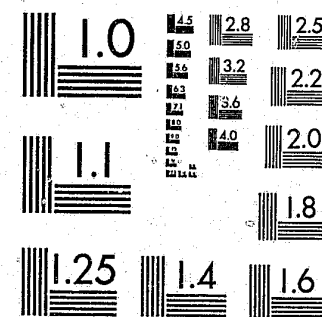


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In The Best Interests Of The Child
A Study on the Friend of the Court

76975

By the
Michigan Women's Commission
State of Michigan

U.S. Department of Justice
National Institute of Justice

76975

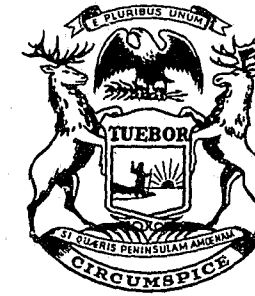
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In The Best Interests Of The Child

A Study on the Friend of the Court

NCJRS

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ACQUISITIONS

By the
Michigan Women's Commission
State of Michigan

IN THE BEST INTERESTS OF THE CHILD

A Study on the Friend of the Court in Michigan

Michigan Women's Commission

1979

Michigan Women's Commission

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INTRODUCTION

In 1978, the Michigan Women's Commission began this study of the Friend of the Court - the statutory arm of the Circuit Court in matters pertaining to care, custody, support, maintenance and visitation of dependent minor children. The purpose of the study was to examine the operation of the Friend of the Court system in light of the duties and responsibilities outlined by statute and Court Rules. A Task Force on the Friend of the Court, composed of Commissioners, was established to investigate and identify (1) the needs and rights of adults and children who are clients of the Friend of the Court, (2) institutional failures that aggravate the problems of families facing dissolution, and (3) the barriers within the system that create those failures and prevent needs from being met.

During the months of inquiry, opportunity was provided for clients, professionals, and Friends of the Court themselves to share their concerns about this office. We established an Advisory Committee that assisted the Commission by providing expertise in developing issues and recommendations.

The Advisory Committee was divided into three subcommittees and each was assigned the responsibility of addressing the Friend of the Court from a different perspective. The Enforcement Subcommittee examined methods and processes being used by Friend of the Court offices in enforcing child support and developed recommendations which would improve child support collection processes. The Policy & Structure Subcommittee considered the organizational structure of the Friend of the Court system, the appointment process of the Friend of the Court, and the functions of Friend of the Court office personnel. The Human Services Subcommittee developed recommendations which addressed the quality of services delivered by the Friend of the

Court office as well as the types of services that ought to be offered by this office.

Membership to the three subcommittees was invited from agencies and professional organizations that have policy input, knowledge, and/or interface with respect to the Friend of the Court office. Active members of these subcommittees represented members of the Legislature, the Family Law Section of the State Bar of Michigan, prosecuting and legal aid attorneys, professionals from state departments and community agencies that interact with the Friend of the Court, mental health professionals (including psychologists), psychiatrists, social workers, and the Friends of the Court themselves. The Advisory Committee was asked to develop recommendations and to submit them to the Task Force which was accomplished in March, 1979.

The Task Force on the Friend of the Court sent a questionnaire to all sixty-nine Friends of the Court asking for information regarding staff and caseload sizes, office operating procedures and offered services, methods of investigating cases and enforcing court orders, and training available to office personnel and the Friends of the Court. Fifty-three Friends of the Court returned their questionnaires and the responses provided excellent information about the status of the Friend of the Court offices around the state.

The Michigan Women's Commission conducted six public hearings throughout the state in Jackson, Gaylord, Marquette, Grand Rapids, Detroit and Flint to allow citizens and other professionals to give testimony regarding the Friend of the Court operation. In addition to the verbal testimony, over one hundred pieces of written commentary were received in our office.

The Women's Justice Center of Detroit has made available to us the results of their Court Watch Project of Wayne County during summer 1978.

In addition to this material, we have gathered background data to assist our understanding of the Friend of the Court operation.

The purpose of our study has been to make recommendations that will improve the services of the Friend of the Court to families undergoing divorce or separation. We recognized that a theme was needed to pull together the numerous recommendations and the accumulated research.

As we considered a theme, we recalled the observations made during our study. Parents undergoing dissolution of their relationship usually experience stress and anxious uncertainty. When the systems they must interact with are administratively cumbersome and/or insensitive to human needs, these factors add additional strain. We have learned of the frustration experienced by custodial parents who are not receiving support payments, the non-custodial parents who are being denied visitation rights and the funding problems of the Friend of the Court offices.

When support is not paid, when visitation is denied, when the Friend of the Court office is understaffed and cannot see clients for weeks - the separating parents experience great frustration. But ultimately, it is the children who pay the highest penalty. This realization became the guiding theme for the recommendations developed by the Michigan Women's Commission - what changes will be "in the best interests of the child"?

In this report, recommendations have been made pointing to specific sections of statute and Court Rules needing modification. Other recommendations focus on structural change needed within the Friend of the Court system to improve its function. In some areas, recommendations were made with the purpose of underscoring the need of Friend of the Court offices to comply with duties and responsibilities presently required by statute and Court Rules.

It is our intent that these recommendations will begin to address the

issue of diminishing the potential for hostility toward and between parents undergoing separation. The recommendations also reflect the concern that both parties, mother and father, be treated in an equitable manner.

To begin this process of reform and in keeping with the Michigan Women's Commission position of fair and equitable treatment for families undergoing divorce,

IT IS RECOMMENDED that the statutes and Court Rules governing the Friend of the Court be examined for gender-based in the use of such terms as "mother" and "father", male and female pronouns, and said gender-based bias shall be eliminated from statute and Court Rules.

CHAPTER 1

A PRIMER ON THE FRIEND OF THE COURT

The Friend of the Court system in Michigan was created by law in the year 1919. The preamble to the statute (P.A. 1919, No. 412) states:

"An act for the protection of dependent minor children and to compel enforcement of chancery decrees where there are minor children in divorce cases, who are liable to become public charges and are not properly cared for by their custodians, and to enforce the payment of amounts decreed them in a court of chancery, and to enforce all interlocutory and decretal orders; to provide for the appointment of a Friend of the Court to act in such cases and to provide for the rights, powers and duties of such Friend of the Court. (As amended P.A. 1939, No. 306)."

The sections which follow (MCL 552.251 through 552.255) outline the appointment, duties and responsibilities, powers and purpose of the Friend of the Court.

The Friend of the Court in Michigan is recognized nationally as one of the better systems for enforcement of court orders in domestic relation cases. In order for the reader to become acquainted with the duties and responsibilities of the Friend of the Court office, the following questions and answers are presented. The question and answer portions of this chapter, and the diagram on page 18 were taken with permission from "The Friend of the Court: Michigan's Answer to Questions About Child Custody, Support and Visitation," by Sonya R. Kennedy.

What is the Friend of the Court? What is its purpose?

In Michigan, all divorce cases, paternity cases and separate maintenance or "family support" cases involving minor children are subject to investigation by one of the state's Friend of the Court. The Friend of the Court investigates these cases and submits recommendations to the court about such issues

as child custody, visitation, amounts of child support and amount of alimony, as appropriate to each case. The Friend of the Court is responsible for the well-being of these children in their custodial homes until they reach adulthood.

In a divorce case, after the judgment of divorce is final, the Friend of the Court is required to enforce the Court's orders for custody, child support and visitation. In addition, child support and other payments ordered by the Court are paid to the Friend of the Court, which records each payment and issues a check to the recipient.

The Friend of the Court is also responsible for the "general supervision" of the children in these cases, and can seek modification of existing court orders for custody, child support and visitation. In some cases, children can be placed in the legal custody of the Friend of the Court, which enables it to make temporary placements in foster homes or with either parent, without seeking further Court orders.

Since the Friend of the Court may play a major role in determining the quality of postmarital family life, parents seeking a divorce need to have a basic understanding of the structure, powers and duties of Michigan's Friends of the Court.

What is the structure of the Friend of the Court? Who decides its powers and duties, and who is accountable for its activities?

Under Michigan statute, each Circuit Court in Michigan (where divorce cases are heard) recommends a person to act as its "Friend of the Court," and maintains an Office of the Friend of the Court whose staff is under the supervision of the Friend of the Court. The judges of each Circuit Court determine and direct the specific policies and procedures to be followed by

that Friend of the Court. Because of these local court policies, there may be many differences in the specific activities and performance of Friends of the Court in different judicial circuits throughout Michigan.

In addition, each Office of the Friend of the Court operates within a budget paid out of the general funds of the county or counties that are included in each judicial circuit. The County Board of Commissioners allocates and approves these budgets. Consequently, the amount of funding available from each county -- and to some extent, the Commissioners' approval or disapproval of the Friend of the Court's programs and performance -- can also affect what each Friend of the Court does and how well it is done.

At present there is no centralized state-level administrative agency specifically designated and required to guide or review the operations of the various individual Friends of the Court throughout the state. Control is essentially a local matter left in the hands of each Circuit Court and (to a lesser extent) each County Board of Commissioners. However, members elected to the Michigan Senate and House of Representatives can introduce new and revised legislation pertaining to all Friends of the Court in Michigan, and can authorize reviews and investigations for legislative purposes. The Michigan Supreme Court promulgates the Michigan General Court Rules which also define the powers and duties for all the state's Friends of the Court. In addition, if an individual case is appealed through the Michigan Appeals Court or ultimately to the Michigan Supreme Court, this may result in a decision that has the effect of further defining the powers and duties of the state's Friends of the Court.

What are the Friend of the Court's procedures for collecting and disbursing child support payments? What about fees?

(1) Payments of child support (and certain other payments) must be made to the Friend of the Court as ordered by the court. Payments may be on a weekly, bi-weekly, or monthly schedule; the payment schedule should be appropriate to the situations of the two parents.

(2) The Friend of the Court records each payment and keeps accurate, official records of the payments.

(3) The Friend of the Court then issues a support check to the proper recipient. (This is usually the custodial parent; if the custodial parent receives welfare assistance, the support payment goes to reimburse part of the cost of the welfare assistance.) In most cases, the Friend of the Court issues the support check within 48 hours of receiving payment.

(4) Payments to the Friend of the Court may be made in person, or by mail; by cash (if in person), personal check, money order, or certified check. Payments may also be made by an automatic payroll deduction, if a wage assignment exists. (Wage assignments may be voluntary, or ordered by the court). In some cases, if the payment is by personal check, the Friend of the Court may not issue its check to the custodial parent until the personal check has cleared the bank. This may result in delayed support to the custodial family, but the check received from the Friend of the Court will not bounce!

(5) There is a fee of \$1.50 a month for processing support checks. By law, the non-custodial parent is charged with payment of the fee, in a \$9.00 installment due every six months. If the non-custodial parent forgets to include the extra \$9.00 when it is due, the Friend of the Court will deduct the \$9.00 from the check to the custodial parent and record this as an

"arrearage" in the payments owed by the non-custodial parent to the custodial parent.

What procedures will the Friend of the Court follow in enforcing child support in case of non-payment?

As set forth by Michigan General Court Rules of 1963 (GCR 727), the normal procedure is as follows:

1. When the support-paying parent becomes delinquent in his or her payments, the Friend of the Court sends a letter by ordinary mail demanding payment.

2. If no response is made within 10 days after mailing the letter, the Friend of the Court may petition the court to issue an order to show cause. This order requires the delinquent parent to appear in court and explain why ("show cause") s/he should not be held in contempt of court. If the court issues the order to show cause, it is sent by ordinary mail to the delinquent parent.

3. If within 4 days there is no response to the order to show cause, an order for arrest may be issued, in order to bring the defaulting parent in for the show-cause hearing.

Some Friends of the Court -- especially those which have computerized their accounts so as to receive automated reports of accounts that are in arrears -- take the initiative in acting on any account that shows an arrearage exceeding certain amounts or periods. Other Friends of the Court do not act unless the custodial parent notifies the Friend of the Court and requests action. Once informed, the Friend of the Court is required to take the first step and send a letter demanding payment. However, the second and third steps -- the order to show cause, and the order for arrest -- are

options: They may or may not be followed as a matter of local policy.

Recent studies indicate that when the court and the Friend of the Court initiate all three steps as a matter of policy, overall child support collections can range from 80% to over 90%. (The average for Michigan is approximately 65%. Some counties are as low as 45%).

Other factors also affect successful collection of child support -- for example, if there are high rates of local unemployment, or high rates of transience, meaning parents leave the area and cannot be reached by local enforcement. The regular availability of officers to serve warrants for arrest, and the measures taken by the court when it finds a parent guilty of contempt for non-payment of child support are also important factors.

SUMMARY OF DUTIES AND RESPONSIBILITIES OF THE FRIEND OF THE COURT

PRE-DIVORCE:

Interviews both parties; may interview children.

Investigates circumstances related to (1) Custody (parents' personal and living arrangements); (2) Child support (financial circumstances of each parent); (3) Any other related circumstances.

May refer parties for social, psychological, or psychiatric evaluation, for purposes of determining custody.

Prepares recommendations to Court about custody, child support, visitation arrangements, etc., based on the information collected and according to legal criteria for custody, support, etc.

May appear in court on behalf of children's interests; may conduct pretrial "referee hearings" before a Friend of the Court attorney.

May provide "marriage counseling"; or may provide lists of counseling services available within the community.

POST-DIVORCE:

Collects all court-ordered payments of child support or

alimony, issues checks to the parent or other person due to receive payment; keeps accurate records of payments made on each account.

Undertakes enforcement measures in cases of non-payment of child support (acting on behalf of child); also seeks reimbursement of Aid to Dependent Children when non-custodial parent is under orders to contribute to child support.

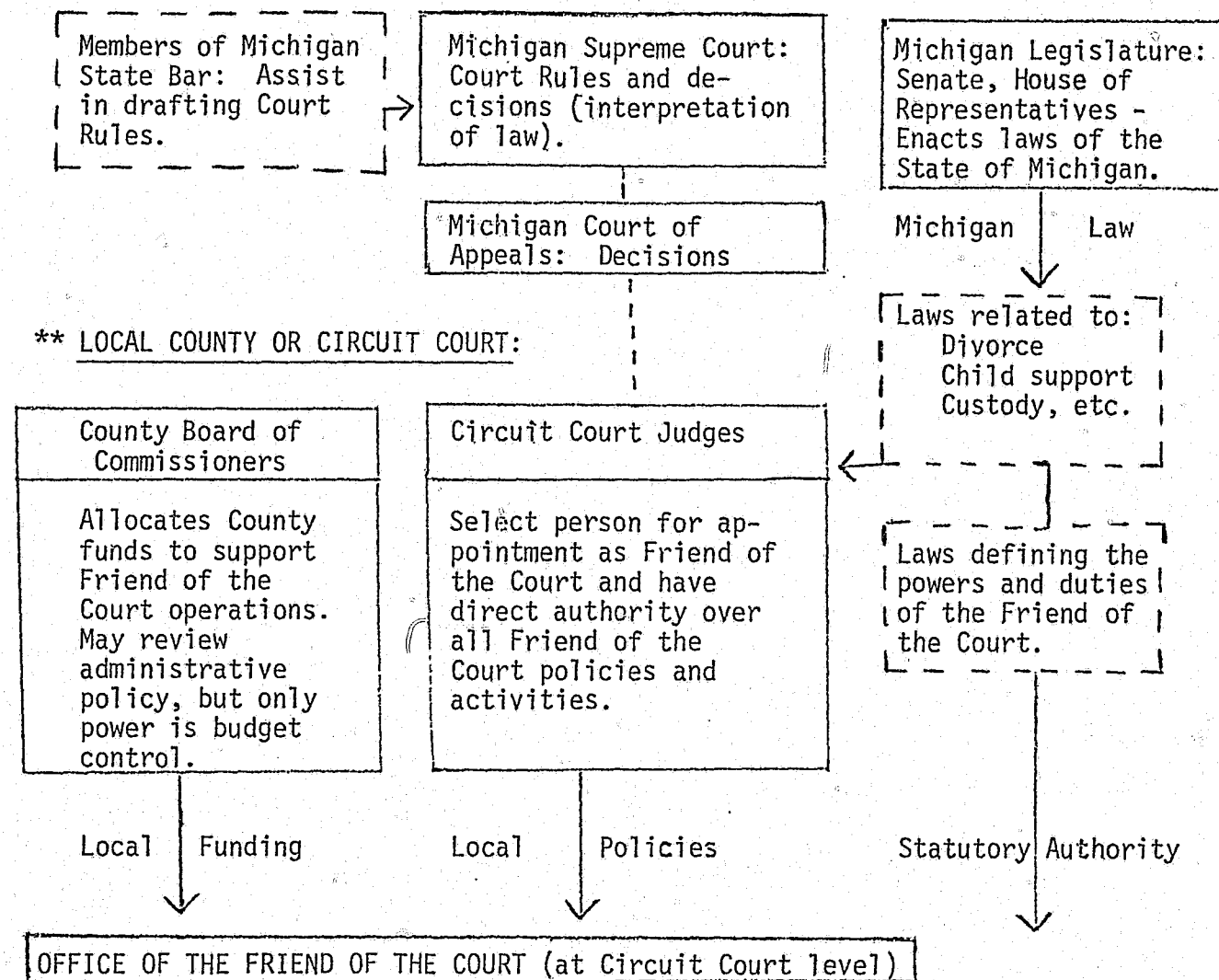
On request by custodial parent, or as otherwise appropriate, reviews levels of child support and may seek modification (on behalf of child).

Exercises general supervision over well-being of all children in custodial homes. Investigates or refers complaints of child abuse or neglect; may seek a modification of custody, or foster-home placement.

May investigate and seek enforcement of visitation rights (acting on behalf of child).

As the Court requires, provides investigations and recommendations in cases for which a party is seeking modification of an existing order for custody, child support, or visitation; same procedures as in "Pre-Divorce" investigations.

**** STATE OF MICHIGAN GOVERNOR APPOINTS THE FRIEND OF THE COURT ON RECOMMENDATION OF CIRCUIT COURT JUDGES.**



Friend of the Court: Appointed by Governor upon Circuit Court judges' recommendation and acts under the direction of the Circuit Court. Investigates cases, recommends disposition, enforces court orders, collects and disburses child support payments, is responsible for directing the office; staff assistance may include the following:

Investigative staff: Caseworkers or social workers investigate and make recommendations as to custody, support, visitation, etc.

Legal staff: Attorneys assist in: enforcement or modification proceedings (may include holding "referee hearings"). (Assistance is primarily for other staff members in performance of duties of Friend of the Court).

Accounts staff: Responsible for receiving, recording payments and promptly issuing checks. Responsible for accurate records and reports on status of all accounts.

Enforcement staff: May initiate action on cases of non-payment: Letter of notification, order to show cause, writ of attachment (arrest warrant). May locate the defaulting parent, serve papers, make arrests. Note: County Sheriff's Office may provide enforcement within county. County Prosecutor's Office provides enforcement for out-of-state cases, usually through Uniform Reciprocal Enforcement of Support Act (URES).

Other: Department of Social Services (ADC cases) and its Protective Services for children (child negligence or abuse), and Juvenile Court: May be involved in some cases. In addition, Friend of the Court may seek consulting services of psychiatrists, psychologists, other professional expertise. May have marriage counselor on staff.

CHAPTER 2

FUNDING

The financial structure of the Friend of the Court system is an interesting interplay of various segments of government. According to MCL 552.254 (Sec. 4), "the compensation of said 'Friend of the Court' shall be such sum as may be fixed by the board of supervisors of the counties...said compensation shall be paid from the general fund of such counties by the county treasurer..." By statute, the salary of the Friend of the Court is paid by the county General Fund. The county General Fund is also the source of the major operating budget for the respective county's Friend of the Court office.

Presently, monies generated by each Friend of the Court in the form of annual fees, ADC and non-ADC rebates from the federal government and other money is returned to the General Fund of the county. The County Commission appropriates budgets and sets salary levels for the Friend of the Court operation.

According to the 1978 Statistical Report from the Friend of the Court Association, the various Friends of the Court throughout Michigan generated a total of \$16,513,239.00 through its fee collections and rebate sources. The Friend of the Court offices across the state were appropriated a total of \$12,689,823.00 for operating budgets for 1978.

In comparing the revenues generated by the Friends of the Court to the amounts of money appropriated them for operating budgets, the Association's report shows a revenue surplus of \$3,823,416.00. Previously, the Friends of the Court were not envisioned as a revenue-generating agency, but these figures indicate that because of various reimbursement programs supported by the federal government, the Friends of the Court have become revenue-generating for the county General Fund. While these revenues contribute to the available capital within the county, the monies are rarely returned to the Friend of the Court office to assist the effort of complying with statutory requirements,

improving client services, or upgrading the quality of personnel.

In the Friend of the Court questionnaire, approximately 60% of the respondents indicated that they received none of the federal rebate monies generated through enforcement of child support back from their County Commission. These rebates totalled approximately \$13,000,000.00 for the various General Funds around the state, and it can be assumed that some of the monies are being utilized for other county activities.

In the area of Friend of the Court personnel, the questionnaire responses revealed that many Friends of the Court are unable to hire the quality of individuals they would prefer, due to salary levels established by the County Commission. In a survey of these salary levels, one can see a wide disparity. For example, the salary levels of investigators within the Friend of the Court office range from a low of \$6,000 annually to a high of \$20,000 for some of the largest counties. The Friends of the Court's salaries also reflect a wide range from about \$7,000 to \$36,000 in the larger counties. Only 15% of the Friend of the Court personnel receive annual cost of living increases.

While it cannot be assumed that increasing salary levels will directly improve the quality of services delivered by the Friends of the Court, the case can be made that if a job requires job skills in investigative work and/or educational background and the salary level is too low to attract appropriately qualified individuals, this impacts the ability of the office to deliver appropriate services. In fact, this reasoning is reflected by comments from the Friends of the Court who shared the dilemma created when the community and law demand certain services, but the County Commission will not adequately fund the staff, both in quality and quantity, needed to perform the functions. Support for changing the funding structure came from private citizens, clients, circuit court judges, prosecuting and legal aid attorneys and Friends of the Court.

During the public hearings, comment from around the state gave insight into the particular difficulty of working with the County Commissions for budget appropriations. From the testimony, it can be stated that in many counties the Friend of the Court is a low-interest, low-priority agency. Divorce is not a politically glamorous issue. A prosecuting attorney at our hearing in the Upper Peninsula said, "I would have to say unequivocally that there is absolutely no commitment to the concept of the Friend of the Court." In the smaller counties, which combine to support one Friend of the Court office, Friends of the Court may have to work with two or three different County Commissions to secure operating budgets and salaries for their offices. Repeated testimony was given on the need for uniformity of funding throughout the Friend of the Court system.

It is the concern of the Task Force that the monies generated by the Friend of the Court be utilized to improve services to families undergoing dissolution. In order to establish a process which encourages uniformity in salaries and operating budgets, and to remove the Friend of the Court office from county budget control, the following recommendations are made.

RECOMMENDATIONS

IT IS RECOMMENDED that the State of Michigan assume funding and control of the Friend of the Court, that the Court Administrator have enforcement powers over the Friend of the Court system and that appropriate statutory change be enacted.

During the period of time needed to accomplish the administrative task of converting the Friend of the Court to state funding, IT IS RECOMMENDED that 100% of federal revenues generated by the Friend of the Court office be returned to the Friend of the Court in addition to present county funding levels. Said monies are to be used to improve Friend of the Court operations

outlined under statutes and Court Rules in order to meet uniform caseload criteria across the state. Any dollar surplus resulting after the Friend of the Court has complied with statutes and Court Rules shall be utilized for Court-related child services.

CHAPTER 3
STATE ADMINISTRATIVE OFFICE

Since the inception of the Friend of the Court in 1919, research indicates that lawmakers have been concerned with establishing a uniform system of conduct, duties and procedures for the operation. This concern is reflected in P.A. 1959, No. 183, MCL 552.255, Sec. 5., which mandates an annual conference of the Friends of the Court. According to the statute, "such conference shall consider legislation and any and all matters pertaining to the statutory duties of the Friends of the Court to the end that a uniform system of conduct, duties and procedure be established."

Testimony from across the State reinforced this need for uniform standards with many people offering solutions as to how it can be accomplished.

A councilwoman from the Detroit hearing stated:

"There is no uniformity in present law enforcement. Collection of child support varies from county to county - in Wayne County collecting is about 45% of the cases and Genesee is the highest with 80%. Grievance processes should be provided for those persons having difficulty with the Friend of the Court.

The Friend of the Court should have more concern for human relationships. Therefore, it needs carefully trained social workers and psychologists on staff."

The concern about qualified office personnel was voiced by the Human Rights Commission of Detroit in their statement that "A large number of the persons employed by the Friend of the Court are not sensitive to the needs of the clients they serve."

A professional from a citizen's lobby group expressed the need "to have a handbook as a matter of policy all across the state", to educate people on their duties and responsibilities. The person emphasized, "I would like to see that so that there is no big mystery (about the Friend of the Court) and people know what they are dealing with." A man at the Jackson hearing stressed the importance of being informed of rights and responsibilities when he said, "It would be nice if the fathers were told what is available. I would never have let my children walk out the door if I had known I had a right to keep them."

At the Marquette hearing, a community worker for poor, low income people felt that what is needed is "basically more information to the public and to social service agencies as to what the rights of both parents are."

Friends of the Court testifying at the Gaylord hearing pointed out the need for an agency that would be responsible for establishing uniformity and maintaining standards of quality in terms of performance. One Friend of the Court remarked, "I feel that it would be a good move. I feel that it could lead to uniformity and to the funding and the personnel to take care of statutory requirements." Another Friend of the Court commented that such an office could give direction toward uniformity in procedures and performance of duties, but added:

"Each county is still going to have to look at their individual needs. Perhaps there can be a uniformity of job descriptions, but how I choose to use that individual within my office is still going to be my decision.

I think the greater emphasis and concern regarding uniformity is that we (the Friends of the Court) have some basics for

operating so that the differences are not great from county to county.

Some of these differences are dictated by our judges. That's one answer you can give. But there are things that I'm not sure are dictated by judges. I think they come from our own preferences. I think it would be helpful to eliminate some of those kinds of idiosyncrasies."

Variations in office operations occur in the counties' systems of enforcing support, the extent of enforcement of visitation, the types of investigation accomplished for custody recommendations, training of personnel, mechanics of operating the office.

The Friend of the Court questionnaire reflected this diversity from county to county. In the case of training for office personnel, 60% indicated they offer no formal training for new investigators, 60% indicated no training was given to newly hired clerical-technicals and 75% stated that formal training was not offered to new caseworkers. The Friends of the Court indicated that only 40% of them were given training upon assuming the position.

In looking at the hours of operation for the Friends of the Court, the questionnaire revealed that all offices are opened from Monday through Friday, but 33% are closed to clients during lunch. A State field worker commented during the Grand Rapids hearing:

"We can't call the Friend of the Court in Ionia County. They are closed during the lunch hour. We are sent a letter telling us that they will no longer accept phone calls. You either have to write or come in.

When I get into homes, I have clients that do not have phones and they have no transportation. I do have clients who cannot read or write. So where are they left? They can't even talk to the Friend of the Court unless they can get somebody to bodily take them in."

RECOMMENDATIONS

IT IS RECOMMENDED that a State Administration Office (SAO) be established for the Friend of the Court system in Michigan. This office shall be a budget line item under the Court Administrator and shall be located in Lansing. A toll-free telephone number shall be available to Michigan citizens which shall be posted as an access number, not a hot-line number.

The duties and responsibilities of the State Administrative Office shall include, but will not be limited to:

- 1) functioning as a monitoring agency and clearinghouse for statewide gathering of statistics which would allow for comparative examination of the various Friend of the Court offices. The data collected shall include that which is necessary to ascertain the degree of compliance with statutes;
- 2) developing uniform standards of conduct, systems, and procedures for the Friend of the Court offices;
- 3) recommending professional staff-to-caseload ratios;
- 4) establishing uniform hours of operation for Friend of the Court offices which reflect sensitivity to clientele needs in maintaining some evenings, lunch, and Saturday operating hours;

- 5) providing training programs for the Friends of the Court, which shall include training to function as a referee as outlined in P.A. 1947, No. 328, MCL 552.253 and in proceedings for temporary orders;
- 6) training and certifying Friend of the Court personnel, which shall include human relations training;
- 7) developing and establishing a well-defined grievance process for Friend of the Court clients and others;
- 8) developing a handbook to explain the rights, responsibilities, and procedures to clients of the Friend of the Court office. The handbooks shall be bifurcated by state and by county. It shall include information that would be useful to Friend of the Court clients. The handbook shall be written in an easily comprehensible style. New clients of the Friend of the Court office shall be given an orientation by the Friend of the Court office that will include the distribution of the handbook;
- 9) providing public educational programs, such as workshops and pamphlets with information about community resources, Michigan divorce law, employment opportunities and financial counseling;
- 10) developing a uniform child support schedule.

CHAPTER 4

THE APPOINTMENT PROCESS

By statute (MCL 552.251, Sec. 1) the Friend of the Court is appointed by the Governor upon the recommendation of the circuit judge or circuit judges of the respective counties. The statute does not set a specific term of office and states "the Governor shall have power to remove such officer... upon the certification of the judge or judges of the court, which certificate shall set forth that a full hearing has been had before said judge or judges."

In the Public Acts of 1919, No. 412, the act establishing the Friend of the Court, the appointing authority was vested in the prosecuting attorney "by and with the advice and consent of the circuit judges." It was not until 1939 that the statutes were amended which changed the appointing authority to the Governor.

Although the appointing authority has gone through modification, the qualifications of the Friend of the Court outlined by statute have remained the same since 1921, (P.A. 1421, No. 146). The statute provides that the Friend of the Court shall be a "duly qualified and licensed attorney" and further, that "such Friend of the Court need not be a duly qualified and licensed attorney, but may be any person competent for such work."

There is support for maintaining the appointment process of the Friend of the Court as it is. A Friend of the Court at the Grand Rapids hearings articulated, "We are essentially appointees of the court, which recommends to the Governor the appointment and we are close to and closely observed by the court which we serve. We thus enjoy a relatively high degree of accountability. Since the court makes the orders which we enforce, the court cares greatly about how well those orders are enforced. I believe the appointment process should be preserved intact."

An Advisory Committee member commented that the statutorily required removal hearing process is unclear, is subject to extensive litigation and appeal from an incumbent Friend of the Court, and could result in a lengthy and costly legal process. The hearing procedure makes it very difficult for the Court to remove an incumbent who does not voluntarily resign when the Court indicates its dissatisfaction with his or her performance. Few such hearings have ever been held, and none appear to have resulted in direct removal.

The Michigan Women's Commission also heard considerable questioning from the Executive, Judicial and Legislative branches of government, from clients and professionals expressing concern with the appointment process and the statutory qualifications of the Friend of the Court in view of contemporary demands on this office. It is common knowledge that divorces have increased, with impact being seen at the county level, as Friend of the Court offices report caseloads approaching or exceeding tens of thousands. This sheer number increase brings attendant administrative responsibilities and human service demands that may not have been anticipated in 1919.

A common issue raised in the testimony regarding the appointment process was that the system does not include any office or agency which is responsible and accountable for overseeing the Friend of the Court's performance. The Governor appoints upon the recommendation of the circuit judge or judges and cannot remove a Friend of the Court without receiving certification of incompetence, misconduct, neglect of duty or refusal to carry out the order of the court from the circuit judge or judges following a judge-initiated public hearing. Neither office is solely responsible for the Friend of the Court appointment and neither office is accountable.

A legal aid attorney asserted that the appointment of the Friend of the Court should be taken out of the political arena. He felt that "their appointments are political plums (of the circuit court judges) and are not

made in consideration of the needs of the people who are being served by the offices."

In reacting to the role of the Governor in the appointment of the Friend of the Court, Governor Milliken raised two issues. First, he does not favor the involvement of the Governor in the appointment of the Friend of the Court. Secondly, he points out the difficulty in practice of a two-part nominating and appointing system involving two separate branches of government. He believes that if the appointing authority is to be vested with the Governor, then that authority should be given broad and complete responsibility. The system of nomination by the circuit court judge or judges and appointment by the Governor is an encumbrance to the line of responsibility and accountability.

A citizen who commented on the appointment process suggested making the county commissioners responsible for the appointment because "what that does is make it (the appointment) as close to the people in that community as possible." A woman wrote to the Commission office with another suggestion: "The Friend of the Court should not be appointed by the Court or the Governor, but by the people. The office should be held for a four year term. There should be a small committee to oversee what is going on and have the Friend of the Court be responsible to them."

If change is to be made in the appointment process of the Friend of the Court to build in accountability for job performance consideration must be given to the qualifications of the individual performing the job. The statute specifies a legal background for the individual appointed as Friend of the Court. Present needs of clients suggest more is required than a legal understanding.

A councilwoman from Detroit commented, "The Friend of the Court needs to have much more concern for human relationship." A social worker from Southfield suggested "a good background for a Friend of the Court would be to have an

understanding on a psycho-social level to understand what is going on with these families more than just legally." Another professional added that "we have to have people that are trained and understand the trauma people are going through and each job should have specific job qualifications and job descriptions."

A Friend of the Court at the Gaylord hearing expressed mixed emotions over the language of the statute which states "that the Friend of the Court shall be an attorney or other qualified person." I feel that it's work within the office that the training comes from, the actual work involved before you become a Friend of the Court. I don't feel it's absolutely necessary to be an attorney if one has the legal advice available to your office."

In fact, the Friend of the Court questionnaire showed that of the Friends of the Court who responded, approximately 44% are high school graduates with varying years of experience and about 32% are attorneys. The remaining 24% are individuals with various college degrees. Presently, the job of the Friend of the Court is being accomplished by people who are not attorneys and the research indicates that job qualifications are not solely needed in the direction of legal expertise.

The statute is limited in describing the individual qualifications of the Friend of the Court and does not address a job performance review process except in the case of malfeasance.

In addition to evaluating job performance and determining compliance with statutes, a Friend of the Court suggested that a "person could be given the opportunity to be reviewed in five years. At that time, the Friend of the Court could recommend to the County Board the additional funds and personnel needed to do the job."

RECOMMENDATIONS

IT IS RECOMMENDED that MCL 552.251, Sec. 1, be amended to provide for the following changes:

- 1) that the selection and appointment of the Friend of the Court shall be vested in a sole authority who shall be held accountable for said appointment;
- 2) that a selection committee composed of local county officials, circuit court judges and citizens from each respective county shall screen and submit three duly qualified individuals to the appointing authority, one of whom shall be appointed by the appointing authority as the Friend of the Court;
- 3) that the qualifications of the Friend of the Court shall not be limited to a "duly qualified and licensed attorney", that said qualifications shall be amended to require all candidates for appointment as Friend of the Court to exhibit "experience and education equivalent to a bachelor's degree in the human services area."
- 4) that the Friend of the Court shall be appointed for a six year term;
- 5) that the Friends of the Court shall be reviewed on a regular basis, no less than once in six years and that said review shall be given proper public notice to accommodate public input;
- 6) that a review committee composed of local county officials, circuit court judges and citizens shall be established and shall be required to accomplish said review of the job performance of the Friend of the Court. Said review committee

shall be guided by the amended statute regarding Friend of the Court qualifications and a uniform job description developed by the Court Administrator and the State Administrative Office; 7) and that the county personnel officer or an appropriate office shall maintain a file on the Friend of the Court for that county and accept written client comment and any other input.

IT IS FURTHER RECOMMENDED that should the appointing authority of the Governor be removed from statute, sole appointing authority shall be given to a local county official and accountability shall rest with said local county official. Should the Governor remain as the appointing authority, that office shall be given sole responsibility and be accountable for said appointment of the Friend of the Court.

In order to initiate this selection and review process and to bridge the gap between the status quo and the recommended changes in MCL 552.251 (Sec. 1):

IT IS RECOMMENDED that legislation be enacted to require a job performance review of all Friend of the Court appointments within one year from the date of enactment. The review committee shall consist of local county officials, circuit court judges and citizens of the respective counties. This review shall be implemented by the County Personnel Office or the County Clerk's Office of the respective counties.

A report of the review shall be submitted to the Governor. The Governor shall take the review reports under advisement and shall then determine a term of appointment for each Friend of the Court not to exceed six years. This process provides the opportunity for varying the number of years for each appointment, not to exceed six years, and to stagger the anniversary dates of the appointments of the Friend of the Court.

For the thousands of separating parents and minor children in the State of Michigan who become involved in the court process of custody, support and visitation determination, the sixty-nine geographic Friend of the Court offices become an integral part of that process. Since the Friend of the Court is required to make recommendations to the Circuit Court in matters pertaining to custody, support and visitation and then to enforce the resultant court orders, the interaction between clients and office is a major involvement.

Although Michigan statutes are clear about the Friend of the Court's responsibilities and duties, each Circuit Court has discretionary power over which of these duties will be emphasized, and the manner in which they will be accomplished. Other factors of county size, staff size, operating budgets, available court time, priorities of the circuit judge or judges -- to name a few -- additionally impact the types of services delivered.

When Friends of the Court were asked why they chose to remain in a position which was the object of much criticism and constant pressure, the response was that they feel their office is able to assist people during a very trying time in their lives. Expressing the purpose of the Friend of the Court during the Gaylord hearing, a Friend of the Court said:

"The function of the Friend of the Court, in my estimation, is to look out for the best interests of the children. That covers the whole gamut from seeing to it that they are provided with adequate food, clothing, shelter, all the way down to making sure that they hopefully can establish a good rapport with both parents. We try to see that their needs are met in whatever way we can best do that."

Implicit in this statement of purpose is the recognized need to provide services to children and families undergoing dissolution in ways not explicitly outlined by statute or Court Rules. In assessing the information gathered

regarding the operation of the Friend of the Court office, the Commission has concluded that client needs have required Friends of the Court to provide various services not specifically outlined in statute and Court Rules. Additionally, some practices set forth in statute and Court Rules are followed in some counties, but not in others. Across the board, comment was received regarding the quality of the services provided, and the job performance of the office personnel.

Services Provided

During divorce proceedings, one of the initial steps is securing a temporary order for child custody, support and visitation. It may take weeks to secure this temporary order and the separating parents are not usually provided the opportunity to discuss the terms in an atmosphere of mediation. Michigan statute does provide that the Friend of the Court can "act as referee in the taking of testimony of witnesses and hearing the statement of parties upon pending motions...and shall have authority to administer oaths and examine witnesses and shall make a written, signed report to the court containing a summary of the testimony and a recommendation for the court's findings and disposition of such matters." (MCL 552.253, Sec. 3)

Forty-two percent of the Friends of the Court who responded to our questionnaire indicated that they performed referee services in their counties. From observations of the referee system at Midland County, it appears that the paramount advantage of this practice is that it provides the opportunity for parents to ask questions, to share and gain information, and to resolve the uncertainty of the situation in less time than awaiting a court date. Parents understand that after the Friend of the Court submits a recommendation to the court, they will have a period of time to challenge the recommendation before it becomes ordered.

In addition to diminishing the fear and anxiety clients experience when they become involved in a legal process, the referee system requires less court time. A Friend of the Court during the Detroit public hearing suggested:

"I could go ahead with the machine we've got, the computer, and I could double the cases, but I don't have the judge time available to handle it. Perhaps something like a referee system would solve many of the problems, as far as time is concerned."

In considering those services which will add to the efficiency of the Friend of the Court operation, as well as assisting the travel of the clients through the process, many expressed support for counseling in matters of divorce adjustment, impact on the child, budgeting, employment and reconciliation.

Presently, Friends of the Court offer a range of counseling services, some in-house and some through referrals. A professional at the Marquette hearing emphasized that "the Friend of the Court should have a very close working relationship with referral agencies." A Friend of the Court commented that there "are a lot of counseling agencies available that are pathetically under-used by clients prior to the filing of the divorce. There are also services needed by clients after the filing of the divorce." A client of the Friend of the Court remarked that as the various Friend of the Court offices develop referral information, the listings should include counseling agencies which provide services to clients on an ability-to-pay basis.

In a letter to the Commission, a circuit court judge suggested that "social workers or mediators could perform a valuable function in working out visitation problems and some custody and broader marital problems without recourse of litigation."

In its primary role by statute of investigator and provider of information and recommendations for the circuit court judge or judges, the Friend of the Court compiles background material which is ultimately used in formulating the Friend of the Court recommendations to the circuit court. In the Court Watch Project conducted by the Women's Justice Center in Detroit, they observed that when a recommendation was given by the Friend of the Court, that recommendation was followed in two-thirds of the cases by the circuit judge. This speaks to the importance of the accuracy of the investigation conducted by the Friend of the Court in that his/her recommendations are accepted by the circuit court judges.

A companion issue to the Friend of the Court recommendations is the question of who has access to the client's office file. In the questionnaire to the Friends of the Court, most offices provide entire office files to the circuit court judge or judges. During the public hearings, attorneys expounded the particular difficulty experienced when the judge is privileged to the entire office file and the attorney of record is given the simple, unsubstantiated recommendations of the Friend of the Court. The difficulty is in adequately representing a client when one is not aware of the information the judge may have in front of him or her.

Quality of Service

The ease with which individuals become involved in marriage relationships is inadequate preparation for the complex system of legal requirements and processes they are subject to when seeking to end the relationship. The presence of children adds to the complexity and pressures of the situation.

Parents undergoing dissolution of their relationship must cope with the stress of ending an adult relationship, the adjustment problems of the children,

the necessity to make plans for the future as a single parent, economic impacts and legal requirements. In examining the office operations of the Friend of the Court, one issue is whether or not the interactions experienced by clients of the Friend of the Court experiences are in themselves additional sources of stress which contribute to hostility towards the other parent, and possibly, the children.

A University professor at one of our hearings indicated he felt compelled to attend to relay the experiences of his absent students who felt intimidated to speak in person:

"The women continually comment on the negative attitude which they encounter in dealing with the Friend of the Court, being treated as not too bright, not able to get their own affairs together without assistance from someone. Somehow, they are being made to feel guilty because they are divorced and because they are receiving annuity payments. They come back to me with feelings that somehow they have done something that they ought to be ashamed of."

Clients who did speak on the issue of professional behavior said, "I think that the staff could use some training in how to deal with people, because the enforcement officers have said a lot of swearing words to me over the phone." Clients also shared the concern that poor people, indigents, feel they are being treated shabbily and without respect.

Attorneys during the Flint hearing pointed to specific problem areas clients encounter, both in interpersonal interactions with the Friend of the Court office, as well as legal improprieties in investigations.

"It is in the investigation process that a number of concerns can be identified. For example, workers' attitudes range all the way from open

hostility to what clients call 'not caring'. Sexist attitudes persist in the investigative reports by not requiring verification of both parents' earnings."

"A method has to be devised of increasing the sensitivity of workers, a sense of humanizing the process. Give more emphasis to adjustment counseling, report income of both parents, provide a family counseling function. Require the Friend of the Court reports to be free of references of misconduct based on hearsay."

A divorced father at the Detroit hearing shared personal reactions and said, "The Friend of the Court does not have the caliber of people to handle the trauma and the emotional problems that occur. You have heard it said that divorce is worse than death, because death is final. If you have children, you are never divorced."

As discussed in the chapter on "Funding", the quality of Friend of the Court personnel is impacted by salary levels determined by the local County Commission. Additionally, the County Commission determines the number of staff positions it will fund. According to the responses from our Friend of the Court questionnaire, employee-to-caseload ratios differ widely from county to county. Oakland County reports the high caseload ratio of 2,700 ADC cases to each employee with Midland County reporting the low of 39 ADC cases to each employee. For non-ADC cases, each Oakland County Friend of the Court employee is responsible for 5,400 cases and Midland County statistics show a ratio of 67 cases to each Friend of the Court employee. Of the Friends of the Court who responded to the questionnaire, the average employee-to-caseload ratio for ADC cases is 451-to-one and the average for non-ADC cases is 797 per employee. High employee-to-caseload ratios certainly are a factor impacting the quality of services provided by Friend of the Court personnel.

RECOMMENDATIONS

IT IS RECOMMENDED that the Friend of the Court shall act as the representative and the advocate of the best interests of the child while functioning as an arm of the Circuit Court. This duty and responsibility shall assume priority over advocacy on behalf of either divorcing or separating party or any others involved in the process of custody, support and visitation determination.

IT IS RECOMMENDED that the referee system outlined in MCL 552.253, Sec. 3, be utilized throughout the state in the respective counties. IT IS FURTHER RECOMMENDED that in order to ensure the proper execution of said referee system, the State Administrative Office, under the Court Administrator, shall be responsible for training of the Friends of the Court and qualified staff to act as referees.

IT IS RECOMMENDED that referral to counseling services by the Friend of the Court office in the respective counties shall be a responsibility of said office.

IT IS RECOMMENDED that the Friend of the Court shall cooperate with employment agencies within the respective counties to locate employment opportunities for unemployed clients (custodial and non-custodial) of the Friend of the Court and that procedures shall be established for cooperation between the Friend of the Court and these agencies.

IT IS RECOMMENDED that the Friend of the Court shall refer to the local Child Protection Agency any complaints from the custodial, non-custodial or a third party regarding child abuse or neglect. MCL 722.621 provides for the protection of children who are abused or neglected and the Department of Social Services is charged with responsibility for enforcement. It shall be in the best interests of the child to investigate said complaints and to protect

them from abuse and neglect.

IT IS RECOMMENDED that any information made available to the circuit court judge or judges shall be available to the attorney or attorneys of record. Any information not made available to the circuit judge or judges shall be held in confidence by the Friend of the Court. Appropriate Court Rule shall be promulgated to ensure compliance with this recommendation.

IT IS RECOMMENDED that the State Administrative Office under the Court Administrator shall train and certify the Friend of the Court personnel and said training shall include education in the professional delivery of human services.

IT IS RECOMMENDED that GCR 727.2, Sec. 3 be amended to require that any action or proceeding after the final court order for custody, support and visitation be submitted to the Friend of the Court and the circuit court of the respective county where the child resides.

The Advisory Committee to the Friend of the Court Task Force recommended that the Michigan Women's Commission accept the following statement on "Employee Caseload Ratio Formula." The Commission has accepted this document and presents it in total, although it contains some recommendations heretofore set forth by the Commission. The "Employee Caseload Ratio Formula" states:

"IT IS RECOMMENDED that the employee caseload ratio be:

<u>Minimum Number of Cases</u>	<u>Maximum Number of Employees</u>
0 to 799	4
800 to 2,999	4 + 1 for each additional 200 cases
3,000 to 9,999	15 + 1 for each additional 225 cases
10,000 to 19,999	46 + 1 for each additional 250 cases
20,000 to 29,999	86 + 1 for each additional 300 cases
30,000 to 39,999	119 + 1 for each additional 400 cases
40,000 to 99,999	144 + 1 for each additional 500 cases
100,000 to 199,999	260 + 1 for each additional 600 cases
200,000 to 299,999	431 + 1 for each additional 700 cases
300,000 upward	597 + 1 for each additional 1,000 cases

If the recommended staff caseload ratio formula is established and if there are adequate funds available, through the earmarking of Federal revenues, the Friends of the Courts throughout the State of Michigan will then be required to provide all those services mandated in either State Statute or State Court Rules, to the general public, including the following services as outlined:

1. The Friend of the Court shall submit a final recommendation in all domestic cases involving minor children before a judgment shall be granted. An investigation of the homes of the competing parties will not be required in those cases where there is no custodial contest, but a full review, including an extensive home investigation, would be required in all cases by the Friend of the Court where there is a contested custody question.
2. The Friend of the Court shall provide a self-starting automatic review and enforcement system in all cases under the jurisdiction of said office to guarantee prompt and efficient enforcement of all child support orders.
3. The Friend of the Court shall be obligated to fully comply with Public Act 104 of 1968, MCL 552.252a, requiring a review of all support orders at least once in every two years and to petition in those cases where said review would indicate the current support order to be inequitable. This service would be available in all cases under the jurisdiction of the Friends of the Court.

4. The Friend of the Court office shall be required to fully enforce all provisions of the "Child Custody Act" of the State of Michigan.
5. The Friend of the Court shall be required to fully enforce all visitation rights of interested parties as prescribed by State Court Rules.
6. The Friend of the Court shall be responsible for the enforcement of the payment of all medical, dental, hospital and pharmaceutical expenses sustained in behalf of the minor children of the parties hereto as established through the orders of the Circuit Court.

IT IS FURTHER RECOMMENDED that if a Friend of the Court is required by local direction to furnish services in addition to those required by State Statute or Court Rule, the staff involved in those services shall not be included in the above employee caseload ratio formula.

IT IS FURTHER RECOMMENDED that State Court Rule 727.2 (2)(3)(4), be abolished, thereby eliminating a review of the custodial home from time to time, as prescribed in said Court Rule. It is the belief that said Rule is unnecessary, as the Friends of the Courts have the absolute right to review any custodial home based upon the "Best Interest Theory" of the minor children under its jurisdiction. The Rule, as now constituted, could be considered an invasion of the privacy of the litigants in domestic matters in the State of Michigan. To comply with said Court Rule, additional staff would be required in each Friend of the Court office, which would be considered an unnecessary expense to Michigan taxpayers.

IT IS RECOMMENDED that an attempt be made to either secure a statute or promulgate a State Court Rule requiring the Friend of the Court to review

and enforce all alimony provisions as they are now obligated to provide in child support orders. In addition, IT IS RECOMMENDED that an effort be made to obtain legislation thereby amending Public Act 104 of 1968, MCL 552.252a, to provide for a review and petitioning in behalf of the non-custodial parent if the review should indicate that the current support order is inequitable and should be reduced in the same fashion as the Friend of the Court offices are now providing pursuant to Public Act 104 of 1968, MCL 552.252a.

As the Friends of the Court for the State of Michigan are working closely with the Office of Child Support in the Department of Social Services, it is suggested that the Office of Child Support be obligated to provide staffing in the enforcement of ADC related cases upon the same professional caseload ratio formula recommended.

The recommended staff caseload ratio formula is based upon the condition that the local Friends of the Court have available to them some data processing capabilities to implement their prescribed duties by either State Statute or State Court Rule. This is of prime importance, as those Friend of the Court offices that do not have those capabilities would not be able to fully comply with all of their duties based upon the minimum staffing of each office as recommended in the staff caseload ratio formula."

IT IS RECOMMENDED that within the respective counties, a day or days shall be established on a weekly basis that shall be designated for Friend of the Court related proceedings.

CHAPTER 6

CUSTODY

The dispute that can become most bitter for separating parents is the contest for child custody. Bound up in the tradition of a woman's and man's proper role in the family, the laws, the courts, and society have reflected that the proper place for children is with their mother. As people's roles have expanded, so has the attitude on child custody. In the Public Acts of 1970, No. 91, law was promulgated which established ten factors which are to be "considered, evaluated and determined by the court" in deciding custody which shall reflect the best interests of the child. The statute provides for a process that will determine the better parent to be awarded child custody and not which parent is unfit for custody. Promulgation of law, however, is not sufficient to change the attitudes of the men and women who input the decision-making process in determining child custody.

For clients and professionals who work with the Friend of the Court offices, the investigation conducted by the office received critical comment. Issue was raised with the quality of the investigation and the length of time taken to accomplish it.

Specific to the quality of investigations conducted, many spoke of personnel within the Friend of the Court office who were not appropriately trained in conducting investigations, in understanding the requirements and guidelines of the Child Custody Act (MCL 722.21), in differentiating between hearsay and other evidence. An attorney specializing in family law commented, "Investigations themselves contain recommendations resulting from such irrelevancies as failure to keep an appointment with the Friend of the Court, that person loses; cooperation with the Friend of the Court worker, that person wins; much hearsay and self-serving statements by parties to the dispute, and most seriously, very often little factual data." Another attorney recommended

that it be a requirement that the "Friend of the Court reports be free of references of misconduct based on hearsay." He continued with objecting to the practice of having different caseworkers participate in custodial investigations. "Right now a third person makes the house calls and files the report and discusses the matter with the primary caseworker. What that means legally is that the Friend of the Court recommendation and report containing the matter about the house is multiple hearsay and it is objectionable from certain evidentiary views."

A psychologist from Southfield pointed out aspects of a poorly conducted investigation in addition to the evidentiary problems which should be considered. He wrote:

"One of the major problems that we've seen has been a lack of systematic procedures in evaluation of children and parents in questions of custody and/or abuse and/or neglect. Too often evaluations are done by a mental health professional who sees perhaps only one member of the family, and on that basis, writes a report to the Friend of the Court. It is our opinion that such an evaluation is impossible to give without being biased and not helpful to the procedures of the court. The problem is twofold: one being the lack of consistent procedures on the part of mental health professionals, and two, the failure of the judges, Friend of the Court and attorneys to refer to specific places for evaluations where treatment has not been initiated."

Recognizing that the period of time during which a divorce or other separation is being finalized is wrought with a myriad of pressures, parents shared the particular hardship created when investigations become prolonged over time. A father at the Jackson hearing reported that it had been four months since the court ordered the investigation into the custody of his child. To date, he was unaware of any investigation being conducted concerning the welfare of his child. He suggested, "I guess my feeling is that the investigation should have been started within thirty days or not more than six weeks since it was ordered."

Another father at the Jackson hearing suggested specific ways in which the investigative process could be improved: "I would recommend that both parents

and all children involved go through a psychological profile in order to determine which is best. Because in too many cases, there isn't an unfit parent. It is who is fit and who is fitter. Who can really provide the best care, based on the ten points of the Child Custody Act. Whoever thought up the ten points was thinking. The only problem is that they are not being allowed by the court system and are not followed by the Friend of the Court."

Offering suggestions for improving the process of custody determination, a father wrote to the Commission:

"In view of the fact that a determination of custody is of great importance because it says where two children will spend a good deal of their lifetime, especially that portion in which they learn various matters which are critical to them in their later development and life in general, it seems to me that such an important issue should be thoroughly researched by anyone making a recommendation. Many of these problems could probably be obviated had the Friend of the Courts office done a more thorough job in the initial stages of a divorce and/or assisted in placing the child in a situation which is in the best interest of the child. The judges should be required to put into the record, their reasons for granting custody to parent A and not parent B, not in general vague terms, but very specifically, so that they can be held accountable for their decisions."

RECOMMENDATIONS

IT IS RECOMMENDED that the Friend of the Court office personnel who are delegated the responsibility of investigating and recommending the "best interests of the child" in custody determinations shall be properly trained in the skills and knowledge needed to objectively perform said function. It shall be the responsibility of the State Administrative Office to establish proper

qualifications and performance standards for said personnel.

IT IS RECOMMENDED that in the instance of disputed custody, the investigation and recommendation developed by the Friend of the Court office shall be performed in an expeditious manner. GCR 727 shall be amended to reflect expeditious time guidelines under duties and responsibilities of the Friend of the Court.

IT IS RECOMMENDED that in order to minimize the personal bias of a single investigator in disputed custody cases, the Friend of the Court shall consider including other investigators in the recommendation development process. Said investigators shall be responsible for conducting the investigation, utilizing the factors in the Child Custody Act of 1970.

IT IS RECOMMENDED that in the instance of disputed custody cases where psychodiagnostic evaluations are deemed necessary, said psychodiagnostic evaluations shall be accomplished at the divorcing or disputing parties' expense. The Friend of the Court shall provide referral information to said parties to local county mental health services, including those which provide a sliding scale fee schedule for said psychodiagnostic evaluations.

IT IS RECOMMENDED that a thorough, factual investigation be conducted in all disputed custody cases. IT IS FURTHER RECOMMENDED that justification of the Friend of the Court recommendation for custody be reflected in said recommendation and that said recommendation shall be available to the disputing parties, the attorney of record, and the circuit court judge or judges.

IT IS RECOMMENDED that parents shall be informed of the Child Custody Act of 1970 (MCL 722.21) and the process the respective Friend of the Court office shall follow in investigating and recommending child custody. Said Child Custody Act of 1970 shall be included in the client handbook in each of the respective Friend of the Court offices.

CHAPTER 7
THE RIGHT TO VISITATION

"In all actions now pending or hereafter filed in a Circuit Court involving dispute of custody of a minor child, the court shall declare the inherent rights of the child and establish the rights and duties as to custody, support and visitation of the child in accordance with this act."
(MCL 722.24, Sec. 4)

Michigan statute recognizes that children have certain inherent rights and those rights are to be provided for through determination of the courts. In pondering the issue of the best interests of the child, the Michigan Women's Commission concluded that "best interests" include encouraging and maintaining natural parental ties. The Commission concurs with statute, that a child has the right to visitation with the non-custodial parent.

Visitation, however, is a two-pronged issue. Non-custodial parents shared heart-felt concern over visitation rights that are being denied and not enforced. Custodial parents painted scenes of children waiting for non-custodial parents until it becomes sadly obvious to the child that the parent is not going to arrive. Parents came to the public hearings to bring attention to the dilemma created by erratic visitation practices - from both the custodial and non-custodial parent perspectives. What they shared was the parental drive to see their children or to have their children see their absent parent.

Determined to exercise his visitation rights, a man at the Grand Rapids hearing said:

"In an attempt to obtain visitation rights, I was thwarted constantly through means of stalling tactics. The thing I want to bring forth is the personal frustrations involved which were phenomenal. I was at a dead end. I had no recourse other than to go to court.

I was lucky. I could afford to go to court. A lot of people can't. It is like beating your head against a stone wall, and

I'm not behind in my child support. In fact, I told the Friend of the Court I could pay more. I have not seen my daughter since July of 1977, and she lives in the same town I do."

Several testifiers pointed out what they perceived as an inequity in enforcement of visitation orders as compared to support orders. In fact, General Court Rules (GCR 729.1) outline the provisions for the form of court judgments and clearly indicate that visitation and support of children are to be embodied in "separate and distinct paragraphs." The Friends of the Court report that because each order is considered separately, they are enforced that way. Friends of the Court throughout the state stressed that their respective courts view the two orders as independent and to be separately enforced. One Friend of the Court wrote, "Money and visitation are separate entities - visitation is a right of the child. These should not be forsaken by recalcitrant parents." Another Friend of the Court illuminated the issue by adding "We do not equate visitation and payment or non-payment of child support. However, non-payment of child support could be one of a number of factors which, taken in their entirety, do not warrant visitation rights. Unreasonable deprivation of visitation rights merits show cause."

Indications are that the Friends of the Court clearly recognize that visitation and support enforcement is separate and distinct. In practice, it is the collection and enforcement of court ordered maintenance payments which receive a major portion of the Friend of the Court office resources. Non-custodial parents feel particularly beleaguered when interacting with a Friend of the Court office which aggressively enforces child support but may not be as aggressive in enforcing visitation rights.

A non-custodial parent in Marquette shared:

"I approached the Friend of the Court and told him to please notify her (custodial parent) that I will pick up the children

at a certain time for Christmas. He came right out and told me that I was so far behind in support that if I wanted to press it, he would take me to court. I want to make it clear that the arrearage was \$570 and our friends owe \$1,400 arrears and the Friend of the Court hasn't so much as sent them a letter.

The records show that I've been doing better than ever. I have not been falling behind in the last six months, plus I'm paying on the arrearage more than before."

Although support is ordered as a contribution to the maintenance of a child, many non-custodial parents view the support payment as giving them, in turn, the right to see their children. An attorney from Traverse City explained, "I think the non-custodial parent feels that the child support he is paying is in actuality a license to see his children. Besides the fact that they are his children, he is sort of paying a fee, in essence, and when the custodial parent interferes with that relationship, I think the court should come to his or her aid, as the case may be."

Adding to the testimony regarding inequities in enforcement of visitation rights, a man at the Detroit hearing gave this experience:

"When the divorce was started between myself and my ex-wife, I was given custody of my daughter in an ex-parte order. It came to the final decision by the last man in the Friend of the Court and he decided that my wife should have my daughter. Since the day she gained custody, I have seen my daughter one to two times a month, and that's a good month. When I've called the enforcement officer at the Friend of the Court, his attitude is one of total disregard."

Another custodial parent added, "I think that the enforcement of the court orders should be done without discrimination. Not just the support order should be enforced, but the visitation should be because that's necessary for the welfare of the children." Raising this impassioned question, a testifier in Detroit asked, "Does the Friend of the Court or any country have the right to tell a man, or any human being, when to love and when not to love? I'm paying to see my child, but I can't see her."

As earlier stated, the other side of the visitation question is the instance where children are prepared for visitation of the non-custodial parent only to be sorely disappointed when the visit is not kept. It is the concern of the Commission that under these circumstances, the best interests of the child are being subordinated to the visitation rights of the non-custodial parents. In the words of a divorced woman from Flint:

"He has always been able to see the children. But do you know what it is like to dress your child to go see Daddy Jack when she hasn't seen him for awhile and he has called on the phone. She goes out on the front step and she waits and she looks up the street. She comes in and says, 'What time is it now?' And she goes out on the step and after two or three hours, well, he forgot again. I have never denied him visitation. And, I have wanted to because I put up with the tears. And then I am the one who says, 'Well, it's lucky this time, isn't it, because now we can go get an ice cream'."

An Advisory Committee member commented that if the Court sets forth a specific visitation schedule in its order, that order should be considered binding on both parents (not just the custodial parent), and should be enforceable with penalties if the non-custodial parent does not comply with the ordered schedule, just as it is for the custodial parent.

RECOMMENDATIONS

IT IS RECOMMENDED that it shall be in the best interests of the child to encourage and maintain natural parental and familial ties; this shall include grandparents and related others.

IT IS RECOMMENDED that visitation rights shall be enforced uniformly by the Friends of the Court in the State of Michigan. In cases where non-compliance of ordered visitation by the custodial parent has been determined, jailing shall be a penalty for said non-compliance. Should the custodial parent be jailed for contempt of court ordered visitation, the non-custodial parent shall be responsible for the care and maintenance of the child or children during the term of imprisonment.

IT IS RECOMMENDED that statutory change be enacted which shall provide for the right of the custodial parent to petition the courts for modification of visitation rights of the non-custodial parent when said non-custodial parent is delinquent in exercising decreed visitation.

CHAPTER 8

THE ORDER FOR CHILD SUPPORT

Child support - the collection of it, the accounting for it, the review of it, the need for it, the lack of it, the ability to pay it - these are the issues which were given the most attention in the written and verbal testimony received. Parents who choose to dissolve their adult relationship can do so. However, the responsibility for decreed child support may continue for many years after the divorce or separation.

If the child support arrangements are amicable to both parties or the custodial parent decides not to pursue enforcement of court ordered support, parents and children can move forward to deal with life's other issues. If support is erratically paid, not paid, or is being challenged to increase or decrease, testimony indicates that the process becomes an ongoing negative aspect of one's life. A woman from the Detroit public hearing said:

"The worst part is still trying to collect from my ex-spouse and nobody wants to help because now I'm on ADC. The case doesn't even come through the computer at Macomb anymore as being delinquent because it's over forty thousand dollars...

But again, we're talking about children. They're not statistics, and they shouldn't just be brought up like these pieces of paper, every one or two years or five years. They have needs. They need food, clothing and guidance and I hope someone can help, because I'm tired."

Child support can be divided into two major issues - the philosophical aspect of parental responsibility for support and the mechanical aspects of determining, reviewing and enforcing decreed support.

Child support - choice or responsibility?

The question of parental responsibility for child support was directly addressed by the Enforcement Subcommittee. The members of this Subcommittee articulated various positions on the issue. One individual started with the proposition "that historically and in (his) opinion properly, all individuals are expected to be responsible for their children, regardless of income level. Thus, in any state in the union, criminal charges can be brought against a parent if they take care of their own needs before those of his/her children. It is indisputably no defense for parents to say they could not afford to feed the child if (the parent) is being fed."

Another member of the committee voiced the concern that "no 'absent parent' should be released from an awareness that s/he has an ongoing obligation toward the child. A custodial parent lives day in, day out with the child and is made continuously aware of the child's needs."

Expanding on the discussion a committee member stated:

"In this day of extensive public assistance programs, all children may receive support from the state if the parents fail in their obligation to pay support. Therefore, from the child's financial perspective, the source of the income is irrelevant. However, I believe that psychologically, it is important for children to know that both parents love and care for them. Although support is not necessarily a manifestation of parental love, it can be."

The responsibility for child support is not a simple one to resolve. Realistically, divorce wreaks financial difficulty on separating parents. As an attorney from Midland observed, "No one these days is able to maintain the same standard of living after being divorced."

In its deliberations on this issue, the Commission approved policy

recommendations which clearly state its position on child support and underscored the need of the Friend of the Court to comply with practices that are outlined in statute.

RECOMMENDATIONS

Philosophically, the Commission supports the ideal that support for children is a responsibility of the parents.

IT IS RECOMMENDED that there shall be no minimum income standard below which there is no responsibility for support. The Commission recognizes that there may be periods of time during which a non-custodial parent is unable to make support payments. However, this inability to provide support does not remove the responsibility of the parent to support his or her children.

In reinforcing the parental responsibility for support, the Commission RECOMMENDS that the non-custodial parental obligation for support shall continue if the non-custodial parent remarries.

It seems that it is the tendency of the non-custodial parent to assume that the monetary support amount is the total sum needed for the care and maintenance of the child or children. Non-custodial parents are also concerned that the support amounts are in fact being used in direct maintenance care for their children. Custodial parents indicate that the support payments are critical, as a woman from Sandusky shared, "My boys need things that I cannot afford to give them unless I receive this support. I cannot even afford the things that they need, much less the extra things that they would like."

RECOMMENDATIONS

While the testimony indicates that support monies are needed resources

for custodial parents, the court ordered payment is one of several contributions to the maintenance and care of the child/ren. In keeping with the perspective that parental responsibility to support is a shared responsibility with monetary and non-monetary contributions made by both parents, the Advisory Committee submitted the document entitled "Sufficient and Equitable Child Support and the Joint Parental Obligation to Support"¹ to the Commission for adoption. The Commission accepted and modified this document and RECOMMENDS that the definition of sufficient and equitable child support be:

(1) Any unemancipated minor child under 18 (and certain others as may be specifically defined) who is the issue of a marriage for which a divorce or legal separation is sought or has been granted is entitled to sufficient and equitable child support provisions from both parents under a continuing joint parental duty to support.

(2) "Sufficient child support" is defined as that amount necessary to provide for the child's total necessities and expenses at a standard of living commensurate with the total available income or other financial resources of the two parents.

(3) "Equitable child support" is defined as the allocation to each parent of a responsibility to share proportionately according to the income or other financial resources of each, in providing sufficient child support.

Consideration shall be given for "work inside the home" by the

¹Excerpt from the document, "Establishing and Maintaining the Post-Marital Family", by Sonya R. Kennedy and Elizabeth A. Waites.

custodial parent and the continual care given the children within the custodial home.

IT IS RECOMMENDED that the above defined sufficient and equitable child support be determined by:

(1) Sufficient child support:

In any proceedings involving child support, the court shall determine sufficient child support as follows:

(a) Sufficient child support shall be determined to be that amount representing the child's total expenses for food, housing, clothing, education, health, child care necessary if a custodial parent works outside the home, and other expenses as appropriate to the total incomes and other financial resources available from both parents.

(b) Said determination shall be based on verified information about the financial resources of both parties. Consideration shall be given for child care expenses incurred by the custodial parent who works outside the home.

(c) Said determination shall be based on reliable information about actual expenses of the child and may be based on such reliably determined economic averages, criteria, and formulas as the Court may adopt for estimating average current expenses of children at various parental income levels.

(2) Equitable child support:

In any proceedings involving child support, the court shall

determine equitable child support by:

Apportioning to each parent a share of the sufficient child support in an amount proportional to the individual net assets of each. Provided that said determination may be derived from such reliable and current economic formulas or schedules as the Court may adopt for this purpose; and further provided that the Court may take into account any extraordinary and necessary expenses of either party as may legitimately affect an ability and duty to support a child. The determination shall include non-monetary contributions of the custodial parent necessary for care and maintenance.

Child support - implementing the responsibility

Michigan statutes in P.A. 1939, No. 306, MCL 552.252, P.A. 1968, No. 104, MCL 552.252a, P.A. 1947, No. 328, MCL 552.253, outline the duties of the Friend of the Court in the area of support. The General Court Rules of 1963, Rules 727-729 includes specific procedures that shall be followed by the Friend of the Court in enforcing child support and guidelines for court judgments and orders. The recommendations made in this section need to be implemented through appropriate statutory and Court Rule change. The issues are divided into three categories: Support Determination, Enforcement and Review Process.

Support Determination

According to the responses received from the Friend of the Court questionnaire, approximately 95% indicated their offices recommend support amounts to the circuit court. During the public hearings, concern was expressed by clients about the procedures used in determining suggested support amounts

by the Friends of the Court. A man from Detroit said, "The final recommendations the Friend of the Court came up with actually quadrupled the recommendation for child support I was to pay at first...I have never seen the investigator. He never came to see me, my accountant, or my office. What I was earning, my income, I don't know how he came up with those figures." Some Friends of the Court indicate an in-depth procedure is utilized in determining support amounts and with other Friends of the Court, the process is less clear.

The statutory fee which assists the Friend of the Court in defraying administrative costs is \$1.50/month, due in two semi-annual payments of \$9.00 each. Although this amount is not large, it can create difficulty when it is deducted from a weekly child support payment. Technically, the statutory fee is the responsibility of the non-custodial parent, but often this semi-annual "extra" payment is forgotten. The fee then becomes an "arrearage" for the non-custodial parent and is deducted from child support. An attorney from Detroit suggested that in support payment coupon books "two coupons be put in every year to take care of those nine dollars semi-annual service fees." It is certainly inappropriate to deduct this unpaid administrative fee from the amount of support sent to the child.

Other testimony shed light on the need for setting responsibility for various other kinds of maintenance children need -- health and dental care, insurance coverage. In conjunction with these support and maintenance needs, comment was made by professionals and clients alike, that change is needed to bring the rules in line regarding the upper age limit of eligibility for children. Presently, Court Rules reflect the previous age of majority of 21 in GCR 729.2 which says "shall provide for the payment of said support for each child until each child reaches the age of majority, or graduates from

high school, whichever is later, or, in exceptional circumstances, until the further order of the court." With the present age of majority at 18, many students reach 18 during their senior year at high school. This is being interpreted in some areas that responsibility for support ceases when a child reaches the eighteenth birthday, which often occurs midway through the senior year in high school. Graduation from high school brings its own special expenses and General Court Rules of 1963, Rule 729.2, indicates the intent to provide support through high school. It is apparent that clarification in the law is needed to ensure the continuation of child support payments through the child's graduation from high school.

RECOMMENDATIONS

To remedy these problem areas identified under support determination, IT IS RECOMMENDED that in every divorce action with minor children, the Friend of the Court shall recommend an amount of child support to be paid by the non-custodial parent. This recommendation shall include a summary that states the basis for the support amount recommendations, including net income determination and other factors under equitable and sufficient child support. Said support recommendation shall be available to parents and attorney of record.

IT IS RECOMMENDED that GCR of 1963, Rule 729.2 be amended to require the payment of support for each child to be made until the child graduates from high school after being a continuous, full-time student, or reaches the age of 18, whichever is later.

IT IS RECOMMENDED that GCR of 1963, Rule 729.2(5) which provides for the payment of the statutory fees (\$1.50/month) in the temporary or final order be amended to prohibit the Friend of the Court from deducting the statutory fee from court ordered child support.

Enforcement

A mythology has developed around child support which says custodial parents are always awarded support for their children in amounts that provide for a lifestyle of comfort. This indeed is myth as the statistics show. In a survey conducted by Market Opinion Research in Michigan in 1978 regarding occupations and aspirations of Michigan women, it was reported that of those ever divorced or separated, 67% were awarded child support. This is higher than the national figure of 44%. One-third of the women awarded child support are/were able to collect this support on a regular basis. Twenty-five percent reported they were never able to collect the support. Eighteen percent of those surveyed indicated they rarely received it, while 21% indicated support was collected sometimes.

According to 1975 data from the U.S. Census Bureau, child support payments to most women were small, with 40% receiving less than \$1,000 during 1975. The remaining 60% received less than \$1,500. It was higher payments to a relatively small number of women that raised the average payment to \$2,430.

Although this information shows that the regular payment of child support occurs only one out of every four times support is awarded, Michigan is known nationally for its aggressiveness in child support enforcement. According to the 1978 HEW Report to Congress on Child Support Enforcement, the total non-AFDC collections in Michigan during fiscal year 1978 totalled \$139,564,770, approximately 20% of the national total collected that year. Michigan's total collections on behalf of families receiving AFDC for fiscal year 1978 are \$73,084,263, which is approximately 16% of the national total.

The collection figures for Michigan indicate that the Friends of the Court lead the nation in enforcing child support orders. However, in testimony during the public hearings, Friends of the Court, clients, attorneys, and other

professionals shared repeated concern for improving the collection process.

A seventeen-year old young woman at the Jackson hearing submitted, "My mother has a letter from a Marquette judge telling her to go on welfare so she would be guaranteed of receiving money to help support me every month." A woman from Detroit echoed, "All the times I have been in court, I had over 108 entries, the judge's recommendation was 'go on ADC if you can't make it any other way.'"

At the public hearing in Grand Rapids, a woman shared her experience with trying to seek legal action to enforce the child support order.

"I don't see why one party has to abide by the law and the other doesn't. I did go to Legal Aid and the attorney I spoke to there, a man -- asked me what I was there for and I explained my problem. He said, 'Well, I'll tell you right now, ma'am, I will not take your case because I don't believe in taking a man's money before he even sees it.' And I said, 'You mean when it means if his kids will eat or not eat?' And he said, 'That's right.'"

It is frightening when you don't know where the next meal is coming from for three children - if it is yourself, you can take care of yourself. I have fruits and vegetables because I worked hard to can them, but if I didn't, they wouldn't have anything. It does take a little bread and milk to glue it together to make a decent meal for them."

A woman in Flint articulated the frustrations created by the continual battle to enforce child support.

"It is just so frustrating. It is just vicious and no one has a right to make you that angry inside, because then you see it takes away from your relationship with your children and it takes away from these children.

You know, I think there just is a difference...we are mothers and men

are never going to be mothers. There isn't a man in the world that really thinks that his children's mother would let them starve. They know that and they have got that on their side, and this is true. We will do whatever we have to do for our children."

It is the system of varying standards for enforcement of child support coupled with the personal cost for retaining an attorney that creates defeating obstacles for custodial parents.

In the Michigan Women's Commission questionnaire to the Friends of the Court, one of the questions asked was whether or not the county had an automatic, self-starting system for enforcing support. Of the 53 responses, a majority of 34 indicated that they do not have an automatic, self-start system with 19 indicating they do. Many offices rely upon custodial parents' complaints before enforcing child support. Not all custodial parents are willing to follow through with the administrative and legal requirements needed to enforce support orders because of the reluctance to bring a complaint against an ex-spouse, the amounts of time involved, and the personal cost of an attorney.

In the words of a client who supported an automatic collection system, "I have made 70 contacts with the Friend of the Court. I would like to see a lower amount for an alarm level, like instead of \$5,000 arrearage, say \$1,000 arrearage when they (FOC) start paying attention to these cases. They have told me in the past that they don't pay any attention to them until they hit ten (thousand dollars)."

Often, custodial parents are placed in a quandry when child support arrearage accumulates and they are required to retain an attorney to collect. Aside from the legal rights to ordered child support, custodial parents who desperately need the support monies are usually unable to pay the cost of

an attorney. What then occurs is the use of collected back support for attorney fees.

An attorney from Kalamazoo wrote regarding the enforcement of support orders:

"Non-custodial parents in this geographic area know that they may fail to make payments for a year or more prior to being called in for a visit. They know that the custodial parent must kick up a fuss and hire counsel before anything is done. Even after the custodial parent hires counsel, he/she may find the Friend of the Court a 'passive resister' to solution, e.g., failing to file necessary papers, and present accurate accountings.

My suggestions are first to apply the highest legal rate of interest to unpaid support charges. This will cut out non-payment or late payments by the 'savvy' non-custodial parents. Currently, every other creditor charges interest, the non-interest bearing account (child support) is the last paid. Since charge accounts (department stores, Master Charge, etc.) charge 18% on the unpaid balance, I feel legislation setting the interest rate at 18% or above would be fair and effective. I also feel that these payment histories should be available to credit reference companies. These two provisions would put a person's children on the same priority level as one's creditors.

The children currently get short shift."

Adding to the public input on support collection, comment was made by a custodial parent whose ex-spouse was in the military. She relayed the difficulty in gaining cooperation from the military in support collection. In investigating this issue, it became apparent that there are two levels of operation in child support collection, utilizing the Army as a specific example.

On November 15, 1978, AR (Army Regulation) 608-99 was promulgated, which provides that an active duty army soldier is required to comply with all valid court orders for legal dependents. Public Law 93-647 permits the federal

government to enter in suits (in the case of a military person) of garnishment or attachment of wages as ordered by the court. Court orders for support are not enforceable within the military structure unless there is an action for garnishment. At the local level, we are told that enforcement of child support comes under the discretion of the commanding officer of the non-custodial parent. We have been given varying information which says local jurisdiction does not affect the U.S. military; defensive layers have been created in maintaining a soldier's location; the normal process for enforcement is administrative.

According to public law and Army regulation, there are legal guidelines for the enforcement of child support for military personnel. What seems to be occurring is a gap between the remedy and informing custodial parents, Friends of the Court, circuit court judges, attorneys, as well as active military personnel in Michigan of the remedy. In enforcing court ordered support for a military person, a custodial parent needs to acquire a court ordered action for wage garnishment. This order then needs to be sent to the Finance Center or the particular branch of the military for enforcement.

RECOMMENDATIONS

In response to the problems and issues raised in this section, these recommendations are made to improve the enforcement of child support.

IT IS RECOMMENDED that uniformity across the State of Michigan be implemented by a self-starting collections standard. The standard for automatic enforcement shall be no support payment within six weeks, or less than 75% of the ordered payment within a six-week period. This recommendation takes into consideration the variance of payments by non-custodial parents which may be weekly, bi-weekly or monthly.

IT IS RECOMMENDED that in conjunction with the uniform standard for automatic child support enforcement, statutory change shall be enacted which shall require that each order for child support or maintenance payments shall include an order directing a wage assignment of the payer. The order for wage assignment shall be a sleeper until arrearage occurs at the level of no support payment within a six-week period or less than 75% of the ordered payment within a six-week period. When arrearage is indicated, the payer shall be notified by the Friend of the Court office and shall be given a reasonable length of time to respond as to why s/he has failed to make payment. If the payer does not respond, or, does not show cause why s/he should not be held in contempt for failing to make payment, the wage assignment shall take effect.

IT IS RECOMMENDED that the State Administrative Office develop working channels with employers to explain and encourage their responsibilities to cooperate with employee wage assignments as outlined under P.A. 1966, No. 238, MCL 552.203, Sec. 3. By statute, "an employer shall not use such assignment as a basis, in whole or in part, for the discharge of an employee or for any other disciplinary action against an employee."

IT IS RECOMMENDED that negotiating to decrease arrearage during Friend of the Court and Circuit Court proceedings be discouraged. Child support is a contribution to the ongoing needs of the child/ren. Support amounts not paid must be substituted by the custodial parent with monies needed for other child care and maintenance needs.

IT IS RECOMMENDED that the Friend of the Court shall enforce insurance and health care services for minor children where provided by court order and that the necessary statutory language be enacted to ensure this enforcement.

Review

Public Act of 1968, No. 104, MCL 552.252a outlines specific guidelines the Friend of the Court shall follow in reviewing child support amounts and petitioning for modification. The statute requires review every two years of support amounts where dependent minor child/ren are being supported in whole or in part by public welfare. The statute also provides for a review of payments upon the request of the custodial parent not more than once in every two years.

In the Friend of the Court questionnaire, approximately 40% of the Friends of the Court responded that they were unable to conduct two year reviews. The majority of these indicated that inability to comply with the review statute was due to inadequate staffing. In allocating office resources, the reviewing of support payments is not given priority.

If the Friend of the Court is not performing this review function, the effects are felt by the custodial parent. A woman from Jackson said, "The ten dollar support amount per child has not changed in seven years. I feel that the Friend of the Court should be able to automatically investigate and recommend an increase in child support." Additional testimony showed that with those custodial parents on ADC, they may not be informed of modifications in their support amounts.

A Friend of the Court at the Flint hearing shared the viewpoint that "most certainly when the Legislators in Lansing pass acts and say that the Friend of the Court should investigate each case every two years and they don't attach money with it, that is not feasible."

As indicated by statute, there are legal provisions for the review of support with the authority given to the Friend of the Court to petition for modification. However, Friends of the Court report that the funding is

not there to comply with statute.

RECOMMENDATIONS

IT IS RECOMMENDED that as presently required by Public Act of 1968, No. 104, MCL 552.252a, the Friend of the Court shall comply with a review of ordered support payments at least once every two years and funding shall be provided to facilitate the operations of this function.

IT IS RECOMMENDED that subsequent to any Friend of the Court recommendations, or Circuit Court judgments regarding modification or change of child support payments, the parental parties shall be informed of any such recommended modifications and/or changes.

CHAPTER 9

CONCLUSION

The recommendations supported by the Michigan Women's Commission in this study address substantive changes needed within the Friend of the Court system in Michigan. The original drafters of Public Act 412 of 1919 created an office which was responsible for enforcement of decrees in divorce cases where there were minor children. Although the need still exists to enforce domestic relations court orders, over the past sixty years other attendant needs of families have surfaced which could not have been anticipated in 1919.

Economic conditions over the decades have brought spiralling increases in the cost of living. The financial hardship experienced by both parents when the intact family is dissolved is no longer confined to those in lower income brackets, but is shared by all income groups. In an era when the average woman makes sixty cents on the dollar of the average male, financial responsibility for one's self and, possibly, one's children is a difficult task.

Expected societal roles for mother and father have also undergone change. It is no longer assumed that mother is the parent who ought to receive custody of the children. In fact, organizations of fathers have formed and some concern themselves with advocating equal parenting rights.

This study does not suggest that any party involved with the Friend of the Court office -- mother, father or the Friend of the Court themselves should be identified as the culprit in the process. Our study does identify those areas within statute and Court Rules which need to be modified to meet contemporary needs of families and administrative needs of the Friend of the Court system.

The determining of custody, visitation and support arrangements for

minor children should be careful and serious processes because these decisions affect the lives of family members for years. F.M. Knowles remarked in "A Cheerful Year Book" (1906), "Marriage is a lottery, but you can't tear up your ticket if you lose." Many who worked with us echoed this sentiment by pointing to the irony created by the ease of entering into a marriage as compared to the difficulty of dissolving it.

From a comprehensive viewpoint, we have detailed in this report basic structural changes which are needed within the Friend of the Court system. The budget appropriating body ought to be moved from the county to the state. The creation of the central State Administrative Office is requisite to establishing uniform standards of procedures, policies, support schedules, personnel training and quality of services throughout the state. It is important that the Friend of the Court appointment process and qualifications be modified to reduce the likelihood of patronage appointments and to ensure the selection of an individual qualified to administer this human service agency.

We have spoken to the need of informing clients of the Friends of the Court of their rights and responsibilities. In the areas of Friend of the Court office operations, custody, visitation and support, we have developed recommendations which speak to the quality and types of services which ought to be offered and equitable processes of enforcing court orders. In the enforcement processes, we emphasized procedures which would automatically generate from the Friend of the Court office, thereby diminishing the need for parents to engage in a laborious complaint process which often requires retaining costly private counsel.

The Michigan Women's Commission recognizes that in completing this study, we join several other organizations, agencies, policy makers, and private

citizens who share concern about improving the Friend of the Court system in Michigan. It is our intention to move forward and to work with these groups in accomplishing appropriate change.

In fulfilling the goals and purposes established by the Friend of the Court Task Force through the development of these recommendations, we are fully cognizant that the reform advocated here will not meet the total needs of each family member. However, it is incumbent upon those who are in policy making positions to be sensitive to the changing needs of our society's basic unit -- the family, and to, in turn, advocate on behalf of those who do not have ready access to public policy making bodies. The right to equitable and fair treatment includes parents and children. The Michigan Women's Commission submits this report and urges the adoption of these recommendations on behalf of and "in the best interests of the child."

END