System (JBSIS). Because accurate collecting and reporting of data depend on uniform data definitions, it is recommended that the Judicial Council direct staff to do the following in order to ensure that JBSIS reports are useful for state program monitoring, evaluation, and analysis:
 - Work with the courts, including child support commissioners, family law facilitators, and the new California Department of Child Support Services (CDCSS); to ensure that data definitions are uniform; and
 - Provide assistance in training court personnel to enter and report the defined data accurately in order to meet JBSIS requirements.

Additionally, staff should continue to work with the family law facilitator program to collect uniform, statewide data.

2. Coordination of the courts, the CDCSS, and the Franchise Tax Board is essential to ensure the success of the automated statewide child support data system currently under development. To maximize the efficient handling of child support cases, an automated interface between the statewide automated child support data system and the courts' automated systems should be developed. The courts, the CDCSS, and the Franchise Tax Board should work cooperatively on system design and implementation to ensure that the automated statewide child support data system is capable of electronically exchanging data to the maximum extent feasible.
3. The Legislature has mandated that the CDCSS develop uniform forms, policies, and procedures for the child support program. Such uniformity is not only essential to

the success of the statewide automated system, it also ensures the fairness of a statewide child support commissioner system that consistently applies the same rules and procedures in each of its jurisdictions. The Judicial Council is responsible for the creation and adoption of court forms and rules of court for the child support commissioner system. The Legislature has directed the CDCSS to solicit input from a wide variety of participants in the system. Child support commissioners, family law facilitators, and other court staff need to be active participants in this process.

To that end, the Judicial Council is working with the CDCSS to convene a statewide conference in June 2000 to address uniformity issues. The invitees to the conference include child support commissioners, Title IV-D court clerks, family law facilitators, and representatives of the district attorneys' offices, as well as representatives of the CDCSS, the Franchise Tax Board, and the federal Office of Child Support Enforcement.

4. Existing law makes visitation timeshare a critical component of the child support guideline. Federal funds, which make up 66 percent of the funding for the child support commissioner system, are limited to child support only and cannot be used for custody and visitation issues. A consistent theme in the evaluation focus groups was that parents would like to resolve all of their child-related concerns at one time. Therefore, it is recommended that the CDCSS ask the federal Office of Child Support Enforcement to expand the use of Title IV-D funds to assist parents in resolving custody and visitation issues connected with their child support cases.
5. The evaluation workgroup recommended that evaluation of the child support commissioner system be an ongoing endeavor for program improvement. Evaluations are resource intensive. The Judicial Council recommends that the Legislature provide \$300,000 per year in funds for ongoing evaluation of the program. Issues for further study may include:

- **Increased collections through participation:**

Most child support commissioners, family law facilitators, and district attorneys who participated in the evaluation believe that a noncustodial parent who understands and participates in the process to determine support payments is more likely to pay support than a noncustodial parent who does not participate at all. A longitudinal study would be needed to test this hypothesis.

- **Fewer continuances:**

The family law facilitators, child support commissioners, and district attorneys who participated in this evaluation believed that there were fewer continuances and cases taken off-calendar as a result of the assistance provided by the family law facilitators. Courts would need to develop systems to document these outcomes.

- **Unmet needs of litigants:**

It appears that needs of unrepresented litigants are not being met by the existing level of funding for family law facilitator services. Long lines or long waits for appointments to see facilitators have been reported. There is also concern that the level of service currently available to persons whose primary language is other than English may not be adequate. An additional \$2.074 million was appropriated for the facilitator program by Senate Bill 240 (Speier) (Stats. 1999, ch. 652), but it had not been allocated to the courts at the time the data for this evaluation was collected. Therefore, empirical studies of unmet needs should be conducted to determine the level of resources required to ensure that family law facilitator services, often the gateway to the courts for resolving child support issues, meet the needs of the community.

There also will be costs with regard to developing automated interfaces between the statewide automated child support data system and the courts, but those costs cannot be determined until the statewide system is designed and specifications are known.

INTRODUCTION

The child support commissioner system, which consists of child support commissioners and family law facilitators, was implemented in 1997 by Assembly Bill 1058 (Speier) (Stats. 1996, ch. 957) to further the goal of making the child support system speedy, efficient, conflict reducing, cost effective, and accessible to families. This report constitutes findings of the evaluation of the child support commissioner system, mandated by Assembly Bill 2498 (Runner) (Stats. 1998, ch. 249), modifying Family Code section 4250.

Key themes run throughout this report:

- Since the implementation of AB 1058, additional changes have been made to the overall child support enforcement system, so a meaningful evaluation must focus on the effects of these systemic changes;
- Because the child support commissioner system is part of a larger system, program objectives interact with and affect one another; and
- Establishing, enforcing, modifying, and maintaining child support is a complex process involving complicated legal, social, and personal issues.

The child support commissioner system enabled by AB 1058 is part of a larger system that establishes, enforces, and collects child support. The larger child support system comprises local child support agencies (at the time of this evaluation, the district attorney offices), the California Department of Social Services (CDSS), the California Franchise Tax Board, the California Attorney General's Office, the California Department of Motor Vehicles, the California Employment Development Department, the federal Office of Child Support Enforcement, and state and federal lawmakers. The system also includes the parents and children whose lives are affected by system policies and practices. This evaluation describes the program now in place in the courts; however, a complete evaluation of the child support commissioner system must also include its effect on the larger child support system.

It is important to distinguish between a system goal, which is a unifying and long-range purpose, and objectives, which are ways in which the goal is achieved. Focus group data collected as part of this study shows that the system goals identified in Family Code section 4252 actually are system objectives. These objectives support what program providers most identified in this study as a unifying goal of the program, which is *to create a system that provides appropriate and timely support to children through a fair process.*

Fairness means a system that

- Gives both parents *access* to the process;
- *Reduces conflict*—between the parents, and also between the various parts of the system;
- Balances *speed and efficiency* with *due process*; and
- Is *cost effective*—for the parties and the public.

In addition, a fair process is one in which a set of rules and procedures is consistently applied.

The system objectives do not function independently, but instead interact with one another. In the context of a system, this interaction is expected and appropriate—one objective affects another because they are linked. One of the key frustrations when the evaluation design was first developed was that the objectives appeared to be unworkable because they conflict. If the objective is speed, without regard to access, then the speediest system establishes orders with the least possible involvement of the obligor. If the objective is to provide better access to the process, without regard to speed and efficiency, then courts could be overwhelmed by unproductive procedures.

A better way to view the system objectives is to see them as integrated into a balanced whole. For example, the desire to obtain speedy orders should not unfairly limit a parent's legitimate right to be heard. Similarly, the interest in reducing conflict, a common occurrence when money issues are raised

between estranged parents, should not override the need to ensure that children are appropriately supported.

The challenge for a well-working child support commissioner system, then, is to develop ways to implement the system objectives so that the ultimate program goal, appropriate and timely support to children through a fair process, is achieved. An example of this balanced approach might be a system that is committed to reducing conflict between the litigants by taking the time to educate them on the process and their mutual rights and responsibilities as parents, with prompter, more consistent child support payments as its ultimate goal.

It must be emphasized that establishing and enforcing child support is complex for a number of reasons, many of which are beyond the direct control of the child support system:

- ***California's population is highly transient.*** Many residents move from county to county, state to state, and often, country to country, making it difficult to locate obligors and consolidate and enforce multiple orders.
- ***Child support cases are dynamic.*** They involve parents' employment status and income, health insurance coverage, family composition, age and location of the children, and other economic and demographic factors, all of which can change often throughout the years that a child support order may be in effect. The duration of a case, which may be 18 years or longer, coupled with changing family and economic circumstances, can make child support cases difficult to track and administer over time.
- ***Child support issues often are intertwined with highly charged interpersonal and complex legal issues*** surrounding child custody and visitation.
- ***Responsibility for establishing and enforcing child support orders is shared*** by multiple governmental partners, the performance of each of which depends on the other, but which often operate independently.

These factors, combined with California's volume of cases, 62 percent higher than in any other state,¹ make the effort to improve this vast and complex system a daunting undertaking. Nevertheless, profound changes in California's child support system have taken place over the past several years to improve its accessibility to families, reduce conflict, and make the system speedier and more efficient.

This report describes the effects of a change that took place in one part of the larger child support system with the creation of the child support commissioner system. The report emphasizes what is now different about the child support system in California as a result of this new system. The report also assesses the effect of these changes on achieving system objectives, identifies barriers to achievement of these objectives, and recommends further action needed to improve the child support commissioner system.

We gathered quantitative evaluation data from a variety of primary sources: surveys of child support commissioners and their courts, surveys of family law facilitators, and comment sheets from parents receiving family law facilitator services. We analyzed quantitative data generated from court data systems from selected counties. We also conducted focus groups to collect qualitative data from child support commissioners, family law facilitators, and district attorneys—key child support system partners.

Three factors complicated this evaluation:

- At the time the child support commissioner system evaluation was begun, the program was only two years old, and many of the program procedures and supports were newly in place.
- Statewide uniform data was unavailable for the family law facilitators and the child support commissioners.
- Halfway into the evaluation, sweeping legislation was enacted that transferred responsibility for administering the

¹ California State Auditor, Child Support Enforcement Program: Without Stronger Leadership, California's Child Support Program Will Continue to Struggle (August 1999) p. 6.

child support enforcement program from district attorney offices to local child support agencies. In January 2000, a new state agency, the California Department of Child Support Services, replaced the California Department of Social Services as the state control agency. The transition of the local administration of the Title IV-D child support program from district attorney offices to local child support agencies is required to begin in January 2001 (with some counties electing to make the transition earlier). Although the data collection period for this study ended before the new legislation took effect, it must be emphasized that this evaluation occurred in a context of program upheaval and uncertainty. Participants in focus groups conducted in this study were aware of these changes, and it may have affected their responses.

BACKGROUND OF THE CHILD SUPPORT COMMISSIONER SYSTEM

The child support commissioner system, in which every county has both a dedicated child support commissioner and a family law facilitator, was created in 1997 as a result of AB 1058 (Speier) (Stats. 1996, ch. 957) in an effort to improve the manner in which child support was collected by the state. Many features of AB 1058 were based on the results of a December 1995 report issued by the Governor's Child Support Court Task Force, whose mission was to:

... make recommendations to modify the current judicial system, and/or devise other appropriate processes as necessary to create an efficient, humane and effective process for the expedited handling of child support cases as required by law.²

Among the recommendations of the task force were that

- An expedited process for hearing district attorney child support cases needs to be established in the courts, using commissioners instead of judges;
- Centers should be established in each county to provide education, information, assistance, and referrals for parents with child support cases;
- The Judicial Council and Legislature should adopt simple, streamlined, uniform procedures and forms;
- The Judicial Council should provide coordination, training, and support services for the child support commissioner system in local courts; and
- Automation and other technology for processing cases should be optimized by the courts.

² California Department of Social Services, Child Support Court Task Force Report (December 1995) p. 1.

In response to the task force recommendations, the Legislature enacted AB 1058, which provided state funding for the child support commissioner system and implemented two key components of this system: *child support commissioners* and *family law facilitators*.

Child Support Commissioners

Child support commissioners specialize in hearing IV-D cases, which are child support cases brought by the district attorney. These cases are referred to as “TV-D cases” because Title IV-D of the Social Security Act (42 U.S.C. § 601 et seq.) requires each state to establish and enforce support orders when public assistance has been expended on behalf of the custodial parent. Title IV-D also requires the state to establish and enforce support orders when requested to do so by a parent who is not receiving public assistance.

The child support commissioner system began as a response to crisis in the child support system. The reasons for the crisis were economic and programmatic. California’s depressed economy in the late 1980s and early 1990s resulted in a skyrocketing welfare caseload. Along with this growing welfare caseload came an increased number of IV-D child support cases. At the same time they were coping with these increasing caseloads, district attorney offices also were directing staff resources to try to implement the State Automated Child Support System, a statewide automated child support tracking system that ultimately failed.

The result was a large backlog of cases filed by the district attorney offices and awaiting adjudication. From 1991 to 1995, child support caseloads within the district attorney offices statewide doubled, from nearly 1.1 million cases to over 2.2 million cases.³ At the same time, district attorneys were required to meet federal expedited process standards, which require that child support and, if necessary, paternity orders, be established within certain time frames.⁴ It became clear that

³ California Department of Social Services, Child Support Management Information System (CSMIS) Report, 1993–94.

⁴ Time frames for disposition specify that 75 percent of the actions must reach disposition within 6 months of service of process, and 90 percent of the actions must reach disposition within 12 months of service of process.

court resources would need to be directed to meet increased demand from district attorneys to calendar and hear these cases.

By the mid 1990s, several large California counties began to experiment with a new model of court service delivery. With the help of funding from district attorneys, bench officers dedicated to hearing IV-D child support matters were used and were successful in helping to clear the backlog of cases. By 1996, twenty counties had established such specialized courts.

In 1995, the *Child Support Court Task Force Report* recommended that child support commissioners in all counties be established as part of an expedited process to hear IV-D cases. Not only would this address the courts' capacity to process IV-D cases, but it also provided a cost-effective way to fund these services during a time of chronic state and local budget shortfalls in California. In recommending that child support commissioners, rather than superior court judges, be used to hear IV-D cases, the Governor's Task Force recognized that federal funding could be used to help offset the increased costs to state and local government that might be incurred with a new statewide program.

In 1997, AB 1058 was enacted. Pursuant to Family Code section 4251(a), all actions or proceedings filed by the district attorney in a support or enforcement action are referred for hearing to a child support commissioner. AB 1058 provided the funding for the superior courts to hire these child support commissioners and support staff. Under AB 1058, the appropriate amount of court time for IV-D cases is allocated, and these cases are heard by a judicial officer who is well versed in child support and the deadlines inherent in IV-D cases. AB 1058 also required the adoption of uniform rules of court and forms for Title IV-D child support cases.

A cooperative agreement between CDSS and the Judicial Council provides for full state funding by CDSS (with two-thirds of the funds provided by the federal government) for the commissioners and their support staff. Commissioner funding for state fiscal year (SFY) 1997–1998 and SFY 1998–1999 was \$30 million, and for SFY 1999–2000 it was \$30.14 million.

Family Law Facilitators

The family law facilitator component of the child support commissioner system was created in large part also as a response to a crisis: the growing number of unrepresented litigants involved in IV-D child support cases. A study by the Judicial Council of 2,987 child support cases from July 1995 through December 1996 found that neither parent was represented in 79.2 percent of the cases involving the district attorney.⁵ There was concern that these unrepresented parents, particularly noncustodial parents, were shut out of the court process as the number of default judgments climbed. In the Judicial Council study, nearly 75 percent of district attorney cases proceeded by default.⁶

The Governor's Child Support Court Task Force was concerned that parents who are not represented become frustrated with the child support process, even if they try to participate. Advice and consultation regarding their cases are not readily available, and they have trouble presenting their cases in court. Consequently, parents may harbor negative feelings about the process, which they do not understand and by which they may feel unfairly treated. In particular, the task force was concerned that parents' anger and disenfranchisement could lead to a lack of compliance with court orders. The task force recognized that if family law information and assistance were made available to all unrepresented parents with child support issues, these concerns would be addressed. Based on the success of two pilot projects in San Mateo and Santa Clara counties, the task force recommended that such services be made available statewide.

The Office of the Family Law Facilitator was created by AB 1058. The Office of the Family Law Facilitator in each county is staffed by an experienced family law attorney, who is appointed by the superior court of each county. The facilitator provides education, information, and assistance to parents with child support issues. The facilitator provides these services to

⁵ This number includes custodial as well as noncustodial parents, because the district attorney is not considered to represent the custodial parent in support matters. Judicial Council of California, Review of Statewide Uniform Child Support Guidelines 1998 (1999) p. 6-21.

⁶ *Id.* at p. 6-17.

either or both parents, and no attorney-client relationship is created. The services of the facilitator are provided at no cost to the parents.

Pursuant to Family Code section 10004, the services provided by the family law facilitator include, but are not limited to:

- Providing educational materials to parents concerning the process of establishing parentage and establishing, modifying, and enforcing child and spousal support in the courts;
- Distributing necessary court forms and voluntary declarations of paternity;
- Providing assistance in completing forms;
- Preparing support schedules based upon statutory guidelines; and
- Providing referrals to the district attorney, family court services, and other community agencies and resources that provide services for parents and children.

Pursuant to Family Code 10005, the superior court of each county may designate by local rule additional duties of the family law facilitator. These additional duties may include, but are not limited to:

- Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance;
- Drafting stipulations to include all issues agreed to by the parties;
- In cases set for hearing, reviewing the paperwork, examining documents, preparing support schedules, and advising the judge on the readiness of the case to proceed;
- Assisting the clerk in maintaining records;
- In cases where both parties are unrepresented, preparing formal orders consistent with the court's announced order;

- Serving as special master in proceedings and making findings to the court (unless the facilitator has served as a mediator in that case);
- Assisting the court with research and any other responsibilities that will enable the court to be responsive to litigants' needs; and
- Developing programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will help unrepresented and financially disadvantaged litigants gain meaningful access to family court.

The cooperative agreement between the Judicial Council and CDSS provides funding for family law facilitators, again with a two-thirds federal contribution. In SFY 1997–1998 and SFY 1998–1999, funding for family law facilitators was \$8.7 million, and in 1999–2000, the funding was increased by Senate Bill 240 (Speier) (Stats. 1999, ch. 652) to \$10.774 million.

In 1998, Assembly Bill 2498 (Runner) (Stats. 1998, ch. 249), modifying Family Code section 4252, was enacted, which required the Judicial Council to evaluate the new program.



**Governor's
Child Support
Court
Task Force
Report**

December 1995

**STATE OF CALIFORNIA
Pete Wilson, Governor**

**HEALTH AND WELFARE AGENCY
Sandra S. Smoley, R.N., Secretary**

**DEPARTMENT OF SOCIAL SERVICES
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EXECUTIVE SUMMARY

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

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

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

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

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

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

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

- An expedited process for district attorney child support cases needs to be established within the courts. The process should incorporate many of the streamlined features of the best administrative and court-based models that are used in some California counties and in other states.
- All counties should be mandated to use commissioners instead of judges for district attorney child support cases in order to maximize federal funding. Federal funding is not available for judges or costs associated with judges due to federal

prohibitions against funding traditional state and local judicial branch functions. Federal funding should be utilized by the courts to provide adequate staffing and hearing time to ensure that cases are processed quickly.

- The Judicial Council should provide coordination, training and support services for the child support commissioner system in local courts. Judicial Council functions would include:
 - Adoption of simplified, mandatory statewide procedures and forms.
 - Establishment of qualifications for child support commissioners and the development of statewide standards for the hiring of commissioners.
 - The development of caseload standards for commissioners and support staff to determine when additional positions are necessary due to caseload growth.
 - Provision of mandatory training for child support commissioners and other assigned court personnel.
 - Technical assistance to local courts, including dissemination of information on state and federal requirements, recommendations for developing automated resources for courts and the development of claiming procedures to maximize federal funding.
 - Coordination of sharing commissioners and other resources among counties, if needed.

- Development of appropriate mechanisms for gathering statistics on both private and district attorney child support cases to assist in analysis and planning for the future resource needs of the courts.
- Child support commissioners should be given statutory authority to make final orders in district attorney child support cases to the extent that such authority is constitutional.
- The use of automation and other technology for processing cases should be optimized by the courts.
- In order to make courts more accessible to parents who are not represented by counsel, simple, streamlined, uniform procedures and forms should be adopted for the child support commissioner system. The legislature and the Judicial Council should make the following changes to existing procedures:
 - A simpler process for initiating and responding to child support actions which provides better notice to the parents of the importance of their participation in the action and the consequences if they fail to participate and provide information concerning their income.
 - A streamlined process for obtaining default orders when parents fail to respond to notice or otherwise fail to participate in the proceedings should replace the existing default process.

- A statewide standard amount of income should be used to determine the amount of support when actual income is unknown. Actual income will be used if known. Zero income will be used when the noncustodial parent is on aid or incarcerated.
- Default orders based on presumed income may be set aside for an extended period of time.
- A hearing should not be required to enter voluntary acknowledgments or stipulations to paternity provided a statutory advisement and waiver of rights form is submitted with the stipulation.
- A simple procedure should be adopted to modify orders after giving notice of a proposed order.
- Check stubs or other reliable documentation should be used in lieu of income and expense declarations in appropriate cases.
- Court orders for support should give authority to the district attorney to use automatic enforcement remedies such as earnings assignments, liens and writs without the necessity of obtaining a separate enforcement order. A simple request for hearing form should be served in conjunction with all administrative enforcement actions. Disputed portions of enforcement actions would be stayed pending a hearing and hearings should be scheduled on an expedited basis.
- A central registry of all California orders should be built and procedures should be adopted to permit consolidation of existing multiple orders involving the

same parents and children. There should be only one statewide order for the same parents and children which would be subject to modification and enforcement only in the county with venue. Simplified case transfer procedures between counties should be developed.

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

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

- In order to assist parents with child support issues in private cases, Child Support Information and Assistance Centers should be established in each county to provide education, information, assistance and referrals for parents with child support cases. Depending on the level of county, state and federal funding provided some or all of the following services would be provided:
 - Distribute forms and educational materials on the child support process including written materials, video tapes, interactive software and curriculum for clinics or group presentations.

 - Assistance in completing necessary forms.

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

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