THE DOMESTIC RELATIONS TASK FORCE

FINAL REPORT

Submitted to the Ohio General Assembly
pursuant to Substitute Senate Joint Resolution 12
of the 116th General Assembly

June 30, 1987

THE DOMESTIC RELATIONS TASK FORCE

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FINDINGS AND RECOMMENDATIONS OF THE DOMESTIC RELATIONS TASK FORCE

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Grace Drake Robert E. Hickey

Sen. Grace Drake
Chairman

Rep. Robert E. Hickey
Vice Chairman

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TABLE OF CONTENTS

INTRODUCTION

The 15 member Domestic Relations Task Force was created in March of 1986, pursuant to Substitute Senate Joint Resolution 12 of the 116th Ohio General Assembly (see Appendix II). Senator Grace Drake (R-Solon), sponsored SJR 12 and was later named Chairman of the Task Force. Representative Robert E. Hickey (D-Dayton) was appointed as Vice-Chairman. The Task Force's 13 other members were selected in a bipartisan manner, and represent a balanced variety of backgrounds and a common interest in domestic relations issues.

The idea for the Task Force began with many letters and phone calls that Senator Drake regularly received from constituents with various domestic relations problems. According to Senator Drake, "It became apparent to me that a great number of Ohioans were having problems with Ohio's domestic relations law."

The last comprehensive review of Ohio's domestic relations law was conducted by the Joint Committee on Domestic Relations, created by the 108th General Assembly, which submitted its report in 1971. Given the far-reaching societal changes in the 15 years after that report, it was time to take another comprehensive look at the condition of domestic relations law in the state.

The goal of the Task Force was to study domestic relations law in Ohio, listen to the opinions and suggestions of domestic relations professionals and citizens throughout the state, and report its findings and recommendations to the General Assembly for legislative action.

The Task Force conducted 11 public hearings between Aug. 15, 1986 and May 15, 1987 in locations representing every region of the state (see Appendix I). During the hearings, a number of subtopics surfaced as regular problem areas in the scope of domestic relations. These subtopics evolved into the nine main chapters that appear in this report.

Each of the nine chapters are designed with two sections. The first part describes the present conditions and laws of the domestic relations issue covered in the chapter. The second section details the recommendations that were agreed upon by a majority of the Task Force members. Also included in the report is a brief glossary, which is designed to be a quick-reference for unfamiliar domestic relations terms.

For some domestic relations problems, the Task Force did not

make a recommendation, but did note their concern. All Task Force members were offered the opportunity to submit a minority opinion to explain why they disagreed with the majority's decisions.

The Task Force submits the following report to the General Assembly with the hopes that all interested parties will carefully consider these findings and recommendations and work towards passage of legislation or other remedies to improve domestic relations law in the State of Ohio.

DIVORCE AND DISSOLUTION

While divorce rates in Ohio are declining, they are still high. According to the 1985 Ohio Vital Statistics Annual Report (the most recent report available), there were 53,016 divorces, dissolutions, and annulments in Ohio in 1985, at a rate of 4.9 per 1,000 in population. This is down from a record rate of 5.6 per 1,000 in 1979. These compare to rates of 2.4 in 1960 and 3.7 in 1970.

Most divorces, dissolutions, and annulments occur in the early years of the marriage. One-third of all divorces occur within three years of marriage, one-half within six years of marriage, and three-fourths within 12 years of marriage.

Because divorces occur relatively early in marriages, nearly all of the broken marriages in Ohio involve three children or less. In 1985 in Ohio, 42.9 percent of all divorces did not involve children, while 26.1 percent had one child involved, 20.5 percent had two children involved, and only 6.5 percent had three children involved. The remaining four percent of divorces account for larger families or an unreported number of children.

Ohio's marriage and divorce trends are symptomatic of national conditions. In a report published in the February 1987 edition of the Journal of Marriage and the Family, statisticians from the U.S. Census Bureau's Population Division concluded that after a nearly two decade-long climb, divorce rates have finally stabilized. "It appears that divorce, remarriage, and redivorce may have peaked in the late 1970s and will recede to some new normative level. If this happens, it will be an important but not dramatic change. Most adults will marry, and the incidence of divorce in the U.S. will likely remain among the highest in the world," the Census Bureau researchers predicted.

The study noted that women who first marry while still in their teens and those who give birth within seven months of marriage were most likely to divorce. Women with incomplete education also experienced higher divorce rates. Conversely, women who marry after they are 30 or older tend to have more stable marriages.

Census figures also indicate that approximately 50 percent of all recent American marriages end in divorce, dissolution, or annulment. About 85 percent of the once-divorced remarry, usually within five years. Sixty percent of those marriages also end in divorce. A quarter of the twice-divorced people

give up on additional marriages, while the other three-quarters will marry again. The high incidence of serial marriages is due to the record divorce rates of recent years, which created a larger pool of people available to remarry.

GROUNDS FOR DIVORCE

There are 11 established grounds for which the court of common pleas may grant a divorce in Ohio. Traditional grounds include bigamy, willful absence for one year, adultery, impotency, extreme cruelty, fraudulent contract, any gross neglect of duty, habitual drunkeness, imprisonment, and procurement of an unfair divorce outside of the state. Section 3105.01 (K) also provides that a divorce may be granted "on the application of either party, when husband and wife have, without interruption for one year, lived separate and apart without cohabitation."

PROPERTY DIVISION

Ohio's property division law is contained in the alimony statute (O.R.C. 3105.18), which empowers the court to award alimony "in real or personal property, or both." In Cherry v. Cherry (1981), the Ohio Supreme Court said that the equal division of property should be the starting point, but the 11 factors in the alimony statutes should be considered in arriving at an equitable division of property (see page 12).

DISSOLUTION

To initiate a dissolution of marriage, a couple must sign a petition for dissolution and attach a separation agreement. According to O.R.C. 3105.63, the agreement must contain provisions for "a division of all property; alimony; if there are minor children of the marriage, for custody of minor children, child support, and visitation rights; and, if the spouses so desire, an authorization to the court to modify the amount or terms of alimony provided in the separation agreement." Upon receipt of the petition, the court may cause an investigation to be made according to Civil Rules.

Between 30-90 days after the petition for dissolution is filed, both spouses will be asked to appear before the court to agree to the terms of the separation agreement. If the court approves the separation agreement, and any amendments to it agreed upon by the parties, then it shall grant a decree of dissolution of marriage. The decree has the same effect on property rights as a decree of divorce, and the

court retains jurisdiction to modify all matters of custody, child support, and visitation.

ANNULMENT

There are six grounds for annulment of marriage in Ohio: (1) a party is under age, (2) bigamy, (3) mental incompetency, (4) consent by fraud, (5) consent by force, (6) marriage never consummated. For certain grounds, an action to nullify a marriage must be taken within two years of the marriage or discovery of facts constituting grounds for annulment.

COMMON LAW MARRIAGES

Common law marriages are addressed in Section 3105.12 of the Revised Code. It says: "Proof of cohabitation and reputation of marriage of the parties is competent evidence to prove such marriage, and within the discretion of the court, may be sufficient therefor."

The breakup of a common law marriage may result in many of the same problems as a married couple's divorce. Once a relationship is designated as a common law marriage, all of Ohio's domestic relations statutes for traditional marriages would then apply.

MEDIATION, COUNSELING, AND CONCILIATION

At all of the Domestic Relations Task Force hearings throughout Ohio, witnesses testified that divorce litigation is adversarial, expensive, and damaging to families. The Task Force received numerous recommendations for mediation or counseling for divorcing couples and their children before, during, and after litigation.

Counseling encompasses a wide range of activities. A counselor may offer guidance and advice on a variety of topics including psychological and family problems, legal matters, and financial matters before or after the divorce. The goal can be to save a marriage, or to ease family tension during the period during and immediately after divorce. Counseling can be performed on an individual or family basis.

Mediation involves a neutral mediator that attempts to help the divorcing parties to resolve disputes through mutual concessions and face-to-face bargaining. Mediation is completely voluntary with all parties agreeing to the process. If given the authority by both parties, the

mediator may also act as an arbitrator and issue binding decisions on any unsettled issues.

Ohio law currently provides a conciliation procedure. Chapter 3117 of the Ohio Revised Code, "Conciliation of Marital Controversies," has been in effect since 1969. The statute provides that before or during action for divorce, annulment, or alimony, "one or both spouses may file in the court of common pleas a petition for conciliation, to preserve the marriage by effecting a reconciliation, or to amicably settle the controversy between the spouses, so as to avoid further litigation over the issues involved."

According to Task Force member Judge June Galvin, however, the conciliation law is rarely used. One reason for its infrequent use is that counties are not required to offer the conciliation procedure under Chapter 3117. The application of the conciliation statute is determined by the common pleas judge (or a majority of common pleas judges if that county has more than one) in each county. The common pleas judges in the domestic relations division of each county, or a designated common pleas judge, hears all conciliation cases in each county. Chapter 3117 also permits the court of common pleas in counties with populations of more than 100,000 to appoint one or more conciliation counselors.

Mandatory mediation for domestic relations disputes is a relatively new policy for states. In 1981, California became the first state to pass a law requiring mediation for all contested custody and visitation issues prior to any court hearings.

The argument often raised against mandatory mediation is that it is impossible to force an agreement upon a divorcing couple unless both parties first agree to the process. Many people have noted that most couples getting a divorce are not likely to agree to anything. Despite these concerns, the Task Force concluded that mediation is worth pursuing, especially when there are dependent children in the family.

SEXUAL ABUSE CHARGES IN DIVORCE TRIALS

In many of the Task Force's public hearings, both men and women testified that their ex-spouse, or someone from the opposing party, knowingly made false allegations of sexual abuse during a divorce where child custody was contested. In these cases, such allegations surface for the first time in the history of the marriage at the point where the couple

seeks to negotiate a custody arrangement. Usually, upon investigation, the charges are proven false and are dropped.

Witnesses stated that such malicious and reckless charges are often made in order to prejudice the judge in his decision of custody. Even after the charges are proven false, the reputation of the parent accused of sexual abuse is often tainted, while, the witnesses said, the party that knowingly made malicious allegations is not reprimanded or penalized.

REFEREE REPORTS

Several citizens testified that judges should be required to consider a referee's report in divorce proceedings. They testified that sometimes, an objection by one party can cause the report to be overturned and thrown out. [This is currently possible under Court Rule 53 (E) (2)]. The witnesses felt that it was unfair for the court to be able to completely ignore the results of the referee's hearing.

According to Rule 53 of Ohio's Rules of Civil Procedure, "A party may, within fourteen days of the filing of the report, serve and file written objections to the referee's report." The rule then permits the other party to also file an objection within a certain period of time.

Rule 53 also provides that after considering the objections, the court may do one of several things: "adopt, reject, or modify the report; hear additional evidence; return the report to the referee with additional instructions; or hear the matter itself."

The Task Force felt that judges should retain the several options, including rejection of the report, that are presently available. There may be occasions where a referee's report should be rejected, and judges should retain the authority to make the final judgment on referee's reports. Rule 53 even provides that, "the court shall determine whether there is any error of law or other defect on the face of the referee's report even if no party objects to such error or defect."

RECOMMENDATION: The Task Force recommends that contested custody and visitation issues be resolved in mediation before divorce litigation. The mediation procedures should be based upon American Bar Association mediation guidelines. Any

mediation program should be properly funded and use trained mediators. The mediator's report should still be subject to the final approval of the judge.

After hearing a great deal of public testimony, the entire Task Force believed that mediation, when performed properly, is a good idea. Several citizens who testified asked for a mechanism to help decrease the adversarial quality of the divorce process. While some Task Force members were concerned by studies which show that some women can be at a disadvantage in mediation, they felt that by subjecting the mediation settlement to the judge's final approval, unfair mediation could be avoided.

RECOMMENDATION: County courts, prosecutors, police, and children's services boards should adopt systems to investigate child abuse that minimize damage and trauma to the children. A "case conference" method, such as the type used in Stark County, or a "vertical prosecution" method, with a videotaped interview of the child and a trained sexual abuse representative from each involved agency, are suggested models.

RECOMMENDATION: Section 2151.421 of the Ohio Revised Code should be amended to provide certain penalties for a person who knowingly and maliciously makes allegations of sexual abuse during a domestic relations trial, as long as the amendments are not in conflict with federal child abuse reporting laws.

O.R.C. Section 2151.421 covers reporting procedures for child abuse and neglect. The section contains no penalties for maliciously or recklessly making false abuse charges. However, the general falsification statute, O.R.C. section 2921.13 may apply to false charges.

The Task Force is concerned with preventing the use of sexual abuse allegations as a tool to obtain custody. The Task Force does not wish for this recommendation to have a chilling effect on good faith reporting of child abuse, but intends to discourage intentionally malicious reports in custody battles.

RECOMMENDATION: The Task Force recommends that a divorce case could not come to a final hearing until at least 90 days after filing, unless both parties agree to waive this requirement. Currently, there is a minimum of 42 days for a cooling-off period between filing and the final hearing date. A longer cooling-off period might afford the two parties time

to reassess their situation, and possibly avoid divorce. The waiver would be established for divorcing parties that have no chance of reconciliation.

RECOMMENDATION: The Supreme Court should amend Civil Rule 60 (B) to expand the limitation for relief from judgment or order from the current one-year period to at least three years in cases of fraud. A one-year limitation is sufficient for most motions for relief from judgment, but it is often difficult to detect fraud within a year's time. This was especially evident in the case of one Northern Ohio woman who testified that her ex-husband had been hiding assets of their family business for a five year period before divorcing her. Only after the divorce did the police and IRS begin complicated criminal investigations that could take more than a year to complete.

ALIMONY

In recent times, public debate concerning alimony in divorce cases has taken a back seat to other divorce issues, such as child custody, child support, and visitation rights. In addition, the percentage of divorced women receiving alimony awards has declined, in part because of the increase of women in the workplace, and the possible assumption that all women now have the skills and earning ability to support themselves.

Even though public testimony did not focus on this issue, the Task Force was concerned with the implications surrounding the shift away from alimony awards in divorce proceedings.

THE NECESSITY OF ALIMONY

While the attitudes toward working women have certainly changed, and women now account for more than 50 percent of the workforce in the United States, some inequalities still exist:

(1) Although women account for about half of the work force, they are usually stationed at lower paying jobs. Even when a woman performs the same job duties as a man, she often earns less than a man in that job.

(2) Women also now account for approximately half of the students in America's institutions for higher learning. Yet there is another group of women with inadequate job skills who find it impossible to attend school, hold a fulltime job, and properly care for children in their custody.

(3) Custody is granted to women in the majority of cases. While it is often difficult for divorced or separated women to remain above the poverty line, the burden of raising children with non-existent or infrequent child support payments and inadequate alimony payments often plunges the woman and children into a life of poverty.

Census Bureau statistics concerning the poverty of divorced women are alarming: "Of the 17.4 million ever-divorced or currently separated women, 3.8 million (or 22 percent) were living below the poverty line. Of the 3.8 million poor (women), only 9 percent were awarded alimony payments as of spring 1984. Of the 117,000 poor women due payments in 1983, about 6 out of 10 received some amount of payment."

Statistics relative to the financial condition of all female-head-of-household families are even more disturbing. The study notes that in 1983, "...of families with children under 18, those with a female householder and no husband present had average incomes of $11,730 with a poverty rate of 47 percent, compared with $31,520 and 11 percent for all other families."

A relationship between divorce and standard of living is clear. Lenore J. Weitzman, in her 1985 book The Divorce Revolution, noted that "...on the average, divorced women and the minor children in their household experience a 73 percent decline in their standard of living in the first year after divorce. Their former husbands, in contrast, experience a 42 percent rise in their standard of living."

Given these conditions, several witnesses as well as Task Force members predict an increase in alimony awards for divorced and separated women as judges and attorneys become more aware of the economic impact of divorce and separation on women.

ALIMONY SUPPORT PAYMENTS

In the absence of comprehensive studies specific to alimony awards in Ohio, one must look at national figures. In October 1986, the Census Bureau released a new report, "Child Support and Alimony: 1983," the most recent nationwide study covering alimony. The study found that as of spring 1984, there were "17.4 million ever-divorced or currently separated women." Only about 2.4 million of these women, or 14 percent, received awards or agreements to receive alimony or maintenance payments; payments were never awarded to the remaining 86 percent.

The recipiency rate for alimony payments seems to be improving, although it is not yet close to 100 percent. In 1983, 77 percent of women scheduled to receive alimony payments did receive at least some portion of them, an improvement over the recipiency rate of 67 percent in 1981. The average amount of alimony received in 1983 was $3,980, an average of 22 percent of the total annual income of each woman receiving the payments.

The Census Bureau study also indicated that the percentage of divorced or separated women awarded alimony payments has indeed declined since 1970, approximately the same time that divorce rates began to increase. Of women divorced or separated before 1970, 17.7 percent were awarded alimony

payments. Thirteen percent of women divorced or separated from 1970-74 received alimony awards; 12 percent of women divorced or separated from 1975-79 received awards. The percentage of women receiving alimony awards increased slightly, to 12.2 percent, for those married or separated from 1980 to the spring of 1984.

In addition to women divorced or separated prior to 1970, women who were more likely than average (14 percent) to have an alimony award were women over the age of 40, women who had attended college, white women, and those not working during the 5 years prior to or at the time of separation.

Among the women less likely than average to receive alimony awards were women under age 30, those who had not graduated from high school, women working at the time of separation, black women, and women with one or more children present from the absent father.

PROPERTY SETTLEMENTS AS ALIMONY

As used in the Census Bureau study, alimony was classified as a schedule of support or maintenance payments that were awarded or planned to be received pursuant to an agreement. The study differentiated alimony from property settlements. The survey defined property settlements as "a one-time cash settlement or other property (i.e., house, other real estate, car, or furniture) or a combination of both."

The Census Bureau report indicates that women are more likely to receive property settlements than an award of alimony maintenance payments. Of the 14.8 million ever-divorced women as of spring 1984, 37.2 percent received property settlements. Only 28 percent of those women awarded a property settlement also received some form of support payment in 1983.

Like alimony awards, there has also been a downward trend in the frequency of property awards for women. In 1979, 44.5 percent of ever-divorced women received property settlements. By 1982, 41.8 percent of received property settlements; the percentage fell to 37.2 in 1984.

STATE LAWS

It should be emphasized that while the above statistics reflect the nation's status concerning alimony payments and property settlements, they may not accurately represent conditions in each state due to differing maintenance and

division of property laws. As noted later in this chapter, Ohio law permits alimony to be allowed "in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, as the court deems equitable."

The Winter 1987 edition of Family Law Quarterly lists 40 states, including Ohio, as common-law states in which the courts have equitable power to distribute property upon divorce for property distribution or alimony maintenance. The theory behind equitable distribution is that the courts may weigh the contributions that each spouse made to the marriage and the needs of each person as they part. This permits property to be used as alimony.

Most of the 40 equitable distribution states do not permit "separate property," usually defined as property owned before marriage or personal gifts or inheritances, to be subject to distribution. Instead, those states only allow "marital property" to be considered for distribution. Marital property is the income and property accumulated by both spouses during the marriage. State laws vary slightly on precise definitions of marital property, but most exclude property acquired by gift or inheritance during the marriage. Ohio is in the minority of common law equitable distribution states which allow all property of both spouses, including separate property, to be considered by the court for distribution.

OHIO'S ALIMONY STATUTES

Ohio law allows the court of common pleas the option to order alimony to either party as it deems reasonable in a divorce, dissolution of marriage, or alimony proceeding.

According to O.R.C. Section 3105.18, the court shall consider all relevant factors in determining whether alimony is necessary, and in determining the nature, amount, and manner of alimony payments. Eleven specific factors are listed in the statute and are required to be considered by the judge:

(1) The relative earning abilities of the parties;
(2) The ages, and the physical and emotional conditions of the parties;
(3) The retirement benefits of the parties;
(4) The expectancies and inheritances of the parties;
(5) The duration of the marriage;
(6) The extent to which it would be inappropriate for a party, because he will be custodian of a minor child

of a marriage, to seek employment outside of the home;
(7) The standard of living of the parties established during the marriage;
(8) The relative extent of education of the parties;
(9) The relative assets and liabilities of the parties;
(10) The property brought to the marriage by either party;
(11) The contribution of a spouse as a homemaker.

Alimony may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, as the courts deem equitable.

By law, either party to a marriage is permitted to file a complaint for divorce or alimony. The other party may then file a counterclaim. The court of common pleas may grant alimony on a complaint or counterclaim for any of six different causes: (1) Adultery; (2) Any gross neglect of duty; (3) Abandonment without cause; (4) Ill-treatment by the adverse party; (5) Habitual drunkeness; (6) Imprisonment (O.R.C. Section 3105.17).

RECOMMENDATION: The Domestic Relations Task Force recommends that Section 3105.18 (A) of the Ohio Revised Code be amended to read:

> (A) In divorce, dissolution of marriage, or alimony proceedings, the court of common pleas may allow alimony OUT OF THE MARITAL ESTATE AS IT DEEMS reasonable to any party.
>
> The alimony may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, as the court deems equitable.

The intent of this recommendation is to clarify what judges may consider as alimony. The recommendation would exempt separate property from distribution and require alimony to be allowed only from marital property or as maintenance payments. Several judges and private citizens who testified before the Task Force felt that this was less complicated and more equitable method to divide property and allow alimony. This recommendation would also put Ohio with the majority of common law equitable distribution states that do not subject property owned before marriage or gifts and

inheritances to distribution upon divorce.

CUSTODY

Of all topics heard by the Task Force, child custody and visitation evoked the greatest response statewide. There is clearly widespread dissatisfaction and disillusionment with current law and procedures concerning custody, visitation rights, and the enforcement of court orders in these areas.

Ohio law gives each parent the basic right to "stand upon an equality as to the care, custody, and control of such offspring, so as far as parenthood is involved," in questions of the court when the husband and wife are separated or divorced (O.R.C. section 3109.03).

Although both parents begin custody proceedings on equal footing, custody is granted to the child's mother in approximately 90 percent of all cases in Ohio.

There are two types of custody arrangements that the courts can approve in Ohio. The court can either grant the care, custody, and control of the child to one of the parents, or may grant joint custody, only if both parents request it and file a plan for joint custody pursuant to state law. Ultimately, the court awards custody and makes any custody modifications according to the best interest of the child.

The best interest of the child is determined, in part, by the five factors set out in Section 3109.04 (C) of the Revised Code: (1) The wishes of the child's parents regarding his custody; (2) The wishes of the child regarding his custody if he is eleven years of age or older; (3) The child's interaction and interrelationship with his parents, siblings, and any other person who may significantly affect the child's best interest; (4) The child's adjustment to his home, school, and community; (5) The mental and physical health of all persons involved in the situation.

After the 11 public hearings of the Domestic Relations Task Force, it was evident that the two custody options available to judges under Ohio law do not meet the needs of many broken families. An overwhelming number of witnesses asked for an alternative to Ohio's custody law that would guarantee access to medical and school records for both parents, and give each parent a role in their child's future. Such a "shared parenting" or "joint legal custody" would retain a primary caretaker parent with whom the child would live, but would offer rights to the non-caretaker parent that are not presently available under sole custody.

In addition to a shared parenting alternative, a significant number of witnesses asked for a change in Ohio's custody laws to reflect a presumption of pure joint custody in which the parents would in all matters jointly care for and make decisions concerning their children.

However, a majority of Task Force members felt that a presumption of joint custody would be disastrous because few divorced parents can agree on all issues. Even Ohio's current joint custody option, which requires both parents first to agree to the plan of joint custody, is usually not a successful arrangement.

RECOMMENDATION: Words, such as "custody," "visitation," and "award," imply that children are property and deny the existence of another parent. These words should be deleted from domestic relations law sections in the Ohio Revised Code.

The Task Force suggested several more appropriate words and phrases. "Parent" should be used more often throughout the Code, while "caretaker parent, primary caretaker," or "home parent" could be used to differentiate the two parents.

"Shared parenting" should be used to describe the duties of the divorced parents, while "order" and "amount" could replace references to "award."

Other states have already undertaken such a revision. Vermont, for example, eliminated all references to "custody" in its law in 1986. Instead, it refers to parental rights and responsibilities, which may be shared, divided, or awarded to one parent.

RECOMMENDATION: The Task Force encourages domestic relations courts to direct divorcing couples with children to attend qualified counseling and family service agencies. A large number of divorced citizens and professionals in the domestic relations field recommended family counseling to assist the parents and children during the transition of divorce. Domestic relations judges should also emphasize the use of the state's little-used conciliation statute, under Chapter 3117 of the Ohio Revised Code.

RECOMMENDATION: The custody modification language of section 3109.04 of the Ohio Revised Code should be amended so that

non-custodial parents could not obtain custody of any of their children unless all child support arrearages are paid in full.

RECOMMENDATION: The custody modification statute of section 3109.04 of the Ohio Revised Code should be amended to give judges more discretion to reject a child's stated wishes regarding custody, when the change would not be in the child's best interest.

The intent of this recommendation is to discourage parents from manipulating or pressuring their children to tell the judge that they wish to live with their other parent. By not allowing a child's wishes to be the main determining factor in custody modification, a judge can weigh the child's wishes against other issues.

Changes in custody should be based mainly on the standard of the best interest of the child, and not on the standard of the fitness of the parent. Often, in actions to modify custody, a child's stated wishes to have a new custodial parent, are, in effect, the determining factor to change custody, unless the parent who would receive custody is shown to be unfit. The Task Force's recommendation is designed to eliminate battles concerning each parent's fitness and make the child's best interest the most important factor in custody modification.

RECOMMENDATION: The Supreme Court should amend Civil Rule 75 (M) (1) concerning ex parte orders of temporary custody during pending divorce action. The Task Force recommends that:

(1) No ex parte order will be granted unless accompanied by an affidavit.

(2) The affidavit would be required to recite that placement is necessary to prevent endangerment or bodily harm of the child.

(3) Only temporary placement should be granted, not custody.

Several people testified that current ex parte hearings are unfair and only increased the chances of divorce animosity and a "race to the courthouse" in order to obtain custody.

VISITATION

Every public hearing of the Task Force, especially the session in Lima, included requests for some type of state guidelines for visitation. Many suggested that visitation time denied by custodial parents should be recorded and compiled in a manner similar to support arrearages. There were many cases where support was illegally withheld by the non-custodial parent because it was his or her only means of retribution for denial of visitation.

There was also concern about granting visitation time to non-custodial parents with a history of abuse. Some recommended that, as an aid to child abuse victims, an age be established at which a child can choose whether or not to continue visitation with the non-custodial parent.

The paragraph in Section 3109.05 (B) is the only mention of visitation in the Ohio Revised Code. There are no codified guidelines for visitation. The section states: "The court may make any just and reasonable order or decree permitting" visitation for a non-custodial parent.

Also, under the court's discretion, "reasonable companionship or visitation rights may be granted to any other person having an interest in the welfare of the child."

There is no penalty for denial of visitation, but "the court may, upon notice and hearing, make any modification that it determines just in an order of support of a child or an award of alimony upon proof that the party subject to the order has been continuously or repeatedly prevented from exercising a right to visit the child established by an order of the court.

RECOMMENDATION: Title 31 of the Ohio Revised Code should be amended to provide specific factors that the court shall consider in forming visitation orders. In determining a schedule to provide optimum visitation between the child(ren) and parent, the court shall consider all relevant factors, including, but not limited to the following:

1. prior involvement of each parent;
2. the distance to travel and cost of transportation;
3. the child and parent's available time, including school and holiday schedules;

4. a policy to reschedule missed visitation;
5. age of the child;
6. desires of a child age 12 or older;
7. time with siblings;
8. the child's desires to spend time with any other person related by consanguinity or affinity;
9. the health and safety of the child;
10. any other factors to facilitate or limit visitation that are in the best interest of the child.

RECOMMENDATION: The Ohio Revised Code should be amended to establish a visitation enforcement statute that provides penalties for willful denial of visitation that are comparable to penalties for nonsupport.

RECOMMENDATION: The Ohio Revised Code should be amended to require all primary caretaker (custodial) parents to notify the other parent and the court of original jurisdiction of plans to move from the present home. Notification would be required within a certain period of time, and performed for the purpose of setting a new visitation schedule.

A plan to cover situations when a caretaker parent moves with the children can be included in the divorce decree, but there is no law requiring it. The Task Force heard many reports from parents who rarely see their children because the custodial parent moved hundreds of miles away, and there was no opportunity for a new visitation schedule to be drafted.

RECOMMENDATION: The Ohio Revised Code should be amended to require that a specific child visitation schedule be included in every final divorce decree, in divorces involving children.

CHILD SUPPORT AND ENFORCEMENT

HISTORY

In the past few years, the Ohio General Assembly has enacted several pieces of legislation concerning child support enforcement. Most of these new Ohio laws were designed independently, but in reponse to the federal Child Support Enforcement Amendments of 1984, P.L. 98-378, which mandated sweeping changes in state child support enforcement programs and laws. Several of the federally mandated enforcement tools required state legislative action (Ohio action shown in brackets):

--mandatory income withholding [HB 509--116th General Assembly (G.A.)]
--expedited process [HB 509--116th G.A.]
--state income tax refund intercepts [SB 80--116th G.A.]
--liens on real and personal property [HB 509--116th G.A., also SB 42--pending before 117th G.A.]
--posting of bonds or security [HB--116th G.A.]
--release of information to consumer credit agencies [HB 509--116th G.A.]
--legal period of paternity establishment open until the minor's 18th birthday [HB 245--114th G.A.]

The 1984 Amendments required other state practices which may be accomplished through legislation or by other means. Legislation has already provided for non-ADC client services, health insurance provisions in support orders, and statutes for the enforcement of spousal support. The Ohio Supreme Court Advisory Committee will soon announce its guidelines for support awards.

PENDING LEGISLATIVE AND JUDICIAL PROPOSALS

Ohio is still in the process of meeting all of the federal mandates of P.L. 98-378. Several of the recommendations submitted to the Task Force should be incorporated in bills such as HB 231, and the Supreme Court Advisory Committee rules.

HB 231 (Hinig), proposes to give county commissioners the authority to designate either the county department of human services, the county prosecutor, the county common pleas court, or an independent county office under the control of the commissioners as the county's child support enforcement agency. The agency would be the local Title IV-D agency and

would perform all duties related to the collection of child support payments. The bill would also categorize all support orders as IV-D cases, entitling the counties to additional federal funding.

Another provision of HB 231 would permit employees whose jobs might be abolished by a change in their county's child support agency to transfer to the new agency and retain their status and benefits. The bill also requires that procedures be adopted to have support payments disbursed within two business days after payments are received. In addition, the bill would direct all funds collected from obligor fees to pay for the part of the support enforcement that federal funds do not cover.

In response to the federal mandate that states adopt equitable guidelines for child support awards, the Supreme Court appointed an Advisory Committee which began its work in April 1985 (and should finish its report around June 1987). The committee is basing its recommendations on a model that is designed to allow the child the same proportion of parental income that he would have received if the parents lived together.

The child support levels are based on the parents' actual gross income, or potential income if the parent is voluntarily unemployed or underemployed. Gross income includes salaries, wages, overtime, commissions, bonuses, capital gains, social security benefits, unemployment insurance benefits, workers' compensation and disability insurance benefits, and other sources. Specifically excluded are AFDC and SSI benefits, Food Stamps, and General Assistance.

The committee has also revised reporting rules for income from self-employment, operation of a business, and rental property. Copies of federal tax returns, W-2 forms, and other forms of income documentation from the most recent six months will also be required.

Provisions for health insurance, extraordinary medical expenses, and child care costs will also be included in child support packages.

The Advisory Committee has recommended several new reporting procedures, but it may still be difficult to discover "under-the-table" employment payments that obligors receive. Task Force witnesses argued that gross income should not include overtime payments, which can fluctuate. Since support

is based on annual gross income, though, overtime payment fluctuations are reflected over the course of the year, which deflates the weekly or monthly impact of overtime payments.

It should be noted that while the Supreme Court Advisory Committee Report is near completion (it was in its 10th Draft by June 1987), many people before the Task Force testified that some Ohio courts are already using the unofficial child support guidelines released in earlier drafts of the committee's report.

OHIO'S EFFECTIVENESS

The measures already taken by the federal and state governments have increased the cost-effectiveness of money spent to collect child support payments in Ohio. Statistics from the forthcoming 1986 Report of the National Child Support Enforcement Reference Center indicate that Ohio collected $4.92 for each dollar spent on child support collections in 1986, compared to only $3.38 collected for each dollar spent in 1985. Ohio still lags behind many other states, though. Michigan leads all states in cost-effectiveness with $8.33 collected in support for every dollar spent on collection services in 1986. According to federal sources, Ohio ranked 44th compared to all states in cost-effective child support enforcement in 1985.

Michigan's effectiveness is due largely to its friend-of-the-court program, which integrates the issues of child support, custody, and visitation into one system. The program, serving all child support cases, establishing paternity, and enforcing visitation statutes, is paid for by a mix of federal child support enforcement funds and county funds.

ENFORCEMENT PROBLEMS

Several judges and support collection officials testified that Ohio's wage withholding provision (O.R.C. Section 3113.21) enacted in 1986 is the most important tool available in enforcing child support orders. Still, there have been reports of cases in which the legislation is not being enforced or used by local agencies. Several child support obligees around Ohio have testified that they have been asked to do their own investigation and find the information (such as addresses and places of employment) to prosecute delinquent obligors.

Such information should be obtained under the wage

withholding provision, which requires the Bureau of Support (for non-IV-D cases) or the local IV-D agency (for IV-D cases) to immediately conduct an investigation to determine all information on the obligor to enable the court to issue a withholding order. Information includes the obligor's employment status and addresses, Social Security numbers, and amount of arrearages.

Witnesses reported that other statutes designed to meet federal child support guidelines have also not received proper enforcement. Effective Sept.24, 1986, the General Assembly increased the penalty for non-support of dependent children to a fourth degree felony when the offender has a previous conviction of that offense or failed to provide support for 26 out of 104 consecutive weeks.

Many witnesses, however, testified that the provisions of the new law were not being enforced, and that people guilty of non-support were not being prosecuted to the fullest extent. Some also noted that in their county, when an obligor is about to be prosecuted for non-support, he makes a support payment before the court date. The prosecutor then often drops the charges. It is unclear, though, whether or not these problems occurred before the child support enforcement law became effective.

SUPPORT ORDERS FOR HIGHER EDUCATION

Some witnesses expressed an interest in mandating continued support orders for dependents over age 18 who are continuing their education. Section 3109.05 of the Revised Code states that in determining child support amounts, the court shall consider: "The educational needs of the child and the educational opportunities that would have been available to him had the circumstances requiring a court order for his support not arisen." No specific higher education provisions are mentioned, though.

SUPPORT ACCOUNTABILITY

Throughout the state, the Task Force heard repeated complaints from non-custodial parents who said that the child support they paid was not used for the benefit of their children. The Task Force recognized this as a valid concern in cases where it is obvious that the spouse receiving support spends the money frivolously or irresponsibly. One example might be a situation where a mother frequently dresses in the latest fashions, but the children attend school in ragged clothes.

However, in the majority of cases, support payments are commingled with the total household funds to provide food, clothing, and shelter for recipient children. Given this scenario, the Task Force felt it would be too difficult to require all custodial parents to account for how support payments are spent.

RECOMMENDATION: The Ohio Revised Code should be amended to permit, under certain circumstances, post-majority age child support for children attending post-high school learning institutions.

According to Ohio law, parents are not obligated to continue to pay child support for children that have reached the age of majority (18 years old). This recommendation would permit, under specific conditions, the court to order and enforce child support for children over age 18 who attend higher education institutions, such as colleges or technical schools.

Support orders for higher education for children over the age of 18 could occur under the following conditions:

(1) When both parents agree to a period of post-majority support and make an agreed journal entry. Currently, Ohio courts can enforce post-minority support if such an agreement was included in a divorce decree. This, however, would permit parents who did not have such an agreement in their divorce decree to later make an agreement and have that agreement subject to court enforcement.

(2) Absent an agreement, the court could consider ordering post-majority support upon the application by only one of the parents.

A few Task Force members felt that the court should not be able to order post-majority support for higher education. They felt that no child had a "right" to a college education and that money for college should only be a personal agreement between the child and his parents.

However, the majority of the members felt that many 18-year-old children who attend college are not completely emancipated and self-sufficient. One Task Force member noted

that before the majority age was lowered from the age of 21 in the early 1970's, courts routinely ordered support for children's higher education.

The Task Force was especially concerned that when neither parent is legally obligated to support college age children, the burden to support college age children almost always becomes the responsibility of the custodial parent, usually the divorced mother. This pattern is verified in studies cited by Lenore Weitzman in her 1985 text, The Divorce Revolution. Weitzman explained that "mothers typically bear the de facto resonsibility for supporting their college-age children who are no longer legally minors. Even though the divorced mothers of college-age children whom we interviewed invariably had less money than their former husbands, a larger percentage of them voluntarily contributed to their children's support past age eighteen."

RECOMMENDATION: The Ohio Department of Human Services should promulgate rules which would allow the child support obligee to see his child support file so the parent can make a determination that appropriate action has been taken on his case. Certain personal data, such as Internal Revenue Service and Social Security information, is protected by federal law and would remain confidential. The ODHS rule should become effective no later than Dec. 31, 1987.

RECOMMENDATION: The Ohio Department of Human Services should promulgate a rule to prohibit cases from being closed or listed as inactive because collections have not been made for several years. The ODHS rule should become effective no later than Dec. 31, 1987.

RECOMMENDATION: The Ohio Department of Human Services should promulgate rules requiring county child support enforcement agencies to promptly send notices to obligors that are more than $1,000 in arrears. The notice would state that the obligor will be automatically reported to credit agencies unless the obligor pays or files an administrative order within 30 days to prove he is not more than $1,000 in arrears. The support obligee should be permitted, by rule, to request and receive information on the status and amount of arrearages of his case. The obligee should also be permitted to initiate action to notify credit agencies if the obligor is more than $1,000 in arrears.

Currently, if credit-approving agencies contact a IV-D unit, they will be told if an obligor is more than $1,000 in arrears. Patrick Conway, an attorney with the Hamilton County

DHS IV-D office, suggested restructuring the system so that the IV-D agency does not have to wait for the credit bureau to contact them.

RECOMMENDATION: The Ohio Department of Human Services should draft and enforce rules that provide for speedy collection and disbursement of support checks.

Support checks often can be held up for several days until the obligor's check clears. This can cause a poor parent with children to default on monthly rent and utility payments. HB 231 will attempt to address this issue by requiring county support agencies to disburse support payments within 24 hours after the obligor's payment is received.

RECOMMENDATION: The Ohio Revised Code should be amended to require that Social Security numbers be included as part of the marriage license. A perjury penalty should also be added. Several witnesses testified that they often did not have a record of their ex-spouse's Social Security number after their divorce. An available record of the number would be of some assistance in the hunt for absent support obligors.

RECOMMENDATION: The Ohio Revised Code should be amended to allow courts to order attachment of an obligor's unemployment compensation benefits.

Currently, only the ODHS has the power to attach unemployment compensation. (ODHS can do this only for cases currently classified as IV-D cases. If all cases are classified as IV-D under HB 231, then ODHS could perform this service for all cases. But, the courts would still need the power to order attachment).

PATERNITY

Paternity, or the establishment of a biological father, is covered in O.R.C. Sections 3111.01--3111.19. There are several circumstances under which a man is presumed to be the natural father of a child. These include: 1) a man and the child's mother are or have been married to each other, and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, divorce, or dissolution, or after the man and the child's mother separate pursuant to a separation agreement; 2) the man, with his consent, signs the child's birth certificate.

An action to determine the existence or non-existence of the father-child relationship may be brought by the child, the mother, the alleged father, or their personal representatives. An action to determine paternity may not be brought later than 5 years after the child reaches the age of 18.

Ohio law provides for the child, mother, alleged father, and any other defendent to submit to genetic testing upon a motion of the court, or a motion of any party to the action.

There are several types of genetic tests. One of the most popular, the Human Lymphocyte Antigen (HLA) blood test, costs about $300 and is 98% accurate. This has helped to reduce the number of paternity trials. Still, many women do not file paternity actions because they do not want those men to come back into their lives.

There is no section in Ohio law requiring that paternity be established. Because, as noted above, actions to determine paternity may be brought only by the parties of the child, the mother, or the alleged father, the state is not permitted to engage in paternity action.

The inability of the state to initiate paternity actions causes additional problems, for paternity must be established before child support payments can be ordered. According to the Children's Defense Fund 1986 Report on Teenage Pregnancy, in 1985 alone there were nearly 35,000 out-of-wedlock births in Ohio, including 13,000 such births to teens. The report noted that only 9,300 paternity cases were established with the assistance of departments of human services that year. The report also cited nationwide Census Bureau data from 1986 that indicated that less than 18 percent of the children of never-married women had child support orders, "underscoring

the importance of establishing paternity as a central part of any strategy to increase child support collections."

In addition to increased child support collections for the state, paternity also allows inherent rights to the child. Claims to Social Security survivor's, Worker's Compensation, and insurance benefits, inheritances, and other rights are dependent upon the establishment of legal paternity.

Some states have already recognized the long-term cost-effectiveness of establishing paternity for children born out of wedlock. In 1986, Michigan enacted a law which permits its Department of Human Services to bring an action to determine the paternity of a child.

RECOMMENDATION: The Ohio Department of Human Services should promulgate rules that require county child support agencies to complete certain percentages of paternity cases within designated periods of time.

The Task Force was very concerned with reports that paternity cases often receive little, if any action. The members were also concerned that cases were deemed low-priority in the Department of Human Services because of the relatively large initial investment for each case (for blood testing), and the large amount of time to perform investigations to find absent fathers. While the initial outlay to establish paternity is expensive in comparison to other human services cases, the establishment of each paternity is extremely cost-effective and saves the state thousands of dollars.

In addition, it is unfair that men who father children in a marriage are usually required to pay child support, while men who father children out of wedlock often bear no financial responsibility for their children, and are not usually required to because of the state's poor record with establishing paternities.

The Task Force would also like to encourage the Ohio Bar Association and the Ohio Prosecuting Attorneys Association to establish reasonable but strict time frames for completing paternity cases as they are processed by the ODHS, prosecuting attorney's office, and the court.

COURT SYSTEM AND PROCEDURES

Upon reviewing testimony received, the Domestic Relations Task Force concludes that a high degree of dissatisfaction with the court system exists statewide. In large measure, this dissatisfaction is probably due to the backlog of cases in Ohio's courts, the legal complexities of many divorce cases, and the divorcing individual's lack of awareness of divorce procedure. This lack of awareness is often compounded by the emotional stress accompanying the collapse of a marriage. James T. Friedman, a Chicago family law specialist, aptly explained the condition of the divorcing person in his 1984 book, The Divorce Handbook: "Divorce unleashes fears of material loss as well as feelings of abandonment and guilt, thus clouding your ability to think clearly about financial settlements, personal needs, and the needs of your children."

OHIO'S DOMESTIC RELATIONS COURTS

In Ohio, all divorce, dissolution, alimony, annulment, and conciliation cases are handled by the court of common pleas in each county (O.R.C. Chapter 2301). By 1987, 18 of Ohio's 88 counties had established a division of domestic relations in their court of common pleas, and staffed the division with one to five judges. In most cases, the counties that have established a division of domestic relations are more populous and handle more domestic relations cases. The counties with domestic relations divisions are: Butler, Clermont, Cuyahoga, Erie, Franklin, Greene, Hamilton, Lake, Lorain, Lucas, Mahoning, Montgomery, Portage, Richland, Stark, Summit, Trumbull, Warren.

In some counties, the domestic relations division also handles all juvenile cases, and any cases under juvenile court jurisdiction, such as paternity proceedings. In other counties, there is a separate juvenile division in addition to the domestic relations division. Smaller, less populous counties usually handle all domestic relations and juvenile cases in the court of common pleas, with no specialized divisions.

Last year, the General Assembly acted to reduce the domestic relations caseload in many Ohio counties. Effective January 1987, several counties received new domestic relations judges or established domestic relations divisions to their common pleas courts. Clermont, Portage, and Warren Counties all formed a one-judge domestic relations division. Cuyahoga County received an additional domestic relations judgeship, which makes five judges in that division, while Butler

County's judge became fulltime in the domestic relations division. Also, many counties without domestic relations divisions created new common pleas judgeships, which should reduce the caseload on all common pleas cases in those counties, including domestic relations litigation.

The Task Force acknowledges that nothing can be done to totally remove the personal emotional stress experienced by divorcing individuals. However, the Task Force offers the following recommendations which may ease the legal and/or procedural difficulties a person may face in the court system.

RECOMMENDATION: The Domestic Relations Task Force recommends that judges, attorneys, and hearing officers who handle domestic relations matters attend periodic classes, workshops, and seminars on family dynamics and family problem solving.

While there was some concern that too many requirements on domestic relations judges, attorneys, and hearing officers would take away time from actual courtroom duties, there was an overriding concern that such people be well trained with current domestic relations methods and psychology.

RECOMMENDATION: The Ohio Supreme Court should establish performance standards for domestic relations courts.

This recommendation reflects a concern of the Task Force that the judicial system needs to police itself more stringently or face increasing pressure from the public to justify its actions. The performance standards should address the efficiency and effectiveness of domestic relations court operations.

RECOMMENDATION: The Ohio Supreme Court should establish a system to certify an attorney as a "specialist" in domestic relations law. Permit that attorney to then advertise as a certified specialist.

Several witnesses before the Task Force stated that it is often difficult to discover which attorneys are well-trained in the domestic relations field.

This recommendation ultimately points to a need for all lawyers to meet requirements and be certified for practice in

certain fields, much like doctors. All Task Force members felt that the scope of law has become so large that it is impractical for an attorney to try to practice in all areas.

RECOMMENDATION: The Ohio Bar Association and local bar associations in Ohio should set rules that require their family law members to take a certain percentage of pro bono cases each year. The Task Force recognizes a great problem that exists for indigent clients trying to get adequate legal representation for domestic relations cases. Often, Legal Aid isn't able to meet the needs of low income people in divorce suits.

RECOMMENDATION: Ohio's domestic relations courts and attorneys should make a concerted effort to apprise their clients of their legal rights in a domestic relations case, including the right to file a motion of prejudice when they believe a judge is biased concerning their case.

RECOMMENDATION: The Ohio Supreme Court should establish a rule that requires courts not to grant continuances in divorce cases unless both parties agree to it, except for just cause.

In nearly every corner of Ohio, there were complaints of lengthy divorce trials that had been unnecessarily continued, drawing out the agony of the trial, causing additional attorney expenses, and prohibiting the separated couple from proceeding with their lives.

DOMESTIC VIOLENCE

On April 7, 1987, The Governor's Task Force on Family Violence released its final report with 54 recommendations and previewed a package of 10 legislative proposals. Several of the bills respond to many of the domestic violence issues that were brought before the Domestic Relations Task Force:

HB 426 (Sheerer)--to require adoption of standards for domestic violence shelters, allowing for confidentiality of shelter files and staff-client contact, and to create an income tax checkoff for money to go to domestic violence shelters and to the Children's Trust Fund.

HB 402 (Rankin)--to extend civil protection orders from one year to two years.

HB 399 (Whalen)--to require counseling for abusive parents as part of any family reunification plan.

In addition, other bills that would address domestic violence problems are also pending. HB 172 (Davidson), for example, modifies the definition of "family or household member" and of "person living as a spouse" in the criminal and civil domestic violence law and the domestic violence shelter law.

During the deliberations of the Task Force, a potential recommendation was signed into law. Substitute Senate Bill 6, signed by the Governor on June 10, 1987, included an amendment that makes menacing, threatening behavior a crime. Section 2919.25 (C) of the Ohio Revised Code now reads: "No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member."

Still, other issues remain. Many people appearing before the Domestic Relations Task Force testified that police across the state often do not respond adequately to domestic violence calls.

Part of the problem may be inadequate training. Wayne Jones, Warren County Family Abuse Shelter director and a former law officer, said that the Ohio Police Academy spends a very small amount of time and uses antiquated programs on domestic violence laws and procedures. He also said that the Academy also instructs that in most domestic violence cases, it is better not to arrest. He suggested that since a significant proportion of police calls involve domestic violence, the

Academy should be required to spend an equal percentage of time on that type of training.

According to the Governor's Task Force on Family Violence December 1986 Summary Report, "The nation's police spend one-third of their time responding to family violence calls." The same report also notes the rate of such calls: "In the first seven months of 1985, police officers in Ohio went on 36,784 domestic violence calls. In other words, Ohio police officers responded to 173 domestic violence calls every day."

The Peace Officer Training Council establishes minimum requirements for police training academies in Ohio. As of March 1979, Ohio police officers are required to take 15 hours of instruction in "domestic dispute" techniques. (Officers active prior to that time who had not received such training were required to take at least 7 hours of domestic violence classes). Related requirements also exist, such as 6 hours of crisis intervention (for rape victims), and 6 hours on missing/neglected/abused children. The basic training curriculum contains a total of 338 hours of instruction. Local police academies may offer additional instruction on domestic violence topics beyond the state's minimum requirements.

In October of this year, the Council is planning to change their administrative rules to increase the basic training curriculum to about 445 hours. However, there is no plan to increase the 15 hour domestic dispute training.

In his testimony before the Task Force on March 6 in Cincinnati, Wayne Jones illustrated the level of preparedness of many of the state's police departments in domestic violence situations. Since 1979, Section 3113.31 of the Revised Code has required any law enforcement agency investigating a domestic dispute to provide information to the family or household members involved regarding relief available under Ohio law. But, as depicted in a recent informal poll that Jones conducted in Warren County, police agencies are often not prepared to disperse that information.

The poll indicated that only four of the eight police agencies in Warren County had the form that a domestic violence complainant must sign to cause an arrest. Many police agencies did not make referrals to shelters and only two of the eight Warren County departments polled fill out domestic violence reports. Jones suggested that law enforcement agencies be required to have these forms and inform victims of their rights.

The inadequate domestic violence training standards for police in Ohio may also be the reason that many police departments across the state do not follow the state's law to compile and submit domestic violence data.

Effective March 1979, O.R.C. section 3113.32 required law enforcement agencies in Ohio to report domestic violence data monthly to the Attorney General's Bureau of Criminal Identification and Investigation. But, according to the Governor's Task Force on Family Violence, December 1986 Summary Report, only 76 of the 88 sheriffs' offices and 531 of the more than 1,000 police departments in the state filed domestic violence reports that year. The report noted that in 1982, "only 78 sheriffs' offices and 591 police departments filed domestic violence reports." The reporting law expired four years later (March 1983), but was reinstated with an amendment in October 1984.

The amendment states, "The attorney general shall oversee the statistical reporting required pursuant to this section to ensure that it is complete and accurate." It is unclear if this amendment has caused compliance with the reporting law to improve, or caused the Bureau of Criminal Identification and Investigation to insist on complete and accurate reporting from all police agencies in the state.

OTHER STATES

In 1986, several states passed domestic violence victim assistance legislation that surpasses the scope of Ohio's law. Missouri now prioritizes domestic abuse situations for response by law enforcement officials and requires officers to inform abused parties of judicial relief and available services. New York requires investigating officers to advise the domestic abuse victim of shelters and other services and include a written notice of legal rights and remedies available. The new Illinois statute includes sections that require assistance by law enforcement officers, including transportation of the victim to a medical facility or shelter.

According to the National Conference of State Legislatures, at least eight states enacted laws in 1986 that authorized or required probable cause arrests in certain cases of domestic violence. Those states, Alaska, Connecticut, Colorado, Illinois, Iowa, Oklahoma, Pennsylvania, and Tennessee, also limited the liability that police officers are subject to in such cases. Many other states, such as

Minnesota, had probable cause arrest laws enacted prior to 1986.

At the present, there is no formal statute that provides for self defense in cases of domestic violence, but common law allows a person to defend himself if he fears that someone would use the same force against him.

RECOMMENDATION: Police officers need improved training (and a better system) to deal with domestic violence calls. Many people testified that the training is not commensurate with the amount of time police must spend responding to domestic violence incidents.

The Task Force recommends that police academy training treat domestic violence as a crime, not a dispute. The training must specifically address all recent amendments to Ohio domestic violence law, including notifying a victim of his rights, and processing civil protection orders and temporary restraining orders.

RECOMMENDATION: Amend O.R.C. section 3113.32 to direct the Attorney General to collect domestic violence information in a standardized format. The Attorney General should also be empowered to monitor the collection of data from all Ohio law enforcement agencies.

According to ACTION OHIO, a domestic violence shelter association, because there is no monitoring directive for the Attorney General to collect domestic violence data from all law enforcement agencies, many do not currently bother to report.

RECOMMENDATION: A victim of domestic violence should not be forced to leave the family's home with the children. Instead, the violent person should be charged and ordered to leave the home.

It should be noted that HB 402 proposes to have civil protection orders extended from one to two years. Of course, these orders still require better enforcement.

RECOMMENDATION: Mandate arrest when there is evidence of domestic violence.

Several studies on domestic violence, including surveys

conducted for the Crime Control Institute (published in the April 1985 edition of the American Sociological Review) indicate that mandatory arrest, when there is evidence of domestic violence, is an effective deterrent of future domestic violence.

RECOMMENDATION: Currently, a second domestic violence offense is still an assault. Increase the second offense to a felony.

RECOMMENDATION: Stabilize domestic violence shelter funding.

Currently, the only constant budget item for domestic violence shelters in Ohio is the county marriage license fee. As more shelters emerge in each county, though, the fees are divided into smaller portions for each shelter.

Domestic violence shelters also receive money through community mental health boards, but there is concern that these funds are not always guaranteed.

CONSUMER ISSUES

The Domestic Relations Task Force received dozens of requests during its public hearings for better lines of communication and service between state and county agencies and courts, and the people they serve. It seems that many of the problems that plague Ohio's entire domestic relations system stem from the inadequate flow of correct information.

Currently, there is no one-stop clearinghouse for domestic relations information existing in Ohio. There are, however, a few sources established for certain domestic relations issues.

The Womens' Information Center (WIC) supplies information on laws concerning women and can refer callers to appropriate agencies. WIC's toll-free line (1-800-282-3040) is not well publicized, though, and the office is not currently staffed to work as the main outlet for all domestic relations information in the state. The Department of Human Services also operates a toll-free number through the Division of Public Assistance (1-800-282-1190), but it deals mainly in welfare problems.

The Ohio School Psychologists Association reports that school psychologists are in a unique position to intervene between parents, children and schools concerning all domestic relations issues. But, again, the staffing is inadequate, as there is only one school psychologist for every 2,500 students in public schools.

Some states are taking a comprehensive approach to their domestic relations consumer problems. Last year, West Virginia created a child advocate office, which is designed to focus on the issues of child and spousal support, child custody, visitation rights, and other family law issues concerning the well-being of children.

RECOMMENDATION: The Task Force requests that the Ohio Supreme Court require evening and/or weekend hours in domestic relations divisions of county common pleas courts.

Child support obligees miss too much work going to court and trying to enforce support orders.

RECOMMENDATION: Request that a state agency (possibly the

Supreme Court) be responsible for designing and distributing a pamphlet that (1) provides information on mental health agencies and other programs that can offer marriage counseling, (2) provides information and remedies concerning domestic relations problems, including divorce, child custody, child support, and visitation, and (3) provides a listing of legal services, such as Legal Aid, pro bono legal assistance, and bar associations available in local communities around the state.

That state agency could also establish a toll-free number to accept requests for the pamphlet and other information. It could be required that the pamphlet be posted at county courts and child support agencies. The cost of the information program could be funded by an additional court fee.

RECOMMENDATION: O.R.C. section 3919.321 should be amended to require that all school information (grades, records, notices, etc.) available to custodial parents should also be made available to non-custodial parents, where parents are divorced or separated, when requested.

RECOMMENDATION: The O.R.C. should be amended so that the court may be empowered to order that a non-custodial parent have the right of access to the same school and health information concerning the child that is accessible by the custodial parent.

RECOMMENDATION: All schools should consider offering post-divorce information classes for children, and outreach and referral programs for parents. Also, schools should consider adding additional/improved marriage and sex education programs.

SUMMARY

After months of investigating and researching Ohio's domestic relations laws, the Domestic Relations Task Force can report that, as a whole, the state's existing domestic relations statutes can provide adequate protection for individuals and families facing family law issues. The great problem is that many individuals are simply unaware of the rights and remedies available through these laws, or they do not exercise their rights for a variety of reasons. In addition, the law is not uniformly applied by judges or practiced by attorneys statewide.

While many problems can be addressed through established legal procedures, the Task Force has also recognized the need for changes in order to address several deficiencies in Ohio's domestic relations statutes and rules.

In closing, the Task Force highlights a few additonal concerns:

A great deal of the complaints associated with domestic disputes could be alleviated by a more uniform court system, and a more even application of certain statutes, while allowing judges the discretion to decide issues in the best interest of all family members. In order to operate a more efficient court system, perhaps more funding is necessary. Citizens will also need to hold judges accountable for their decisions, and remove judges that are not performing their duties well.

Many other complaints associated with the domestic relations system could be avoided through an emphasis on consumer information. Witnesses before the Task Force often said that they just didn't know or understand the procedures and laws of domestic relations issues. Several diligent witnesses testified that they often received "the runaround" from lawyers, judges, prosecutors, government agency case-workers, and others, and were exhausted from not receiving any assistance. Oftentimes, if someone had made the effort to help these people, many of these problems would have been avoided.

Most important, legislation and policies should be designed to ease the adversarial quality of divorce. While it is usually difficult for divorcing parties to avoid emotional conflict, it is possible in many cases for the breakup to be less aggravating. Child custody and visitation laws should reflect a shared parenting concept where both divorcing

parties remain important to their children's development. Child support and alimony policies should permit both divorcing parties and children to retain a relatively normal standard of living. All judicial actions relating to domestic relations should be expedient and fair. And, as noted before, consumer information should flow unimpeded.

While domestic problems will always exist, it is the hope of the Domestic Relations Task Force that these problems can be resolved efficiently, fairly, and in the best interest of all family members involved.

GLOSSARY

ADVISORY OPINIONS-a neutral third party, after an investigation, discussions with the two parties, or a formal hearing, recommends a solution.

ARBITRATION-a neutral third party is asked to decide the issues. The decision may be final and binding.

ARREARAGE-the total unpaid support obligation owed by the absent parent (also referred to as past due support).

BIFURCATED TRIAL-a (divorce) case in which certain issues are tried separately, with duties often split between referees and judges.

COUNSELING-guidance or advice concerning family, legal, or psychological issues, given by a qualified counselor in an informal setting.

CUSTODY DETERMINATION-a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any monetary obligation of any person. (from O.R.C. 3109.21)

DOMESTIC VIOLENCE-the occurence of one or more of the following acts between family or household members who reside together or have resided together: (a) attempting to cause or recklessly causing bodily injury; (b) placing another person by the threat of force in fear of imminent physical harm; (c) committing any act with respect to a child that would result in the child being an abused child as defined by certain sections of the Revised Code. (from O.R.C. 3113.31).

DOMESTIC VIOLENCE SHELTER-a facility providing temporary residential service or facilities to family or household members who are victims of domestic violence. (from O.R.C. 3113.33).

EX PARTE-the application for court relief without the presence of the other party, due either to a lack of notice or a decision by the other party not to appear.

GROUNDS FOR DIVORCE-the legal circumstances which must be proved before a divorce can be granted.

INTERLOCUTORY DECREE-a judgement of the court that is not final until the passage of a certain period of time.

LEGAL SEPARATION-All of the issues--property and children--are decided exactly as if a divorce was taking place. However, only a decree of separation is issued and the couple remains married in the eyes of the state.

LIEN-a charge or claim upon real or personal property for the satisfaction of a debt, such as child support arrearages.

LITIGATION-lawyers representing both parties argue the case before a public court, with a final determination made by the judge. It is an adversarial process, as lawyers try to triumph over the other party.

LOCAL TITLE IV-D AGENCY-the county department of human services or other agency that is designated in the county to provide for the enforcement of support orders under Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended. (from O.R.C. 3113.21).

MEDIATION-a neutral third party helps the other two parties to resolve disputes through mutual concessions and face-to-face bargaining. Mediation is completely voluntary, with all parties agreeing to the process.

MEDIATION/ARBITRATION-a neutral third party attempts to mediate the dispute, and is also given the authority to issue binding decisions on any issues that mediation cannot settle.

OBLIGEE-the person who is entitled to receive the support payments under a support order. (from O.R.C. 3113.21).

OBLIGOR-the person who is required to pay support under a support order. (from O.R.C. 3113.21).

OCSE-the Office of Child Support Enforcement. The federal agency in the U.S. Department of Health and Human Services which monitors state IV-D programs.

ODHS-Ohio Department of Human Services.

PATERNITY SUIT-a civil action to determine that a person is the father of a child and to enforce the duty to support the child.

PHYSICAL CUSTODY-the actual possession and control of a child. (from O.R.C. 3109.22).

SUPPORT-child support, alimony, and support for a spouse or a former spouse. (from O.R.C. 3113.21).

SUPPORT ORDER-an order, by the court, for payment of support. (from O.R.C. 3113.21).

WAGE WITHHOLDING-automatic deductions from an individual's earnings for payment of a debt or current obligation, such as child support. The deductions may be initiated voluntarily or by court order.

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APPENDIX 1--TASK FORCE PUBLIC HEARING SCHEDULE

August 15, 1986	Medina Medina County Administration Building
August 29, 1986	Canton Walsh College Science Center
September 22, 1986	Ironton Ohio University, Ironton Branch
October 8, 1986	Toledo Toledo School Board Room
October 29, 1986	Dayton Sinclair Community College
January 16, 1987	Cleveland Cleveland State University
February 6, 1987	Cambridge Cambridge High School
March 6, 1987	Cincinnati University of Cincinnati
March 27, 1987	Lima Apollo Career Center
April 3, 1987	Huron Firelands Campus, Bowling Green State U.
May 15, 1987	Columbus Statehouse Annex

APPENDIX 2--RESOLUTION CREATING THE TASK FORCE

(Substitute Senate Joint Resolution No. 12)

JOINT RESOLUTION

Relative to the establishment of a Domestic Relations Task Force to review Ohio's domestic relations law.

Be it Resolved by the General Assembly of the State of Ohio:

WHEREAS, The General Assembly has not authorized or conducted a comprehensive review of the domestic relations law of this state since the Joint Committee on Domestic Relations, created pursuant to a resolution of the 108th General Assembly, submitted its report in 1971; and

WHEREAS, Numerous, piecemeal changes have been made in the domestic relations law of this state in recent years; and

WHEREAS, Many citizens of Ohio have expressed dissatisfaction with various portions of current domestic relations law; now therefore be it

Resolved, That a Domestic Relations Task Force shall be appointed to study the domestic relations law of this state, including, but not limited to, the subject matters of divorce, dissolution of marriage, annulment, alimony, child support, child custody, and visitation; to review recent trends in domestic relations law in the United States; and to submit a report of its findings and recommendations for legislative action to the General Assembly; and be it further

Resolved, That the Domestic Relations Task Force shall consist of the following fifteen members to be selected within ninety days after the effective date of this Resolution: the Director of Human Services or an employee of the Department of Human Services designated by the Director; a judge of the domestic relations division of a court of common pleas, or of a court of common pleas that does not have a domestic relations division but who exclusively handles domestic relations cases, appointed by the President of the Senate; a judge of a court of common pleas who is not a judge of a domestic relations division of a court of common pleas or does not exclusively handle domestic relations cases, but who handles domestic relations cases as well as other cases within the general jurisdiction of the court of common pleas, appointed by the President of the Senate; two attorneys with substantial experience in domestic relations law, appointed by the Speaker of the House of Representatives; two private citizens, one male and one female, who represent organizations or groups in Ohio that have an interest in domestic

relations law, appointed by the President of the Senate; two private citizens, one male and one female, who represent organizations or groups in Ohio that have an interest in domestic relations law, appointed by the Speaker of the House of Representatives; three members of the Senate, no more than two of whom belong to the same political party, appointed by the President of the Senate; and three members of the House of Representatives, no more than two of whom belong to the same political party, appointed by the Speaker of the House of Representatives; and be it further

Resolved, That the President of the Senate shall appoint the chairperson of the Domestic Relations Task Force from among the members of the Senate appointed to it and that the Speaker of the House of Representatives shall appoint the vice chairperson of the Domestic Relations Task Force from among the members of the House of Representatives appointed to it; and be it further

Resolved, That the members of the Domestic Relations Task Force shall receive no compensation for serving on it but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of it and that the Domestic Relations Task Force shall meet within thirty days of the appointment of the last member to commence its duties and to schedule further meetings; and be it further

Resolved, That the Domestic Relations Task Force shall submit the report of its findings and recommendations to the General Assembly no later than June 30, 1987.

_____

Speaker _____ *of the House of Representatives.*

_____

President _____ *of the Senate.*

Passed _____, 1986

(Substitute Senate Joint Resolution No. 12)

JOINT RESOLUTION

Relative to the establishment of a Domestic Relations Task Force to review Ohio's domestic relations law.

Introduced by

MRS. DRAKE-MESSRS. FISHER-NEY-COLLINS-HOBSON-OELSLAGER-BURCH-GILMOR-VUKOVICH-MS. BOSTER

Adopted by the Senate,

_____, *19*__

Adopted by the House of Representatives,

_____, *19*__

Filed in the office of the Secretary of State at Columbus, Ohio, on the

____ *day of* _____, *A. D. 19*__

_____

Secretary of State.