



**CHILD SUPPORT ENFORCEMENT AND
DOMESTIC RELATIONS REFORM
COMMITTEE**

State of Arizona

1997 Annual Report

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*CHILD SUPPORT ENFORCEMENT
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DOMESTIC RELATIONS REFORM
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DOMESTIC RELATIONS REFORM COMMITTEE
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EXECUTIVE SUMMARY

As required by law (Laws 1994, Chapter 374, Section 24), the Child Support Enforcement and Domestic Relations Reform Committee, comprised of Hon. Ann Day, Hon. Winifred "Freddy" Hershberger, Hon. David Petersen and Hon. Lela Steffey, submits to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the Arizona Supreme Court the following report.

From the outset of 1997, both the Child Support Coordinating Council Subcommittee ("Council") and the Domestic Relations Reform Study Subcommittee ("DR Subcommittee") continued to explore concepts for improvement of the child support and domestic relations systems. Specific proposals resulted in legislative change as work groups appointed by each subcommittee developed ideas and evaluated recommendations for future improvement. Leadership and membership changes

contributed new perspective to the task. Senator David Petersen joined Representative Freddy Hershberger as cochair of the Council and Senator Ann Day and Representative Lela Steffey assumed the cochair positions of the DR Subcommittee.

In 1997, the Legislature enacted three new laws based on proposals developed and recommended by the DR Subcommittee. Chapter 45 of the Laws of 1997 helps clarify the rights of grandparents in domestic relations issues by listing factors to guide the court when determining whether visitation by grandparents and great-grandparents is in the best interests of the child. This law also specifies that, when logistically possible and appropriate, visitation shall occur during times that the parent through whom the grandparent derives the right of visitation has or would have had residential or access time with the child. Laws 1997, Chapter 250, facilitates custody determinations in paternity cases and, subject to equitable defenses and enumerated circumstances, limits to three years the period for which past support may be recovered. The Legislature also approved amendments to a law enacted in 1996 requiring parents intending to relocate a child's residence outside the state to provide prior written notice to the other parent, if visitation or custody rights would be impacted. Among other things, the amendments clarify the process for giving notice and for seeking court relief to prevent relocation and

affirm that any challenge to relocation would be determined in accordance with the best interests of the child (Laws 1997, Chapter 173).

When the DR Subcommittee reconvened at the end of legislative session, members moved forward with the mission to recommend broad reform to the state's domestic relations statutes. Work groups were reconstituted to focus on earlier developed long-term goals for improvement of the domestic relations system. Through the summer and fall, these work groups developed strategies to improve the process by which custody determinations are made and reduce the contentiousness and often protracted nature of litigation of family disputes. Although ultimately no specific legislation was recommended for enactment in 1998, the groundwork was laid for future deliberations and reforms.

The Council did not suggest statutory change to the child support system during the 1997 legislative session. However, the product of various subcommittee work groups resulted in an omnibus legislative proposal being offered for passage in 1998. Most noteworthy are provisions to enact or amend statutes with the goals of altering the date of termination of the marital community when an action for dissolution of marriage or legal

separation is commenced; extending the program of domestic relations education on children's issues to all paternity proceedings in the superior court and consolidating and conforming lengthy and sometimes inconsistent provisions of existing laws relating to orders of assignment for payment of child support and spousal maintenance.

The Council was originally conceived as a forum for all system stakeholders to develop and coordinate policies and strategies to improve child support enforcement. The importance of that role was reemphasized this year. For example, coordination of efforts focused and greatly facilitated development of a formula for distribution of support payments under a centralized processing system. Also in this context, the roles of superior court clerks and the state title IV-D agency were clarified. The Council took the lead in investigating appropriate means to extend to private support litigants, remedies already available under state and federal laws to the title IV-D agency. These achievements highlighted the beneficial role of the Council in bringing together various participants to achieve policy goals in a coordinated way.

In recognition of the need for continued viability and the importance of their respective missions, the Legislature extended a termination provision that would have repealed after December

31, 1997, authority of the subcommittees to complete long-term objectives. By Laws 1997, Chapters 45, 176 and 250, the subcommittees were continued through the end of the year 2000.

This year, both subcommittees cooperated to accomplish a study delegated by the Legislature to the Child Support Enforcement and Domestic Relations Committee. By Laws 1997, Chapter 295, the Legislature enacted a new statute (Section 25-415, Arizona Revised Statutes) permitting nonparents who stand in loco parentis to a minor child to commence proceedings to determine custody or to obtain visitation rights. The term "in loco parentis" was defined in the law to mean a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time. Recognizing that further analysis and debate may be important to the application and implementation of this law, the Legislature directed the Child Support Enforcement and Domestic Relations Reform Committee to study the issue of in loco parentis custody, visitation and child support and submit a report of its findings to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives, the Secretary of State and the Director of the Department of Library, Archives and Public Records.

The study resulted in a series of recommend amendments to present law. The specific proposals for statutory change were incorporated into a bill intended to be introduced for passage in 1998. In summary, the amendments establish the rights and responsibilities of persons standing in loco parentis who are granted custody of a minor child; clarify that in loco parentis custodians shall have no court-ordered obligation to pay child support and formalize the court procedures to be followed for the commencement of a proceeding for, and the standards to be utilized by the court when, determining a request for custody or visitation by a person standing in loco parentis to a child.

*CHILD SUPPORT ENFORCEMENT
AND DOMESTIC RELATIONS REFORM
COMMITTEE
ANNUAL REPORT 1997*

INTRODUCTION

Historical Background

Session law establishing the Child Support Enforcement and Domestic Relations Reform Committee grew from the work of a legislative advisory committee.

In June 1993, Senator John Greene, President of the Senate, and Representative Mark Killian, Speaker of the House of Representatives, appointed a Joint Select Committee on Child Support Enforcement, co-chaired by Senator Matt Salmon and Representative Pat Blake Wilder, with the goal of creating an effective child support system for Arizona families and children. To assist in this effort, in July 1993, the Select Committee appointed a Technical Advisory Committee, co-chaired by David Byers, Administrative Director of the Courts, and Bonnie Tucker, Deputy Director of the Arizona Department of Economic Security.

The Technical Advisory Committee brought together the major stakeholders in the statewide child support arena. Membership represented a cross section of program administrators, parents, judicial officers and attorneys, creating a forum for meaningful debate on the issues facing Arizona's child support enforcement system.

The Technical Advisory Committee identified various problems within the system and recommended solutions for corrective action, including identification of the agency or entity responsible for initiating implementation. The Committee developed 57 recommendations of which 28 required legislative action. At the conclusion of its mission, the Committee submitted a report of its recommendations, dated November 1, 1993.

In the course of deliberations, there was consensus that integrated planning and communication among all of the child support stakeholders is vital to ensure continued improvement in the system. Thus, the first recommendation made in the Committee's report was that a child support coordinating council be formed to provide a mechanism for on-going communication and integrated planning among stakeholders to ensure consistency in child support policies.

A specific problem identified by the Technical Advisory Committee concerned the difficulty in understanding laws and procedures resulting from the lack of integration of statutes relating to domestic relations issues. To address this problem, it was recommended that a domestic relations study committee be established to consolidate, revise and modernize the domestic relations statutes.

Legislative Response

During the forty-first session, the Legislature created each of the two committees proposed in the recommendations of the Technical Advisory Committee. By Laws 1994, Chapter 374, Section 24, both the Child Support Coordinating Council Subcommittee ("Council") and the Domestic Relations Reform Study Subcommittee ("DR Subcommittee") were established within a legislative committee titled the Child Support Enforcement and Domestic Relations Reform Committee.

The Child Support Enforcement and Domestic Relations Reform Committee consists of the co-chairs (or their designees) of each of the two subordinate subcommittees. This overarching committee was established to coordinate the work of the subcommittees, but is specifically directed not to make substantive changes to the work, findings or recommendations of these bodies.

Any conflicts between the findings or recommendations of the subcommittees are to be referred back to the subcommittees for resolution.

Each of the subcommittees is co-chaired by a member of the Senate and a member of the House of Representatives. The enabling legislation identifies the composition of each subcommittee's membership and prescribes the tasks to be undertaken. Reports are to be submitted by the subcommittees quarterly to the Child Support Enforcement and Domestic Relations Reform Committee. The overarching committee is responsible to report annually on the work, findings and recommendations of the subcommittees to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the Arizona Supreme Court.

The legislation creating the committee and its subcommittees was effective July 17, 1994. That same enabling law appropriated funds to the Arizona Supreme Court for costs associated with staffing the committees. In July 1994, the Arizona Supreme Court designated the Domestic Relations Division of the Administrative Office of the Courts to provide that support.

The legislation establishing the committee and its subcommittees originally was scheduled for repeal from and after

December 31, 1997. Provisions of law enacted in 1997 (Laws 1997, Chapters 45, 176 and 250) extended this date, so that each of the Subcommittees may continue to serve the public until December 31, 2000.

Membership

The session law originally enacted in 1994, outlined the membership of each subcommittee by position or category and directed how chairpersons would be appointed. In 1995, the Legislature amended this law. Chapter 44 of the Laws of 1995 altered the numbers of subcommittee members and attempted to balance political party representation of legislative members. The new law also directly affected the composition of the Council.

Under the original law, the only legislative members of the Council were the two subcommittee co-chairs, one appointed from each legislative chamber. As amended, session law now provides there shall be two members of the Senate from different political parties and two members of the House of Representatives, also from different political parties. As a result, two additional members, both of the minority party, were added to the Council in 1995. Co-chairperson positions were unaffected.

The 1995 amendment spoke to but did not require a change in, membership of the DR Subcommittee. Under the original session law, the DR Subcommittee's membership included two members of the Senate and two members of the House of Representatives, as well as a co-chairperson appointed from each chamber. The 1995 amendment changed session law to provide that the legislative membership should include *three* members of the Senate and *three* members of the House of Representatives, in each case not more than two of whom are from the same political party.

From the outset of its deliberations, six legislators have served on the DR Subcommittee--three members of the state Senate and three members of the House of Representatives. Of these, four are of the majority party and two are of the minority party, achieving the political balance intended by the 1995 amendment.

One further amendment altered the membership of the DR Subcommittee. From the inception, six parents served on the subcommittee--two custodial parents, two noncustodial parents and two parents having joint custody, all of whom must be knowledgeable in domestic relations issues. In 1997, the Legislature added two additional parent representatives without any requirement of custodial status. (Laws 1997, Chapter 176,

Section 2). This addition permits parents who are not divorced or separated to serve.

This year, the Legislature added additional requirements of membership. An amendment (Laws 1997, Chapter 173) to the original enabling law (Laws 1994, chapter 374, section 24) provides that members of each subcommittee shall serve two-year terms at the pleasure of the official or officials who appointed them. Additionally, the law specifies that the appointments shall be made at the start of each even fiscal year and that members may be reappointed.

*CHILD SUPPORT COORDINATING COUNCIL
SUBCOMMITTEE
1997*

Summary

In 1997, the importance of the Child Support Coordinating Council ("Council") as a recognized clearinghouse for cooperative decision making in the area of child support enforcement was reaffirmed. Through the activities of various work groups, proposals for improving the child support system were developed, leading to an omnibus legislative package designed for introduction to the Legislature in 1998. Recommended are amendments to laws dealing with such diverse topics as termination of the marital community, orders of assignment, and education programs for parents in paternity cases, extension of enforcement resources and remedies to persons not represented by the state title IV-D support agency and distribution of child support payments.

The Council also contributed to the development of legislation to improve laws relating to in loco parentis custody, visitation and child support. Acting in concert with the Domestic Relations Reform Study Subcommittee, the Council reviewed and approved recommendations to improve the provisions of section 25-415,

Arizona Revised Statutes. Please see the discussion at pages 19 and 20 of this report.

Membership

With the decision by Senator Jim Buster not to seek reelection in November 1996, a vacancy was created for a Council co-chair. In February 1997, Senate President Brenda Burns appointed Senator David Petersen to that position. (Senator Petersen also was appointed to serve as a member of the Domestic Relations Reform Study Subcommittee.) Legislation establishing the Council provides for membership by a title IV-D Commissioner of the Superior Court. Arizona Supreme Court Chief Justice Thomas A. Zlaket appointed Commissioner Richard Weiss of the Superior Court in Mohave County to this position, replacing Commissioner Mary Anne Fast. Following the succession to office of Governor Jane Dee Hull, Jodi R. Beckley was appointed to the membership position reserved to an executive assistant of the Office of the Governor. Near the end of the year Pima County Attorney Barbara LaWall, who occupies the membership position for a County Attorney from an urban county, appointed Bianca Varelas her designated representative to succeed Jeannette Gallagher. There remains a vacant membership position for a custodial parent appointed by the Speaker of the House of Representatives.

Partly as a result of her leadership of and contributions to the Council, co-chair Freddy Hershberger was honored as

Legislator of the Year for 1997 by the National Child Support Enforcement Association. The award recognized Representative Hershberger's accomplishments leading Arizona in protecting and strengthening the interests of children and families.

Work, Findings and Recommendations

The Council held seven meetings during the year. At each meeting, public comments were encouraged to direct and further efforts to improve the child support enforcement system.

Tasks and Objectives

The Council did not recommend statutory amendments to the first regular session of the Forty-third Legislature. However, work groups designated during the previous year continued to meet to develop recommendations for improvement to the child support enforcement system. Listed below is a description of the various work groups, the charge to each, and a synopsis of the activities of each work group.

Public Education

Charge: Through public service announcements and other media presentations, raise public awareness of how taxpayers are supporting other people's children; increase public knowledge of the importance of participation of both parents in supporting a child, both financially and emotionally; and, target noncustodial parents, particularly young fathers, to encourage responsibility for the children brought into the world.

This work group continues to explore avenues to bring awareness of child support issues to the public through media products. Last year, the Arizona Supreme Court and the Department of Economic Security (DES) provided funding to support a statewide public education campaign. Posters and billboards featuring players from the Arizona Cardinals of the National Football League, heightened community awareness of the important emotional impact of non-support on children and the community at large.

Centralized Processing of Non IV-D Payments

Charge: As recommended by the Auditor General's July 1995 Report, study the issue of centralizing the collection and processing of non title IV-D child support payments.

In 1995, the Legislature had directed that processing of child support payments in Title IV-D cases be centralized. Upon a referral to the Council by the Auditor General, this work group undertook the study of centralized payment processing in non-IV-D cases, concluding that processing of these payments also should be centralized. However, during the course of its deliberations, federal welfare reform legislation directed states to effectuate centralized payment processing in both IV-D and certain non-IV-D cases. Legislation was enacted in Arizona in 1997 (Laws 1997, Chapter 219) consistent with the federal mandate. Section 25-510, Arizona Revised Statutes now provides that on or before October 1, 1999, the state support payment clearinghouse shall receive and disburse all child support and spousal maintenance payments, unless a court has ordered otherwise. In view of that legislation, the task of the work group this year was to coordinate the conversion and centralization process between Superior Court Clerks and the state title IV-D agency. Additionally, the work group was instrumental in fashioning a formula for distribution of payments in non IV-D cases, in order that the statewide support payment clearinghouse

might properly handle these new payments. Recommendations for statutory amendments necessary to carry out these functions will be made to the Legislature.

The process and the resulting product of this endeavor evidence the importance of the Council's role in bringing together interested stakeholders to achieve common goals to the benefit of the public.

Interfacing with Juvenile Court

Charge: Study the need for an interface between domestic relations and juvenile court cases with respect to child support and parental assessments; discuss sentencing and emancipation issues in connection with child support orders; and provide for modification/termination of child support when a juvenile court proceeding is pending.

Last year, this work group identified several problems with the current system of determining appropriate parental assessments for the support of children referred for placement by the juvenile court. Currently, computation of the parental assessments varies among counties. Enforcement of parental assessments by the juvenile court appears to conflict with the

juvenile court objective of reuniting the family. During 1997, the work group examined opportunities to inject a domestic relations court presence in juvenile court proceedings when child support or parental assessments are at issue. Also explored were issues such as termination of child support effective upon the adoption of a child, the survival of paternity determinations when dependency proceedings are concluded, and modification of support or redirection of funds in dependency cases. Although no specific legislation is being proposed at this time, the work group preliminarily recommended that each parent should be ordered to pay support to the state for any child made a ward of the court, in an amount determined under the Arizona Child Support Guidelines. Support paid by parents would provide care for the child or reimburse public monies funding such care.

Community Property Issues in Temporary Child Support Establishment

Charge: Study how community property statutes impact temporary child support orders.

This work group originally was designated to evaluate the appropriate manner of determining child support orders pending issuance of a final decree of dissolution of marriage or legal separation. Under present state community property concepts, until a decree is entered, most property acquired by spouses during the course of a marriage becomes community property jointly owned. Determination of child support under the Arizona Child Support Guidelines requires the calculation of each parent's

income. Such a calculation is conceptually impossible if it is assumed that income is jointly owned. Working in concert with a study committee of court and legal representatives established by the Superior Court in Maricopa County, the work group developed proposals to terminate the marital community upon the service of a petition for dissolution of marriage or legal separation, so long as the petition results in a final decree. Various statutory amendments to accomplish this will be submitted to the Legislature as part of an omnibus bill of the Council.

Review of Child Support Statutes

Charge: Review existing child support statutes, in particular those relating to orders of assignment, to clarify and make consistent various provisions of law.

This work group examined particular statutes related to child support enforcement to identify inconsistencies, lack of clarity, or unnecessary duplication. In particular, the group focused on sections 25-504 and 25-505, Arizona Revised Statutes, regarding orders of assignment. Each of these sections pertains to orders of assignment obtained by different applications to the court. Section 25-504 governs orders of assignment issued by the court in the course of a support proceeding upon notice to the party obligated to pay support. Section 25-505, on the other

hand, concerns so-called *ex parte* orders of assignment. These orders may be issued by the clerk of the court on request of a party to a support order, with no prior notice to the obligated party. Each of these statutes, long in effect in Arizona, has repeatedly been amended. The resulting laws are lengthy, duplicative and sometimes inconsistent, containing provisions not reflective of current best practices. The work group has proposed a consolidation of these two laws into a single, improved and concise statute.

Information Access for Non IV-D Cases

Charge: Determine whether information and remedies currently available to the state title IV-D agency may be shared with private litigants for use in child support establishment and enforcement.

In 1996, the Family Law Section of the State Bar of Arizona and private attorneys throughout the state, requested access for litigants or their attorneys in child support cases to information presently collected and maintained by the state Title IV-D agency. In response, the Council established this work group to consider ways to make information available to parents in cases not served by the state. Available information suggests that in Arizona approximately one-half of all support cases are not IV-D cases and that approximately two-thirds of all child support collected is for non IV-D support orders. In a written report prepared for the Council, the work group offered a series of recommendations. To summarize, it was proposed to

1) study the feasibility of creating a statewide data system that would allow private access to data currently maintained by state agencies, 2) explore the availability of funds to make computer search services available to the non IV-D community and, 3) solicit support for amendment of federal law that currently imposes confidentiality restrictions on the release of information maintained by the federal and state child support enforcement offices. Each of these recommendations requires further study by the Council. More immediately, the work group suggested changes to current statutes that would permit private parties to establish a child support order expeditiously and access more frequently information from employers necessary to pursue child support. These recommendations will be made a part of an omnibus legislative proposal intended to be offered by the Council.

Paternity Issues

Charge: Evaluate whether an injunction similar to the preliminary injunction issued in a dissolution action, should be created for use in paternity cases.

An omnibus bill of the Council enacted into law in 1996 (laws 1996, Chapter 170) had made specific improvement in the state's paternity statutes, particularly as effects voluntary establishment of paternity. One idea originally proposed but ultimately not included in that bill, was to mandate in paternity cases the automatic issuance of an injunction against both parties against harming or harassing the other and against removing a child from the state without permission of the court. A similar but more expansive injunction currently is issued when an action for dissolution of marriage or legal separation is begun. After deliberation, the work group concluded that this idea not be adopted. Members believed that currently available protective orders would protect parties from possible violence and that parents should not be automatically limited in paternity cases from relocating

for employment, family or other legitimate reasons unrelated to the putative father's potential custody or visitation rights.

Recommendations for Legislative Action

The Council did not suggest statutory change to the child support system during the 1997 legislative session. However, the product of various subcommittee work groups resulted in an omnibus legislative proposal being recommended for passage in 1998. Most noteworthy are provisions to enact or amend statutes with the goals of:

- Altering the date of termination of the marital community when an action for dissolution of marriage or legal separation is commenced. Under the proposal, the community would terminate when the legal action is commenced, if the action results in a decree of dissolution or separation.
- Extending the program of domestic relations education on children's issues to all paternity proceedings in the superior court. Presently, this program is mandatory in paternity actions only if custody or visitation is disputed. It is proposed to include cases in which child support is at issue.

- Consolidating and conforming lengthy and sometimes inconsistent provisions of existing laws relating to orders of assignment for payment of child support and spousal maintenance.
- Establishing a priority for distribution of support payments made in cases not being serviced by the state title IV-D child support enforcement agency. Under legislation enacted in 1997, the state child support clearinghouse will become responsible for collection and disbursement of all support payments throughout the state. Payments in non IV-D cases traditionally have been received and processed by superior court clerks in each county.

As the year ended, a bill draft of the recommended legislative changes had been submitted to the Legislative Council to be placed in proper form for introduction. By the date of this report, the Council cochairs agreed to sponsor the bill, being identified as Senate Bill 1132.

Other Issues Before the Council

The Council had discussed at length adding a provision to statute which would create a new category of child support arrest warrant. The warrant would issue in support enforcement cases if an obligor that had received proper notice failed to appear and was found in contempt by the court for nonpayment of support. The warrant would act as an order of confinement. A person arrested would be eligible for work furlough or work release but no hearing on the warrant would be required for a period of three weeks. Although originally contemplated to be contained within the omnibus legislative proposal recommended to the Legislature, the Council voted to withhold the provision, pending further study.

Additionally, the Council discussed amending section 25-315, Arizona Revised Statutes, governing the preliminary injunction automatically issued to the parties when an action for dissolution of marriage or legal separation is commenced. It was proposed to include in the Council's omnibus bill, several new injunctive provisions dealing with such matters as termination of the marital community, protection of court personnel and professionals that assist the courts in domestic relations actions, and the responsibilities of parties regarding real and personal

property. This provision also was withdrawn from the omnibus legislative package pending further debate.

Future Actions

The Council is committed to the continued development of mechanisms to enhance access to information and provide additional legal remedies in cases not served by the state title IV-D agency. Work groups also will continue to explore issues currently under discussion in such areas as child support establishment in juvenile court proceedings, increasing public awareness of child support issues, and implementation of centralized processing of support payments. As chartered, the Council will maintain its important role in providing a forum for cooperative decision making and cohesive policy development among all interested stakeholders in the child support enforcement system.

***DOMESTIC RELATIONS REFORM
STUDY SUBCOMMITTEE
1997***

Summary

Nineteen ninety-seven was a year of reorganization and redirection for the Domestic Relations Reform Study Subcommittee (“DR Subcommittee”). Membership changed substantially, as new co-chairs and members assumed their responsibilities. Three separate legislative proposals recommended by the subcommittee were enacted into law, involving the areas of grandparent visitation rights, relocation of a child’s residence and custody determination in paternity cases. To provide opportunity to continue its important mission, the Legislature also extended the subcommittee for an additional three years to the end of the year 2000. When the DR Subcommittee resumed meeting in June, work groups were reconstituted to focus on broader improvement of the domestic relations system. Under the leadership of Legislative co-chairs Senator Ann Day and Representative Lela Steffey, work groups developed ideas intended to continue the mandate to reform the state’s domestic relations

statutes. Ultimately, the subcommittee determined not to advance recommendations to the Legislature for enactment in 1998. However, the ground work had been laid for accomplishment of long-term objectives designed to facilitate the adjudication of domestic relations cases in the best interests of families and children.

Membership

With the decision by Senator Patricia Noland not to seek reelection in November 1996, and the election at that time of Representative Russell Bowers to the Arizona Senate, each of the co-chair positions on the Subcommittee became vacant in January 1997. Senate member Manuel Peña also retired, creating an additional opening on the Subcommittee. In February 1997, Senate President Brenda Burns appointed current Subcommittee member Ann Day as co-chair and Senators David Petersen and Jack Brown as members. Senator Brown had previously served on the subcommittee as a member of the House of Representatives. His appointment by the Senate President and the appointment of Senator Day as co-chair, provided continuity in the legislative membership, assuring a seamless transition. The House of Representatives membership position formerly occupied by Senator Brown was filled by the appointment of Representative

Elise Salinger. The legislative membership was completed by the appointment of Senator David Petersen, who assumed the position formerly held by Senator Day.

The composition of the non-legislative membership changed significantly during this year as the positions of four past members were filled and two new members were added. The position reserved for a domestic relations attorney was vacated with the resignation of Steven Yarbrough. Appointed to serve was Mark J. Robens, a Phoenix attorney certified as a domestic relations specialist. Three former members--Melissa Barton, Don Jarnigan and David Rose--also resigned positions as custodial or noncustodial parents. The co-chairs appointed Corrine K. Martineau as the custodial parent and Kathryn Tolman and Terrill J. Haugen as noncustodial parents. New legislation (Laws 1997, Chapter 173) created additional membership positions for two parents knowledgeable in domestic relations issues. Appointed were Judge Barry C. Schneider, the presiding domestic relations judge of the Superior Court in Maricopa County, and Ira Mark Ellman, a professor at the Arizona State University College of Law. Membership on the Subcommittee now stands at twenty-one.

Work, Findings and Recommendations of the Subcommittee

In the first quarter of 1997, opportunities for the Subcommittee to meet were limited by the busy pace of the legislative session. One meeting was held in January to review and finalize drafts of bills proposed by the subcommittee for introduction during the first regular session of the Forty-third Legislature. Commencing in June, the subcommittee held a total of four meetings during the balance of the year to develop future strategy, receive reports from standing work groups, and accept public comment. Much of the work of the subcommittee was conducted by work groups that met frequently to develop proposals for system reform.

Goals Achieved

The DR Subcommittee is specifically charged in its enabling legislation (Laws 1994, Chapter 374, Section 24) to recommend changes to reform the state's domestic relations statutes.

In 1996, the DR Subcommittee proposed legislation to require parents intending to relocate a child's residence outside the state to provide prior written notice to the other parent, if visitation or custody rights would be impacted. During the legislative process, the original bill was substantially amended and as passed (Laws 1996, Chapter 145) reportedly presented

problems of interpretation and application. In response, the Courts and Substantive Law Work Group of the subcommittee recommended amendments intended to address these difficulties. Among other things, the recommendations would clarify the process for giving notice and for seeking court relief to prevent relocation and affirm that any challenge to relocation would be determined in accordance with the best interests of the child. A bill (Senate Bill 1293) to amend state law was introduced and enacted as Laws 1997, Chapter 173.

Responding in part to issues raised in public testimony, the subcommittee also suggested revisions to the state's paternity statutes. Introduced as Senate Bill 1295, the legislation was designed to facilitate custody determinations in paternity cases and, subject to equitable defenses and enumerated circumstances, to limit to three years the period for which past support may be recovered. The bill was passed by the Legislature and signed into law by the Governor on April 29 as Laws 1997, Chapter 250.

In addition to recommending changes to the domestic relations laws, enabling legislation also directs the subcommittee to clarify the rights of grandparents in domestic relations issues. Senate Bill 1294, proposed by the subcommittee in accordance with this mandate, passed the legislature and was approved by the Governor on April 4, becoming Chapter 45 of the Laws of 1997.

The new law lists factors to be considered by a court to determine whether visitation is in the best interests of the child. The law also requires, when logistically possible and appropriate, that visitation occur during times that the parent through whom the grandparent derives the right of visitation has or would have had residential or access time with the child.

One legislative effort of the subcommittee was not successful. The Courts and Substantive Law Work Group recommended revision of state custody laws, eliminating the terms “custody” and “visitation” and adopting a statutory scheme focusing on the development of parenting plans. Under current law, parenting plans are required only when parents seek joint custody (A.R.S. § 25-403(F)). A bill (Senate Bill 1290) to revise these laws was introduced in the Senate. The bill was approved by the Senate and by the House of Representatives Human Services Committee. However, the bill failed when not scheduled for a Rules Committee hearing in the House. This year, the subcommittee considered whether to propose reintroduction of the bill. By the date of this report, it was decided to continue study before advancing.

The DR Subcommittee also contributed to the development of legislation to improve law relating to in loco parentis custody, visitation and child support. Acting in concert with the Child Support Enforcement Coordinating Council Subcommittee, the DR

Subcommittee reviewed and approved recommendations to improve the provisions of section 25-415, Arizona Revised Statutes. Please see the discussion at pages 19 and 20 of this report.

Tasks and Objectives

Enactment in 1996 and 1997 of laws and amendments recommended by the DR Subcommittee satisfied many of the short-term goals originally established during the subcommittee's first full year of existence. Commencing with the June 1997 meeting, members revisited ideas developed during strategic planning, to accomplish long-term goals for improvement in the domestic relations process.

Following the method successfully adopted last year, work groups were designated to explore ideas for reform in major topic areas. Two such groups were designated: the Courts and Substantive Law Work Group and the Custody Evaluation, Property Distribution and Conciliation Court Work Group.

The Courts and Substantive Law Work Group had been responsible during the preceding years for recommending much of the legislation proposed by the subcommittee. With short-term goals accomplished, the work group had established as a

long-range priority the study of a unified family court model for adjudication of domestic relations matters. As the work group contemplated this task, it was anticipated that this project might extend for several years, during which time statewide comment would be solicited and other state's models evaluated. However, on October 22, 1997, the Arizona Supreme Court established by administrative order a Committee to Study Family Issues in the Courts. The overall purpose of this committee is to examine and recommend improvements to the manner in which family cases are adjudicated in the courts. As a part of its study, the committee specifically was directed to review other state's methods for promoting the fair, prompt and uniform resolution of these cases, including study of the family-court model. Because it appears the work of the Supreme Court committee is directed at the same goals and objectives identified by the work group, it was determined to defer further study of this issue. DR Subcommittee members were appointed to serve on the Supreme Court committee or its work groups.

The Courts and Substantive Law Work Group also recommended reintroduction of the legislative bill (Senate Bill 1290) that failed to pass during the 1997 session. The work group originally had proposed this bill to revise state custody laws by eliminating the terms "custody" and "visitation" and adopting a statutory scheme focusing on the development of parenting

plans. Each element is designed to reinforcing early in the litigation process the continuing parental obligations of divorcing and separating parents. Because the membership of the subcommittee had changed so substantially during this year, it was deemed important to reopen discussion on the proposal before moving ahead. Also, the subcommittee agreed to research the effectiveness of similar legislation enacted in the State of Washington in 1987. After considering the limited information available, and following considerable debate, it was the consensus of the subcommittee that there should be further evaluation of the wisdom and focus of the bill. The Courts and Substantive Law Work Group was encouraged to continue evaluation of the earlier legislative recommendation.

Consistent with the goal to identify and respond to emerging concerns, the work group proposed the study of two additional reforms. The first addresses situations where a spouse contemplating divorce liquidates community assets or relocates a child's residence before filing legal papers with the court. Each of these actions disadvantages the other spouse and upsets the equality to which parties are entitled. The work group also is discussing amendments to the state's domestic violence laws governing the transfer of cases from limited jurisdiction (municipal and justice) courts to the superior court. Presently, any case involving a domestic violence order of protection must be

transferred when a domestic relations case is pending in the superior court. However, in this context, the meaning of the term “pending” is uncertain. An action for dissolution of marriage may be regarded as pending well beyond issuance of the final decree, as child support, custody or property issues continue to be adjudicated. Clarification is important in order that petitions for protective relief may promptly be resolved in the court of appropriate jurisdiction.

The Custody Evaluation, Property Distribution and Conciliation Court Work Group work group originally was chartered to explore a variety of matters, including custody evaluation, property distribution and conciliation court. During 1997, members elected to focus on issues of child custody evaluation. This involves the manner in which child custody decisions by the courts are assisted and influenced by professional personnel authorized by state law to provide advice (section 25-405, Arizona Revised Statutes) or investigations and reports (section 25-416) on custodial arrangements. Included is consideration of the potential need for review of complaints by litigants against the mental health professionals that perform child custody evaluations. No specific recommendations for legislative reform were offered for introduction in 1998.

Future Actions

Based on the recommendations of the work groups, the DR Subcommittee will continue to develop proposals for future legislative action and to pursue a strategy for accomplishing the long-term goal of domestic relations reform. Although regular subcommittee meetings likely will be postponed during the busy legislative session, work groups will continue to shape plans and policies for an improved domestic relations system founded upon the goals and objectives initially determined.

By the date of this report, the DR Subcommittee had met once to determine legislative issues and agreed to postpone further meetings until the end of legislative session. Efforts to carry out previously identified long-term objectives for the reform and improvement of the domestic relations system will resume at that time.

IN LOCO PARENTIS CUSTODY, VISITATION AND CHILD SUPPORT WORK GROUP

Modern society has challenged the traditional model of the intact, nuclear family. Increasingly in America, children are being cared for by nonparents, often relatives, who may have assumed full parental duties and significantly bonded with a child. Persons acting in place of a parent often are referred to as "in loco parentis" parents. While the child, and even the community, may regard such persons as parents, the legal relationship with the child remains undefined absent a court determination.

In 1997, the Legislature enacted a new law (Section 25-415, Arizona Revised Statutes) permitting nonparents who stand in loco parentis to a minor child to commence proceedings to determine custody or to obtain visitation rights. The term "in loco parentis" was defined in the law to mean a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time. Recognizing that further analysis and debate may be important to the application and implementation of this law, the Legislature directed that the Child Support Enforcement and Domestic Relations Reform Committee study the issue of in loco parentis custody, visitation and child support and submit a report of its findings *to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives, the Secretary of State and the*

Director of the Department of Library, Archives and Public Records.

As a matter of efficiency, the Child Support Enforcement and Domestic Relations Reform Committee determined that a preliminary study of in loco parentis issues should be conducted by a work group formed from members of both the Council and the DR Subcommittee and other interested citizens. The work group met in a series of meetings beginning in June 1997, ultimately determining to recommend amendments to present law. Those amendments were submitted to and approved by both the Child Support Coordinating Council Subcommittee and the Domestic Relations Reform Study Subcommittee.

The specific proposals for statutory change were incorporated into a bill intended to be introduced for passage in 1998. By the date of this report, that bill had been sponsored by DR Subcommittee Representative Mark Anderson and identified as House Bill 2164. In summary, the amendments:

- Establish by utilizing present statutory standards applicable to guardians and custodians, the rights and responsibilities of persons standing in loco parentis who are granted custody of a minor child.*
- Clarify that in loco parentis custodians shall have no court-ordered obligation to pay child support and that the income of such persons shall not be factored when*

determining the child support obligation of the natural parents.

- Permit a nonbiological parent to seek custody or visitation in an action for dissolution of marriage or for legal separation, either by filing a petition or a response. This addresses reported cases where a father who has raised a child in marriage learns in the course of a divorce that he is not the biological parent. It also recognizes the relationship of the nonbiological father's parents (the child's "grandparents").
- Formalize the court procedures to be followed for the commencement of a proceeding for and the standards to be utilized by the court when determining a request for custody or visitation by an in loco parentis parent.
- Permit the court in a custody or visitation proceeding, brought by a person who stands in loco parentis to a child, to order paternity testing and to determine paternity when it is in the best interests of the child.

Members of the work group are committed to assist the proposal through the legislative process by providing technical information as necessary.

*APPENDIX TO
CHILD SUPPORT ENFORCEMENT AND
DOMESTIC RELATIONS REFORM
COMMITTEE
1997 ANNUAL REPORT*

CHILD SUPPORT COORDINATING COUNCIL SUBCOMMITTEE

Purpose

Pursuant to Laws 1994, Chapter 374, the Child Support Coordinating Council Subcommittee was formed to:

- Coordinate and review plans of various government agencies.*
- Make recommendations regarding child support enforcement and related issues to the Child Support Enforcement and Domestic Relations Reform Committee.*
- Develop a plan to implement a statewide parent education program. (With successful implementation of this program effective in 1997, the mandate to develop a program was stricken from session law by Laws 1997, Chapter 176.)*

Membership

Membership consists of the following members or their designees who have knowledge of or experience in, child support enforcement and related issues:

- *The Director of the Department of Economic Security.*
- *The Assistant Director of the Division of Child Support Enforcement of the Department of Economic Security.*
- *A Division or Section Chief from the Office of the Attorney General who is appointed by the Attorney General.*
- *The Director of the Arizona Supreme Court Administrative Office of the Courts.*
- *Two Presiding Judges from the domestic relations department of the superior court who are appointed by the Chief Justice of the Arizona Supreme Court; one judge from an urban county, and one judge from a rural county.*
- *A title IV-D Court Commissioner who is appointed by the Chief Justice of the Arizona Supreme Court.*
- *A Clerk of the Superior Court who is appointed by the Chief Justice of the Arizona Supreme Court.*
- *Two County Attorneys who are appointed by the Director of the Department of Economic Security from a county that is currently contracting with the state to provide child support enforcement services; one County Attorney from an urban county and one County Attorney from a rural county.*

- *An Executive Assistant from the Office of the Governor who is appointed by the Governor.*
- *One person knowledgeable in child support issues who is a noncustodial parent and one person knowledgeable in child support issues who is a custodial parent, who are appointed by the President of the Senate.*
- *One person knowledgeable in child support issues who is a noncustodial parent and one person knowledgeable in child support issues who is a custodial parent, who are appointed by the Speaker of the House of Representatives.*
- *One parent knowledgeable in child support issues who has joint custody who is appointed jointly by the President of the Senate and the Speaker of the House of Representatives.*
- *One person from the Executive Committee of the Family Law Section of the State Bar of Arizona who is appointed by the Chief Justice of the Supreme Court.*
- *One person from the business community who is appointed jointly by the President of the Senate and the Speaker of the House of Representatives.*
- *Two members of the Senate from different political parties.*

- Two members of the House of Representatives from different political parties.

The President of the Senate shall appoint the two Senate members and designate one of the members as the cochairperson. The Speaker of the House of Representatives shall appoint the two House of Representatives members and designate one of the members as the cochairperson. Each cochairperson may appoint additional members to the Child Support Coordinating Council Subcommittee to serve as non-voting technical experts.

Reports of the Council's work are required to be submitted quarterly to the Child Support Enforcement and Domestic Relations Reform Committee.

CHILD SUPPORT COORDINATING COUNCIL SUBCOMMITTEE

Members

*Cochairs: Representative Winifred "Freddy"
Hershberger
Senator David Petersen*

*Honorable Judith Allen
Clerk of the Superior Court*

*Conrad Greene
Noncustodial Parent
Appointed by Senate President*

*Jodi R. Beckley
Executive Assistant from the
Governor's Office*

*William Hurst
Joint Custody Parent
Appointed by Senate President
and House Speaker*

*Linda J. Blessing, D.P.A.
Director Department of
Economic Security*

*Honorable Sandra Kennedy
Arizona State Senate*

*Kirk Burtch
Division Chief
Office of the Attorney General*

*Nancy Mendoza
Assistant IV-D Child Support
Director, DES Division of Child
Support
Enforcement*

*David K. Byers
Administrative Director of the
Courts*

*Honorable Robert Duber II
Domestic Relations Judge (Rural)*

*David Norton
Noncustodial Parent
Appointed by Senate President*

Honorable David Ostapuk
*Family Law Section Executive
Committee State Bar of Arizona*

*County Attorney's Office
Providing Enforcement Services
(Urban)*

Honorable Rebecca Rios
Arizona House of Representatives

Vacant
*Custodial Parent
Appointed by House Speaker*

Debora Schumacher
*Custodial Parent
Appointed by Senate President*

Chuck Shipley
*Business Representative
Appointed by Senate President
and House Speaker*

Honorable Barry Schneider
Domestic Relations Judge (Urban)

Paul Smith
*County Attorney's Office
Providing
Enforcement Services (Rural)*

Honorable Richard Weiss
IV-D Commissioner

Bianca Varelas

DOMESTIC RELATIONS REFORM STUDY SUBCOMMITTEE

Purpose

Pursuant to Laws 1994, Chapter 374, the Child Support Coordinating Council Subcommittee was formed to:

- Recommend a method for consolidating the domestic relations statutes in Title 25, Arizona Revised Statutes, with other related sections of law, including Titles 8 and 14, Arizona Revised Statutes. (Having achieved this goal by legislation enacted in 1996, this mandate was stricken from session law by Laws 1997, Chapter 176.)*
- Recommend changes to the domestic relations statutes, rules and procedures and other related issues each year in a phased-in approach designed to lead to a reform of the state's domestic relations statutes.*
- Clarify the rights of grandparents in domestic relations issues.*

Membership

The Domestic Relations Reform Study Subcommittee consists of the following members:

- Two noncustodial parents knowledgeable in domestic relations issues.
- Two custodial parents knowledgeable in domestic relations issues.
- Two parents who have joint custody who are knowledgeable in domestic relations issues.
- Two parents knowledgeable in domestic relations issues.
- One active or retired judge or commissioner from the domestic relations department of the superior court.
- One domestic relations attorney.
- One Clerk of the Court.
- A professional domestic relations mediator.
- A psychologist experienced in performing child custody evaluations.
- A domestic relations educator experienced in matters relating to parenting or divorce classes.
- An Administrative Officer of the Supreme Court.
- Three members of the Senate, not more than two of whom are from the same political party.
- Three members of the House of Representatives, not more than two of whom are from the same political party.

The President of the Senate shall appoint the three Senate members and designate one of the members as the cochairperson. The Speaker of the House of Representatives shall appoint the

three House of Representatives members and designate one of the members as the cochairperson.

Reports of the Subcommittee's proposals for consolidation and change are required to be submitted quarterly to the Child Support Enforcement and Domestic Relations Reform Committee.

DOMESTIC RELATIONS REFORM STUDY SUBCOMMITTEE

Members

*Cochairs: Senator Ann Day
Representative Lela Steffey*

Honorable Mark Anderson

*Representative Appointed by
House Speaker*

**Honorable Alma Jennings
Haught**

Clerk of the Court

Sanford Braver, Ph.D.

Domestic Relations Educator

Zenia Kuzma

Domestic Relations Mediator

Honorable Jack Brown

*Senator Appointed by Senate
President*

Corrine K. Martineau

Custodial Parent

Beverly Burns

Parent with Joint Custody

Honorable David Petersen

*Senator Appointed by Senate
President*

Ira Mark Ellman, Ph.D.

Parent

Terrill J. Haugen

Noncustodial Parent

Honorable John M. Quigley
Domestic Relations Judge

Kathryn Tolman
Noncustodial Parent

Mark J. Robens
Domestic Relations Attorney

Alice Rose Thatch
*Administrative Officer of the
Supreme Court*

Honorable Elise Salinger
*Representative Appointed by
House Speaker*

Brian W. Yee, Ph.D.
*Psychologist with Child
Custody*

Honorable Barry C. Schneider
Parent

Evaluation Experience

Ellen Seaborne
Custodial Parent

Jeffrey C. Zimmerman
Parent with Joint Custody

IN LOCO PARENTIS CUSTODY, VISITATION AND CHILD SUPPORT WORK GROUP

Purpose

In 1997, the Legislature enacted a new law (Section 25-415, Arizona Revised Statutes) permitting nonparents who stand in loco parentis to a minor child to commence proceedings to determine custody or to obtain visitation rights. The term "in loco parentis" was defined in the law to mean a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time. Recognizing that further analysis and debate may be important to the application and implementation of this law, it was directed that the Child Support Enforcement and Domestic Relations Reform Committee of the Legislature study the issue of in loco parentis custody, visitation and child support and submit a report of its findings *to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives, the Secretary of State and the Director of the Department of Library, Archives and Public Records.*

Membership

The Child Support Enforcement and Domestic Relations Reform Committee is comprised of the cochairs of the Domestic Relations Reform Study Subcommittee and the Child Support Coordinating Council Subcommittee. As a matter of efficiency, the cochairs directed that a preliminary study of in loco parentis issues be conducted by a work group formed from members of both subcommittees and other interested citizens.

*IN LOCO PARENTIS CUSTODY, VISITATION AND CHILD
SUPPORT WORK GROUP*

Members

*Cochairs: Jeannette Gallagher
Hon. Barry C. Schneider*

*Hon. Mark Anderson
A. Thomas Cole
Kat Cooper
Hon. Norman Davis
Hon. Robert Duber II
Conrad Greene
William Hurst
Therese L. Martin
Annmarie Mena
Mary K. Myers
Hon. David R. Ostapuk
Hon. Rebecca Rios
Ellen Seaborne
Billye Wilda
Hon. Chris Wotruba*