

## G. FAMILY LAW CASES

Family law cases constitute a fairly small segment of all trial court filings (about 2%), but the emotional nature of the issues and the fact that these cases impact individuals in all segments of society make this case-type category unique. For purposes of analysis, we sort the case types into two groups: Family—Marital and Family—Other. The individual case types included in family law are:

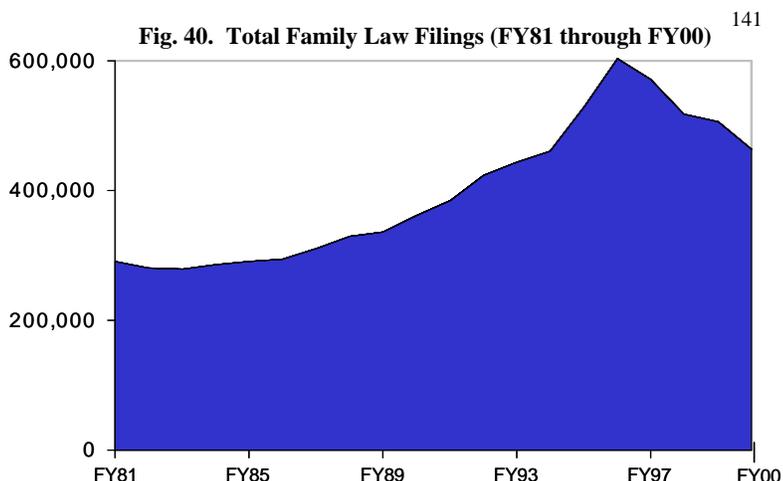
### Family—Marital

- Dissolution With Minor Child
- Legal Separation With Minor Child
- Nullity With Minor Child
- Dissolution Without Minor Child
- Legal Separation Without Minor Child
- Nullity Without Minor Child

### Family—Other

- Adoption
- Domestic Violence Prevention With Minor Child
- Domestic Violence Prevention Without Minor Child
- DA Family Support
- DA—UIFSA
- Other Family Law

The total number of family law cases increased between FY81 and FY00 by 184,657 cases (+63%). Filings climbed by approximately 70,000 cases (+18%) in the 1980s. However, the greatest single increase occurred between FY90 and FY96 (about 242,000 cases). The latter half of the 1990s saw a rapid decline. This trend is driven almost entirely by the cases in the Family—Other group.



California filing trends in family law (aka domestic relations) differs from the national trend.<sup>142</sup>

Data reported by 48 states, the District of Columbia, and Puerto Rico, revealed a 5% increase in domestic relations case filings between 1996 and 2000.<sup>143</sup> By contrast, California's total family law filings declined 23% between FY96 and FY00.

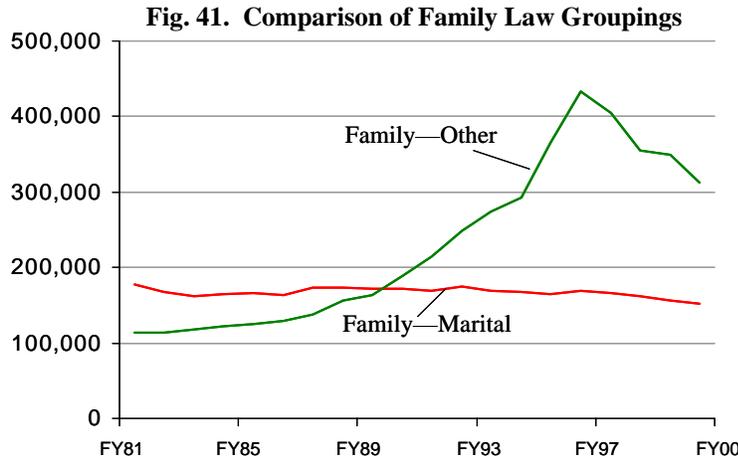
The main distinction between the two case type groups in family law is that one group involves changes in marital status and the other does not. The Family—Marital group involves filings

<sup>141</sup> Filing and disposition data cited or represented are from the Judicial Branch Statistical Information System (JBSIS) unless otherwise noted. For a list of individual case types in an case-type category, see p. iii.. Convention for notating fiscal years is also found on p. iii.

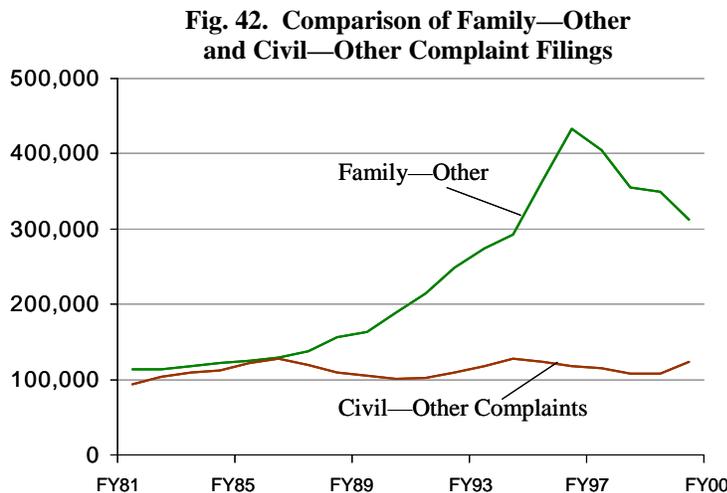
<sup>142</sup> Comparing California family law trends with national trends is a bit problematic because some states in the sample count custody matters under divorce proceedings as separate filings whereas California does not.

<sup>143</sup> National Center for State Courts, *Examining the Work of the Courts, 2001: A National Perspective From the Court Statistics Project* (2001). States not included in the national data are Oklahoma and Louisiana.

pertaining to dispositions of the marital status—dissolutions, legal separations, and nullities—including support and custody of minor children. The Family—Other group includes a variety of family matters that do not include a change in marital status—support of minor children (DA Family Support),<sup>144</sup> adoptions, and domestic violence prevention filings. The case filings in Family—Other have increased at a faster rate than those in Family—Marital over the 20 years studied.



Some of the increase in the second group (Family—Other Grouping) is due to reporting changes. Up until the early 1990s, many family-related petitions were reported as Civil—Other filings. With the enactment of California’s Family Law Codes,<sup>145</sup> all petitions formally reported in “Civil—Other” were reported as “Other Family Law.” It is doubtful, however, the dramatic increases occurring in the early- to mid-1990s can be attributed solely to migration of cases because the increase in this grouping was far greater than the number of cases migrating out of Civil—Other (Fig. 41).



<sup>144</sup> Requests for orders for support and custody under a dissolution, legal separation, or nullity petition are not counted as separate new filings.

<sup>145</sup> The Family Codes were enacted in 1992 and became operative in 1994.

Statutory changes requiring more aggressive collections of child support payments by district attorneys most likely account for the dramatic increase in the 1990s (see *Influences* in “Family—Other” below). However, because filings other than those pertaining to marital status were not disaggregated in the period studied, it is difficult to evaluate the influences other case types may have had on total family law filings. On the other hand, because Family Law filings pertaining to marital status were disaggregated during the 20 years studied, this report will divide family law filings into the two groupings—Family—Marital and Family—Other—for analysis purposes.

## **1. Influences in All Family Law Cases**

The work associated with most family law cases has been impacted (both negatively and positively) by a number of different factors, including:

- Statutory changes;
- Rise in the number of self-represented litigants;
- Growth in language diversity and use of interpreters; and
- Shift to collaborative courts and/or Family Courts.

### **a. Statutory Changes**

Statutory changes, both federal and state, have materially impacted family law workload. Changes in federal law increasingly require more information from the state courts. In 1998, Thomas A. Henderson, Director of the Washington Liaison Office of the National Center for State Courts, stated:

Congress has placed an increased responsibility on state justice agencies to report information to state and national data repositories through such acts as...the Violence Against Women Act,...and the Welfare Reform Act, and these information needs change each year.<sup>146</sup>

Some of these reporting requirements are placed directly on the courts. Others are placed on other agencies, but often these agencies need information from the courts to fully comply.

While federal law has affected workload, changes in state statutes have increased workload far more. Of the 437 statutes reviewed for this report, 50 directly involve family law cases. The section on Statutes in the Introduction details the ways in which statutory changes can impact both courtroom processes and staff work. The following provide samples of statutes passed in the 1990s that specifically had an impact on family law workloads:

*1991*

- Required the court to consider history of abuse in determining the “best interest of a child.”

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<sup>146</sup> “The Washington Review” (1998) *The Court Manager* 13(2/3), pp.35—36.

1992

- Established factors that rebut the presumption created by child support guidelines.
- Extended requirement for separate mediation and court-mandated counseling sessions where history of domestic violence exists.

1995

- Allowed court to preclude and/or obtain alternative means of obtaining a child's testimony in a child custody proceeding.

1996

- Required granting a motion for reconsideration of child custody if motion claims the other parent has been falsely accusing the moving parent of child abuse.

1998

- Required court to state in writing reasons for awarding custody to parent alleged to have perpetuated domestic violence or to have substance abuse problems.

1999

- Required the court to state on record its determination that terminating parental rights would be detrimental to the child.

Although the bulk of new laws had an impact on courtroom proceedings, many also had an impact on staff workload. Following is a sample of statutes that impacted the work of court staff:

1999

- Required clerk to mail specified documents to defaulting spouse in marital dissolution.
- Established procedures for an order prohibiting release of personal information in interstate child support cases if court determines disclosure presents unreasonable risk of harm.
- Required that no case information be released about the whereabouts of a minor or other party if a protective order has been issued or there is reason to believe release of this information will result in physical or emotional harm.

Keeping information confidential presents a number of difficulties for the court, all of which are workload intensive. Procedures must be developed to guarantee that confidentiality is maintained while at the same time ensuring access to persons with authority. Each new requirement of confidentiality translates into workload for staff.

#### **b. Self-Represented Litigants**

A study done for the Judicial Council on child support cases documented the growth in self-representation in all family law case types. For instance, the percentage of cases in which both parents were unrepresented when the district attorney brings a child support action grew

from 79% to 96% between FY96 and FY00. When the issue is solely between the two parents, approximately 53% now involve two unrepresented parents.<sup>147</sup>

Data provided by individual courts further bolster this point. Summary data provided by Alameda County indicate that the number of self-represented parties in the “Family—Marital” grouping increased 9% since 1990 and 85% in that same time period for the “Family—Other” grouping. Data from San Diego indicate that the number of self-represented parties in family law cases, generally, has risen 32% since 1992.<sup>148</sup>

Uniform Statistical Reporting data show a steady increase in self-represented parties, with 64% of contested child custody cases including at least one self-represented party by 1999.

Self-represented litigants affect workload for both judicial officers and staff. Cases with self-represented parties often require more continuances because of incomplete or missing documents, failure to provide information in a timely manner, and failure to arrange for needed witnesses. Staff often must respond to inquiries that would have otherwise been answered by a party’s attorney and spend more time reviewing forms to be sure needed information is included.

To address the problems associated with self-represented parties, family law facilitators were employed by the courts to assist the self-represented in child support cases. They have had a very positive effect on the workload associated with a lack of preparation or incomplete documents. While the facilitators have absorbed certain elements of the workload previously handled by case processing staff and judicial officers, this work has not dissipated, just shifted.

### **c. Use of Interpreters**

The use of interpreters is not required in family law matters, as it is in criminal cases. It is allowed, however, and some courts provide interpreters in family law cases. A study surveying judicial officers in California found that when interpreters were provided, the majority of the judges felt the courtroom time needed for hearings was reduced, non-English speaking parties appeared more consistently in subsequent hearings, the number of delays in custody hearings was reduced, the number of continuances was reduced, and parties’ understanding of orders was improved.<sup>149</sup> Although these results are very encouraging, more research is required before concluding that the use of court interpreters alleviates the increased workload associated with non-English speaking parties.

### **b. Collaborative Courts: Rise of the Family Courts and Domestic Violence Courts**

Currently, there are six family treatment courts and 26 domestic violence courts in California. The design and services rendered in each of these specialized courts varies, but the major

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<sup>147</sup> David M. Betson, et al., *2001 Review of California’s Statewide Uniform Child Support Guideline* (San Francisco, Ca: Policy Studies, Inc., 2001) p. 27 (draft report).

<sup>148</sup> San Diego does not currently collect separate data on self-represented litigants for each of the two case categories.

<sup>149</sup> Judicial Council of California, *Family Law Interpreter Pilot Program: A Report to the Legislature* (San Francisco, CA 2001) p. 3 (draft report).

workload features are similar. The workload features include (1) case bundling, (2) case processing, (3) service provision, and (4) monitoring.<sup>150</sup>

Case bundling requires that court staff identify all related cases for a particular family. Some cases may be filed in the civil division, some in the family division, and some in the juvenile or criminal divisions. Through bundling cases, a determination of how best to proceed (case processing)—e.g., whether one judge hear all the cases—and of the possible services needed by the family (service provision)—e.g., whether the family will need housing assistance, counseling, drug intervention—is made and coordinated.

Monitoring compliance with court orders made in collaborative courts requires an investment of judicial and staff resources as well. For example, many domestic violence courts require review hearings every 30 to 60 days. These hearings require the participation of court reporters, clerks, bailiffs, district attorneys, probation officers, batterer intervention programs, victim witness assistance, social services, and judicial officers.<sup>151</sup> Court staff are generally responsible for coordination of these hearings.

Although collaborative courts will initially generate more workload for the courts, their objective is to ensure better outcomes, thereby reducing the probability of cases coming back to court (see the Introduction for a more complete description and history of collaborative courts in California). There is little data at this time to ascertain whether the approach of these courts successfully reduces the number of cases returning to court, however.

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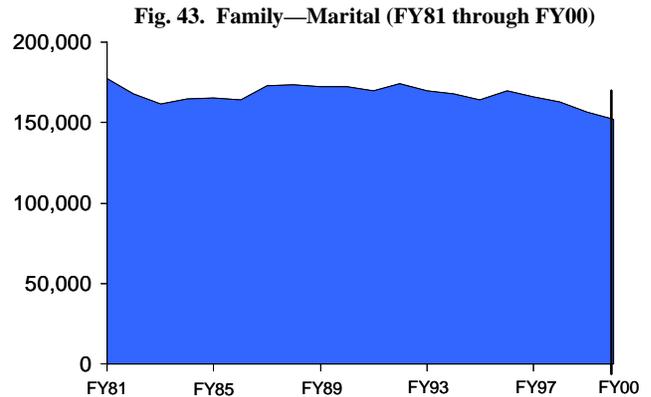
<sup>150</sup> See Administrative Offices of the Courts, *Domestic Violence Courts: A Descriptive Study* (2000).

<sup>151</sup> *Ibid.*

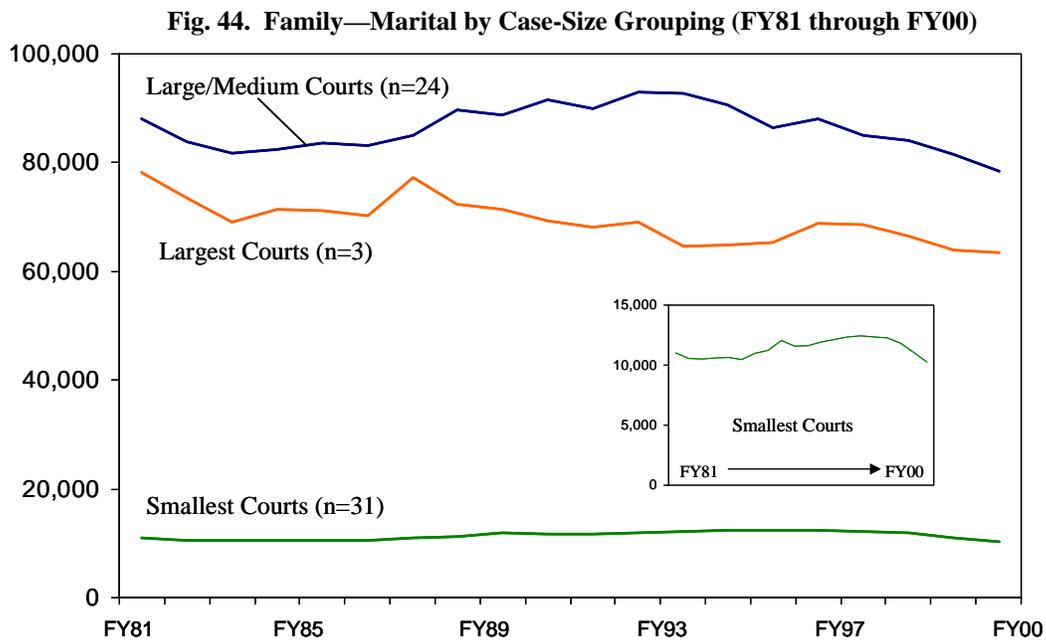
## 2. Family—Marital

### a. General Decline in Filings

The number of new filings in the Family—Marital grouping fell by just under 25,000 cases between FY81 and FY00. A much higher numeric decline was experienced in the 1990s about (17,300 cases), however, than in the 1980s (approximately 5,000 cases). From FY83 to FY96, filings seesawed between 160,000 and 175,000 filings before plunging to about 152,000 in FY00.



Categorizing courts into three groupings based on size reveals that all groupings ended the 1990s with just slightly fewer new filings than experienced at the beginning of the 1980s. The years between FY84 and FY93 saw slight and steady increases each year, followed in FY93 by slight declines to FY00 in the Large/Medium and Smallest court-size groupings. Filings generally declined in the Largest courts between FY81 and FY00, although Los Angeles is largely responsible for the decline. Orange and San Diego lost approximately 1,500 cases between FY81 and FY00; Los Angeles lost just over 12,000 cases.



Note: A listing of courts within each court-size grouping can be found on p. iii.

## b. Influences

### (1) Fewer Married-Couple Households

One factor that appears to influence filing patterns for the Family—Marital grouping is the decline in the number of marriages. The U.S. Census Bureau captures data on household composition. As can be seen from Table 12 below, married-couple households did not keep pace with population growth while one-person households grew.

**Table 12. Changes in Household Composition Between 1990 and 2000**

Household Type	1990	2000	% Change
	Total Pop. in households x 1000	Total Pop. in households x 1000	
Married-Couple Households	189	178	-5.8%
Unmarried-Couple Households	84	82	-2.4%
One-Person Households	17	21	24%
Female-Headed Households—No Husband Present	41	44	7.3%

Source: California Department of Finance 1990, 2000 Census Comparison Table

If there are fewer marriages, it follows that there will be fewer dissolution filings.<sup>152</sup>

### (2) Family Dynamics of California Immigrants

The family dynamics of Californian immigrant populations no doubt also influence filing patterns. A report by the Public Policy Institute states that “Hispanics and Asians in California are more likely to live in married-couple households than Hispanics and Asians in the rest of the nation,” and that the proportion of whites and African Americans living in married-couple households has declined in the 1990s but the proportion of Hispanics and Asians living in married-couple households has remained the same (around 60%).<sup>153</sup> The Hispanic and Asian populations rose steadily in California through the 1990s. Combined, they represented 45% of the total population in 2000. Accordingly, the growing percentage of Hispanics and Asians in

<sup>152</sup> Although the category “Female-Headed Households” certainly contains married females separated or divorced from a spouse, a certain percentage will be unmarried.

<sup>153</sup> Belinda I. Reyes, Ed., *A Portrait of Race and Ethnicity in California: An Assessment of Social and Economic Well-Being* (San Francisco, CA: Public Policy Institute of California, Inc., 2001), p. 29. It should be noted, however, that the Public Policy Institute data do not delineate how intermarried or exogamous marriages are classified and, consequently, how these households would have impacted the data overall. For instance, 39% of Hispanics were married to non-Hispanics in 1998. Among second generation Asian Americans, exogamous marriages range from 36% for Chinese Americans to 67% for Korean-American women (see Sharon Lee and Keiko Yamanaka, “Patterns of Asian American Intermarried and Marital Assimilation” (1990) *Journal of Comparative Family Studies* 29).

the population would have resulted in a decline in the overall divorce rates since roughly 60% live in married-couple households. A drop in divorce rates results in fewer dissolution filings.<sup>154</sup>

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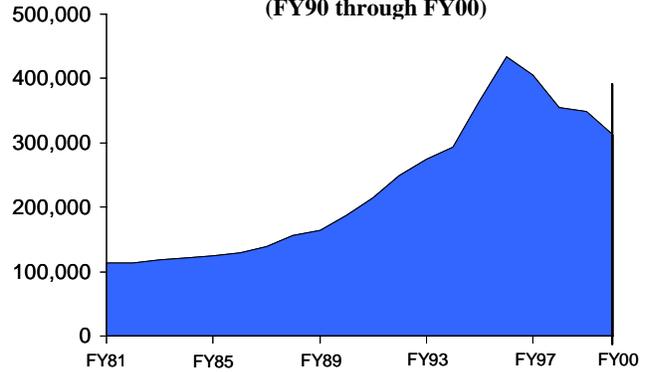
<sup>154</sup> There is some indication that divorce rates are going up for Hispanics. In 1998, the divorce rate was 5.6%; in 2000, 5.9%; and in 2001, 6.0%. See U.S. Census Bureau, *Statistical Abstract of the United States: 1999* (Washington, DC: Government Printing Office, 1999), Table 65. This may be partially due to acculturation. Research shows that native-born Hispanics exhibit marital disruption patterns (including divorce) similar to non-Hispanic white populations. Only immigrant populations show a tendency toward nondisruption, meaning the pattern is not entirely cultural but rather a family adaptation strategy adopted to cope with difficult economic and social circumstances. However, even immigrant populations begin to show marital disruption patterns after 10 years in the United States (see, e.g., Frank D. Bean, et al., "Socioeconomic And Cultural Incorporation And Marital Disruption Among Mexican Americans," *Social Forces* (Dec. 1996) 72(2) p. 593). The immigrant population in California has not grown since 1995, thus resulting in a decline in the number of stable Hispanic immigrant households in California that in the past may have camouflaged marital disruption patterns occurring in the population. See Jeffrey S. Passel, et al., *Are Immigrants Leaving California? Settlement Patterns of Immigrants in the 1990s* (Washington DC: Urban Institute, April 2001). More research is needed.

### 3. Family-Other

#### a. Pattern of Filings

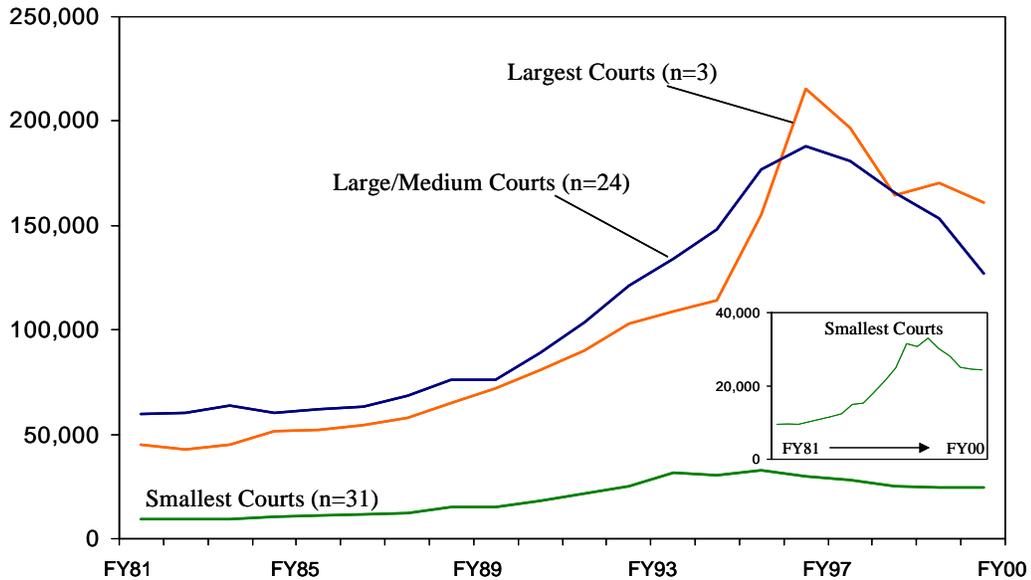
The filings in the Family—Other grouping grew dramatically most of the period under review. The greatest increase occurred between FY89 and FY97. Since FY97, filings have declined by approximately 130,000 cases, but remain substantially higher than they were in the 1980s.

**Fig. 45. Family—Other Filings (FY90 through FY00)**



Categorizing courts into three groupings based on size reveals that filing patterns were similar for all court groupings. All had more filings in FY00 than in FY81, and all experienced similar growth patterns over the 20-year period studied. Filings began to climb steadily from FY81 to FY93, and then increased dramatically between FY93 and FY96. After FY96, steep drops occurred in all size groupings, representing a 28% decrease in all Family—Other filings in four years.

**Fig. 46. Family—Other by Court-Size Grouping (FY81 through FY00)**



*Note: A listing of courts within each court-size grouping can be found on p. iii.*

#### b. Influences

Federal legislation has impacted this case-type category significantly. The social and political concerns that parents—mostly fathers—are not supporting their children have dominated this case type. Political pressure to collect funds from nonsupporting parents focused on cost

reduction: If more funds were collected, government could reduce its costs for welfare. Most people saw this as a “win-win” prospect. Nonsupporting parents would be made to assume responsibilities that were rightfully theirs, and taxpayers would spend less on welfare. To facilitate the collection process, the federal government enacted a number of laws and made funds for computerization available to the states.

In 1974, federal law mandated that each state set up mechanisms to collect child support payments.<sup>155</sup> In 1984, Congress determined that the 1974 law was not as effective as was needed and adopted a major revision to beef up collection efforts. In late 1985, Congress mandated that states improve enforcement by employing wage garnishments, income tax refund interceptions, liens against real property, and reports to consumer reporting agencies.<sup>156</sup> Shortly thereafter, funds were made available for software that substantially streamlined and accelerated the process of reviewing files and drafting and filing petitions. Filings to FY86 continued on a mild upward trend, but in FY87, the one-year increase was twice any previous one-year increase in the previous six years. In 8 of the next 10 years, filings increased by more than 10% a year. Annual growth was 25% in FY95 and another 19% in FY96. Some of this growth is surely attributable to these collection efforts.

The drop in filings occurring at the end of the 1990s may also be attributable to federal law. Congress adopted the Temporary Aid to Needy Families Act (TANF) in 1996.<sup>157</sup> The TANF introduced “work fare,” which limited the total time one could receive aid for children, and required able-bodied recipients to seek work. Because of TANF, welfare workers started to steer people away from welfare if they were not “too needy” and if they were employable.<sup>158</sup> TANF not only lowered welfare rolls, but also reduced the clientele that were required to file family support cases. While employment does not preclude a custodial parent’s right to family support, it is unknown what percentage of those persons steered away from welfare still filed family support claims. More research is required.

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<sup>155</sup> Social Service Amendments of 1974, Pub.L. No. 93-647 (1983) 42 U.S.C. §§ 651—659.

<sup>156</sup> Pub.L. No. 98-378 (1984). See Harry B. O’Donnell, *Title I of the Family Support Act of 1988—The Quest for Effective National Child Support Enforcement Continues* (1991) 29 J. Fam. L. 149, 154.

<sup>157</sup> 42 U.S.C. §604 et seq. (1996)

<sup>158</sup> In FY95-96, 1.8 million children were receiving TANF, which represented 20.2% of all juveniles 0-17 years of age in California. Just two years later, this had dropped to 1.4 million, representing 15.2% of all juveniles. See *California: The State of Our Children 2000* (Oakland, Ca: Children Now, 2000).